

ROAD SAFETY AND LIABILITY UNDER ACCIDENTAL CLAIM

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ABSTRACT

With the development of civilization, act of negligence have become actionable wrong. In the English Law any person or the legal representative of deceased person who expired on account of negligent act of other can besides instituting criminal proceeding, recover damages under the Law of Torts. Thus, negligence accompanied with losses to the other party give rise to a n order to give effective rights to the person injured or expired in an accident, Fatal Accidents Act, 1885 was enacted in India. In the year 1982 a new concept of providing interim compensation on ‘No Fault’ basis was introduced. By this relief was also been given to those persons who expired by hit and run accidents, where the offending vehicles are not identified. In 1988 a new Motor Vehicle Act was introduced.In this Motor Vehicle Act provision for interim award, insurance of motor vehicle against third party risk and the constitution of Claims Tribunal and adjudication of claim and related matters was introduced.

Keywords: Motor accident, motor vehicle insurance, third party insurance, motor claims, motor accident claims tribunal, third party liability

Introduction

Motor vehicle insurance (also known as vehicle / car / motor vehicle insurance) is insurance purchased for cars, trucks, and different road vehicles. Its primary objective is to supply protection against physical harm resulting from traffic collisions and against liability that might additionally arise there-from. Motor insurance in India covers for the loss or harm caused

to the car or its elements thanks to natural and unreal calamities. It provides accident protect individual house owners of the vehicle whereas driving and additionally for passengers and third party legal liability. Motor Insurance or Third Party insurance is obligatory on purchase of latest vehicles whether acquired for business or non-public usage as per car Act in India. One may be punished for driving without a valid cover.

An accident will happen to anyone though the driver of the automobile isn't guilty this might result into lots of damages caused face to face in addition on the automobile. Motor Insurance turns to be terribly helpful l below such circumstances .

If the driving force is accountable for an accident which ends up in bodily injuries to a 3rd party, then the expenses need to be borne by the owner of the automobile. An accident will flip this investment into a large loss in addition. Therefore it's necessary to possess motor insurance. It additionally helps to hide for damages caused aside from an accident like fire, theft etc. The aim of the study is to analyse and know the road safety measures, to recommend the measures to mitigate the accidents .To understand the liability under the motor accidents claims, various motor insurance schemes and the laws which has been amended thereafter to suit the needs and finally to stress the importance of road safety thereby to decrease the road accidents.

Hypothesis

Motor insurance premiums are unremarkably connected with drivers' behaviour and risk profile. the most objective of this paper is to assess attainable contribution of car insurance, their promotion of road safety measures, premiums, claims and policies on drivers' behaviour and in increasing road safety and decreasing the number of road traffic accidents.

RESEARCH METHODOLOGY:

Exhaustive literature survey relating to the subject and connected ideas has been done. Secondary knowledge comprehensive of quantitative and qualitative knowledge in addition collected from varied sources together with books, analysis papers, newspapers, magazines, and websites is employed for the aim of study. Since there was no provision for conducting primary knowledge analysis solely the secondary knowledge was collected .For this study only secondary sources - DOCTRINAL RESEARCH have been referred to. Secondary sources include books, articles

and journals relating to the above topic. Various websites, blogs, online materials have also been referred for this study.

Motor insurance and claims

Auto Insurance in India deals with the insurance covers for the loss or injury caused to the automobile or its elements thanks to natural and unreal calamities. It provides accident protect protect individual house owners of the vehicle whereas driving and additionally for passengers and third party legal liability. There are bound general insurance corporation who additionally provide online insurance service for the vehicle.

There are differing types of automobile Insurance in India :

Private insurance – Within the automobile Insurance in India, non-public insurance is that the quickest growing sector because it is obligatory for all the new cars. the number of premium depends on the build and price of the automobile, state wherever the automobile is registered and therefore the year of manufacture.

Two Wheeler Insurance – The two Wheeler Insurance below the automobile Insurance in India covers accidental insurance for the drivers of the vehicle. the number of premium depends on this saleroom value increased by the depreciation rate fastened by the Tariff consultative Committee at the time of the start of policy amount.

