CHAPTER – V

APPRAISAL OF PUBLIC LIABILITY INSURANCE ACT, 1991

Public liability insurance protects you and your business against the financial risk of being found liable to a third party for death or injury, loss or damage of property or ‘pure economic’ loss resulting from your negligence. The legal cost and expenses incurred in defending the case with prior consent of the insurance company are also payable subject to certain terms and conditions. This type of insurance will only cover third party claims (i.e. not your own employees). The policy offers a benefit of retroactive period on continuous renewal of policy whereby claims reported in subsequent renewal but pertaining to earlier period after first inception of the policy, also become payable. This is a mandatory policy to be taken by owners, users or transporters of hazardous substance as defined under Environment (Protection) Act, 1986 in excess of the minimum quantity specified under the Public Liability Insurance Act, 1991.

Motor insurance, an important branch of insurance, had its beginnings in the United Kingdom in the early part of the last century. The first motor car was introduced into England in 1894. The first motor policy was introduced in 1895 to cover third party liabilities. By 1899, accidental damage to the car was added to the policy, thus introducing, the comprehensive policy along the lines of the policy issued today. In 1903, the Car and General Insurance Corporation Ltd. was established mainly to transact motor insurance, followed by other companies. After World War-I, there was considerable increase in the number of vehicles on the road as also in the number of road accidents. Many injured persons in road accidents were unable to recover damages because not all motorists were insured. This led to the introduction of compulsory third party insurance through the passing of the Road Traffic Acts, 1930 and 1934. The compulsory insurance provisions of these Acts have been consolidated by the Road Traffic Act, 1960.

In the old days, many of the pedestrians who were knocked down by motor vehicles and who were killed or injured, did not get any compensation because the motorists did not have the resources to pay the compensation and were also not insured. In order to safeguard the interests of pedestrians, therefore, the Motor

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Vehicles Act, 1939, introduced compulsory insurance. The insurance of motor vehicles against damage is not made compulsory, but the insurance of third party liability arising out of the use of motor vehicles in public places is made compulsory.\(^2\) No motor vehicle can play in a public place without such insurance. In a Division Bench of the Bombay High Court, held that on a reading of Sections 145, 146, 147 and 148 of the Motor Vehicles Act, 1988 it was clear that insurance was required to be in respect of vehicles, which was being used and while driving the accident was committed.\(^3\)

In India, the Motor Vehicle Act was passed in 1939 introducing the law relating to compulsory third party insurance. The practice of motor insurance in India generally follows that of the U.K. market. The business was governed by a tariff till 2006, and now like the UK market it is non-tariff. However, the IRDA\(^4\), the Indian regulatory authority for insurance has directed insurers in India to continue to follow the tariff policy wordings. The Motor Vehicles Act 1988\(^5\) has replaced the earlier 1939 Act, and it became effective from 1st July 1989. The third party insurance business is still governed by the India Motor Tariff. Legally, no motor vehicle is allowed to be driven on the road in India without valid insurance. Hence, it is obligatory to get the vehicle insured. As per the Motor Vehicles Act, 1988 it is mandatory for every owner of a vehicle plying on public roads, to take an insurance policy, to cover the amount, which the owner becomes legally liable to pay as damages to third parties as a result of accidental death, bodily injury or damage to property. Car accident insurance claims begin with road traffic accident. Car accident is a road traffic incident which usually involves one road vehicle colliding with either another vehicle or a road user and which may result in injury or property damage, or possibly death. Accident can be of different nature, like for cars it can be due to collision or non-collision. This is the class of Insurance through which a majority of the people recognize general Insurance and that too because it is compulsory for all motorized vehicles to have an Insurance policy against third party liability before they can come on road. Though this class of Insurance is the major source of premium earnings for the Insurance companies it is also the class which is showing the biggest losses.

\(^3\) Pesumal v. New Asiatic Insurance Co., AIR 1964 Bom 121.
\(^4\) IRDA means, Insurance Regulatory and Development Authority.
In all countries across the globe, motor insurance constitutes around 60 per cent of the business of all insurance companies. The public interest element is still relevant, even as global markets bring private players in the insurance sector. The objective of optimizing benefits for persons who are most vulnerable in motor accidents could never be in doubt. It directs a focus on what "third parties" shall secure. Among this category are victims of hit-and-run cases, where the offending vehicles causing death or personal injuries are not traced or when the driver of the offending vehicle does not possess a valid driving license or when there is no valid policy of insurance at all and the insurance company finds a ground to disown liability. The Motor Vehicles Act, 1988 (MV Act) does address the claims of victims of hit-and-run cases and of cases where the drivers do not have effective valid driving licenses, but not substantially. The Act gives no relief, except against the owner, in a case where there is no valid insurance. There is still the problem of even the awards of Tribunals not getting satisfied immediately.

Just as the motor insurance sector stands poised for a de-tariff regime and there is scope for lowering of tariffs in a competitive market, there is as well a need to look into the imperatives for a better deal to victims of motor accidents. Here, insurance companies who are the stakeholders in the business could play a pivotal participatory role in amelioration of the woes of victims or their families. To this end shall be the present exercise of examining the relevant provisions, the judicial precedents and scope for reform: first, by referring to the hit-and-run cases; second, to cases where drivers do not have effective driving licenses; third, to cases where there are no valid insurance policies; and fourth, for delayed satisfaction of awards passed by Tribunals.

5.1 HIT-AND-RUN CASES UNDER MOTOR VEHICLES ACT

The Motor Vehicles Act contains provisions for redeeming the claims of victims of hit-and-run cases where the vehicle owner is not identified. Section 161(b) defines “hit-and-run motor accident” to mean an accident arising out of the use of a motor vehicle or motor vehicles, the identity whereof cannot be ascertained, in spite of reasonable efforts. The Solatium Scheme (the 1989 scheme) introduced

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6 In the context of contract of insurance, the insured is the first party, the insurer is the second party and the victim in a transport vehicle that might include a passenger in a ‘transport vehicle’ is the third party.

7 Section 161(b) defines “hit-and-run motor accident”. 
by the Central Government by notification in the Official Gazette\textsuperscript{8} and administered
by the General Insurance Corporation, sets out the mechanism for processing and
disbursing respectively Rs 12,500 for permanent disability of a victim and Rs
25,000\textsuperscript{9} in case of death of a person in a motor accident\textsuperscript{10}.

**Driver who has no effective driving license under Motor Vehicles Act**

As regards the claims involving a driver who does not possess an effective
driving license,\textsuperscript{11} the Act enables the insurer to state, as permissible defence, to a
claim for damages that there is a condition in the policy of insurance excluding
driving by a named person or persons or by any person who is not duly licensed, or
by any person who has been disqualified for holding or obtaining a driving license
during the period of disqualification\textsuperscript{12}. A person holding a light motor vehicle
(LMV) license but driving a heavy goods vehicle and causing an accident has been
found to have had no effective driving license and the insurance company has been
exonerated\textsuperscript{13}. Again, the driver who did not renew his license within the grace
period was found to create a situation where the insurer could escape liability\textsuperscript{14}. The
protection to still proceed against the insurer comes through section 149(4) that
enacts a salutary ‘pay and recover’ principle, making the insurer primarily liable for
claims for and on behalf of a third party, even in an eventuality of a breach of
condition, however, providing for an indemnity from the owner of the vehicle. It
was not, however, till the Supreme Court emphatically laid down in *New India
Assurance Company Limited v. Kamla*\textsuperscript{15} that courts came to the succor of the
claimants for upholding their claims against insurers. But, surprisingly, the
application of this section itself has been defensive in some later judgments of the
Supreme Court, either by reference to its prerogative to decline interference under
Article 136 of the Constitution, by allowing the award to stand as a measure of grace
and providing to the insurer a right of recovery\textsuperscript{16}, or depart with a feeling of
despondency that nothing much could be done for the victim and the insurer was

\textsuperscript{8} The 1989 Scheme was introduced vide notification no. s.o.440 (E) dt. 12.6.1989.
\textsuperscript{9} Increased respectively for personal injuries and death from Rs 2,000 and Rs 8,500, as
\textsuperscript{10} The Motor Vehicles Act, 1988, Section 163(1).
\textsuperscript{11} Sections 3 to 11, Motor Vehicles Act, 1988.
\textsuperscript{14} Ram Babu Tiwari v. United India Insurance Co. Ltd. & Ors (2008) 8 SCC 165.
\textsuperscript{15} New India Assurance Co Ltd v. Prabhu Lal (2008) 1 SCC 696.
entitled to deny liability, or direct that the decision shall not be cited as a precedent. There is a need to dispel any prevarication in such situations where the right to enforce the claim for a third party victim against the insurer is fully protected by statute.

