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# MARINE ADVENTURE PAVED WAY TO MARINE INSURANCE: A LEGAL STUDY

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## ABSTRACT

The study discusses about the Marine Insurance, which transfers the risk from one person to the other, and effects on the participants who might be the businessman facing economic loss; ship owner facing destruction of his ship or not receiving freight charge; cargo owner who is responsible for the goods under risk and government which receives economic profit. The need for marine insurance would be remembered only when marine adventure takes place, which is nothing but marine voyage that exposed to perils of the sea or loss or risk. Thus, the complete study focuses on marine adventure which results in the claiming process of marine insurance, under which the introduction part deals with the history and evolution of Insurance and Marine Insurance. Objectives of the study are well discussed in the study. The legal study is a doctrinal study and related information is gathered using secondary sources such as articles, books, judgements etc. Few articles were also reviewed in the study. The study concluded by saying that unless marine adventure takes place, there is no need for the concept of marine insurance and indemnification of losses by third party. Thus, when the transfer of goods takes place through sea, though the marine adventure happens to take place, at least economic losses can be compensated through marine insurance policies provided with set of coverage and limitations.

**Keywords:** Marine Insurance, Marine Adventure, Perils of Sea, Loss, Vessel, Cargo.

## **LIST OF ABBREVIATIONS**

1. RBI – Reserve Bank of India
2. IRA – Insurance Regulatory Authority
3. IRDA – Insurance Regulatory and Development Authority
4. Co. – Company
5. Ltd. – Limited
6. AIR – All India Reporter
7. Ins – Insurance

## **LEGAL PROVISIONS**

1. The Insurance Act, 1938
2. Insurance Regulatory Authority Bill, 1996
3. Insurance Regulatory and Development Authority Bill 1999
4. Insurance Regulatory and Development Authority Act 1999
5. The Indian Marine Insurance Act 1963

## **CASES REFERRED**

1. National Insurance Co. Ltd. V. Atlantic Shipping Services
2. Sassoon Western Assurance Co; (1912) AC 561 (PC)
3. Thames and Mersey Insurance Co. V. Hamilton, Fraser & Co.
4. State of Orissa v. United India Insurance Co. Ltd
5. Goole and Hull Steam Towing Co. Ltd. V. Ocean Marine Ins. Co Ltd. (1928)
6. M Mohanlal Kalia v. Wood Trading Co. AIR 1961
7. Hamilton Fraser & Co. V. Pandorf & Co. (1887),
8. Lloyd v. Fleming

## 1. INTRODUCTION

The general meaning of the term *Insurance* as referred in dictionary is, 'Insurance is covered under a contract, in which one party either indemnifies or guarantees the other party, for any future loss that may happen due to any accident or perils<sup>1</sup>. The main key characters of insurance contract or insurance policy are the insurer<sup>2</sup> and the insured or policy holder<sup>3</sup>.

The legal meaning of the term *Insurance* is, an agreement through which one party pays the consideration to the other party to get returns during the occurrence of a specific event covered in the agreement. The one who pays the money is policy owner; the other who receives the consideration of insurer and the consideration paid is said to be premium. The policy owner will be the individual or any person buying such insurance; the insurer will be the company that is selling such insurance and the premium is the interest rate that will be claimed as insurance coverage with the happening of the event that is insured<sup>4</sup>.

Marine Insurance policy was defined in *Lloyd v. Fleming*<sup>5</sup>, by Justice Blackburn, as a contract that indemnifies the subject matters mentioned in the contract, which may be exposed to loss or damage during marine adventure due to any perils that occurs in the due course of marine adventure. Here, this research paper focuses on Marine insurance and Marine Adventure.

### 1.1. RESEARCH PROBLEM

Marine Adventure exposed to perils of the sea creates a great loss; however, it cannot be compensated only through insurance, because the one who is waiting for the goods in the other side of voyage sometimes only need goods rather than monetary compensation, to face the demand of his society.

### 1.2. AIM AND OBJECTIVES

The aim of the study is to test whether marine adventure leads to marine insurance. The objectives of the study are as follows,

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<sup>1</sup> Merriam Webster Dictionary.

<sup>2</sup> Insurance Act, 1938, Sec. 2(9), No. 4, Acts of Parliament, 1938 (India).

<sup>3</sup> Insurance Act, 1938, Sec. 2(2), No. 4, Acts of Parliament, 1938 (India).

