

Traffic Accidents and Claim: A Comprehensive Study on Psychological and Actual Aspects of Insurers' Obligations and Rights

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Abstract- Traffic accidents are an awful reality that greatly impacts people and the insurance sector. We will examine the legal obligations of insurance firms in managing motor vehicle accident claims using standard insurance law concepts and best practices in the context of India. This research paper aims to examine insurers' obligations and rights thoroughly, as well as the part insurance firms play in road accidents in India. The provisions of the Act that relate to the rights and obligations of the insurer are the main subject of this paper. The foundation of the insurance contract, its types, and its limitations are made clear in the paper's first section. Additionally, it indicates the areas where the Insurance Company cannot avoid its liability by pleading evasive responses even when the persons involved in the accident were not at fault. It covers the grounds on which the Insurance Company might assert its defenses while defending the case. Also, the role insurance firms play in "no-fault liability." Certain examples have been addressed where a settlement between the parties could be reached with the tribunal's blessing. The paper's conclusion provides some recommendations to speed up accidental claims.

Keywords- Claim Accident, Vehicle Insurance, Compensation

I. Introduction

Accidents are occurrences that take place unexpectedly and unintentionally though varying degree of carelessness, negligence and rashness are also present in each accident. "An accident that occurred on a way or street open to public traffic; resulted in one or more people being killed or injured, and at least one moving vehicle being involved" is how road traffic accidents are defined. So, a road traffic accident is a collision of two or more moving objects, such as a vehicle and a pedestrian, an animal, a building, or a geographical feature. According to the World Health Organization (WHO), worldwide, traffic accidents result in over 1.2 million fatalities and more than 25 million serious injuries each year. Road traffic fatalities are on par with malaria mortality worldwide, accounting for almost 90% of lives. According to the statistical profile, around 1.2 million persons worldwide died, and 50 million were injured in traffic accidents in 2002, costing the global society roughly US\$518 billion. Serious traffic accidents often occur in India. According to government figures, 0.11 million people died in India in 2006 due to traffic accidents, close to 10% of all traffic-related fatalities worldwide. Due to a lack of an organized system for collecting injury information, many injuries go unreported.

Furthermore, as RTAs and RTIs have risen over the past 20 years, the situation in India is getting worse. This is partly because more cars are on the road and partly because there isn't a unified official program to address the issue. The number of road accident fatalities in India has significantly increased over time, going from 14,500 in 1970 to 137,400 in 2013. Even though it only has 1% of the world's vehicles, the nation is responsible for roughly 10% of all fatal crashes. 155,622 people died in 2021, the most since 2014, and 69,240 deaths were due to two-wheelers. The growing number of traffic accidents in India negatively influences the lives of its citizens and the insurance industry.

This study examines insurance companies' legal responsibilities while handling motor vehicle accident claims in India, using accepted insurance law theories and best practices as a guide. We examine the Act's provisions relating to insurance contracts, their types, their exclusions, and the role that insurance firms play in the context of road accidents in the nation as we examine the rights and obligations of insurers under the Act. The essay also discusses circumstances in which insurance companies cannot escape responsibility even if the accident's participants were not at fault. It explains the legal bases on which insurers may raise defenses in court and emphasizes the part insurance companies play under "no-fault liability." We also look at situations where the tribunal's blessing makes settlement between the parties possible. The research article concludes with suggestions for accelerating the

handling of accidental claims, offering insightful information for Indian insurance providers, consumers, and attorneys. Understanding the legal environment around motor vehicle accident claims is essential in creating a fair and effective system for the benefit of all stakeholders as the nation struggles with the enormous socioeconomic weight of road accidents.