**Insurance policy, its lack or inadequacy under various situations**

The provision for compulsory insurance is provided under Sections 146 and 147 to the following types of situations resulting in personal injuries or death: a vehicle meant to carry dangerous or hazardous goods that is required to cover risks detailed under the Public Liability Insurance Act, 1991; owner of the goods or his authorised representative carried in the vehicle; passenger in a public service vehicle; workman, such as an employee engaged in driving the vehicle or a conductor in a public service vehicle, or a person engaged in examining tickets in the vehicle, employees carried in a goods carriage to the extent of liability provided under the Workmen’s Compensation Act. A policy of insurance to cover such cases is called, in common parlance, ‘Act only policy’. A personal cover for risk for an owner travelling in his own motor vehicle, where he meets with an accident due to his own negligence or the driver of the owner, a gratuitous passenger such as a friend or relative being carried in a private vehicle, a pillion rider in a motorcycle that is involved in an accident due to the negligence of the rider and a passenger in a goods carriage (who is not a traveler along with his goods) are cases that fall outside the scheme of compulsory insurance. To such persons, unless there is a specific insurance policy coverage (usually by payment of higher premium), the insurer will not be liable.

**Delay in satisfying awards**

It is common knowledge that cases take a long number of years for disposal and when awards get passed, there is scope for appeals and stay of operation of the awards. Although an insurer is barred from disputing the issue of quantum, grant of permission under Section 170 to the insurer is a matter of course in proceedings before Tribunals. Filing an appeal through the insured, even when such permission

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is not granted under Section 170, is a familiar practice. Liability to pay subsequent interest at 6 per cent per annum is seldom an incentive to deposit money in court immediately after the award, all of which add to the victim’s woes. Since Insurance Company did not obtain order of the Tribunal under Section 170 therefore, the Insurance Company cannot contest the claim application on the ground of limitation.\textsuperscript{22}

\section*{5.2 TYPES OF MOTOR INSURANCE}

The word Motor broadly covers a lot of classes of vehicles plying on the roads. These may be two-wheelers like scooters and motorbikes, three-wheelers or four wheelers like private cars, jeeps, buses, trucks, commercial taxis and other vehicles.

For purpose of insurance, motor vehicles are classified into three broad categories:

(a) Private cars
(b) Motor cycles and motor scooters
(c) Commercial vehicles, further classified into

(I) Goods carrying vehicles

(II) Passenger carrying vehicles e.g.
- Motorized rickshaws
- Taxis
- Buses

(III) Miscellaneous Vehicles, e.g.
- Hearses (funeral van)
- Ambulances
- Cinema Film Recording & Publicity vans
- Mobile dispensaries etc.

\textbf{Car Insurance}

This is the fastest growing segment in the insurance sector as car insurance is mandatory while buying a new car. Major car manufacturers are tying up with leading insurance companies to provide quick insurance to its customers. Car insurance covers loss or damage by accident, fire, lightning, riots, earth quake, earth tremors, theft, explosion, etc.

\textsuperscript{22} New India Assurance Co. Ltd. v. Vibha Devi, 2001 ACJ 1009(All).
hurricane, terrorist attacks, explosion, theft, third party’s claims and damages (like liability for third party injury or death, third party property and liability to paid driver). On payment of appropriate additional premium it covers loss or damage to electrical or electronic accessories and other significant items.

**Two Wheelers Insurance**

Two wheeler insurance is another type of popular auto insurance in India. It is governed by the Indian Motor Tariff. This insurance provides protection against natural and manmade calamities like: fire, rockslide, landslide, storm, hurricane, flood, earthquake, burglary, theft, riots or any damage caused to the vehicle in transit by road, air, inland waterway or rail. Two wheeler insurance provides mandatory personal accident cover of Rs. 1 lakh to the insurer. This accident cover can also be opted for passengers. It also protects against legal liabilities arising due to third parties injury/death or damage caused to its property.

**Commercial Vehicle Insurance**

This type of insurance covers all those vehicles which are not used for personal purpose. Trucks, buses, heavy commercial vehicles, light commercial vehicles, multi utility vehicles, agricultural vehicles, ambulances etc are covered under this insurance. The premium is calculated on the basis of the make and model of the commercial vehicle, place of registration, year of manufacture, current showroom price and whether the insurer is individual or corporate. Insurance Companies in collaboration with the automobile manufacturing companies chalk out different kind of easy and less complicated plans for safe and easy insurance policy. HSBC India, New India Assurance, United India Insurance, Bajaj Allianz, ICICI Lombard etc are some of the prominent companies in India which provide commercial vehicle insurance.

Motor Insurance or vehicle Insurance is all about protecting against financial losses arising out of vehicle usage. With the multifold rise in usage of four wheelers, motor Insurance is also termed as Car Insurance or Auto Insurance. Auto Insurance is one of the most common types of general insurance products.

Car Insurance is mandatory by law and protects you and the people riding in your car from any legal claim or penalty made by a third party. Family members

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23 Satyanarayan Pande v. Sangram Keshari Mohanti, 2005(1) TAC 382(Ori).
24 The truck was used as goods vehicle and goods vehicle is defined under Section 2(8) of the Motor Vehicles Act, 1988.
who may drive your car can also be covered through auto insurance. Car insurance rates have been steadily rising in India over the past few years. Therefore it becomes very important that you get best insurance rates for your car. Car Insurance is a protection against losses which arise due to legal claims made by a third party in case of an accident caused by you or losses which arise as a result of manmade/natural calamity to you, your vehicle and co-passengers.

It is mandatory under the Motor Vehicles Act 1988 to get your car insured as soon as you purchase it. There are two types of car insurance: 'Third Party Insurance' and 'Comprehensive Insurance'. Third party insurance protects a policy holder against losses which arise due to bodily injury/death to a third party or any damage to its property. It is mandatory by law to have third party insurance. However this insurance doesn't protect you against losses which arise due to bodily injury/death to you, your vehicle and co-passengers. If you want to be compensated for any damages to you, your co-passengers and your vehicle in addition to third party coverage, then purchase comprehensive car insurance. Comprehensive car policy is better as it provides both third party coverage and damages/loss to one's own vehicle, co-passengers or self. Comprehensive policy does not necessarily mean that it covers the liability arising due to the bodily injury or the death to the owner insured.25

The liabilities which require compulsory insurance are as follows:

(a) any liability incurred by the insured in respect of death or bodily injury26 of any person including owner of the goods or his authorised representative carried in the carriage.

(b) liability incurred in respect of damage to any property of a third party;

(c) liability incurred in respect of death or bodily injury of any passenger of a public service vehicle;

(d) liability arising under Workmen’s Compensation Act, 1923 in respect of death or bodily injury of: (i) paid driver of the vehicle; (ii) conductor, or ticket examiner (Public service vehicles); (iii) workers, carried in a goods vehicle;

(e) liability in respect of death or bodily injury of passengers who are carried for hire or reward or by reason of or in pursuance of contract of employment.

26 Subs. For the words “injury to any person” by Act No. 54 of 1994, Section 54 (w.e.f. 14th November, 1994).
The policy of insurance should cover the liability incurred in respect of any one accident as follows:

(a) In respect of death of or bodily injury to any person, the amount of liability incurred is without limit i.e. unlimited.

(b) In respect of damage to any property of third party: A limit of Rs.6,000/-.

The liability in respect of death of or bodily injury to any passenger of a public service vehicle in a public place, the amount of liability incurred is unlimited. Section 140 of the Motor Vehicles Act 1988, provides for liability of the owner of the Motor Vehicle to pay compensation in certain cases, on the principle of “no fault.”

The amount of compensation, so payable, is, Rs.50,000/- for death, and Rs.25,000/- for permanent disablement of any person resulting from an accident arising out of the use of the motor vehicle.

Insurance companies work with different statistics and use different methods to calculate premiums. Some companies are specialized in certain areas or types and so are prepared to give discounts in those areas. This adds to the complexity as various companies yield varied prices. Factors to determine the premium amount:

1. Make and Model of the Vehicle
2. Year of Manufacture
3. Place of Registration
4. Current Showroom price of the vehicle

The principal insurance amount and its subsequent premium also vary according to the price of the vehicle. If you do not receive your insurance certificate right away, you will receive a cover note. It is a temporary insurance document establishing proof of Insurance and you can register your vehicle with it. The cover note is valid for 60 days from its date of issue. It is replaced by the actual policy document and certificate. Thus, it was held that the cover note serves the same purpose as the policy of insurance serves.

