V. GENERAL INSURANCE

V(i) Extent of Insurance Coverage

Insurance is a contract to make good a specified loss on certain conditions in return for a stipulated premium; the verb 'to insure' means to contract to pay by the 'insurer' or to receive by the 'insured' under specified conditions in return for a stated premium a sum of money at a prescribed rate, or indemnification against specified liabilities or compensation for injury or loss of life, health, goods, profits, employment and prospects. Insurance thus covers damage or loss to all descriptions of tangible property on account of accident, fire, burglary, theft, as also anxiety on account of intangibles like ill-health, unemployment, etc.

Insurance is a method of sharing of financial loss of a 'few' from a common fund formed out of contribution of the 'many' who are equally exposed to the same loss, that is, spreading the loss of an individual over a group of individuals. The object of insurance is to provide protection against financial losses caused by fortuitous events. Risk is an uncertainty regarding a loss. The best method of mitigating the adverse effects of risk is through insurance.

Origin of Insurance

The earliest transactions of insurance as practised today can be traced in the beginning of the fourteenth century in North Italy. The Italian merchants, who were engaged in the Mediterranean trade with India via Constantinopole and with the European countries by land, originated the practice of breaking up the bottomry bonds into two instruments covering separate transactions - the advance of money which was to be repaid on safe arrival of the ship and the policy of assurance which paid the amount stated in the event of loss at sea. This was the beginning of marine insurance which gradually spread to Netherland and thence to London, where it got firmly established. In 1575 a Chamber of Assurance was established to
register policies and settle disputes. Around 1680 the coffee house owner Edward Lloyd started individual underwriting, which later became the famous Lloyds Underwriters. Today Lloyds is regarded as a great international insurance centre. In 1906 the Marine Insurance Act was framed to codify the marine insurance law. Fire insurance was the sequel of the Great London Fire of 1666, the pioneer being Dr. Nicholas Barbon. The industrial revolution brought about a great increase in material wealth in the form of factories, machinery and merchandise to be protected by insurance. Gradually insurance rating became complicated necessitating scientific classification of risks and uniformity of rates. In the early years of the 19th century there were many explosions of boilers causing heavy damage and bodily injuries. The employers liability insurance emphasised the need for liability insurance against third party risks. Early third party policies were issued in respect of horse-drawn vehicles since 1880.

The first motor vehicle entered UK in 1894 and the Law Accident Insurance Society Ltd. started writing motor insurance business from 1898 onwards. With the tremendous expansion of road transport, there were inevitable road accidents resulting in injuries to third parties. Motor insurance today constitutes the largest section of accident insurance.

Development of Insurance in India

The first Indian insurance company, the Triton Insurance Company, was formed in 1850 to transact general insurance. As trade and industry developed, there was an increase of insurance potential. Under the influence of swadeshi spirit, various industries as well as insurance companies were established. After independence life insurance was nationalised in 1956 under the name of Life Insurance Corporation of India (LIC) and in 1972 the General Insurance Corporation of India (GIC) was established with four subsidiaries, National, New India, Oriental and United India.

The Insurance Act 1938 was amended a number of times, the important amendments being made in 1950 and 1968. S.35 of the General Insurance Business (Nationalisation) Act 1972...
Chapter V(i) 235

specifies the exceptions, restrictions and limitations subject to which the Insurance Act 1938 shall apply to the GIC and companies. Insurance contracts, like other contracts, are governed by the general principles of the law of contracts as codified in the Indian Contract Act 1872. Insurance contracts are also governed by certain special principles evolved under the common law and later codified in the Marine Insurance Act 1963. These legal principles relate to (i) utmost good faith, (ii) insurable interest and (iii) indemnity. S.2 of the Insurance Act 1938 defines that "General Insurance Business" means fire, marine or miscellaneous business, whether carried on singly or in combination with one or more of them. Miscellaneous insurance includes motor insurance, guarantee insurance, etc.

**Good Faith** : All commercial transactions must observe good faith, that is, absence of fraud or deceit. At law, a commercial contract will be a nullity if one of the parties has committed fraud or deceit. Contracts of insurance are essentially of a fudiciary nature, i.e. built on trust. A breach of good faith can arise by (i) non-disclosure, or (ii) by misrepresentation.

**Insurable interest** : The principle of insurable interest is of fundamental importance and leads to other principles such as indemnity, subrogation and contribution. Insurable interest is a legal right to insure and it arises out of the insured's pecuniary interest in the property. Lack of insurable interest renders the contract void.

**Indemnity** : Insurance is a contract of indemnity, that is, its object is to place the insured, as far as possible, in the same financial position after a loss as that occupied immediately before the loss. Indemnification is subject to the sum insured which is the maximum limit of insurer's liability.

**Subrogation** : may be defined as the transfer of rights and remedies of the insured to the insurer who has indemnified the insured in respect of the loss. For instance, a car may be damaged in a collision caused by the rash and negligent driving of a truck. The car owner's right of recovery against
the truck owner is transferred to the insurer who has indemnified the loss of the car owner. If under a hire-purchase contract, the guarantor pays off all dues of the defaulting hirer, the rights of the hirer stand transferred to the guarantor except the right to exercise the option to purchase.

Guarantee Insurance: The various bonds and guarantees issued by insurers are: (a) Earnest Money or Bid Bond; (b) Contract Guarantee or Performance Bond; (c) Hire-purchase Guarantee; (d) Bank Advance Indemnity, and (e) Credit Guarantee. Under all these types of insurance, the financial solvency of the insured is important as the cover is required to guarantee the credit of the insured. A counter guarantee is taken before granting such insurance.