Justice Fazal Ali has rightly observed that *“Where a passenger traveling by plane dies in an accident, he gets a compensation of Rs 1,00,000 or large sums, and yet when death comes to him, not through a plane but through a motor vehicle he is entitled only to Rs 2000/-. Does it indicate that a passenger’s life traveling by plane becomes more precious merely because he has chosen a particular conveyance, and the value of his life is considerably reduced if he chooses a conveyance of lesser value, like a motor vehicle? Such an invidious distinction is shocking to any judicial or social conscience. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in section 95(2) (d) of the Motor Vehicles Act.”*

II.The Context of the study

To guarantee that another person will pay the latter or his representatives a specific set sum upon the occurrence of a specific event or upon the passing of a specific amount of time is known as insurance or assurance. The assured party or person is referred to as the insured or assured person, whereas the assuring party is referred to as the insurer. An insurer could be a single person, a group, or a business. Every individual, group, or business must be properly registered to conduct insurance business. However, in the case of group insurance, there must be a person or persons to be insured by the insurers for the proposal of the insurance contract upon fulfillment of certain fixed conditions, of eligibility of health (in the case of life insurance), or value (in the case of property to be insured), and payment of certain premiums for the fulfillment of the insurance contract.

Road users must be informed that every vehicle that enters a highway must be registered with the Registration Authorities and that insurance coverage with a company offering insurance is a legal requirement. *“Every driver and vehicle owner are responsible for maintaining their driver’s license, tax token, and insurance certificate to ensure that the vehicle they are operating is covered by insurance per the law. When the driver mentioned above is discovered to be lacking these documents by an authorized police officer on duty, the absence of these documents, including the insurance papers, may result in punishment.”* Motor vehicle insurance coverage is a combination of insurance in the normal order. It covers damage to the vehicle and its accessories, liability to the assured or their spouse, and the risk of liability for third parties injured or killed due to the driver’s negligence. The insurer’s function is the most important component in the law governing compensation for motor vehicle accidents. The associated law forbids avoids the responsibility to pay for the causalities. The dependency and shared participation aspect has evolved into the foundation of insurance. The fundamental tenet of insurance is sharing the misfortunes of a small group of unhappy people who have made token commitments by paying a predetermined amount known as *“premiums.”* Insurance firms must wisely use this fund because they are the legal custodians of the collected premium.

III.Property Accident Aspect

A contract of indemnification known as motor vehicle insurance guards the vehicle’s owner against any loss or damage brought on by an accident. The insurer is only entitled to indemnification and may repair or replace the vehicle or any damaged parts or pay the smaller amount in cash up to the lesser amount covered or the value at the time of loss. There are two sorts of policies: *“the third-party liability policy, which the Motor Vehicle Act requires, and the comprehensive policy. The terms of the policy determine the kind and scope of the indemnity provided by the policy.”* A private motor car comprehensive motor policy is just one of the special general insurance coverages that make up the “motor car policy.”

Insurance Coverage for Third Party Risk Only

Section 147 of the “Act” policy restricts the Insurance Company’s obligation to risks to third parties alone. The Hon’ble Karnataka High Court’s 2019 ruling in *“K. Koushik v. Sandeep”* and Others, which involved an automobile accident in which one of the car’s occupants suffered fatal injuries, proved this. A different case, *“National Insurance Co. Ltd. v. Guddi Bai and others,”* led the M.P. High Court to adopt a strong stance on the issue of liability. The insurance provider argued that the section’s terms did not apply to the occupants of the privately owned car. The insurance provider was released from liability since there was a blatant policy violation after the court overturned the tribunal’s decision.

The Mutuality of the Insurance Contract

In "*National Insurance Co. Ltd v. Seema Malhotra*," the Supreme Court examined the structure of a motor vehicle insurance contract and determined that the insurance company must defend the insured against loss or damage by presuming no accident will occur. Many sorts of policies cover different categories of risks following the standard schedule set by IRDA. The premium paid by the insured persons on the insurance policy is the only profit, not the loss of damages. The term "*comprehensive*" should not be construed as "*unlimited*," as section 147 of the Act allows the insured to increase the risk cover to that level. Hence, "*comprehensive*" might refer to various liabilities rather than the extent of financial liability. According to the Motor Vehicle Act, the victim cannot be replaced when filing the petition if they are still alive, even if they are bedridden and unable to do so themselves. In a death case, the deceased's legal heirs, legal representatives, or dependents may bring the action, while the other party sued the church in a landmark decision known as "*Montford Brothers of St. Gabriel & Anr. v. United India Insurance Co. and Anr.*" The deceased had renounced his natural family and acted as a "brother" in the church at the time of the accident. The tribunal viewed the institution as dependent since it adopted a liberal and expansive stance.