Legal liability covers the legal compensation that might have to be paid if a third party files any case against the driver for damage, loss, or fire. The driver is covered for a sum equal to his salary for the policy period. It also covers accidents and occupational diseases. It does not matter where the accident takes place, if your

27 Note: The principle of “no fault” means the claimant need not prove negligence on the part of the motorist, Liability is automatic.

28 Tipu v. India Assurance Co. Ltd., 2004 (3) TAC 908 (Raj).
motor insurance policy is in effect; you remain insured throughout the country. Certificate of Insurance proves that the vehicle owner has valid car insurance\textsuperscript{29}. You can claim insurance only if the vehicle is registered to you i.e. you are the owner of the vehicle. The insurer has to be intimated to make the endorsement accordingly. If the certificate is defaced, mutilated, or lost, you can get a duplicate certificate by paying a fee and producing an affidavit stating the need for the duplicate. Driving License proves that the driver is authorized to drive a particular type of vehicle. Further it is a penal offense to drive without a valid license. The driver who had a valid licence to drive a light motor vehicle held authorized to drive a light goods vehicle\textsuperscript{30}. If you are just learning to drive, you must have a learner's license\textsuperscript{31}. Certificate of Registration proves that a motor vehicle has been duly registered to you in accordance with the Indian Motor Vehicle Act, 1988. You are required by law to carry the Registration Certificate or an attested copy in your vehicle at all times.

Car Insurance doesn’t cover consequential loss, depreciation, wears and tears, mechanical and electrical breakdown, war perils, drunken driving or vehicle driven by someone else other than the driver stated in driver's clause. The insurance also does not cover failure or breakage when the vehicle is used outside the geographical area. Voluntary excess is client's option to opt for bearing a certain amount of loss from every claim. When the vehicle owner opts for this option, insurance companies allows discount on the premium.

Accident is inevitable and anyone of us can be its victim. Car accident can be of different nature, it can be due to collision or non collision. An accident can bring life to an end. If you find yourself in such circumstances, do the following. Firstly calm down, secondly get medical attention or help if necessary, thirdly respect the police and their efforts. Do not make an immediate statement to the police or to any insurance company. Let the police know that you will speak to them later after you have calmed down and sought medical attention. Lastly contact a professional to make sure before proceeding with your matter further. It means that if the party who injured you can show that you were in some way at fault in causing the accident, then your claim can be denied. Speed can be used as contributing factors to deny an

\textsuperscript{29} Section 157(1), the Motor Vehicles Act, 1988.

\textsuperscript{30} National Insurance Co. Ltd. v. Annappa Irappa Nesaria and Ors., 2008(1) TAC 812 (SC).

\textsuperscript{31} New India Assurance Co. Ltd. v. Mandar Madhav Tambe, 1996(1) TAC 506 (SC).
injury claim. Even if the other party is more at fault than you, it can jeopardize your claim. Most people are not looking at their speedometer at impact. Therefore, mostly people guess at their speed. At the scene of an accident, you may be confused and shocked, be in pain and you may be angry. Mostly you may not be accurate and the insurance company will rely on that statement to evaluate your case. Just avoid making any statement at such a painful time. Visit the closest hospital and get a thorough check up done. Make your statement at a later date mainly after you have had time to calm down and reflect. During this course get in touch with your insurer and confirm the coverage and the claim procedure. Small statement can reduce the chances of getting the claim processed. Keep the steps mentioned below in mind to avoid complexities in case of car accident.

1. Do not give any statement immediately after the accident.
2. Do not sign anything unless you fully understand what it is.
3. Do not accept the blame if you think it is not your fault.
4. Do not lose your temper.
5. Do not use bad language.
6. Do not behave aggressively.

A Certificate of Insurance\(^\text{32}\) must be carried in the vehicle as a proof of such insurance. For all vehicles registered with Regional Transport Authorities, third party insurance is compulsory as per Motor Vehicle Act. Third party liability is unlimited however, there is a statutory limit for Third party property damage of Rs. 6000/-.

### 5.3 REQUIREMENT OF INSURANCE POLICY AND LIMITS OF LIABILITY UNDER SUCH POLICY

Section 147 of the Act\(^\text{33}\) deals with the provisions regarding requirement of policies and limits of liability. In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which (a) is issued by a person Who is an authorised insurer\(^\text{34}\) and (b) insurers the person or classes of persons specified in the policy to the extent specified in Sub Section (2):

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\(^{34}\) ‘Authorized insurer’, means, an insurer for the time being carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), and any Government insurance fund authority to do general insurance business under that Act.
a. Against any liability which may be incurred by him in respect of the death of or
bodily injury to any person, including owner of the goods or his authorised
representative carried in the vehicle or damage to any property of a third party
caused by or arising out of the use of the vehicle in a public place.
b. Against the death of or bodily injury to any passenger of a public service vehicle
caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required:

(i) To cover liability in respect of the death, arising out of and in the course of this
employment, of the employee of a person insured by the policy or in respect of
bodily injury sustained by such an employee arising out of and in the course of
his employment other than a liability arising under the Workmen’s
Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury
to, any such employee

(a) Engaged in driving the vehicle, or
(b) If it is a public service vehicle, engaged as a conductor of the vehicle or in
examining tickets on the vehicle, or
(c) If it is a goods carriage, being carried in the vehicle, or

(ii) To cover any contractual liability.

An explanation appended to sub section (1) has declared for the removal of
doubts that the death of or bodily injury to any person or damage to any property of
a third party shall be deemed to have been caused by or to have arisen out of, the use
of a vehicle in a public place notwithstanding that the person who is dead or injured
or the property which is damaged was not in a public place at the time of the
accident, if the act or omission which led to the accident occurred in a public place.

Sub Section (2) of the Section provides that subject to the proviso to sub-section (1),
a policy of insurance referred to in sub-section (1), shall cover any liability incurred
in respect of any accident, up to the following limits, namely:

(a) Save as provided in clause (b), the amount of liability incurred.
(b) In respect of damage to any property of a third party, a limit of rupees six
thousand.

Provided that any policy of insurance issued with any limited liability and in
force, immediately before the commencement of this Act, shall continue to be

effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier. In *Jameskutty Jacob v. United India Insurance Co. Ltd*\(^{36}\) it was held by the Supreme Court that if the policy itself has provided for Rs. 50,000/- than the insurer cannot be made liable in excess thereof. In *Jayshree Narendra Kataria v. Somnath Damodhar Kale*\(^{37}\) it was held by the Mumbai High Court that where the policy showed limited liability in respect of any one claim or series of claims arising out of one event upto Rs. 1.5 Lakhs and premium of Rs. 240 was accepted, the liability of insurer was held unlimited. Sub Section (3) of Section 147 provides that a policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters, and different forms, particulars and matters may be prescribed in different cases. Where a cover note issued by the insurer under the provisions of this Chapter or the rules made there under is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.\(^{38}\)

Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. In *United India Insurance Co. Ltd. v. Hussain Sab*,\(^{39}\) the owner of the goods vehicle as well as the insurance company denied liability on the ground that the deceased persons were not travelling in the goods vehicle as passengers but were only pedestrians. The claimants in support of their claim produced documents relating to criminal case, namely FIR etc., which disclosed that the deceased were travelling as passengers in the goods vehicle. It was held that the FIR would be

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\(^{36}\) AIR 2006 SC 3690.

\(^{37}\) 2010 (10) TAC 10 Bom.

\(^{38}\) The Motor Vehicles Act, 1988, Section 147 (4).

\(^{39}\) AIR 2006 (NOC) 437 (Kar.).
admissible in evidence since strict rules of evidence are not applicable to trials and enquiry relating to motor accident claims. In the case of *M.V.Jayadevappa v. Oriental Fire and General Insurance Co. Ltd.*\(^{40}\), it was held by the apex court that a vehicle described in the Schedule annexed with policy as ‘Cheverolet Lorry with open body’ with its licensed carrying capacity as 2 tons is a good vehicle when it is nowhere written in policy that it was authorised to carry passengers.

### 5.4 LIABILITY OF INSURER AND DEFENCE AVAILABLE TO INSURER

Section 149 of the Act provides for liability of insurer and defences available to insurer in a case of Motor Accident filed before a Motor Accident Claims Tribunal and provides for duties of insurers to satisfy judgments and awards against persons insured in respect of third party risks. If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgement or award.