Role of General Insurance in Road Transport Industry

While road transport industry plays an increasingly prominent role in the national economy, the general insurance industry provides freedom from anxiety to the operators inherent in transportation business. General insurance has evolved a wide range of insurance covers to afford financial protection against all sorts of road transportation risks. The Carriers Legal Liability policy is available to cover liability towards consignors. Apart from the standard insurance policies, several additional covers are available such as, riot and strikes, earthquake, flood and so on.

The rates of premium for motor insurance are based on past loss experience and proper evaluation of the hazard factors. The basic objective of fixation of premium for different classes of risks is to relate the rate of premium to the hazard exposure. Less hazardous risk attracts a lower rate and the more hazardous risk, a higher rate. The insurance premium rating system is also geared towards accident prevention. The No Claim Bonus granted at renewal acts as a powerful incentive to promote safe driving.

General Insurance has sponsored the Loss Prevention Association of India to work for road safety, fire loss prevention, marine cargo loss prevention, industrial safety, etc.

Road Accidents

More the industrialisation, more the vehicular traffic and therefore more the need to take timely and adequate accident preventive measures. Gone for ever are the days of peace and tranquillity of the bullock-cart era when speed had no hand in the tragedies caused by speed. In the present era of hurry and bustle, accident always lurks at the corner speed having all the fatal attraction. Heavy road traffic has accentuated the problem of road accidents to an alarming proportion. Next to heart disease and cancer, traffic accidents take a heavy toll of human life. The following figures tell their own tale.

TABLE 19
Road accidents in India

<table>
<thead>
<tr>
<th>Year</th>
<th>Accidents</th>
<th>Killed</th>
<th>Injured</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>During the year</td>
<td>During the year</td>
<td>During the year</td>
</tr>
<tr>
<td></td>
<td>per day</td>
<td>per day</td>
<td>per day</td>
</tr>
<tr>
<td>1970</td>
<td>1,14,079</td>
<td>14,459</td>
<td>70,642</td>
</tr>
<tr>
<td>1980</td>
<td>1,47,651</td>
<td>24,085</td>
<td>113,670</td>
</tr>
<tr>
<td></td>
<td>(30 % rise)</td>
<td>(66 % rise)</td>
<td>(60 % rise)</td>
</tr>
</tbody>
</table>

The total deaths caused a loss around Rs. 237 crores, which figure would go up with the passage of years and with the amendments of the Motor Vehicles Act regarding compulsory compensation. Expressed otherwise, against the vehicle population of 42,72,737 in 1980, the accidents per 10,000 vehicles were 345, killed 66 and injured 266. These figures for advanced countries in 1979 were as under:

TABLE 20
Road accidents in advanced countries per 10,000 vehicles

<table>
<thead>
<tr>
<th>Country</th>
<th>Accidents</th>
<th>Fatalities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>100</td>
<td>1.8</td>
</tr>
<tr>
<td>USA</td>
<td>140</td>
<td>3.3</td>
</tr>
</tbody>
</table>
Insurance is a statutory obligation under the Motor Vehicles Act in view of the death, injury and damage to vehicle and property in road accidents.

<table>
<thead>
<tr>
<th>Country</th>
<th>Accidents</th>
<th>Fatalities</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td>153</td>
<td>3.9</td>
</tr>
<tr>
<td>France</td>
<td>94</td>
<td>4.6</td>
</tr>
<tr>
<td>Sweden</td>
<td>46</td>
<td>2.7</td>
</tr>
<tr>
<td>West Germany</td>
<td>137</td>
<td>4.9</td>
</tr>
<tr>
<td>India</td>
<td>346</td>
<td>55.0</td>
</tr>
</tbody>
</table>

Source 1
V(ii) Vehicle Insurance

The Motor Vehicles Act 1939 deals with insurance of motor vehicles as under:

Necessity for insurance against third party risk. - (1)

(1) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Thus, vehicles of every description must be insured and the insurance policy must be renewed on the very day it expires.

Driving uninsured vehicle. (2) - Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 94 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees -or with both.

Policies and limits of liability. (3) - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(b) insures the person or class of persons specified in the policy to the extent specified in sub-section (2) -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) 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;

(2) a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely-

(a) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all including the

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(1) Section 94, Chapter VIII of Motor Vehicles Act 1939
(2) Section 125, Chapter IX of Motor Vehicles Act 1939
(3) Section 95m Chapter VIII of Motor Vehicles Act 1939
liabilities under the Workmen's Compensation Act 1923, in respect of the death of or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -

(i) in respect of persons—other than passengers carried for hire or reward a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees six thousand in all in respect of damage to any property of a third party.

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by 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 conditions 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.

(4-A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder 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 such other authority as the State Government may prescribe.

(5) Notwithstanding anything elsewhere contained in any law, a person 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.

Accidents are of varying severity. In a severe accident at a place away from habitation at an odd hour, there may be death, grievous injuries, heavy damage and no rescue.

Duty of driver in case of accident and injury to a person. (1)
- When any person is injured or any property of a third party is damaged as the result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall -
  
  (a) take all reasonable steps to secure medical attention for the injured person, and if necessary, convey him to the nearest hospital, unless the injured person or his guardian, in case he is a minor, desires otherwise;

  (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence.