<sup>4</sup> Jain, Sankalp, *Marine Insurance: Nature, Kinds, Principles and Importance* (2020).

<sup>5</sup> *Lloyd v. Fleming* (1872), L. R 7 QB 299.

- 1) To know the historical development of Marine Insurance,
- 2) To analyse the essential factors of Marine Insurance,
- 3) To identify the relationship between Marine adventure and marine insurance,

### 1.3. RESEARCH QUESTIONS

- 1) Whether marine insurance is treated as other forms of general insurance contracts?
- 2) Whether marine adventure paved way to marine insurance?

### 1.4. HYPOTHESIS

Marine Adventure paved way to marine insurance claims.

### 1.5. SCOPE & LIMITATIONS OF STUDY

The scope of the extends to Marine insurance and marine policy under the marine insurance act, 1963 along with IRDA act and related committees. Hence, the scope of the study also extends to historical backgrounds, judicial decisions and interpretations.

The study is limited to Indian Marine Insurance laws only and there is no possibility of comparing with other countries Marine insurance policies. Since this research work is also a part of academic work, researcher's time of doing research is also limited to one year, which restricts the researcher from doing research beyond the Indian law.

### 1.6. METHOD OF RESEARCH

The study follows *Doctrinal Method of Study* using secondary sources such as articles, books, judgements, news etc.

### 1.7. REVIEW OF LITERATURE

- In **Mahdavian, Seyedamirhossein (2018)<sup>6</sup>**, the author discussed Marine Insurance's nature scope and other related characteristics of Marine insurance like features of

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<sup>6</sup> Mahdavian, Seyedamirhossein, *An analytical study of international trade law with special reference to Marine insurance issues of international commercial transactions* (2018).

contract, types of policies, perils of the sea and subsequent losses, which remains the central theme of the study. The author didn't concentrate individually on the above-mentioned subject matters and in depth and elaborate study is not carried out.

- In **Jain, Sankalp (2020)**<sup>7</sup>, the author focused on Marine insurance and developed the study by discussing its kinds, principles and it's important. The author tries to connect all the related subject matters of Marine insurance contract which remained the central theme of the study.
- In **Verma, Dharam Prakash (2010)**<sup>8</sup>, the author carefully connected Liberalisation, Privatisation and Globalisation to the development of Marine Insurance sector. The historical developments and legislative developments asking with the other subject matters of Marine insurance places the central theme of the study. The researcher appreciates the clear-cut study of the author.
- In **Hayden, Raymond P. and Sanford E. Balick, (1992)**<sup>9</sup>, the author narrowed his study only towards Marine Coverages which may occur in different forms of Marine insurances like hull insurance, property insurance, protection and indemnity insurance and other forms too. General Coverages under each form of Marine insurances, form of perils against which insured, extend of Coverages and forms remains the central theme of the study.

## 2. MARINE INSURANCE IN INDIA

### 2.1. HISTORICAL BACKGROUND AND LEGISLATIVE DEVELOPMENT

#### International aspect of historical development

The oldest form of insurance evolved in the world is said to be Marine Insurance. Officially, the very first-time maritime insurance got regulated in the year, 1369 but prior to that in the

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<sup>7</sup>JAIN, SANKALP, *supra* note 4, at 3.

<sup>8</sup> Verma, Dharam Prakash, *Marine Insurance in India: Policies and Principles*, Vol. 25, M.D.U. LAW JOURNAL 123, 123-142 (April 23, 2010).

<sup>9</sup> Hayden, Raymond P, and Sanford E. Balick, *Marine Insurance: Varieties, Combinations, and Coverages*, Vol. 66, TULANE LAW REVIEW 311, 311-370 (1991-1992).

year 1347 first contract in maritime insurance was recognised and performed on 13<sup>th</sup> Oct 1347 in Genoa.

*Lloyds of London:* A coffee shop was opened by Mr. Edward Lloyd in the year 1680, where he circulated daily news which consists of subject matters such as ship movements, casualties and freights and other news related to marine trading, later which was named as 'Llyod's News'. Due to his valuable work, the coffee shop becomes the place for marine traders such as ship owners, brokers and underwriters to have their common meetings and business transactions. For public reference, he first published from the year 1734 and still continued in the name of 'LLYOD'S'<sup>10</sup>. In 1713, A small group of Marine insurers came together and formed a committee here and named it as 'society of Lloyd's' later famously known as 'Lloyd's of London'. It is generally believed that, the first Marine insurance was offered through this Lloyd's of London.