### 5.5 THIRD PARTY INSURANCE

In India, under the provisions of the Motor Vehicles Act, 1988, it is mandatory that every vehicle should have a valid Insurance to drive on the road. The purpose of the provisions contained under this Chapter is to protect the interest of the third parties who are involved in motor accidents.\(^{41}\) Any vehicle used for social, domestic and pleasure purpose and for the insurer's business motor purpose, should be insured. Insurance is a contract whereby one party, the insurer, undertakes in return for a consideration, the premium, to pay the other, the insured or assured, a sum of money in the event of the happening of a or one of various, specified uncertain events. Insurance developed from the fourteenth century as a means of spreading huge risks attendant on early maritime enterprises; life and fire insurance developed later. The main classes of insurance are life and other personal insurance, marine insurance, accident or property insurance and liability insurance when the sum becomes payable when legal liability is incurred as for personal injuries or professional negligence to another.

Motor third-party insurance or third-party liability\(^{42}\) cover, which is sometimes also referred to as the 'act only' cover, is a statutory requirement under

\(^{40}\) 2005 ACJ (3) 1801 (SC).
\(^{42}\) Section 146, the Motor Vehicles Act, 1988.
the Motor Vehicles Act. It is referred to as a 'third-party' cover since the beneficiary of the policy is someone other than the two parties involved in the contract i.e. the insured and the insurance company. The policy does not provide any benefit to the insured; however it covers the insured's legal liability for death/disability of third party loss or damage to third party property.

There are two quite different kinds of insurance involved in the damages system. One is Third Party liability insurance, which is just called liability insurance by insurance companies and the other one is first party insurance. A third party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the Second party, and the person injured, who claims damages against you is the third party.

"Third party" includes the Government.\(^{43}\) "Third party” should include everyone (other than the contracting parties to the insurance policy), be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject matter of insurance policy.\(^{44}\)

5.6 **SALIENT FEATURES OF THIRD PARTY INSURANCE**

1. Third party insurance is compulsory for all motor vehicles.\(^{45}\) Third party risks insurance is mandatory under the statute. This provision cannot be overridden by any clause in the insurance policy.

2. Third party insurance does not cover injuries to the insured himself but to the rest of the world who is injured by the insured.

3. Beneficiary of third party insurance is the injured third party, the insured or the policy holder is only nominally the beneficiary of the policy. In practice the money is always paid direct by the insurance company to the third party (or his solicitor) and does not even pass through the hands of the insured person.

4. In third party policies the premiums do not vary with the value of what is being insured because what is insured is the ‘legal liability’ and it is not possible to know in advance what that liability will be.


\(^{44}\) Section 145(g) of The Motor Vehicles Act, 1988.

5. Third party insurance is almost entirely fault-based. (means you have to prove the fault of the insured first and also that injury occurred from the fault of the insured to claim damages from him).
6. Third party insurance involves lawyers aid.
7. The third party insurance is unpopular with insurance companies as compared to first party insurance, because they never know the maximum amounts they will have to pay under third party policies.

5.7 HISTORICAL BACKGROUND OF THIRD PARTY INSURANCE

Prior to 1930, there was no law of compulsory insurance in respect of third party rights in England. As and when an accident took place an injured used to bring action against the motorist for recovery of damages. But in many cases it was found that the owner of the offending vehicle had no means to pay to the injured or the dependant of the deceased and in such a situation the claimants were unable to recover damages. It is under such circumstances that various legislations were enacted. To meet the situation it is for the first time ‘the Third Parties’ Rights against Insurance Act, 1930’ was enacted in England. The provision of this Act found place in S.97 of the Act which gave to the third party a right to sue insurer directly. Subsequently, ‘the road traffic Act, 1930’ was enacted which provided for compulsory insurance for Motor Vehicles. The provisions of this Act were engrafted in S.95 of the Motor Vehicles Act, 1939 and S.146 of the Motor Vehicles Act, 1988. It is relevant that under S.38 of the English Act of 1930, certain conditions of insurance policy were made ineffective so far as third parties were concerned. The object behind the provision was that the third party should not suffer on account of failure of the insured to comply with those terms of the insurance policy.

Subsequently in 1934, the second Road Traffic Act was enacted. The object of this legislation was to satisfy the liability of the insured. Under this enactment three actions were provided. first was to satisfy the award passed against the insured. The second was that, in case the insurer did not discharge its liability the claimant had the right to execute decree against the insurer. However, in certain events, namely, what was provided in section Ss.96(2)(a) which corresponds to section 149

46 The Motor Vehicles Act, 1939.
(2)(a) of the Act\textsuperscript{47}, the insurer could defend his liability. The third action provided for was contained in S.10(3) of the Road Traffic Act. Under this provision, the insurer could defend his liability to satisfy decree on the ground that insurance policy was obtained due to misrepresentation or fraud. This provision also found place in S.149 (2)(b) of the 1988 Act. While enacting the 1939 Act and the 1988 Act, all the three actions were engrafted in S.96 of the 1939 Act and Section 149 of the 1988 Act. However neither the 1939 Act, nor the 1988 Act conferred greater rights on the insurer than what had been conferred in English Law. Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits, i.e. offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defences specified for in the statute. Thus while enacting Chapter VIII of the 1939 Act or Chapter XI of the 1988 Act, the intention of the legislature was to protect third party rights and not the insurers even though they may be nationalized companies.

Prohibition on use of motor vehicles without statutory insurance policy, object of is to enable the third party suffering injuries from use of the motor vehicle to get damages irrespective of the financial capacity or solvency of the driver or the owner.

5.8 \textbf{RELEVANT PROVISIONS OF MOTOR VEHICLES ACT, 1988}

Compulsory third party insurance,\textsuperscript{48} which is required to be taken by every vehicle owner, has been specified in Section 146(1), that no person shall use or allow using a motor vehicle in public place unless there is in force a policy of insurance. Contravention of the provisions of section 146 is an offence and is punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both. Section 147 provides for the requirement of policy and limit of liability. Every vehicle owner is required to take a policy covering against any liability which may be incurred by him in respect of death or bodily injury including owner of goods or his authorized representative carried in the vehicle or damage to the property of third party and also death or bodily injury to any passenger of a public service vehicle. According to this section the policy not require covering the liability of death or injuries arising to the

\textsuperscript{47} The Motor Vehicles Act, 1988.

\textsuperscript{48} Section 145 to Section 164 of Motor Vehicles Act, 1988.
employees in the course of employment except to the extent of liability under Workmen Compensation Act, 1923. Under Section 149 the insurer have been statutorily liable to satisfy the judgment and award against the person insured in respect of third party risk.

**Insurance Companies have been allowed no other defences except the following**

(1) Use of vehicle for hire and reward not permit to ply such vehicle.

(2) For organizing racing and speed testing.

(3) Use of transport vehicle not allowed by permit.

(4) Driver not holding valid driving license or have been disqualified for holding such license.

(5) Policy taken is void as the same is obtained by non-disclosure of material fact.

**Settlement between insurers and insured persons**

No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.\(^49\)

Where a person who is insured under a policy issued, has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

**Legal defence available to the Insurance Companies towards third party**

The Insurance Company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149(2). In recent time, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defence has been pleaded and proved by the Insurance Company, they are not absolve from liability to make payment to the third party but can receive

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such amount from the owner insured. The courts one after one have held that the burden of proving availability of defence is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149(2) but has to prove also that such act happens with the connivance or knowledge of the owner. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.

5.9 DRIVING LICENSE AS A DEFENCE

Earlier not holding a valid driving license was a good defence to the Insurance Company to avoid liability. It was been held by the Supreme Court that the Insurance Company is not liable for claim if driver is not holding effective & valid driving licence. It has also been held that the learner's licence absolves the insurance Company from liability, but later Supreme Court in order to give purposeful meaning to the Act have made this defence very difficult. It has been held for the first time by the Supreme Court in Sohan Lal Passi's v. P. Sesh Reddy\(^{50}\), that the breach of condition should be with the knowledge of the owner. If owner's knowledge with reference to fake driving licence held by driver is not proved by the Insurance Company, such defence, which was otherwise available, can not absolve insurer from the liability. Recently in a dynamic judgment\(^{51}\), the Supreme Court has almost taken away the said right by holding:

(i) Proving breach of condition\(^{52}\) or not holding driving licence or holding fake licence\(^{53}\) or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner.