After having lodged the First Information Report (FIR) with the police, the next thing to do is to report the incident to the nearest branch office of the insurance company who will depute a surveyor for spot survey and report. Simultaneously intimation is to be sent to the finance company, if the vehicle is under hire-purchase agreement, or to the bank, if the vehicle is under hypothecation, as well as to the office of the insurance company which issued the policy. After spot survey, the vehicle is permitted to be removed to a workshop for preparation of repair estimate to be submitted to the insurance company for approval. Due to the accident, the vehicle would remain off the road for quite some time, and it is therefore advisable to send a stoppage report to the taxation authority to save tax during the non-operation period.

This is followed by completing the formalities of lodging the claim in the form prescribed by the insurance company, supported by registration particulars, driver's licence, route permit,

(1) Section 89, Chapter VI of Motor Vehicles Act 1939
surrender of salvage, etc. The claim is to be lodged with that branch of the insurance company which issued the policy though spot survey may have been conducted by some other branch near the place of accident. Claim in respect of damage to the vehicle is known as O/D claim. In case the vehicle is under hire-purchase agreement, the finance company renders full help in settlement of the claim because the hire-purchase agreement provides -

The Hirer shall keep the motor vehicle insured during the period of hiring against any loss or damage by accident or fire or other risks under a comprehensive policy with an insurance company approved by the Owner. The Owner shall receive all claims payable by the insurance company for any loss or damage to the motor vehicle.

Trucks are comprehensively insured on the basis of tonnage. Buses are insured on the basis of passenger seating capacity. Passenger insurance has slab premium charges with limits of liability per passenger, the highest slab covering unimitted liability. Additional premium is payable to cover risks of riot, civil commotion, fire, theft, etc. or for acts of providence like flood, lightning, etc. Insurance companies allow no-claim discount on renewal premiums if there was no claim during the preceding year/s. This is at once a reward and incentive for cautious behaviour as well as discouragement to lodge concocted or inflated claims.

Hire Purchase Endorsement attaching and forming part of an insurance policy reads as under:

HIRE PURCHASE

It is hereby understood and agreed that ......................
(hereinafter referred to as the Owners) are the owners of the Motor Vehicle described in the schedule to this Policy and that the Motor Vehicle is the subject of a Hire Purchase Agreement made between the Owners of the one part and the Insured of the other part and it is further understood and agreed that the Owners are interested in any monies which but for this Endorsement would be payable to the Insured under this Policy in regard to loss or damage to the Motor Vehicle (which loss or damage is not made good by repair, reinstatement or replacement)
and such monies shall be paid to the owners as long as they are the owners of the Motor Vehicle and their receipt shall be a full and final discharge to the Company in respect of such loss or damage.

Save as by this Endorsement expressly agreed, nothing herein shall modify or affect the right and liability of the Insured or the Company respectively under or in connection with this Policy.

The likely consequences of a motor vehicle accident are:

**Damage to**
- the vehicle
- goods carried
- property of others

**Death or injury to**
- the driver and other employees
- passengers
- other road users
- gratuitous passengers.

Government is not concerned with the loss to private property except measures to prevent and minimise accidents, but it is very much concerned with the losses incurred by public out of use of motor vehicles in public places. When it is loosely said that every motor vehicle must be insured under law, all it means is that the insurance must be against third party risks as laid down in the Motor Vehicles Act 1939.

The expression 'third party' has not been defined in the Act. Third Party Risk connotes that the insurer is one party to the contract, the policy-holder is another and the claims made by others in respect of negligent use of a vehicle would naturally be claims by third parties. (1)

The vehicle in itself is a private property and may or may not be insured just as any other private property. However, the very hazardous nature of transport industry makes it prudent for every vehicle owner to get it insured as comprehensively as he may choose, including multi-peril policy covering collision, overturning, landslide, etc. All lenders against the security

of the vehicle like banks and hire-purchase companies strictly enforce the contractual obligation to keep the vehicle insured comprehensively throughout the currency of the agreement.

Goods carried by a goods vehicle are private property not requiring insurance under the Act.

A common carrier is not just a mere bailee of goods. He is also an insurer of goods. He is answerable for the loss of goods even when such loss is caused not by either negligence or want of care on his part. This responsibility attaches to the public nature of the business carried on by him. He is therefore insurer of the goods and is answerable for its loss.\(^1\)

**Classification of policies**

Act policy or compulsory insurance policy - granted in accordance with Chapter VIII of the Act to cover only that liability required to be covered by the Chapter.

Third-Party Risk Policy - covers liabilities arising from death or injury caused to a third person \(^2\) arising out of the use of the motor vehicle and damage to property of such a person so arising.

Comprehensive Policy - covers loss or damage of the insured vehicle; may be modified by many extension and restriction clauses, e.g. may cover (a) the assured in respect of his death or bodily disablement in which the vehicle is involved; (b) the member of the assured's family, and (c) damage to vehicle arising out of events insured against, viz. theft, fire, etc.

**Acceptance of proposal**

A contract of insurance is formed when there is unqualified acceptance of the proposal. It may be implied if the insurer accepts premium and retains it. The incorporation of the terms and conditions of the policy may be inferred from


\(^{2}\) In this context 'third person' refers to a person who is neither an employee nor a passenger.
the documents like the proposal, cover note or the letter of acceptance. For the enforcement of the insurer's liability, it is not necessary that the policy should have been issued. (1)

Cover Note is a document which is given to the owner of a vehicle immediately after a proposal for insurance is made and premium in respect of it paid. It is generally followed by the policy itself, if the proposal is accepted, otherwise it is cancelled. (2)

Chapter VIII of the Act

Chapter VIII, divided into sections from 93 to 111-A, covers, inter alia, the necessity for insurance against third party risk, requirements of policies and limits of liability, duties of the insurer, rights of third parties, insolvency, Claims Tribunals, procedure and powers of Claims Tribunals, appeals, etc.