### **Indian aspect of historical development**

The development of Marine insurance in India is evolved after independence without any appropriate legislation. At that developing stage, there consists a common form which is portrayed as Marine policy and interpreted under general contracts law. Such contract acts didn't expressly involve all the principles and rules interrelated with Marine insurance, but all these were understood and developed through cases. Finally, and officially, on August 1, 1963 the Indian Marine insurance act was enforced, piled up with all the necessary regulations relating to Marine insurance business in India<sup>11</sup>.

Later, A report was formed by Malhotra Committee which was set up in the year 1993, under Mr. R. N. Malhotra, who leads the chairmanship of this committee and who was also the former Governor of RBI. The respective report which was submitted on 7<sup>th</sup> January, 1994 recommended for liberalization in the field of insurance through bringing various necessary reforms in this sector. At first, IRA Bill was introduced on 20<sup>th</sup> December, 1996 based on the respective report (for growth and promotion of the insurance industry which should protect the interest of the insurance holders) which was withdrawn in a short time and later IRDA Act was passed based on the IRDA Bill, 1999 which is nothing but the modified form of IRA Bill.

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<sup>10</sup> M. N. Srinivasan & K. Kannan, Principles of Insurance Law, 10<sup>th</sup> Edition, Volume 1.

<sup>11</sup> JAIN, SANKALP, *supra* note 4, at 3.

Finally, the very much needed independent statutory authority was come into existence in the same year, which is entitled to regulate insurance business<sup>12</sup>.

## 2.2. ESSENTIAL ELEMENTS OF MARINE INSURANCE CONTRACT

Section 3 of the Marine Insurance Act 1963, defines *Marine Insurance* as, an agreement that one person i.e., the insurer promise to indemnify the other one i.e., the assured to the extend agreed through this agreement when he faces loss due to any incident happened in such Marine Adventure. The following are the necessary elements based on which a Marine insurance contract or Marine policy should be framed so that the Marine insurance will be held valid in case of Maritime claim,

### *Features of a general contract*

The following steps should be followed as in general contracts – offer, acceptance, consideration and signature

### *Principle of Insurable Interest*

The insured should have Insurable Interest over the subject matter when it is exposed to perils of sea or loss i.e., the party should have any connection over the subject matter that is entitled to receive Insurable benefit.

### *Principle of utmost good faith*

Both the parties of the contract, insurer and insured should give all the necessary information related to the contract, which may affect the contract if failed to disclose.

### *Doctrine of indemnity*

This involves indemnification of loss through cash, since the underwriter cannot replace the lost vessel or goods. The valuation of cash would either tally the loss or it would be the maximum insured amount. The insured nowhere can make benefit out of this claimed amount.

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<sup>12</sup> JAIN, SANKALP, *supra* note 4, at 3.

### *Principle of warranties*

Warranty is that, the insured is giving warranty to the underwriter that he won't go beyond the contract. Like, some implied warranties in the Marine insurance contracts are,

- *Seaworthiness of the vessel* (i.e., the vessel is in good condition and it is capable to go through the entire trip from loading to unloading of the goods, which also implies the worthiness of captain and other staffs),
- *Legality of venture* (i.e., the perils of the sea should be legally permitted and the goods transported should also be legally permitted)
- *No change in voyage* (i.e., the journey should go as mentioned in the contract)
- *No delay in voyage* (i.e., there should be no delay in timings)
- *Non-Deviation* (i.e., the vessel should be travelled through the fixed route as accepted in the contract)

### *Principle of proximate clause*

The cause of damage should be sudden cause and the cause of action should be covered in insurance contract. Once it is proved, the insurance company is liable to indemnify the insured. Other common damages or causes not mentioned in the contract cannot be indemnified.

### *Principle of subrogation*

In contract of Marine insurance, once the damage or loss happens, the insurer will be replacing insured and he is entitled to all the rights and liabilities of the insured. Through subrogation only, the indemnification takes place.

### *Return of premium*

Section 82 (enforcement of return expresses), Section 83 (return of agreement allowed) and Section 84 (return for failure of consideration) of the Marine insurance act 1963 deals with the return of premium during insurance claims.