IV. Liability of the Insurance Company

For motor vehicle accidents, the Insurance Company with whom the vehicle is covered is equally obligated to provide compensation under the Motor Vehicles Act. passengers died in "*Zadingliana v. Thakur Chand*" owing to fear of a gas leak while riding in the cargo wagon as an unpaid passenger. The Insurance Company contended under Section 147 of the Act and sought an exemption, but the court released the Insurance Company from liability. The "*pay and recover*" principle was used, where the insurance company had to pay the claim first before having the right to get the money back from the owner of the at-fault automobiles.

V. Personal Accident Aspect

In the case of "*Tattersall v. Derysdale*," the insured sold the insured car and drove it on his command or with his consent; as a result, the insured had to pay an additional premium. The policy also covers the driver, who is operating a private motor vehicle that is neither his own nor was hired by him, and the owner of the vehicle who, with the court's approval, claimed indemnification as the driver under the policy. The terms, limitations, and restrictions of the insurance as it may be applied will apply to the indemnification.

OBJECTS OF THE INSURANCE POLICY

The Motor Vehicles Act provides insurance protection for third parties involved in motor accidents. The General Insurance Business (Nationalization) Act 1972 defines "*an insurer as an insurer for the time being carrying out general insurance business in India.*" The definition of property "*includes goods carried in motor vehicles, roads, bridges, culverts, causeways, trees, posts, and milestones.*" The insurer's liability arises only if it had insured the driver in respect of the vehicles by the use of which the accident was committed. The researcher has analyzed some of the relevant definitions and terms in understanding the concept of insurance. In "*Pesumal v. New Asiatic Insurance Co.*", a Division Bench of the Bombay High Court found that it was evident from a reading of Sections 145–148 of the Act that insurance was necessary for respect of any vehicles that were being used when the accident was committed while they were being driven. The Act expanded the scope of the "third party" by including the 'Government' under the third party's purview. It also includes the various categories of persons to be covered under third parties and provides insurance for vehicles carrying or meant to carry hazardous goods. However, the provisions of "*Sub-section (1) did not apply to any vehicle owned by the Central Government or State Government and used for Government purposes unconnected with any commercial enterprise.*"

I. Requirement of Policies and Limits of Liability

According to the Act, any insurance policy issued by a licensed insurance company must include liability coverage for death or bodily injury to any person, including the owner of the goods or their authorized representative, or damage to any third-party property brought on by or resulting from the use of the vehicle in a public place. This requirement includes the owner of the goods as well as their authorized representative. Except for liabilities arising under the Workmen's Compensation Act of 1923, the policy does not cover liability for the death or bodily harm suffered by an employee of a person insured by the policy.

II. Legal Objectives

In the case of *“National Insurance Company Ltd. v. Nicoletta Rohtagi,”* it was determined that the clause serves two legal purposes: it prevents third parties from filing lawsuits and prevents those without a stake in the insurance’s coverage from utilizing its advantages. In Chapter XI of the 1939 Act and Chapter XII of the 1988 Act, the Supreme Court determined that certain insurance policy requirements were rendered useless as far as third parties were concerned by Section 38 of the English Act of 1930. The Road Traffic Act of 1930’ was subsequently passed, mandating the insurance of motor vehicles. The legislation’s purpose was to settle the insured’s liability and established three ways to do so: pay the award made against the insured, give the claimant the right to execute a judgment against the insurer, and provide the third option specified in section 10(3) of the Road Traffic Act. Sections 149 of the 1988 Act and 96 of the 1939 Act incorporated these activities. The legislation wanted to prevent the use of motor vehicles from causing damages regardless of the driver’s or owner’s financial capacity or solvency and to defend the rights of third parties rather than the insurers.