Chapter VIII of the Motor Vehicles Act 1939 requires insurance of motor vehicles against third-party risks. The object is to ensure insurance of all vehicles so that if a third party suffers any damage, he would be able to get damages straightway from the insurance company and the recoverability of such damage would not depend upon the financial condition of the driver or the owner of the vehicle. (3)

If the insured or his driver are exonerated from liability, the finding being that the driver was neither rash nor negligent, the insurer, whose liability does not extend beyond the liability of the insured, will not be liable to compensate the injured for the injuries sustained by him. (4)

The liability of the insurer depends upon the liability of the insured under the law of torts. Negligence of the owner or driver is the sine qua non for such liability. If the insured

(1) Ajodhya Prasad v. Premier Ins. Co. 1971 ACJ 363(365) (All)
(3) LIC v Kartthyani, AIR 1976 Ori 21
(4) Neptune Ins. Co. v. Lakhiram, 1962 MPLT (Notes) 103
is not liable, even the insurance company is also not liable. (1) The Patna High Court, however, has held that the liability of the insurer is absolute. (2)

Insurance of employees

The proviso to S. 95(1) lays down that a policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee other than a liability arising under the Workmen's Compensation Act 1923, section 3(1) of which provides: If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation ... S. 95(2)(a) of the Motor Vehicles Act lays a limit of rupees one lakh and fifty thousand in all, including the liabilities, if any, arising under the Workmen's Compensation Act 1923, in respect of the death of, or bodily injury to, employees (other than the driver) not exceeding six in number, being carried in the vehicle.

The position is rather ticklish when it has been decided that no useful purpose is served by inserting in the policy the condition that they are not liable to pay compensation to the persons employed who would be entitled to get compensation under the Workmen's Compensation Act ..... the insurance company is liable to pay compensation to the injured employee who will be entitled to get compensation under this Act. (3)

Other passengers

The legislature has provided for protection of the lives and limbs of passengers in public carriage vehicles only under the system of third party insurance and not any other class of passengers. The insurance company would not be liable to pay any compensation to a passenger sitting in a private vehicle even though it might be owned by a public body like a University. (4)

(1) (Australia) Nesterczuk v Mortimore, 1969 ACJ 204
(MP) Mangilal v Parasram, 1970 ACJ 86(94)
(2) New India Ass. Co. v Sumitra Devi, 1971 ACJ 58(61)
(3) Gen. Ass. Society v N.A. Mohammad Hussain, AIR 1966 Mad 388
(4) D. Rajapathi v University of Madurai, 1980 ACJ 113 (Mad)
Where the vehicle is used by passengers otherwise than for hire or reward or by reason of or in pursuance of a contract of employment, it is not necessary that the policy should cover the risk of their death or bodily injury to them. It is not obligatory for the owner of vehicle to insure it against their death or bodily injury to them.\(^{(1)}\)

The position of a pillion rider is not that of a third party, and the insurance company is, therefore, not liable to pay any compensation or damages\(^{(2)}\) unless the policy covers such risk.

There is conflict of views, however, as to the liability of the insurer in respect of compensation in regard to a gratuitous passenger in the vehicle.

**Transfer of Vehicle**

A motor vehicle is a moveable property and its sale will consequently be governed by the provisions of the Sale of Goods Act. If the present owner realises the sale consideration and delivers the vehicle, the transfer is complete. The Delhi and Rajasthan High Courts have, however, taken the view that the sale of a motor vehicle would be governed by the special provisions of the Motor Vehicles Act and there would be no valid or effective sale unless the sale is reported to the Registering Authority and the registration is transferred in the name of the purchaser.\(^{(3)}\) The contrary view is: it makes no difference that the vehicle remains recorded in the records of the registry in the name of the original owner. The vehicle stands transferred all the same\(^{(4)}\) and the liability of the insurer ceases on that account.\(^{(5)}\)

An insurance policy is a personal contract between the parties for indemnifying the insured in case of an accident.

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\(^{(1)}\) K.N.P. Patel v Jayabharat Ins Co. 1966 ACJ 284 (Bom)
\(^{(2)}\) Unique Motor & Gen. Ins. Co. v Mrs. Krishna Kishori, 1968 ACJ 318 (PH)
\(^{(3)}\) Delhi -Vimal Rai v Gurbachan Singh, 1967 ACJ 115
Rajasthan -Maina v Niranjan Singh, 1976 ACJ 1(5), etc.
\(^{(4)}\) Sajjan Singh v Sardara Ali, 1960 AC 167, etc.
\(^{(5)}\) South India Ins Co. v Lakshmi, AIR 1971 Mad 347 etc.
covered under the policy. If the motor 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. (1)

When there is a transfer of the vehicle with the assent of the insurance company, there is a novation of the contract by which the original assured is released and the new assured is accepted. (2) However, a third party, when he dies or suffers an injury, should not be allowed to suffer an injury because unknown to him there was change in the ownership of the vehicle. If such were the result one could spell out, then the very purpose of compulsory insurance against third party risk is completely defeated. (3)

In case of an accident giving rise to liability for the payment of compensation to the person injured or the heirs of the deceased, even the owner of the vehicle and the driver are liable, provided the driver was negligent in driving, and claims might be made against them. (4)

Grounds open to insurer in defence

The insurer is not entitled to avoid its liability except on grounds mentioned in S.96(2) of the Act. The pleas open to the insurer are:

1. The policy was cancelled by mutual consent or had ceased to operate on account of any provision therein.

2. The certificate of insurance was surrendered by the insured to the insurance company or it was lost or destroyed.

3. There was breach of specified condition of the policy.

4. The policy was void on the ground that it was obtained by non-disclosure of material facts or representation of false facts.