(ii) Learner's licence is a licence and will not absolve Insurance Company from liability.

(iii) The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of accident and thereby absolving requirement of driving licence to those accidents with standing vehicle, fire or murder during the course of use of vehicle.

\(^{50}\) AIR 1996 SC 2627.

\(^{51}\) Ibid.

\(^{52}\) Section 149(2) (a) (ii), the Motor Vehicles Act, 1988.

\(^{53}\) Radhica Devi v. Vasantha, 2004 (3) TAC 327 (Ker).
5.10 NATURE AND EXTENT OF INSURER’S LIABILITY

According to the provisions of this section the policy of insurance must be issued by an authorized insurer. It must insure against liability in respect of death or bodily injury or damage to property of a third party. “Third party” includes owner of the goods or his authorized representative carried in the vehicle and any passenger of a public service vehicle.

Section 147 has to be given wider, effective and practical meaning so that it may benefit various categories of persons entitling them to claim compensation from the insurer or the insured or both. Insurer's liability commences as soon as the contract of insurance comes into force. The liability remains in existence during the operation of the policy. If the existing policy is renewed the risk is covered from the moment the renewal of the policy comes into force. If the accident occurs before the renewal comes into existence, the insurer cannot be made liable. It is the primary duty of the vehicle owner to prove that his vehicle was insured with a particular company. If he fails to comply with it he will have to pay the entire amount of compensation in the case. In case where there is a dispute in respect of the vehicle having been insured by an assurance company, the tribunal must give its finding in the matter, it is its duty to do so. After a certificate of insurance is issued it does not lie in the mouth of the insurer to deny his liability. If the insurer has been a victim of fraud he can recover the amount from the insured.

If the insurer has issued a policy to cover the bus without receiving the premium therefore, he has to indemnify third parties in respect of the liability covered by the policy. He cannot avoid the liability arguing that he was entitled to avoid or cancel the contract. The policy under the Act covers only third party risks. Insurer is not liable for any harm suffered by a passenger traveling in a private car neither for hire nor for reward. Similar is the position of a pillion rider on a scooter. In K.Gopal Krishnan v. Sankara Narayanan, Madras High Court observed that a scooter-owner is not bound to take out a third party risk policy to cover the claim of the pillion rider that is carried gratuitously. If he is injured, the insurance company would not be liable unless policy covering such risk is obtained by the scooter-owner. A private carrier registered as such with R.T.O. and also in

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56 AIR 1968 Mad 438.
insurance policy, cannot be used for carrying any passenger or goods for hire or reward. However if it is so used and the employees of a party hiring the private vehicle belonging to the insured are injured in an accident the insurance company will not be liable.

5.11 INSURER’S LIABILITY TO VEHICLE-OWNER

A contract of insurance is a personal contract between the insurer and the insured. It is for the purpose of indemnifying the insured for damage caused due to accident by the vehicle, to a third party. To make the insurer liable the policy of insurance must be in the name of the owner of the vehicle\(^{57}\). Owner of the vehicle as defined in Section 2(30), is a person in whose name the motor vehicle stands registered. A person in possession of a vehicle under a hire-purchase agreement or an agreement of lease or hypothecation is also covered by the definition, no matter he has exercised his option to purchase the vehicle or not.

Section 157(1) makes it clear that when the owner of a vehicle transfers the ownership of the vehicle, the policy of insurance and the certificate of insurance shall be deemed to have been transferred in favour of the purchaser of the vehicle with effect from the date of its transfer. This deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. According to subsection (2) the transferee has to apply within 14 days from the date of transfer to the insurer for effecting necessary changes in the certificate and in the policy of insurance and the policy are not transferred, the insurer could not be made liable even though the vehicle is transferred. It is to be remembered that “an insurance policy is a personal contract between the parties for indemnifying the insured in case of an accident covered under the policy. If the vehicle is transferred by an insured to another person, the insurance policy lapses upon the transfer. In such a case the benefit of the policy is not available to the transferee, without an express agreement with the insurance company. When the insurance policy lapses it would not be available to cover the liability of the purchaser of the vehicle. In one case\(^{58}\) there was an agreement for sale of a vehicle. The owner did not comply with the statutory provisions regarding transfer of a vehicle. He, however, allowed the


vehicle to be used by the transferee. The owner had retained the insurance policy with him. Held, the insurance company was not liable to indemnify the owner.

**Effect of Settlement between Insurer and Insured**

Section 152 of the Act concerned with the effect of any settlement between insurers and insured persons. No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

Where a person who is insured under a policy issued for the purpose of this Chapter has become insolvent, or where, if such insured person is a company, a winding-up order has been made or a resolution for a voluntary winding-up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding-up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.  

5.12 GRATUITOUS PASSENGER

In *United India Insurance Co. Ltd. v. Bodali Bai* 60 where the owner had permitted the truck to be used for taking a dead body for cremation and on return journey the driver allowed two passengers, then on death of those passengers as truck had dashed against a bridge, the insurer is not liable because the deceased were gratuitous passengers, but the owner was held vicariously liable. In *New India Assurance Co. Ltd. v. Santra Devi* 61 it was held by the court that so far as taking gratuitous passengers in goods carriage is concerned, the law is settled that insurer cannot be made liable, since a commercial vehicle is not at all meant for carrying passengers. The Liability of the insurance company to pay compensation on account of death or bodily injury to any person who was travelling by the vehicle does not

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59 Ibid. Section 152 (2)
60 2009 ACJ 2213 (Chhat.).
61 2007 ACJ 2273 (P&H) DB.
depend upon whether the person concerned was a gratuitous passenger or had paid fare for the journey performed by him. What is important is whether the person was killed or injured while travelling in or upon or entering or mounting or alighting from the motor vehicle and not whether he had or had not paid any fare for such travel. Status of passenger is matter of evidence. Where insurer has failed to prove that deceased was gratuitous passenger, it cannot avoid its liability. Where the claimants were travelling as gratuitous passengers in a jeep covered by ‘Act only’ policy covering risk in respect of third party only in respect of such private vehicle let out on hire, and there was no mention in the policy for coverage of any occupants of jeep, no liability could be fastened on the insurer. A gratuitous or fare paying passenger in a goods vehicle or fare paying passenger in private vehicle has been proved to be a good defence. In Motor Vehicle Act, 1939 the gratuitous passenger was not covered under the insurance policy but a fare passenger in a goods vehicle was considered to be covered.

Effect of Transfer of Vehicle

Transfer of a vehicle prior to accident has been held to be not valid defence for the purpose of third party liability. It can be a defence for own damage but as far as third party liability, even the vehicle has been transferred and policy has not been transferred, liability of Insurance Company shall remain there.

Effect of Insolvency of Insured

Section 154 of the Act deals with effect of insolvency of insured. Where a certificate of insurance has been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (1) or sub-section (2) of section 150 shall, notwithstanding anything contained in this Chapter, not affect any liability of that person of the nature referred to in clause (b) of sub-section (1) of section 147; but nothing in this section shall affect any rights against the insurer conferred under the provisions of section 150, 151 and 152 of the Motor Vehicles Act, 1988, on the person to whom the liability was incurred.

62New India Assurance Co. Ltd. v. Vbhuti, 2004 ACJ 769 (Karn.) DB.
63United India Insurance Co. Ltd. v. Surinder, 2006 ACJ 1285 (P&H.) DB.
65Ibid.
Effect of Death on Certain Causes of Action

Section 155 of the Act deals with effect of death on certain causes of action. It provides that notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 of the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of Certificate of Insurance.

Section 156 of the Act provides the effect of certificate of insurance. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then, (a) if and so long as the policy described in the certificate has not been issued by the insurer to the insured, the insurer shall, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and (b) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favorable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.67

Effect of Transfer of Certificate of Insurance

Section 157 of the Act stated the effect of transfer of certificate of insurance. It provides that where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfer to another person the ownership of the another vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the

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66 Ibid.
67 New India Assurance Co. Ltd. v. Girdhari Mallick, 2006 (2) TAC 849 (Ori).
date of its transfer. For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance. The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

In *G.Govindan v. New India Assurance Co. Ltd.* it was held by the Supreme Court that compensation to the victim cannot be denied merely on the ground that the policy had not been transferred. In *Ram Chander v. Naresh Kumar* it was held by the High Court that there should be no error in making the transferee owner liable instead of the insurer.