Commercial Vehicle Insurance – Business Vehicle insurance under the automobile insurance in India provides protect all the vehicles that aren't used for private functions, just like the Trucks and HMTVs. the number of premium depends on the showroom value of the vehicle at the commencement of the insurance amount, build of the vehicle and therefore the place of registration of the vehicle.

The automobile insurance doesn't include:

Consequential loss, depreciation, mechanical and electrical breakdown, failure or breakage. When vehicle is employed outside the geographic area, war or nuclear perils and driving.

The minimum level of insurance cover unremarkably accessible, and that satisfies the necessity of the Act, is termed third party solely insurance. the extent of canopy provided by Third party solely insurance is basic, however will exceed the necessities of the act. This insurance covers any liability to third parties, however doesn't cover the other risks.

More unremarkably purchased is third party, fire and stealing. This covers all third party liabilities and additionally covers the vehicle owner against the destruction of the vehicle by fire (whether malicious or thanks to a vehicle fault) and stealing of the vehicle itself.

It's going to or might not cover mischievousness. this type of insurance and therefore the two preceding varieties don't cover harm to the vehicle caused by the driving force or different hazards. Comprehensive insurance covers all of the on top of and harm to the vehicle caused by the driving force themselves, in addition as mischievousness and different risks. This can be sometimes the foremost pricey sort of insurance. For valuable cars, several insurers solely provide comprehensive insurance.

Legislation and necessary acts of motor insurance:

I. Pre – 1988 Position

Before, the car Act, 1988 came into existence, the motorcars Act, 1939 was applicable for all sort of Motor Accidents. The motorcars Act, 1939, consolidates and amends the law about motorcars. This has been amended many times to stay it up to this point. The necessity was; but, felt that this Act should; currently inter alia, take into consideration additionally changes within the road transport technology, pattern of passenger and freight movements, developments, of the road network within the country and notably the improved techniques within the motor vehicles management.

II. The motor vehicles Act, 1988

The Supreme Court in M. K. Kun him Mohammed V. P. A . Ahmed kuty, has created bound suggestions to boost the limit of compensation collectable as a results of motor accidents

in respect of death and permanent disablement within the event of there being no proof of fault on the a part of the person concerned within the accident and additionally in hit and run motor accidents and to get rid of bound disparities within the liability of the underwriter to pay compensation relying upon the category or sort of vehicles concerned within the accident.

III. The motor vehicles (Amendment) Act, 1994: The Act was amended by the motorcars (Amendment) Act, 1994, That came in to impact from 14.11.1994.

Once the approaching into force of the motorcars Act, 1988, protective consumers' interest in Transport Sector & Concern for road safety standards, transport of hazardous chemicals and pollution management.

IV. The motor vehicles (Amendment) Act 2000:

The Act was once more amended by the motorcars (Amendment) Act 2000 – additional amendments within the fore mentioned Act became necessary therefore on reduce the conveyance pollution and to confirm the protection of the road users.

V. The motor vehicles (Amendment) Act, 2001:

Third times amendments to the present act were brought by the motor vehicles (Amendment) Act, 2001. The motor vehicles Act, 1988 may be a Central legislation through that the road transport is regulated in the country. By the motorcars (Amendment) Act, 1994, inter alia, amendments were created for build special provisions so as to provide that vehicles in operation on eco-friendly fuels shall be exempted from the necessities of permits and additionally the house owners of such vehicles shall have the discretion to mend fares and freights for carriage of passengers and product. To a lesser degree vehicle insurance might in addition provide financial protection against stealing of the vehicle and presumably harm to the vehicle, sustained from things aside from traffic collisions. It is obligatory to possess vehicle insurance before using or keeping a car on public roads.

Several jurisdictions have experimented with a "pay-as-you-drive" insurance set up that is paid through a excise (petrol tax). this could address problems with uninsured motorists and

additionally charge based on the miles (km) driven, that may in theory increase the efficiency through efficient collection.

