
THIRD-PARTY INSURANCE IN INDIA: LEGAL FRAMEWORK AND EVOLVING JURISPRUDENCE

Nisha Patnaik, KIIT School of Law

ABSTRACT

Basically, insurance is a type of contract wherein the insurer, after acceptance of a certain consideration, agrees to indemnify the insured with the required amount against the happening of any kind of uncertain and unexpected events. There are different categories of insurances available in India for various aspects. One kind of insurance is insurance with respect to third parties, which is a statutory mandate under the Act of 1988 relating to motor vehicles, wherein the damage or injury caused by an insured to a third party is covered and the third party is compensated for the damages. As the name suggests, i. e third party insurance, there are three parties involved here, one party being the insured, the second being the insurance company and the third party being the individual who has claimed damages against the injury caused to him by the insured.

This kind of insurance safeguards and secures the interests of the society at large. The reason for making this kind of insurance mandate for the owners of the motor vehicles, was to make sure that in case of damage caused to a third party, the third party is compensated even if the insured is financially incapable to pay for the damages caused. This accompanying paper basically deals with insurance related to third party considering its historical evolution, general idea and salient features of the same, relevant statutory provisions, rights and duties of third party and at the end, the paper has mention of certain judicial precedents corresponding to the insurance with respect to third party in India.

Keywords: Third Party Insurance, The Motor Vehicles Act, Insured, Damage, Compensation

INTRODUCTION

An insurance with respect to third party is a shield as opposed to the claim raised by someone else. The insurance with regard to automobiles is considered to be a major type of insurance with respect to third party wherein an uninsured driver's claim is covered even though it is not been under the particular insurance policy.¹ It is an essential requirement for all the drivers to have insurance under the statute of 1988 with respect to the Motor Vehicles irrespective of whatever purpose the vehicle has been purchased for. The basic purpose of this previously mentioned statute was to make sure that the inability of the insured to pay the payments with respect to insurance premiums should not affect the third party in any way. The basic is to ensure that the third party gets compensation for the injury or damages caused by the owner of the motor vehicle. The legislature intended to safeguard the road users from the peril of the vehicles. Along with the previously mentioned act, the statute of 1938 that is with respect to insurance has also the provision dealing with risks related to third party in case of motor vehicles to be precise.

HISTORICAL EVOLUTION OF THIRD PARTY INSURANCE

To understand the concept and aim of bringing the third-party insurance concept in a statute in India, it is quite essential to know the roots of mandatory third-party insurance that was made in England. Before 1930, England had no such law for insurance with respect to third party to be precise. So, the person who has been injured, used to claim compensation for the damages caused by the particular individual riding the motor vehicle. It was seen in the majority of cases that the person causing the damage did not have any way to compensate the injured or the family of the injured, and that led to no compensation for the damages caused. Looking at these complicated situations, lead to the enactment of various regulations and legislations. To tackle with such circumstances, the act of 1930 was incorporated in England which dealt with situations with respect to third parties. The provisions of the 1930 Act were taken into the Act of 1939 under section 97, where the third party could directly sue the insurer as a matter of right. Later, Act of 1930 with respect to road traffic was brought in wherein it was a mandate for motor vehicles to have an insurance. The provisions of this act was taken in both 1988 and

¹ Pinky Dass, All About Third Party Insurance Policy Law in India(August 5, 2018)
<https://www.latestlaws.com/articles/all-about-third-party-insurance-policy-law-in-india-by-pinky-dass>

1939 Act under section 146 and section 95 respectively. ²The basic objective behind the legislations was to ensure the third party was compensated and is not affected by faults done by the insured by not following the policy terms with respect to the insurance. Further, act of 1934 with respect to road traffic was passed with the objective persuade insured's legal responsibilities. Under the 1934 act, three situational actions were addressed. The three situational actions were basically also enshrined in the Act of 1988 under section 149. Whatever is mentioned in both the acts has its base mentioned in the English legislation. Hence, while passing the Act of 1988, which is with respect to motor vehicles, the lawmakers had the intention to safeguard the rights of the third party, and all the aspects related to the third party have been enshrined in **Chapter XI of the Act of 1988**. The reason of making this kind of insurance mandate for owners of the motor vehicles was to make sure that in case of damage caused to a third party, the third party is compensated even if the insured is financially incapable to pay for the damages caused.