### 5.13 PRODUCTION OF CERTAIN CERTIFICATES, LICENCE AND PERMIT ETC.

Section 158 of the Act, provides the details as to production of certain certificates, licence and permit in certain cases. This section states that any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, should produce the following:

- a) the certificate of insurance;
- b) the certificate of registration;
- c) the driving licence; and
- d) in the case of a transport vehicle also the certificate of fitness referred to in Section 56 and the permit, relating to the use of the vehicle.

If, where owing to the presence of a motor vehicle in a public place an accident occurs involving death or bodily injury to another person, the driver of the vehicle does not at the time produce the certificate, driving licence and permit referred to in sub-section (1) to a police officer, he shall produce the said

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69 Ibid, Explanation to Section 157 (1)
70 Ibid, Section 157 (2).
71 AIR 1999 SC 1398.
72 2000 ACJ 727 (P&H) DB.
certificates, licence and permit at the police station at which he makes the report required by Section 134.\textsuperscript{73}

No person shall be liable to conviction under sub-section (1) or sub-section (2) by reason only of the failure to produce the certificate of insurance if, within seven days from the date on which its production was required under sub-section (1), or as the case may be, from the date of occurrence of the accident, he produces the certificate at such police station as may have been specified by him to the police officer who required its production or, as the case may be, to the police officer at the site of the accident or to the officer-in-charge of the police station at which he reported the accident.\textsuperscript{74} Provided that except to such extent and with such modifications as may be prescribed, the provisions of this sub-section shall not apply to the driver of a transport vehicle.\textsuperscript{75} The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the State Government to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 146 and on any occasion when the driver was required under this section to produce his certificate of insurance.\textsuperscript{76} In this section, the expression “produce his certificate of insurance” means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of Section 146.\textsuperscript{77}

As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer.\textsuperscript{78}

\textsuperscript{73} The Motor Vehicles Act, 1988, Section 158 (2).
\textsuperscript{74} Ibid., Section 158 (3).
\textsuperscript{75} Ibid, Provision to Section 158 (3).
\textsuperscript{76} Ibid., Section 158 (4).
\textsuperscript{77} Ibid., Section 158 (5).
\textsuperscript{78} Section 158 (6), The Motor Vehicles Act, 1988.
Production of Certificate of Insurance on Application for Authority to Use Vehicle

Section 159 of the Act provides for the production of certificate of insurance on application for authority to use vehicle. It provides that a State Government may make rules requiring the owner of any motor vehicle when applying whether by payment of a tax or otherwise for authority to use the vehicle in a public place to produce such evidence as may be prescribed by those rules to the effect that either on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or the vehicle is a vehicle to which section 146 does not apply.

Duty to Furnish Particulars of Vehicle Involved in Accident

Section 160 of the Act deals with duty to furnish particulars of vehicle involved in accident. It states that a registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged in such form and within such time as the Central Government may prescribe.

5.14 SPECIAL PROVISIONS AS TO COMPENSATION IN CASE OF HIT AND RUN MOTOR ACCIDENT

Section 161 of the Act provides for special provisions as to compensation in case of hit and run motor accident. It provides that for the purposes of this section, section 162 and section 163:

a) “grievous hurt” shall have the same meaning as in the Indian Penal Code, 1860.

b) “hit and run motor accident” means an accident arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;
c) “scheme” means the scheme framed under section 163.

Notwithstanding anything contained in the General Insurance Business (Nationalization) Act, 1972 or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents. 79 Subject to the provisions of this Act and the scheme, compensation shall be paid in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees and in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees. 80 The provisions of sub-section (1) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section. 81

In Moosola Ram Rao v. District Collector, Srikakulam 82 it was held by the High Court that the applications for compensation under that Scheme have to be decided expeditiously. Where an application for compensation in a hit and run accident had been kept pending for more than four years, direction was issued, in writ jurisdiction, to decide the application within three months.

5.15 REFUND OF COMPENSATION PAID UNDER SECTION 161

Section 162 of the Act deals with refund in certain cases of compensation paid under section 161. It provides that the payment of compensation in respect of the death of or grievous hurt to any person under section 161 shall be subject to the condition that if any compensation or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer. Before

79 Ibid, Section 161 (2).
80 Ibid, 1988, Section 161 (3).
81 Ibid, Section 161(4).
82 2002 ACJ 1085 (AP).
awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall –

a) If compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1).

b) If an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending, if such application has been rejected, till the date of the rejection of the application, and in any other case, till the date of payment of compensation in pursuance of the application.

**Scheme for Payment of Compensation in Case of Hit and Run Motor Accidents**

Section 163 of the Act deals with scheme for payment of compensation in case of hit and run motor accidents. It provides that the Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

A scheme made under sub-section (1) may provide that –

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or

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83 The Motor Vehicles Act, 1988, Section 162 (2).
84 Ibid, Explanation to Section 162(2).
with fine which may extend to such amount as may be specified but in no case exceeding five hundred rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central Government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act\textsuperscript{85}\textsuperscript{112}. Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision\textsuperscript{86}. A hit and run accident is one in which the identity of the offending vehicle cannot be ascertained since it had hit and run away.

In \textit{New India Assurance Co. Ltd v. Rajendra Prasad Bhatt}\textsuperscript{87} it was held by the court that a Scheme under section 163 in the name of Solatium Scheme, 1989 has been framed and Rule 20 of that Scheme makes it clear, that an application for compensation there under has to be filed in Form 1 before the Claims Enquiry Officer of the Sub-Division in which the accident has taken place and not before the Motor Accidents Claims Tribunal. In \textit{Mohammed Iyub v. Muzaheed Pasha}\textsuperscript{88} it was held that in a case when an uninsured vehicle is involved and the standing of the owner or the user of the vehicle is not known, the vehicle itself is the most proximate asset, in respect of which, the claimant in a motor accident, could proceed. Notwithstanding that the vehicle may have been under the use of a person other than the owner for hire or otherwise, a charge ought to be fastened on the vehicle, disabling any disposal of the vehicle to protect claimants such as the petitioner from recovering some portion of the compensation by bringing the vehicle to sale. There is no such legal provision available which would operate to ensure the recovery of money by bringing such a vehicle to sale.

\textsuperscript{85} Ibid, Section 163 (2).
\textsuperscript{86} Ibid, Proviso to Section 163 (2).
\textsuperscript{87} 2002 ACJ 1762 (MP).
\textsuperscript{88} 2010 (1) TAC 313 (Del.).
5.16 SPECIAL PROVISIONS AS TO PAYMENT OF COMPENSATION ON STRUCTURED FORMULA BASIS

Section 163A of the Act provides for special provisions as to payment of compensation on structured formula basis. It provides that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923. 89 In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. 90 The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule. 91 Where a person is entitled to claim compensation under section 140 and section 163-A, he shall file the claim under either of the said sections and not under both. 92

In United India Insurance Co. Ltd. v. Mehtab Bai 93 it was held by the High Court that unless the legislature had made Section 163A of the Motor Vehicles Act, 1988, operative retrospectively, its operation shall only be prospective. In Shantaben Gordhandas Bhatt v. Gujarat State Road Transport Corporation 94 case it was held that in passing award for compensation in cases of accidents occurring prior to coming in to force of Section 163A, guidance can be taken from Second Schedule at least in the selection of multiplier, so as to avoid innumerable mistake likely to occur in the calculation of income of the victim and in selection of a proper multiplier. 95

89 Ibid, Explanation to Section 163A(1).
91 Ibid, Section 163A (3) .
92 Ibid, Section 163B.
93 AIR 1999 Raj. 293.
94 2002 ACJ 1714 .
5.17  FRAUD IN MOTOR INSURANCE

General insurance fraud is undergoing a sea change in its character. It is no more confined to the domain of white-collar crime, but surpassed into a fully fledged scam, world over, posing a serious threat to the global economy. What are visible is only the tip of the iceberg and a lot more underneath. After tax evasion, insurance fraud is officially acknowledged as the second biggest financial crime in the US costing Americans about $100 billion each year reports National Insurance Crime Bureau. Insurance Fraud is akin to an industry in the West. Special classes are held to make people proficient in perpetrating insurance fraud. There are organized gangs that specialize in staging vehicular accidents, arson and sabotage of property, all to one end for getting a fat insurance claim. Unlike the rest of the world, in India, there is so little information in the public domain about insurance fraud that easily misleads one to believe that the malaise has skipped us. But in reality we are ahead of others. Though a preliminary estimate puts fraud claims at 6% of the total number in India but If insurance fraud levels in India are to be rated in the international range of 10%-15%, the Indian general insurance industry would be losing between Rs.2,500-3,500 crore in a year.96

Channels of Frauds Against Insurance Companies

Fraud against the Insurance Companies committed at different stages are phenomenal and alarming which can be from outside known as external sources or from within the industry, known as internal source, but very often caused due to the unholy alliance of both the sources.