Liability under accidental claims covered by motor insurance:

Accident caused by external means. Man created calamities, like Explosion, Burglary, Theft, Riots & Strikes, Malicious Acts, Terrorism, etc. Natural calamities like Earthquakes, Fire, Floods, Typhoons, Hurricanes, Storms, Cyclones, Lightning, etc. While in Transit by rail/road, air or waterway. Third party legal liability. Cover for an owner driver just in case of death

Items not covered under Motor Insurance

Normal wear and tear of the vehicle due to usage

Loss or harm because of depreciation of car Electrical / Mechanical breakdown Wear and tear of consumables like tires and tubes Loss or harm incurred outside the geographic area

Loss or harm due to nuclear risks Vehicle being used otherwise than in accordance with restrictions as to use. Loss/Damage attributable to War/Mutiny/Nuclear risks Damages caused due to speed testing/ racing Known or deliberate accidental harm. These might vary from insurer to insurer.

Types of motor insurance accessible within the market:

Car Insurance policy may be generally classified as follows:

Private insurance : It is obligatory for all the new cars to possess a motor-car insurance. it's insurance for vehicles not used for business functions. the number of premium depends on the build and price of the automobile, state wherever the automobile is registered and the year of manufacture.

Two Wheeler Insurance : It covers accidental insurance for the drivers of the two wheeler vehicle.

Commercial Vehicle Insurance : It provides protect all the vehicles that aren't used for private functions, product carrying vehicles like the Trucks, Tempos and HMTVs.

Third Party Insurance Policy: This sort of policy only covers the person who has been broken or harmed in an accident wherever the owner is responsible. It covers the insured person's liability to 3rd parties' loss caused by an accident involving the auto vehicle of the insured. This refers to the minimum risks that are to be lined below the automobile Vehicles Act 1938 (Act Liability). It doesn't cover the expenses, damage, stealing or injuries of the owner. this sort of setup is formed obligatory by the law of India.

Comprehensive Insurance Policy: This sort of setup features a wider scope and covers all the on top of mentioned liability along with the insured person's harm, theft, expenses and injuries in results of an accident of the automobile vehicle. this sort of policy may be extended to extend advantages as an additional feature.

Liability solely policy: It covers third party liability for bodily injuries and/or death and property harm. Personal accident protect owner driver is additionally enclosed.

Liability coverage

Liability coverage, typically known as Casualty insurance, is offered for bodily injury (BI) or property damage (PD) that the insured driver is deemed accountable. the number of coverage provided (a fastened dollar amount) can vary from jurisdiction to jurisdiction. whatever the minimum, the insured can usually increase the coverage (prior to a loss) for a further charge. An example of property harm is wherever an insured driver (or 1st party) drives into a telephone pole and damages the pole; liability coverage pays for the damage to the pole. during this example, the drivers insured may additionally become accountable for different expenses related to damaging the telephone pole, like loss of service claims (by the telephone company), counting on the jurisdiction. associate example of bodily injury is wherever an insured driver causes bodily hurt to a 3rd party and therefore the insured driver is deemed answerable for the injuries. However, in some jurisdictions, the third party would 1st exhaust coverage for accident advantages through their own {insurer|insurance company |insurance firm| financial institution}

(assuming they need one) and/or would need to meet a legal definition of severe impairment to possess the proper to assert (or sue) under the insured driver's (or 1st party's) policy. If the third party sues the insured driver, liability coverage additionally covers court prices and damages that the insured driver is also deemed answerable for.

In addition, some vendors and insurance corporations provide what's known as "Total Loss Coverage." this can be kind of like normal GAP insurance however differs in this rather than paying off the negative equity on a vehicle that's a complete loss, the policy provides a precise quantity, toward the acquisition or lease of a brand new vehicle. Thus, to some extent the excellence makes no distinction, i.e., in either case the owner receives a precise add of cash. However, in selecting which sort of policy to buy, the owner ought to think about whether or not, just in case of a complete loss, it's additional advantageous for him or her to possess the policy pay off the negative equity or give a payment on a brand new vehicle.