III. Amount of compensation payable

Supreme Court noted in *“S. Kaushnuma Begum v. The New India Assurance Co. Ltd.”* the court said: *“that even if there is no negligence on the part of the driver or owner of the motor vehicle but negligence on the part of the driver or owner of the motor vehicle, but an accident occurs while the vehicle is in use, the owner should be held accountable for damages to the person who suffered as a result of such accident.”* The Apex Court further noted that even if one of the *“Ryland v. Fletcher”* exceptions can be used, the compensation sum is established and payable under section 140 of the Motor Vehicle Act, 1988, which governs *“no-fault liability.”* Without this statutory liability, the claimant should not be entitled to compensation from that court. The Common Law allows for compensation claims for accidents caused by the usage of motor vehicles, even in the absence of a statute. The Motor Vehicle Act’s provisions allow the tribunal’s final award to be reduced by the compensation paid under *“no-fault liability.”*

According to this clause, the claimant does not necessarily have to demonstrate that the accident happened due to any wrongdoing, carelessness, or default on the part of the vehicle owner or the driver to be awarded compensation. A claim for compensation under subsection (1) may not be denied due to any wrongdoing, negligence, or default on the part of the person whose death or permanent disability is the subject of the claim, nor may the amount of compensation recoverable in connection with such death or permanent disability be diminished following the degree to which such wrongdoing contributed to the death or permanent disability. It implies that the defense of a party’s contributory negligence will not be raised in a claim for the sum determined by the rule mentioned above. The right to additional compensation based on the wrongdoing or negligence of the vehicle owner or the driver should not be negatively affected by the right to the compensation described above. However, the amount previously paid under this chapter shall be reduced by the amount of compensation due by the vehicle owner in such circumstances.

The Supreme Court gave a fairly permissive interpretation of section 92-A (now Section 140) in *“Shivaji Dayanu Patil v. Smt. Vatschalu Uttam.”* In this instance, at 3 a.m., a fuel tanker collided with a truck off the road and toppled at a distance of 20 feet on the left side of the road. The tanker overturned, causing gasoline to seep and gather in the surroundings. After almost four hours, at 7:15 in the morning, an explosion caused a fire, injured several people who had gathered around the gasoline tank, and some of them perished. The mother of one of the deceased persons filed a claim with the Claims Tribunal for damages. The defendants argued that because the accident occurred after four hours and did not *“arise out of usage of a motor vehicle,”* they were not responsible. They claimed that because the gasoline tanker could not drive on the road after overturning, it was not a vehicle as that term is defined in section 2 (18) of the Act at the time of the accident. The defendants were liable for damages after the court determined that vehicle use caused the accident. It remains a motor vehicle even after hitting the truck and flipping over on the side of the road.

To demonstrate that there is no universal and direct correlation between the usage of a vehicle and accident, Section 140 has been added to the Act. Reading the section’s language is consistent with the Act’s salutary goals and significantly expands the breadth of the prosecution options available to accident victims. The Act included section 140 with this goal in mind. 48 The provisions of Section 140 do not apply backward. Section 140 of Chapter X became operational on January 1, 1982. Accidents that occurred before that date are not covered by Section 140. Since liability under section 140 is not based on fault, if two or more motor vehicles are involved in an accident, all of their owners and insurers will be jointly and severally liable. This means that the owner of the *“offending vehicle,”* or the vehicle being driven negligently, will not be exempt from liability. Only when an accident causes

death or permanent disability does liability without fault under Section 140 come into play; it does not apply in other circumstances.

IV. Right of Pay and Recover

The principle of “*pay and recover*” was applied in this case regarding Section 149(2)(a)(ii) concerning motor insurance because it concerned the legality, validity, and applicability of the driver’s license as well as the insurance company’s liability. According to the case’s details, a passenger was hurt when a minibus turned turtle. The investigation showed that the minibus’s negligent driver did not have a valid driver’s license at the time of the collision. Suppose insurance companies are liable in these kinds of situations. The Insurance Company was told to compensate the claimant and seek payment from the owner and driver of the minibus after it was decided that the Insurance Company was not at fault in a recent case involving the validity of a driver’s license and authorization to operate a vehicle, “*Pappu and ors. v. Vinod Kumar Lamba and anr.*” Moreover the vehicle causing accident is impounded and not released and may be auctioned to generate funds to settle claims.