(1) B.P. Venkatappa v B.N. Lakhmiah, AIR 1973 Mys 350
(2) Gulab Bai Tapse v Peter K Sundar, 1975 ACJ 100(110) Bom
(3) Hazi Zakaria v Naoshir Cama, 1976 ACJ 320(332):
    AIR 1976 AP 171
(4) Atma Singh v Gurmeet (1966) 68 Punj LR 371
5. That the policy lapsed because of transfer of the vehicle.

Under exceptional circumstances contemplated in S.96(2A), the insurance company would have the additional privilege of raising the defences that -

6. There is collusion between the person making the claim and the person against whom the claim is made; or

7. The person against whom the claim is made has failed to contest the claim.

The plea of transfer of vehicle has evoked opposite decisions. The Rajasthan High Court has taken the view that even when a vehicle is transferred by the assured, it will not be open to an insurer to raise a plea that the vehicle was transferred by the insured, it not being open to the insurer to take any plea other than those mentioned in S.96(2). (2)

Claims Tribunals

Money cannot renew a physical frame which has been battered and shattered nor bring the dead back to life. All that can be done is to award sums which may be regarded as giving reasonable compensation.

All States have constituted Claims Tribunals in exercise of the power vested in them under S.110 of the Act, to adjudicate upon all claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. The claimant, however, has the option to refer claims exceeding rupees two thousand to civil courts, though S.110C provides that the Claims Tribunal shall have all the powers of a civil court.

Conflicting views have been expressed by the different High Courts and even different judges of the same High Court

(2) Padma Devi v Gurbux Singh 1973 ACJ 460(466) (Raj)
as to whether compensation for motor vehicles accidents has to be determined and awarded under the Fatal Accidents Act 1855 or under the Legal Representatives Suits Act 1855 or under the Motor Vehicles Act 1939 independently of the provisions of the aforesaid two Acts. (1)

Vicarious liability

Is government immune from vicarious liability? The oft-quoted words 'The King can do no wrong'(2) stand transferred to government in replacement of the King in the present times, but these words have lost the sanction and sanctity of the feudal era. It has consequently been held that if the vehicle is owned by the State Government and there is a tortious act like rash and negligent driving by a public servant, the claim of the citizen cannot be resisted on the ground that it was committed by the State Government employee or public servant while the State was pursuing a sovereign function. (3)

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(2) Blackstone's Commentaries, 10th Ed. 1887.
(3) Government of Andhra Pradesh Transport Deptt. v. Mrs. K. Padma Rani, 1975 ACJ 462(467) AP.
In respect of vehicle insurance, the Motor Vehicles Act 1939 makes distinction between employees, passengers and the third party, who is neither an employee nor a passenger such as a pedestrian involved in an accident. Proviso to section 95 reads:

Provided that a policy shall not be required (1) -

(i) to cover liability in respect of the death arising out of and in the course of his employment, of the employees or 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 vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) to cover any contractual liability.

The above provision is to be read with section 110-AA.

Option regarding claims for compensation in certain cases (2) - Notwithstanding anything contained in the Workmen's Compensation Act 1923 (8 of 1923), where the death of or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act

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(1) Proviso to Section 95, Chapter VIII of Motor Vehicles Act 1939
(2) Section 110-AA, Chapter VIII of Motor Vehicles Act 1939
1923, the person entitled to compensation may, without prejudice to the provisions of Chapter VIIA, claim such compensation under either of those Act but not under both.

In case the driver and -other employees of the owner of the vehicle have sustained injuries or met with death, separate claim is to be lodged known as W/C claim under Workmen's Compensation Act. In the case of those vehicles under hire-purchase agreement, such claims are generally settled amicably by mutual negotiations aided by influential intervention by the hire-purchase company. In case of difference of opinion as regards the amount of claim between the claimant and the insurance company, the matter may be referred to the Workmen's Compensation Commissioner, who is generally the District Magistrate.

Janata Policy - The recently introduced Janata Policy covers -the life risk of the driver for a very low premium which is a personal matter to cover the risk of his hazardous job.

Vicarious Liability and Third Party Risk.

Vicar is a church official meaning a deputy (from Latin - Vicarius). Even if the owner of the vehicle is not at the scene of the accident and is not personally responsible, he is held liable under the doctrine of vicarious liability, which is a liability of one person for wrongful act committed by another. It is the driver of the vehicle who commits the tort (wrong) and is primarily responsible for it. But under the master and servant theory, the master (employer) is -held vicariously liable for the wrong committed by his servant in the normal and ordinary course of his employment. Between the owner and the driver, all the indicia of the relationship of master and servant are satisfied, namely, (i) the master is the employer; (ii) the servant/driver is under the absolute control and functions under the directions of the master, and (iii) the master has full powers of employment, dismissal or any other manner of dealing with the servant.

In criminal law there is no vicarious liability because the mens rea (guilty mind) of the agent cannot be imputed to the principal.
A situation arose in which the 'owner' was interpreted as the 'owner; under the hire-purchase agreement, meaning the hire-purchase company, who is the de jure owner. All litigation on this legal point invariably exonerated the 'owner' under the hire-purchase agreement on two main grounds : firstly, the definition of 'owner under the Motor Vehicles Act is abundantly clear, and, secondly, the driver who committed the tort (wrong or negligence) was the servant of the de facto owner, that is, the hirer and the hire-purchase company had nothing to do with the operation of the vehicle.