Towing

Vehicle towing coverage is additionally referred to as margin help coverage. traditionally, car insurance corporations have in agreement to solely acquire the price of a tow that's related to an accident that's lined below the auto policy of insurance. This had left a niche in coverage for tows that are related to mechanical breakdowns, flat tires and gas outages. To fill that void, insurance corporations began to provide the automobile towing coverage, that pays for non-accident connected tows.

Personal property

Personal things vehicle that are broken thanks to an accident usually are not lined below the automobile policy. Any sort of property that's not hooked up to the vehicle should be claimed below a home insurance or renters' insurance policy .Accidents & Fatalities report And Road Safety Measures.The road fatalities in India multiplied by some 5-hitter per year from 1980 to 2000, and by some 8 May 1945 p.a. from 2001 to 2004. From 2004 to 2009, the common increase has been some 6 June 1944 annually. Indian road safety management is quite advanced

in terms of motor vehicle standards, and there are positive developments in planning new road traffic rules.

Recently known are the subsequent six promising areas for intervention in India:

Pedestrians , bicyclists, and different non motorists in urban areas that account for regarding hour of all fatalities in urban areas,pedestrians , different non-motorists, and slow vehicles on national highways that represent some 20-40% of fatalities on highways, motorcycles and tiny cars in urban areas (motorcyclists represent some twenty fifth of urban fatalities), over involvement of trucks and buses in fatal crashes, nighttime driving (visibility, alcohol, and fatigue), and wrong-way drivers on divided highways

Contributory negligence

In most countries, a victim's claim may be reduced if they're found to possess contributed to the collision (or the casualty severity).If within the following:Claimant wasn't wearing a seat belt,Head restraint not properly adjusted, Two wheeled rider/occupant not wearing a security helmet(both motorcyclists and cyclists).

Key governmental agencies guilty of road safety rules covering the management of traffic are issued by the Ministry of Road Transport and Highways, Government of India and are statute in the car Act of India. The Act is presently being amended with numerous new rules that affect many factors that area unit known to extend risk of crashes, like exceptional speed limits, failing to use seat belts, improper seating of a baby in vehicle, use of a transportable whereas driving, and failing to wear a helmet whereas driving or riding a motorcycle.

Our new 'golden hour' policy can give immediate relief to accident victims and can facilitate save Lakh of lives.The Golden Hour policy provides for treatment to road accident victims at intervals one hour.Other options embody unified vehicle registration system, single National Road Transport & international Coordination Authority and product Transport and National Freight Policy.It encompasses provisions for safety of vehicles, together with implementation of safety instrumentality of motorcars.

Suggestions:

Improve and often review the extent of compensation to confirm realistic damages.

Ensure realistic compensation for all victims by, for example, ensuring efficient operation of a secure fund. Require insurance corporations to supply immediate advance payments (interim) to victims and/or to their families, to hide expenses like ceremonial occasion prices, loss of earnings or medical treatments. Provide thought to having a part of the compensation paid by the litigator. so a judge ought to be ready to confiscate a district of the property or financial gain of the guilty so as to allow direct facilitate to the victim.

Ultimately most of the people do feel additional of a way of price if they're active in employment and ready to actively partake in society. this can be one necessary objective with the codes it reduces the social prices to society in addition because the actual prices of care and medical treatment.

The drawback of not having any rehabilitation enclosed the multiplied prices to the economy in addition because the strain on the National Health Services once the payment payment becomes depleted. Despite the more and more giant payment awards being given in cases of personal injury analysis shows that almost all claimants have spent their entire award at intervals eight years. No-fault systems typically exempt people from the same old liability for inflicting body injury if they are doing therefore during a automobile accident.

The main purpose of the code is to stress the importance of early intervention on treatment and rehabilitation in personal injury cases. In intervening early, the possibility of the claimant returning to employment area unit dramatically multiplied. This prevents the applier from becoming too franchised with the sickness in addition like the remainder of society. It shifts the main target from blame to prospects that area unit vital in encouraging the applier to start out on the means to getting a much better life.