While adding the insurance company’s obligation in “*Anil Kumar v. Roop Kumar Sharma and another,*” the insurer contested its liability because the vehicle was operating outside India, creating another extremely rare circumstance. It is now time to discuss the issue raised by Section 146,147 of the Motor Vehicles Act of 1988 (59 of 1988), which deals with setting an insurer’s third-party obligation based on “*Geographical binding.*” According to the ruling, the insurance company cannot escape its obligation to pay the compensation because the car was utilized in a specific city, state, or region. By claiming that it can charge an additional premium to cover a specific geographic area and that the insured has not paid that additional premium to cover that specific geographic area, the insurance company cannot escape its liability as a third party. As in the current instance, third-party culpability was involved because the tragedy happened in Nepal rather than India. The court clarified that the car’s insurer would be held fully responsible for making any payments resulting from guilt from the accident involving the vehicle that was legally permitted to operate in Nepal.

On a more serious note, when it comes to assigning blame in accident cases, the victim’s side should indeed be given some leeway, but insurance companies have repeatedly argued that mandatory liability determined against the insurance company involves taxpayer money and shouldn’t be used as a precedent when the owner or driver of the involved vehicle can’t demonstrate the validity of his driver’s license or other pertinent documents. It was claimed in “*Om Parkash v. Baldev Singh and Others*” that the driver’s license was not authentic. As a result, an adverse inference should be drawn because, in the owner’s words, the license had been renewed, but any officer did not sign the endorsement. Yet, this defense was unpersuasive because there was no justification for not returning the license to the authorities for their signatures. Even the representative from the licensing authority who had arrived said that there was no record of this license’s renewal. Also, the driver-owner declined to enter the witness stand; as a result, the court decided that a negative inference should be made against them.

CHANGES INTRODUCED IN NATURE AND EXTENT OF INSURER’S LIABILITY BY THE AMENDMENT ACT OF 2019

Chapter XI of the Act replaces the new Chapter XI of the “*Motor Vehicles (Amendment) Act of 2019.*” The following is a discussion of the modifications made to the provisions relating to insurance against third-party risks:

1. The need for insurance against “third-party risks”: The new Chapter XI’s Section 146 incorporates a clause relating to the requirement that motor vehicles be insured against third-party hazards. The Amendment Act of 2019 doesn’t modify anything about this section.

2. Policy requirements and liability limits: Section 147 of the Amended Act of 2019 addresses policy requirements and liability limits. The following modifications to the nature and scope of the insurer’s liability can be identified by reading the modified section: I The terms of the insurance policies remain the same.

A. The Amendment Act 2019 has made a few modest changes to the insurance company’s obligation regarding its nature. According to the revised Act, the insurer is responsible for any deaths or bodily harm caused by or resulting from the operation of a motor vehicle in a public place to any passengers of a transport vehicle, “excluding gratuitous passengers of a goods truck.” Therefore, it is specifically stated that the insurer shall not be liable for any gratuitous passengers of a goods truck that were not present. The Amendment Act of 2019 also removes a proviso that was part of Section 147(1) of the Act. The Amendment Act of 2019 has enlarged the definition of “third party,” which now includes “the Government, the driver, and any other coworker on a transport vehicle.” Notwithstanding this expansion, there will be no real change in the insurer’s obligation due to this deletion.

Regarding the scope of the insurer's liability, the Amended Act of 2019 stipulates that, in consultation with the Insurance Regulatory and Development Authority, the Central Government shall prescribe a base premium and the liability of an insurer concerning such premium for an insurance policy for third party insurance related to either death of a person or grievous harm to a person. The Tribunals' determination that the insurer is responsible for the full liability incurred stands. The Tribunals evaluate several variables while determining the compensation sum, including the victim's age and earning potential, and the total amount could reach several crores of rupees. However, due to the amendment, the Central Government will set the base premium and the insurer's obligation to pay it. This could make it more difficult for the victims or their legitimate successors to receive compensation.