There have been legal disputes in which the insurance companies repudiated their liability to cover third-party risk in such cases where the the vehicle was transferred without transfer endorsement in the insurance policy and in the meanwhile an accident took place creating a third party insurance claim. Such a plea was turned down in the case of the Oriental Fire & General Insurance Co. Ltd. v. Smt. Vimal Rai and others in which it was held[1] "... the users of the road would be entitled to assume that a registered motor vehicle plying on the road is duly covered by a third party risk insurance. It would really be a misfortune if a person involved in the accident or his legal representatives should find that they lose the benefit of compulsory third party risk insurance merely because the registered owner of the vehicle had transferred the same to another person whose name has still not been endorsed on the insurance policy. This would deviate from the effectiveness of provisions of S. 95 of the Act."

Two typical cases involving accident claims under insurance policies are cited below.

In the High Court of Judicature at Rajasthan (2)
Smt. Padmadevi & Others
v. Gurubaksh Singh
March 21, 1973

One Manakchand was coming from his office on 11th October 1960 when he was struck by truck RJD 672 on Mirza Ismail Road, Jaipur, driven by Gurubaksh Singh. Manakchand died on spot. He was survived by his widow Padmadevi and his son Tarachand.

(1) LLR 1972-2-Delhi 949.
(2) AIR 1973 Rajasthan 317.
They claimed damages for a sum of Rs.20,000 from (1) Gurubaksh Singh, driver (2) Harcharan Lall, Owner (3) New India Assurance Co. Ltd. (4) Sardar Brijendra Singh to whom the truck was alleged to have been transferred prior to the date of accident, and (5) Narula Finance Co. with whom Brijendra Singh had entered into a hire-purchase agreement.

The hirer contended that the driver was not instructed to take the vehicle on the Mirza Ismail Road, that the hire-purchase company was the real owner, and that the insurance company was liable to pay the damages as the truck was insured. Harcharan Lal pleaded that the truck had been sold out to Brijendra Singh and as such he was not liable for the accident. The insurance company contended that the truck was insured in the name of Harcharan Lal and Sons. But it had been transferred without the sanction of the insurer and thus Cl. 5 of S. 2 of the policy had been contravened and therefore the insurance company was not liable for the damages on account of the accident.

Decision of the Lower Court: The Senior Civil Judge No.II, Jaipur City held that the accident had taken place on account of rash and negligent driving by the driver; that the truck had been transferred by Harcharan Lal to S. Brijendra Singh and on that account there was a violation of the conditions of the policy, and therefore Harcharan Lal and the insurance company were not liable. The finance company was also exonerated by him. The claim for Rs.19,200 was declared against Gurubaksh Singh, the driver and S. Brijendra Singh, the hirer.

The two parties against whom the decree was passed by the Senior Civil Judge went in appeal before the Rajasthan High Court praying for a decree against the remaining three parties.

The transfer plea was outright rejected by the High Court because no attempt was made to get the registration certificate transferred in the name of Brijendra Singh and the truck continued registered in the name of Harcharan Lal and Sons, who paid road tax and had a permit in their name. The alleged transfer was of no legal effect. In view of the transfer having no legal effect, the plea of the insurance company that there was transfer of the vehicle in contravention of some condition of the policy
cannot be upheld. Accordingly, the insurance company was also liable for damages. S.96(2) of MV Act clearly provides that an insurer is not entitled to take defence which is not specified in it. A further plea was taken by the insurance company that the policy lapsed on the transfer of the vehicle in an action by third parties for compensation. Here too the plea was rejected adding: "we are firmly of the opinion that it was not open to defendant No. 4, the insurance company, to raise any plea outside the scopes of S. 96(2)."

Excepting the hire-purchase company all the four other parties were jointly and severally held liable to pay the decretal amount.

In the High Court of Judicature at Delhi (1)
Tulsidas and another
v. Panna Lal and Others.
December 5, 1975

Panna Lal filed an application before the Motor Accidents Claims Tribunal, Delhi u/s 110-A of the Motor Vehicles Act, 1939 claiming a sum of Rs.20,000 by way of damages for the injuries sustained by him on 2nd May 1962 when he was travelling on the pillion of the scooter driven by his brother, Harbans Lal. Near the crossing of Rohtak Road and Faiz Road, New Delhi, truck DLG 4726 driven by Pyara Singh knocked down the scooter as a result of which Panna Lal received multiple injuries including fractures. He claimed the compensation jointly from Tulso Dass, the hirer and RC holder, Oriental Fire & General Insurance Co. Ltd., Pyara Singh driver, the United India General and Finance Pvt. Ltd. and Delhi Saharanpur Road Carrier Pvt. Ltd. in whose name the insurance stood originally.

The common ground on which the claim was resisted by all was that the accident took place not because of any rashness or negligence on the part of the driver but because of the rashness and negligence on the part of Harbans Lal who was driving the scooter. The Tribunal rejected this ground.

There were many turns and twists in this case; the finance company said that the hire-purchase agreement was with one Ram Lubhaya c/o Delhi-Faridabad Goods Transport Co.; the RC holder was Tulsi Dass who said that he had transferred it to Pyara Singh.

(1) 1976 ACJ 167
The court considered in detail the endorsements found on the RC Book and the evidence let in by the finance company. During hearing Tulsi Dass died causing some fuss which later subsided and hearing resumed, the deceased's representative taking his place.