Suggested Motor Insurance and Road Safety Measures

The following are the urged Road Safety measures with relation to Motor insurance scheme:

Advanced coaching programme for doctors/nurses/emergency team to conduct periodic seminars to push all aspects of trauma care Upgrading of medical facilities Periodic paramedical coaching to supply on the spot care and power-assisted transportation

Satellite hospitals ought to give trauma care on the highways, the primary aid rescue cabins should be deployed to act as pick-up points, Establishment of aid facility at each gas bunk on the main road With Rotary's facilitate, all the present main road hospitals ought to be equipped with aid child,spinal board and different emergency life saving medication.

Ambulances to be placed at Strategic location to supply the transportation service

Through the wireless repeaters communications to be sent on to the highways.

Motor claims of money

All motor vehicles, together with government vehicles should be insured against harm.Short policies ought to be discouraged with refunds offered instead to those that can show they're now not the owner driver of the vehicle. Motor sum of money should be checked as a part of the vehicle review, registration and road tax payment procedures.

The amount charged for driving whereas uninsured should be monitored by the police and reported frequently.Insurance regulator and insurance association ought to agree on a standard information (minimum knowledge set) for all motor claims.

Suggestions:

The law of accident claims is fast growing and the amendments to suit the requirement of the object are necessitated but at the same time interest of those should be watched who are disbursing the compensation i.e. Insurance Companies. Without affording them right to contest, imposing liability to make payment cannot be approved by law. Section 170 provides for seeking permission but this provision can be misused by the owners and claimants in collusion. Presently

because of increasing scale of compensations almost 10 to 15% or even more cases presented to the Claim Tribunals are fake or the other accidents have been converted into road accidents with connivance of the police authorities. It is necessary that while increasing the burden of the Insurance Companies they must get a right of proper contest to mitigate fake cases and also the quantum.

The time is matured for bringing legislation for award of the fixed compensations as in case of rail or airways. A person who dies due to rail accident cannot get beyond Rs. 4 lakhs but a person who dies in road accident can get claim even upto Rs.4 crore. The payment of compensation based on the vehicle is not reasonable and a structural basis compensation formula without reference to income or age may be brought in so that each and everybody can get compensation of their life irrespective of his poverty or richness.

A Scheme should be formulated with the State Police Authorities and the Insurance Companies by which the Insurance Company must know immediately after happening of accident and can make necessary investigations. Insurance Company comes in picture when the claim petition is filed and by that time the evidence can be created to convert the non-accident into accident and also on quantum. The intention of legislation is to provide just compensation and not exorbitant compensation. This should always be kept in mind by the legislators.

Conclusion

In India, below the provisions of the third party motor claims in Indian insurance trade ought to have a sound Insurance to drive on the road. Any vehicle used for social, domestic and pleasure purpose and for the insurer's business motor purpose ought to be insured.

Insurance may be a contract whereby one party, the insurer, undertakes reciprocally for a thought, the premium, to pay the opposite, the insured or assured, a add of money within the event of the happening of a, or one among varied, specified unsure events.

Insurance developed from the fourteenth century as a way of spreading immense risks attendant on early maritime enterprises; life and insurance developed later. The most categories of insurance are life and different personal insurance, marine insurance, accident or property

insurance and insurance once the add becomes collectable once legal liability is incurred as for private injuries or skilled negligence to a different.

Motor third party insurance or third party liability cover, that is usually additionally stated the Act only covers, may be a statutory demand below the motor vehicles Act. It's stated as a 'third-party' cover since the beneficiary of the policy is somebody aside from the two parties concerned within the contract i.e. the insured and therefore the insurance firm. The policy doesn't give any profit to the insured; but it covers the insured's legal liability for death/disability of third party loss or harm to 3rd party property. Taking policy for coverage of bound risks are created obligatory and coverage for other risks area unit optional at the instance of the owner. consequently, car insurance policies may be divided into two, namely, obligatory policy (Act policy) and comprehensive policy.

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