

PART IV

ACCIDENT AND MOTOR INSURANCE— SPECIAL ASPECTS

CHAPTER 27

SCOPE AND NATURE OF MOTOR INSURANCE

SYNOPSIS

- | | | | |
|------------------------------------|-----|---------------------------------------------------|-----|
| 1. Introduction..... | 395 | 3. Motor Insurance and Accident Insurance..... | 396 |
| 2. Law governing motor insurance . | 395 | | |

1. INTRODUCTION

A contract of motor insurance comes into existence when a person seeking insurance in respect of his motor vehicle enters into a contract with the insurer to indemnify him against loss or damage to the vehicle or against legal liability he may incur to third parties in respect of death of or bodily injury caused to them or damage to their property caused by the use of the vehicle. Being primarily a contract, it is governed by the general law of contract. A contract of insurance has certain special features which are common to all insurance contracts like utmost goods faith, indemnity, insurable interest, subrogation, *etc.* These common features have already been considered. There are certain unique features which distinguish each class of insurance from the others. These aspects of motor insurance will be dealt with here.

2. LAW GOVERNING MOTOR INSURANCE

The Indian Insurance Act, 1938 mainly dealt with the regulation and control of insurance business as such and not with regulating the relationship between the insurer and the insured except in respect of a few matters in life insurance contracts. Even the General Insurance Business (Nationalisation) Act, 1972 does not concern itself with the relationship between the insurer and the insured in general insurance contracts. In these circumstances, courts in India in dealing with motor insurance contracts have to rely on the general principles of the law of contract to examine the manner of enforcement of claims against insurer before Motor Accidents Claims Tribunals, Workmen's Compensation Commissioner, Consumer Forums and Permanent Lok Adalats.

Chapter XI of Motor Vehicles Act, 1988 [formerly Chap VIII of 1939 Act] contains provision for compulsory insurance of motor vehicles against third party

risks, requirements of policies and limits of liability, the permissible defences for the insurer, establishment of Motor Accident Claims Tribunal as a forum for adjudication of claims for death or injuries to person arising out of the use of motor vehicles, or damages to any property of a third party so arising, etc. The Act provides for compulsory insurance also as regards liability of employer for claims of employee under Employees' Workmen's Compensation Act, 1923 and to that extent claims against insurer before the Compensation Commissioner become relevant for consideration. Many claims arise before consumer forums under the Consumer Protection Act, 1985 for 'deficiency of service' of an insurer brought at the instance of the insured and also before Permanent Lok Adalats for answering the claims of insured as a 'public utility service' under Legal Services Authority Act, 1987.

3. MOTOR INSURANCE AND ACCIDENT INSURANCE

Both these may have concern with risk of injury to person or death, but they are attended with different legal incidents. Thus, a person may take (1) a policy covering the risk of death or accidental injury of another person or (2) if he is the owner of a motor vehicle, a policy covering his third party liability for death or personal injury. The two differ fundamentally in regard to their legal incidents though in both cases death of or personal injury to a person gives rise to claims.

Thus, the first is an accident insurance policy, the proposer being the insured and the other person being the subject matter of the insurance. For the policy to be legal, the proposer must have insurable interest in the other person. If a claim arises, the sum insured is not received by the other person but by the insured. The contract is not one of indemnity in the strict sense, as the sum insured is a predetermined sum.

But the second is a motor insurance policy, the motor vehicle being the subject matter of the insurance and the insured the owner of the vehicle. If a claim in respect of death or personal injury to a third party arises, the insured is only indemnified and the third party who is not known at the time of insurance receives compensation which is the benefit from the insurance. The amount of compensation is not a predetermined sum, but is to be assessed by the court. In the Indian scene, it is addressed by the Motor Accidents Claims Tribunal.