The insurance company contended that even if Tulsi Dass was not only the registered owner of the vehicle but also the real owner, the insurance company would not be liable to pay compensation if Tulsi Dass was not the person who was in possession of the vehicle under a hire-purchase agreement. There was an endorsement which was attached and which formed part of the insurance policy to the following effect:

'It is hereby declared and agreed that as from 24th August 1961 the interest in the policy is transferred to and vested in Shri Tulsi Dass care of M/s United India General Finance Private Limited, Bank Street, Karol Bagh, New Delhi, who shall be deemed to be the insured and whose proposal and declaration dated 24th August 1961 shall be deemed to be incorporated in and to be the basis of this contract.'

The above endorsement came into effect much earlier than the date of the accident on 2nd May 1962. The insurance company explained that this transfer was effected only because Tulsi Dass happened to be the holder of a permit whereas Ram Lubhaya did not hold such a permit and that for the purpose of enabling Ram Lubhaya to operate the vehicle, the said vehicle had to be transferred in the name of Tulsi Dass. This was rejected by the Tribunal on the ground that the evidence was not satisfactory.

The High Court upheld the decision of the Tribunal, in which a compensation of Rs.3,500 was awarded and ordered that the insurance company was liable to pay the compensation awarded by the Tribunal.
Bank advances to hire-purchase companies are secured by the pledge of hire-purchase documents with the bank under a cash credit limit. Upto a certain extent within the norms of the bank such a cash credit limit may be sanctioned by the bank without a guarantee from the insurance company.

In the beginning some insurance companies issued guarantee in the form required by the banks but the wordings of such guarantee came under criticism by insurance experts. The banks insisted on pure financial guarantees, that is, where moneys were recoverable from the guarantor (insurance company) as if the guarantor were the principal debtor in the event of default by the financing company. Fundamentally such pure financial guarantees were neither insurance contracts nor contracts of pure indemnity.

The present practice is that the insurance company issues Indemnity Guarantee Policy (IGP) otherwise called Hire-Purchase Indemnity (HPI) under which the insurance company indemnifies the bank to the extent of 80 per cent of its net pecuniary loss consequent upon the default in repayment of the moneys advanced by the bank to the financier and the bank is -its own insurer for the balance 20 per cent risk. The insurance premium of one per cent per annum of the guarantee amount, is shared by the insurance company and the bank in the proportion of their respective risk, i.e. 80 : 20.

The risk of the insurance company as well as that of the bank is amply covered by the multi-layered coverage offered by the vehicle itself, the hirer with his -property mentioned in the proposal form, his guarantor, the financier and in addition the collateral security in the form of personal demand promissory notes accepted by partners/directors as well as guarantees by non-partner/non-director guarantors acceptable to the insurance company. There may be yet more additional security of tangible assets like real property or life insurance policies or shares belonging to the financier and/or partners/directors.
The very encouraging experience of banks in respect of their advances to hire-purchase companies with insurance guarantee has led to sanction of liberal credit limits and their renewal as well as enhancement for expanding business. General insurance thus plays an important role in the development of road transport and through it, of trade and industry. However, the cost element of commission payable to the insurance company and bank under a guarantee policy and the -procedural delays and expenses add to the cost of borrowings by the finance company.

Such a guarantee policy is also issued to a group of concerns under the same management (sister concerns) covering all sorts of credit facilities such as, cash credit limits, term loans, overdrafts, limits against receivables, hypothecation limits, etc.

Insurance companies have strict norms before and after issuance of bank advance indemnity guarantee policies relating to hire-purchase business, such as, debt-equity ratio, liquidity, cash flow, ratio of all overdue instalments to total outstandings, etc. By insisting on periodical returns, the insurance companies keep their finger on the pulse of the business to watch the performance of the financiers. Though the insurance company takes all these precautions in its own interest to minimise claims against the guarantee policy, this serves as a protection to bank loans as well as the financier to streamline his business and accounts to observe the healthy norms set by the insurer.

The main factors taken into account by the insurance company while processing the hire-purchase indemnity guarantee proposal from a hire-purchase financier and the follow up action after issuance of the policy, are as under:

Constitution of business: Except in rare cases, proposal from a sole proprietary concern is not encouraged on account of the likely problem of continuity of business.

History of management: The past record as reflected in the audited accounts and other financial data generally for the last three years are studied in detail. The reputation of the management personnel is examined by market enquiry, bank references, etc.
Financial soundness: Balance sheets, profit & Loss accounts and other financial data for the past three years are studied to assess the quality of the business conducted, adequacy of capital base and profitability. Certain ratios like (a) risk capital to liabilities and (b) risk capital to hire-purchase advances are worked out from the balance sheet to judge whether the proponent's liabilities are within reasonable proportion and whether there is over trading. The risk capital constitutes capital, reserves, surplus carried forward and deposits required to be maintained in the business minus carried forward losses, net advances to sister concerns, fictitious assets, preliminary expenses not written off, etc. Under guidelines issued by the General Insurance Corporation of India, each of these ratios is required to be maintained within 1:4.

Net worth of management personnel: Income tax and wealth tax assessment orders/returns for three preceding years of directors/partners show the annual income and net worth of management personnel. In the case of persons who are not assesses under wealth tax, statements of assets and liabilities are called for.

Security: Invariably a counter guarantee from the proponent is required to be executed. In case of a limited company, a resolution of the Board of Directors in the standard form for execution of the counter guarantee is required. This counter guarantee is in addition to the assignment of hire-purchase documents and hypothecation of vehicles in favour of the bank. In case the proposal falls short of required soundness, the insurance company may call for tangible collateral security in the form of mortgage of fixed assets, assignment of life insurance policies of management personnel, pledge of shares, etc.