Collusion between insurance employees, intermediaries and insured

It would not be an exaggeration to say that in most of the cases the insurer cannot be defrauded except without an unholy nexus between the employee/intermediary in one hand and the insured/beneficiary at the other. Most of the frauds committed by way of a concerted effort of agents, brokers, insurance employees, insured member and the provider of services and other stakeholders of the general insurance system. Not necessarily, the policy holder/beneficiary always bribe surveyors and officials of insurance company to get false claims passed. Some time insurance employees and or intermediaries or the fraudsters approach the policy holder/beneficiary and suggest ways and means to exaggerate the genuine claim by fabricating documents.

96 The Insurance Times, November 2008.
5.18 VARIOUS STAGES OF INSURANCE FRAUD

Fraud can occur at any stage during the process of applying, buying, using, selling, underwriting insurance or while staking a claim which can be broadly categorized as pre-insurance otherwise known as application fraud and post insurance comprising eligibility and claims fraud.

Pre-insurance stage: Application fraud

This is committed when material misrepresentations are made on an application for insurance with the intent to defraud. Application Fraud differs from claim fraud in that the perpetrator is not seeking to illegitimately obtain a benefit payment-rather the perpetrator is seeking to illegitimately obtain a general insurance coverage only. Planned non-disclosure by clients has always been a major problem faced by Insurance industry, which sadly is socially acceptable. Hiding relevant and potentially damaging information is almost a norm in India. Even if the customer wants to disclose, his/ her insurance agent advises to the contrary and convinces the customer not to tell as it may attract extra premium. Agent is after all interested only in his commission and is worried that faced with extra premium, for which client may decide not to take the policy.

Post insurance stage: Frauds at this stage can be either an eligible fraud or claims fraud

Eligibility fraud: Eligibility fraud most commonly involves misrepresentations of the status of beneficiary. In such cases, the benefit is paid to a person not eligible to receive benefits because of various factors. Fraud by way of identity theft where people stole other person's identity to make false insurance claim, widely prevailing in the west is another species of the eligibility fraud.

Claims fraud: Most common where the losses are concocted, exaggerated, inflated, manipulated, manufactured, stage managed, to name a few. Magnitude and frequency of any insurance fraud is greater at the claim stage in comparison to pre-insurance stage.

Types of insurance claims frauds

Insurance fraud is generally of two types - one the 'opportunity fraud' - otherwise known as 'soft fraud' and the other is deliberate act to cheat known as 'hard fraud'. Any misrepresentation of facts or circumstances while making a claim is fraud. This could include hiding your previous driving record or padding up the
claims sheet. But unfortunately most people like to consider these as little exaggerations rather than fraud.

**Hard fraud:** Premeditated fabrication of claim

Hard fraud is a deliberate attempt either to stage or invent an accident, injury, theft, arson or other type of loss. A hard fraud is committed by faking incidents, accident, burglaries or illnesses, backdating claims, identity theft claims etc.

**Soft fraud:** Opportunistic padding up of claim

In these kinds of fraud, the claimant demands more than what he otherwise deserve. Approximately, 90% of the general insurance fraud results from soft fraud. Soft fraud, which is sometimes called opportunity fraud, occurs when a policyholder or claimant exaggerates a legitimate claim i.e. seeking more than the loss.

**Immaterial fraud**

In some cases, what can described as 'immaterial' fraud occurs, where a policyholder acts fraudulently simply to obtain legitimate payment of a genuine insured loss. A classic example is where the policyholder has lost the receipt for a stolen item and, facing pressure from the insurer, produces a forged receipt to substantiate the claim. The loss is genuine but the policyholder has lied in the course of making the claim, thereby breaching the duty to act 'in utmost good faith'.

**Motor Insurance Frauds**

World over auto or motor insurance constitute the single largest portfolio ranging between 40% to 70% of total general business insurance segment. Motor insurance is the most potential and vulnerable fraud ridden sector in the industry in comparison to other line of insurance. Motor own damage claims fraud committed at pre and post insurance stage involving both hard and soft fraud. Hard frauds includes total damage to the vehicle deliberately to get rid of the same or to earn more money than its market value. Some of the examples are staging collision, theft of the vehicle, burnt by fire, fall into river, owner vehicles give ups, loss under an excluded peril etc. A real accident may occur, but the dishonest owner may take the opportunity to incorporate a whole range of previous minor damage to the vehicle into the garage bill associated with the real accident. Soft fraud accounts for the majority of the motor insurance frauds. Some of the common soft frauds are filing more than one claim for the single loss, higher costs for repair, damage caused
earlier, replacement of old spare parts etc. With the advent of organized gangs in auto insurance fraud, it become more complex and sophisticated, which are much difficult to detect, if detected difficult to prove.

Whatever is practiced in west easily find its way to India. A recent survey has shown that more than 50% of the Third Party claims in India are bogus. There are several claims that are based on bogus accidents carried out with the connivance of law enforcing agencies. In India one public sector insurance company become richer by around Rs.184 Crores due to withdrawal of 427 number of Motor Third Party claim cases, including 40 cases where award have been made, fearing action following investigation by the CBI in pursuance to the direction of the Madras High Court. Last year it is reported that the Insurance companies were defrauded of around Rs. 500 Crores for over five years in seven South Bengal districts. It is apprehended that the figures could be around Rs.1500 Crores over the past ten years.\(^7\) Some of the common Modus operandi of TP frauds in India are conversion of ordinary death/other accidental death cases to Hit and Run cases. Conversion of hit and run cases by implanting another vehicle. Most of the hit and run cases are fixed at a later stage in collusion of the police. In some cases it was found that the person making the claim changes but all the other details remain the same like 20 claims made on the same car. It was also found that the same vehicle involved in 18 different accidents, all in the same city and the same years.

Death due to own negligence and without involvement of Third Party vehicles was converted to cases where accident shown to be caused by another vehicle. Accident caused under influence of alcohol converted to cases where accident caused by another vehicle. In United India v. Rajendra Singh,\(^8\) it was decided in which Father and son succeeded in receiving compensation of Rs. 3,55,000/- and Rs. 1,52,000/- for the alleged injury sustained while proceeding in a motorcycle, which was dashed by a car, actually they are operating their own tractor, which jilted into a ditch as result of which the occupants slipped down and sustained injuries. Inclusion of some stock victims name in the list of persons as injured

\(^7\) Times of India Mumbai, dated 25-07-2007.  
\(^8\) 2000(3) SCC 581.
persons even though they are not traveling. Substitution of un-insured vehicle with a insured vehicle. X claiming compensation for the treatment to an injury sustained by Y in vehicle accident. Passengers traveling in a truck converted to either owner of goods or coolies carried in the vehicle. Impersonating the victim, claimant, owner, driver sometimes advocates had been a norm. Filing cases without consent of the claimants, and in the name of advocates who do not exist had been widely prevalent. Filing of bogus injury report / medical certificate etc. to inflate compensation considered to be a right.

5.19 ACCIDENT INSURANCE POLICIES

Accidents claim more lives than war does. Alternatively, huge hospital expenses, vulnerability towards diseases, increasing risk of fatal diseases, all these factors strongly suggest a comprehensive accidental risk cover for everyone. Being insured against death is not sufficient, disabilities caused by accidents sometimes doesn’t allow you to work. Even if the disability is temporary, you still need a cover to meet financial obligation during hospitalization. It is here that personal accident policies come in handy. Almost every life insurer offers personal accident policies. These personal accident insurance policies of the four subsidiaries of the General Insurance Corporation, National Insurance, Oriental Insurance, United India and New India Assurance, promise compensation in the event of the insured sustaining death or disablement by bodily injury, resulting solely and directly from accident caused by external, violent and visible means. These accident policies provide cover for groups too. In case of group accidental policies, the insurer gives marginal discounts on premiums. Insurance Policy being contract between insured and insurer is neither public document nor admissible in evidence without any proof.\(^9\)

The insurance under the policy can be extended by payment of extra premium to include payment of medical expenses up to 10 per cent of the capital sum insured or 25 per cent of the actual claim amount or the actual medical expenses incurred, whichever is less and such expenses are admissible only if incurred in connection with any accident which has given rise to a claim under the

policy. The cover provided is world over, subject to pay in rupees. Hundred per cent compensation is offered of the sum insured in case of death, permanent total disability, loss of two limbs, loss of sight in both the eyes or loss of sight in one eye and loss of a limb. Fifty per cent compensation of sum insured is offered in case of loss of one limb or an eye. In case of permanent partial disability, compensation per cent of sum insured varies. In case of temporary total disability, compensation offered is one per cent of total sum insured payable on a weekly basis. Personal accident policies offered by public sector insurers provide for weekly compensation for the period you are unable to return to work, subject to a maximum of 104 weeks. When no time has been mentioned in the insurance policy, the deemed risks can be covered from the zero hours.\footnote{\textit{National Insurance Co. Ltd. v. Hanappa}, 2000 ACJ 412 (Kant): 1999(2) TAC 530.}

**Permanent total disability:** Defined as permanent loss of use of any two limbs, or permanent and complete loss of sight in both eyes or injuries that render the insured incapable of earning an income from the date of the accident onwards from any work, occupation or profession (commensurate with his educational qualifications, training and experience).