*[Hence marine insurance is not treated as other forms of general insurance contracts. It also has some features of general insurance but also have some additional features and remains different from other insurance.]*

### **3. MARINE ADVENTURE**

#### **3.1. IMPACT OF MARINE ADVENTURE EXPOSED TO “PERILS OF THE SEA” – MARINE LOSS.**

##### **Perils of the sea**

Some actions like accident or misfortune which is more than the normal wind or waves is ‘perils of the sea’<sup>13</sup>. The accident will be unexpected or unforeseen<sup>14</sup>. In the case, the house of lords held that the cargo damaged due to entry of sea water through the hole made by rat will also be considered as ‘perils of the sea’. In contrary in the case<sup>15</sup>, the court held that any damage that made to a vessel out of its old age will not be considered as damage happened due to ‘perils of the sea’. A wide view in the case<sup>16</sup>, the damage not only means the damage caused by the sea, but also the damage caused to the characteristics of the goods or subject matter of insurance contract which would remain as the objective of such contract.

‘Perils of the sea’ that can be insured in a marine policy include, sinking of ship, stranding, damage of ship and cargo due to collision of ships or dashing of ships on rock or shipwreck, missing of ship, fire or explosion or lightning or volcanic eruption.

‘Other risks that can be insured in a marine policy include, damage and loss caused by rat, loss by fire, loss by Capture, seizure or taking at sea, loss by arrest, detention etc, war risk and FCS Clause, loss caused by pirates and thieves, etc.,

##### **Marine Loss**

The impact of Marine Adventure exposed to perils of the sea and other risks will be ‘Marine Loss’. The Marine losses may be either total loss (actual total loss or constructive total loss) or

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<sup>13</sup> CFG Cuffley, Ocean Freights and Chartering, 1970.

<sup>14</sup> Sassoon Western Assurance Co; (1912) AC 561 (PC)

<sup>15</sup> National Insurance Co. Ltd v. Atlantic Shipping Services.

<sup>16</sup> Thames and Mersey Insurance Co. V. Hamilton, Fraser & Co.

partial loss.

*Total Loss* – The subject matter or the cargo insured in the Marine Insurance contract is totally damaged or destroyed. Total loss may be either actual total loss (the insured subject matter is completely damaged and destroyed and cannot be recovered into actual form, E.g., Complete loss of ship and cargo by fire and sinking of ship) or constructive total loss (the insured subject matter is completely damaged but not completely destroyed and can be recovered or repaired into actual form, but the cost to repair will be more than the value of the subject matter insured, E.g., the ship that sinks into sea is retrieved and repaired, but it costs more than the actual cost of the ship).

*Partial Loss* – The subject matter or the cargo insured in the Marine Insurance contract is partially damaged or destroyed. Partial loss may be either compensated through general average (all other traders who are having interest over the subject matters in such Marine Adventure will compensate the one whose goods got damaged E.g., Jettison) or through particular average (loss caused by the perils of the sea, insured by the underwriter).

In case<sup>17</sup>, it was insured for total loss, but what actually happened was partial loss, so the court rejected the request for insurance claim, sticking on to legal provisions Section 56(4) and 57 of Marine Insurance Act 1963.

### **3.2 HOW MARITIME ADVENTURE LEADS TO INSURANCE CLAIMS?**

From early days itself, since goods are transported through sea route, security of the goods remains a great question, which is threatened by the perils of the sea. This burden brings the traders together to have some mutual aid and assistance, in which all together will compensate the other, which puts a strong foundation for Marine Cargo Insurance, called in present day.

A Marine insurance contract though indemnifies the loss of subject matter, the thing actually insured against is Marine Adventure which is exposed to Perils of the sea, without which the question of indemnification is unnecessary.

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<sup>17</sup> Kunjuraman v. United India finance and General Insurance 1987 ACJ 1095 (D. B.)

#### **4. CONCLUSION**

The study concluded by proving hypothesis that Marine Adventure paved way to marine insurance claims i.e., Marine Adventure exposed to perils of the sea will face great loss which will be compensated through Marine insurance claims. Thus Marine Adventure is not just a journey, it is mixed with risks, which will not even allows deviation from accepted voyage. The risks in the voyage forced the owners of the goods and vessel to come forward to move towards compensation which developed now as Marine insurance.

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