THIRD PARTY INSURANCE AND ITS BASIC FEATURES

The system dealing with damages has basically two varieties of insurance, which are first-party insurance and third-party insurance. An insurance policy with respect to third party is one wherein the insured person is indemnified by the particular insurance company, if he/she has caused injury to a third party and has been legally held liable for the same. ³So basically, there are three parties involved here, one party being the insured, second being the insurance company and third party being the individual who has claimed damages against the injury caused to him by the insured. The basic features of this kind of insurance are as follows:

- When it comes to insurance in relation to third party, it is not as popular as the insurance with respect to first party, simply being the reason that under policies with respect to third party, the insured have no estimation of the utmost amount that they need to pay.

-This type of insurance aims to not only gives coverage to the injuries caused to the insured but also any individual to whom the insured has caused injury.

² Sangeeta Chakravarty, Third Party Insurance in India
<https://www.legalserviceindia.com/article/I264-Third-Party-Insurance.html>

³ Claiming compensation under third-party motor insurance(The Economic Times)
<https://economictimes.indiatimes.com/claiming-compensation-under-third-party-motor-insurance/tomorrowmakersshow/69426444.cms>

- Insurance with respect to third party has been made mandatory majorly for motor vehicles under the statute and this cannot be sidelined in anyway. This particular feature has also been ruled in the case of *G. Govindan v. New India Assurance Co. Ltd*⁴
- This kind of insurance is a bit erroneous and inaccurate as the liability of the insured has to be proved first then it has to be also proved that the damages caused to the third party has been done by the insured in order to have the benefits of the particular insurance.
- In true sense, the beneficial party in this type of insurance is the third party as the insured is just a nominal beneficiary of the particular insurance policy. The insurance company without letting the amount go through the insured, directly pays to the third party.

RELEVANT LEGAL PROVISIONS UNDER THE MOTOR VEHICLES ACT

Under the statute i.e. The Motor Vehicles Act (MV Act) , insurance with respect to third party is regarded to be a statutory necessity. The act basically regulates insurance with respect to motor vehicles and also deals with rights and liabilities with respect to third party.⁵ To be precise, third party aspects have been enshrined in Part XI of the act relating to motor vehicles. Risks related to third party have also been enshrined in Section 32D of the Act of 1939 with respect to insurance.

One of the essential provisions of the act i. e Section 146 which basically expressly mentions the driver using the particular motor vehicle must carry the insurance with himself which must comply with the provisions enshrined in Part XI of the Act. It has also been mentioned in the Act that if anything done is in contravention with section 146 then that becomes an punishable offence.

Section 147 in simplest sense talks about the extent of liability or the valuation and it also talks about the essentials of the insurance policy which are basically the requirements. Any damages caused to the third party's motor vehicle has to be compensated by the particular insured. The value of the damages caused to third party in the accident must be covered by the policies.

⁴ AIR 1999 SC 1398

⁵ Rachit Garg, Motor vehicle insurance : rights of third party against insurers(May 27, 2021) <https://blog.ipleaders.in/motor-vehicle-insurance-rights-of-third-party-against-insurers/>

Section 157 of the act basically talks about the scenario wherein the ownership of the vehicle is transferred to another person then in that case the certificate relating to the insurance can be transferred to the new owner of the vehicle. If the transferee feels that certain changes are required then he can do so by applying the same before appropriate authority within fourteen days from the date of transfer.

BASIC RIGHTS AND DUTIES OF A THIRD PARTY

Right to receive information

The person who has basically caused damages to the third party must necessarily furnish with required information whenever necessary to the third party. It is the duty of the person who has caused damage to inform the third party about the status of his insurance like whether he was, is or is going to get it. ⁶ The third party has the right to be informed if there is any contract with regards to the insurance which would have an impact on his rights. The third party has also the right to be informed if it has any transferred or any sort of such right.