**Permanent partial disability:** Defined as permanent loss of any body part, one eye, one limb or one finger or a toe or injuries that render the insured incapable of earning an income. While the loss may be permanent, its effects on the insured and on his life is partial.

**Temporary total disability:** Defined as temporary loss in any form that may render a person immobile or affect his earning capacity from the time of the accident. In other words, a fracture in the arm or leg that keeps you from work qualifies: you may be mobile but the injury may not support your ability to work.

Different policies specify the circumstances under which each item is covered. For example, a vehicle can be insured against theft, fire damage, or accident damage independently. Depending on the jurisdiction, the insurance premium can be either mandated by the government or determined by the insurance company, in accordance with a framework of regulations set by the government. Often, the insurer will have more freedom to set the price on physical damage coverages than on mandatory liability coverages. When the premium is not
mandated by the government, it is usually derived from the calculations of an actuary, based on statistical data. The premium can vary depending on many factors that are believed to have an impact on the expected cost of future claims. In most states, moving violations, including running red lights and speeding, assess points on a driver's driving record. Since more points indicate an increased risk of future violations, insurance companies periodically review drivers' records, and may raise premiums accordingly. Laws vary from state to state, but most insurers allow one moving violation every three to five years before increasing premiums. Accidents affect insurance premiums similarly. Depending on the severity of the accident and the number of points assessed, rates can increase by as much as twenty to thirty percent. Any motoring convictions should be disclosed to the insurers, as the driver is assessed by risk from prior experiences while driving on the road.

5.20 VEHICLE CLASSIFICATION

Two of the most important factors that go into determining the underwriting risk on motorized vehicles are: performance capability and retail cost. The most commonly available providers of auto insurance have underwriting restrictions against vehicles that are either designed to be capable of higher speeds and performance levels, or vehicles that retail above a certain dollar amount. Vehicles that are commonly considered luxury automobiles usually carry more expensive physical damage premiums because they are more expensive to replace. Vehicles that can be classified as high performance autos will carry higher premiums generally because there is greater opportunity for risky driving behavior. Motorcycle insurance may carry lower property-damage premiums because the risk of damage to other vehicles is minimal, yet have higher liability or personal-injury premiums, because motorcycle riders face different physical risks while on the road. Risk classification on automobiles also takes into account the statistical analysis of reported theft, accidents, and mechanical malfunction on every given year, make, and model of auto.

Distance

Some car insurance plans do not differentiate in regard to how much the car is used. There are however low-mileage discounts offered by some insurance
providers. Other methods of differentiation would include: over-road distance between the ordinary residence of a subject and their ordinary, daily destinations.

**Reasonable distance estimation**

Another important factor in determining car-insurance premiums involves the annual mileage put on the vehicle, and for what reason. Driving to and from work every day at a specified distance, especially in urban areas where common traffic routes are known, presents different risks than how a retiree who does not work any longer may use their vehicle. Common practice has been that this information was provided solely by the insured person, but some insurance providers have started to collect regular odometer readings to verify the risk.

**Credit ratings**

Insurance companies have started using credit ratings of their policyholders to determine risk. Drivers with good credit scores get lower insurance premiums, as it is believed that they are more financially stable, more responsible and have the financial means to better maintain their vehicles. Those with lower credit scores can have their premiums raised or insurance canceled outright\(^{101}\). It has been shown that good drivers with spotty credit records could be charged higher premiums than bad drivers with good credit records.

**5.21 CONCLUSION**

Motor Vehicle Insurance Act will be a new separate act and will get rid of the section of unlimited liability, which figures prominently in the Motor Vehicle Act of 1988. Matters pertaining to insurance: vehicle insurance, compensation payment, commissions etc will move to the Motor Vehicle Insurance Act. This act will soon be set to shape and dispensed by the Ministry of Finance. The revised Motor Vehicle Insurance Act will do away with unlimited liabilities in claims of third party insurance. According to the Ministry of Finance premiums of third party covers are dispensed by the government. The New act will cater to provisions like a cap of Rs 10 lakh and Rs 20 lakh on fault principle. There will also be provision for interim recompense of Rs 1 lakh in case of death or permanent immobilization of victim. Rs 50,000 will be the compensation for partial disablement that results in loss of limb, sight or gross injury that leads to other permanent injuries. However

victims are required to file for recompense in a span of 3 months from the date of accident. Almost 1.4 million cases related to third party insurance claims remain pending at different tribunals and courts. This has called for a need to rationalize the principle for charting compensation under third party insurance. It has become a need of the hour. The revised bill proposes more powers to states so that they can limit and regulate indenture carriage on city routes after obtaining prior permission from Central government.

State government will be delegated added power regarding issuing of driving licenses, disposal of appeals, fitness certificates, registration cards, grant of permits etc. There will also be a time line set, to settle related matters. The revised Motor Vehicles Act will usher in hopes of lesser accidents, with 135000 accidents recorded in 2009. The statistics has been revealed by National Crime Records Bureau. The figures also reveal that India leads the world in such cases, overtaking China, its nearest competitor. 40% of such accidents involve two wheelers and trucks. The Motor Vehicles Act enjoins the tribunals to grant a just and fair amount of compensation to the victims of mishaps.

Accidents can be very stressful and lead you to trauma. There is the fear about what impact the accident will have on your driving record and insurance. Such thoughts can make it hard to think clearly and respond properly. And if there are injuries, the stress can be amplified. But that's when a clear head and quick action are really crucial. First calm down, call for the police and seek advice from a solicitor, they usually offer good advice when approached by the affected party.

There are different types of accident claims like the claims that can be made for road accident. The following are the checklist to be kept in mind when preparing to file road accident claim:

1. It is best to record and make a note of all the information that you can observe at the place where the accident took place. A keen observation will help you when making the claim. Give all the minute details when you are making the accident claim.

2. Make note of witnesses if there are any. It is helpful to collect the addresses and phone numbers of those who witnessed the accident, such eye witnesses can throw light on the cause of the accident.
3. Take the pictures of the place where the accident took place. Pictures of the accident site will always add weight to the claim. It will prove that you are right and the accident is a result of the negligence of the other party.

4. If you are injured in the accident the nature of the injury has to be recorded.

5. If the police personnel are available in the accident site it is important to collect the case number from them, if a case is registered. Also the insurance details of the other party have to be noted.

6. Calm down and go to the hospital after the accident to get treated and get the doctor's opinion about the nature of the injury.

7. Keep track of all the expenses that you have incurred as a result of the accident.

8. Another important advice on accident claims is the time frame to be kept in mind. The victim has to file the claim within a stipulated time period. Call your insurer or the agent to find more about claim procedure.

The insurance company is a ‘State’ within the meaning of Article 12 of the Constitution. For this reason it cannot deny, discriminate or refuse third party insurance cover to State run vehicles because their actions are guided by Article 14 of the Constitution. The compulsory nature of third party insurance is justifiable as it makes the process more easy for the injured person to recover money from the insured. The defendant or wrongdoer cannot be exempted on the ground that he has become insolvent. If he owns a vehicle he bound to pay to the injured directly or through his insurance company. Third party insurance protects the interest of a third party who becomes the victim of accident or injury caused by the fault of the insured. So any liability arising on the insured by the third party is mitigated by the insurance company. Third party insurance is compulsory under the motor vehicles Act, 1988. As the third party insurance is mandatory so it cannot be overridden be any clause in the insurance policy.