3. Insurance company settlement and the related process: The new Chapter of Amendment Act of 2019's Section 149 addresses insurance company settlements and related procedures. According to this clause, the insurance company must appoint an officer to handle the claims related to the accident as soon as it receives information about it, whether from the claimant, an accident information report, or another source. Within 30 days and after adhering to any procedures that the Central Government may specify, an officer designated by the insurance company to handle the settlement of the claim of compensation may present an offer to the claimant for settlement before the Claims Tribunal. The insurance company must make the payment within a maximum of thirty days from the receipt of such record of settlement if the claimant to whom the offer is made accepts it. The Claims Tribunal shall make a record of such settlement, and such claim shall be deemed to be settled by consent. The Claims Tribunal will set a hearing date to decide the claim's merits if the claimant rejects this offer.

4. The insurers' obligation to pay judgments and awards made against those who are insured for third-party risks: The Motor Vehicles (Amendment) Act 2019's Section 150 addresses the insurers' obligation to pay judgments and awards against insured parties for third-party risks. Before the change, a similar clause was found in Section 149. This section has not seen any significant revisions. The insurer must nonetheless fulfill the judgment's requirements. The following are the modifications made to the section mentioned above by the Amendment Act

A. Defenses that the insurance company may use: The list of defenses that the insurance company may use is included in Section 150(2) of the Motor Vehicles (Amendment) Act, 2019. The list now includes two additional defenses. First, if the motorist uses drugs or alcohol while driving, as defined in section 185. Second, the premium was not received as required by "section 64VB of the Insurance Act of 1938."

B. Pay and recover rule: Section 149(4) of the Act's before the 2019 Amendment contained the "pay and recover" provision. Even if the owner violates any conditions, the insurer must pay the compensation initially and reclaim it from the vehicle owner. Therefore, if Section 149(2)(b) of the Insurance Act proves the policy invalid, the insurance provider is not subject to payment obligations. The Amendment Act of 2019 has, however, removed this regulation. According to "Motor Vehicles Act 2019", Section 150(4), the insurer may disclaim responsibility under any of the circumstances listed in Section 150(2) by using one of the insurer's authorized defenses in a claim petition. Section 150(4) states that "[w]hen a certificate of insurance has been issued under subsection (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in subsection (2) shall, as respects such liabilities, be of no effect."

CONCLUSION

After discussing the above-mentioned specific concerns, the researcher has made some recommendations where the Insurance Company can play a valuable role in accelerating the claim process and genuinely aiding the victims of traffic accidents. Insurance companies have a legal obligation to name a Designated Officer within ten days of receiving a copy of the DAR (Detailed Accident Report): After the Insurance Company gets the Accidental Report from the Investigative Officer, it must immediately appoint an officer whose responsibility it is to process the claim following the law and whose conclusions must be supported by sound reasoning.

1. To expedite the process, it is the responsibility of the insurance companies to designate a Nodal Officer and notify the police. The concerned insurer must also appoint an investigator to track down and confirm the claimants' residential and professional addresses, contact information, etc.

2. The Insurance Companies' Obligation to Have Their Surveyor/Investigator Verify the DAR (Detailed Accident Report): Any claim that the claimants prefer must have its validity verified by the insurer. The insurance companies must organize their officer(s) or assign a professional or surveyor to verify the accident. For instance, if the insurance company receives information about a fatal accident within 48 hours of the incident, an official, specialist, or surveyor from the insurance company may pay a quick visit to the scene of the accident or the claimants' home to confirm the accuracy of the facts so that there is no chance of later fabricating or tampering with

the evidence. The Insurance Company's official, surveyor, or agent visiting the treating facility to check and verify the claims' legality will give authenticity to the claim in the same manner; it will come in Injuries Cases.

3. The insurance companies have a 30-day deadline to process DAR and make a settlement offer. After receiving the investigating officer's detailed accident report, the insurance company must communicate its decision regarding the amount of compensation within 30 days of receipt. The sum mentioned above must be determined rationally and in light of all relevant considerations outlined in the Motor Vehicles Act. By putting these recommendations into practice, the difficult process of handling claims related to traffic accidents can be made to some extent feasible, and the insurance companies will also understand exactly what is expected of them as an institution that was created with the specific goal of reducing financial hardships in the event of unfortunate circumstances resulting from unforeseen mishaps.

4. Solid and robust mechanism must be placed in operation to settle claims in the absence of the insurance policies. The offending vehicle be impounded and must be auctioned to generate funds for payments to victims.

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