Right to remain unaffected

This right basically come into play in three situations, one where an judgement has been delivered against the insured, second insurer's liability is not lawfully refrained and lastly in a situation of settlement between the two parties i. e insurer and insured. In any situation whatsoever, the third party will be compensated to the damages caused and any of such situation would not affect the third party in anyway. ⁷

Duty to payback

In case wherein damage has been caused to the third party and insurer has paid extra amount to the third party in comparison to the damages caused then it is the responsibility of the third party to return back the excess amount.

⁶ Vijay Chauhan, Rights And Liabilities Of Third Party In Motor Insurance(May 28, 2020) <https://www.mondaq.com/india/insurance-laws-and-products/942010/rights-and-liabilities-of-third-party-in-motor-insurance>

⁷ Garg, supra 5

Liability to provide information

If there is a situation wherein the surveyor is in need of some extra information with respect to the accident then not only the insured but also the third party has a duty to provide the surveyor with information relating to the details of the accident.

Liability to Compensate

If in any case, it is found out that the third party is guilty of certain damages later then it is the responsibility of the third party to recover the same by compensating the damage or loss caused.

JUDICIAL PRONOUNCEMENTS

In *Govindan V. New India Assurance Co Ltd*⁸, insurance with respect to third party is mandatory, mainly for motor vehicles under the statute, i., the **Act of 1988, which is with respect to motor vehicles**, and this cannot be sidelined in any way. This particular aspect has been held by the court in the case.

In *National Insurance Co. Ltd. V. Laxmi Narain Dutt*⁹, it clarified the insurer's responsibility in relation to judgment been executed and is in the third party's favour enshrined under section 149 of the act of 1988 that is related to motor vehicles. The court had further held in this case that the insured and the third party have no liability towards each other in terms of a contract.

In *Oriental Insurance Co. Ltd. V. Sudhakaran K. V*¹⁰, basically the distinction was drawn and made clear between the third party and owner of the motor vehicle with respect to the contract relating to insurance. Basically, it explained about the section 147 of the act of 1988 and it has also been clarified in this case that it is to be utilized with regard to compensating the damages caused to the third party. Furthermore, it was held in the case that this provision is not beneficial in anyway to the vehicle's owner.

In *S. Iyyapan V. United India Insurance Co. Ltd*¹¹, it was basically held in this case that the basic objective behind making insurance with respect to third party is to ensure that the third party gets compensation for the injury or damages caused by the owner of the motor vehicle.

⁸ AIR 1999 SC 1398

⁹ (2007) 3 SCC 700

¹⁰ (2008) 7 SCC 428

¹¹ (2013) 7 SCC 62

The legislature intended to safeguard the road users from the peril of the vehicles.

In *National Insurance Co. Ltd V. Nicolletta Rohatgi*¹², here the court basically held that the objective of insurance with respect to third party is to safeguard the the third party interests and not the company without taking into consideration if the insurer is a company that is nationalized or not.

In *National Insurance Co Ltd. V. Swaran Singh*¹³, it was held in this particular case that a contract would be declared as null and void if there is any condition that is making the third party devoid of any of their basic rights. Also, in cases where a judgment cannot be questioned, the insurer's liability has been entrenched.

CONCLUSION

It's been quite a while since the field of insurance has been developing day by day. In today's scenario, where vehicles on the road have increased and so has traffic, protection has also increased for people who use their vehicles on the road or essentially use the road. Therefore, insurance with respect to third party plays a very crucial role to safeguard the interests of the people. Further, the insurance with respect to third party is a mandate under the statute and hence, this mandate definitely helps the individual who has suffered damages, to claim for a recovery of the same. **The reason for making this kind of insurance mandate for the owners of the motor vehicles, was to make sure that in case of damage caused to a third party, the third party is compensated even if the insured is financially incapable to pay for the damages caused.** The person who has caused injury cannot escape. from paying damages to the third party even if, he becomes insolvent. The person, if owns a vehicle and has caused a damage then he liable to compensate the same with the help of the insurance.

¹² AIR 2002 SC 3350

¹³ AIR 2004 SC 1531