Overdues: Installments fallen due but not paid by the hirers serve as a barometer to measure the quality of business conducted by the financier. Higher overdues mean lax efficiency and lower overdues show better quality of working. Usually the insurance company expects that the overdues should not exceed 15 per cent of the total hire-purchase advances outstanding. The composition of the overdues period-wise is an indicator as to what proportion of the overdues accrued over a longer period.
may result in bad debts. When the overdues exceed the limit, the insurance company calls upon the financier to tighten up collection machinery in order to bring down the overdues. Failure to do so may lead to withholding renewal of the guarantee policy.

Periodical inspection: Under the guidelines issued by the General Insurance Corporation of India, the insurance company carries out periodical inspection by their own staff or by independent chartered accountants to check the accounts of the financier, the documents deposited with the bank and the trend of debit balance and drawing power.

Incidentally, the insurance company issuing the HPI policy expects the financier to place his general insurance business with the same insurance company.

Under the HPI policy, financing of second-hand vehicles including trucks, buses, private cars, jeeps, motorcycles, scooters, pick-up vans, tempo, tractors, trailers, taxis and autorikshas, is allowed up to three years and this limit in respect of Tata and Ashok Leyland vehicles is four years.

The insurance company stipulates per hirer advance to ensure that the financier does not grant heavy advances to a particular hirer.
V(v) Scope for wider coverage

The road transport industry is not provided with adequate insurance cover for the goods booked by transport companies and transported in trucks owned by unattached single truck owners. The carrier liability under the Carriers Act 1865 is absolute. Even under subrogation of the Insurance Act, the carrier is answerable to the insurance company. There is scope for widening insurance cover by offering a package deal like Carriers Liability Policy to cover the risks of shortage, fire, weather conditions, theft, robbery, pilferage, breakage, leakage, etc. Fixation of premium under such a policy on truck basis is not practicable because of the predominant number of trucks owned by single truck owners not attached to any particular transport company. Moreover, the destinations vary from a few hours journey to long routes requiring days to reach. The premium can be based on freight collections of the transport company irrespective of which trucks carry the consignments. The freight earnings can be checked from the audited accounts of the transport company. To avoid disparity of premium from one carrier to another, a standard and uniform rate can be evolved based on data statistics and revisable with the passage of time and fresh data coming forth. As a safeguard, the insurance company can be selective and stringent in its norms so that the undesirable transport companies get automatically weeded out. Under such norms, the eligible transport company would be required to have regular booking offices, delivery godowns and above all, a reputation earned through safety, speed and efficiency.

Transport companies will have to fall in line with the norms set by the insurance companies if consignment insurance is made compulsory under the Carriers Act 1865, just as vehicle insurance is compulsory under the Motor Vehicles Act 1939.

Insurance coverage can be extended to yet untapped fields as well as widening the scope of existing fields. Just as bank's risk in respect of its advances to a hire-purchase company is covered under Hire Purchase Indemnity (HPI) policy issued by an insurance company, the risk of the hire-purchase company could be
covered by a Hire-Purchase Policy under which the pecuniary loss incurred by a hire-purchase company on account of default in the payment of hire instalments resulting in bad debt could be insured by charging a reasonable premium. This insurance coverage would be helpful in case of serious damage to the vehicle or death of the hirer under which circumstance recovery of the finance money may not be possible. This end can also be achieved if the scope of the comprehensive insurance policy under the Motor Vehicles Act could be extended to cover the circumstances in which repayment of advances to hirers may not be possible. Such additional coverage would of course justify additional premium. Yet another way of achieving this result is to extend the coverage of the Hire-Purchase Guarantee policy to cover the risk of the hire-purchase company in respect of irrecoverable advances to hirers. As a matter of fact, such two-tier insurance policies were being issued by insurance companies covering the risk of the bank in respect of the hire-purchase company as well as the risk of the hire-purchase company in respect of its hirers. The premium charged was one per cent per annum in respect of risk of the bank and additional half per cent for the risk of the hire-purchase company in respect of its hirers. This dual insurance coverage scheme worked smoothly as enquiries reveal that there were practically no claims under the additional coverage for hire-purchase companies. The scheme was abruptly withdrawn, perhaps, for the unwarranted apprehension that unscrupulous hire-purchase companies may concoct fabricated claims in collusion with their hirers and thus defraud the insurance company. Withdrawal of this very useful scheme was not the correct action as the hire-purchase companies with clean record were thus denied the benefit of this insurance coverage. While granting HPI policy, the application of the hire-purchase company is so finely screened that the company of doubtful record and falling short of the norms set by the insurance company gets automatically excluded.

The disadvantage experienced in the practical application of HPI guarantee of an insurance company is illustrated below. HP Company A depicts the results of working under proficient management whereas HP Company B shows results of working under adverse conditions.
Assumptions -

i. Each hire-purchase case is for Rs. one lac.

ii. Bank advances loan with 25% retained margin.

iii. Each monthly instalment of Rs.3,000 is deposited in bank when due whether received from the hirer or not.

iv. CC limit of bank for Rs.10 lacs and HPI guarantee for Rs. 10 lacs more or less run concurrently.

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<td>Working of Hire-Purchase Indemnity Guarantee</td>
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<td>HP Company A</td>
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In the case of HP Company A, though the Drawing Power (DP) is Rs.1275,000, the debit balance is Rs.9,78,000 on completion of the 12-month period, which is within the sanctioned Cash Credit Limit of Rs.10 lacs. The performance of HP Company B is poor and needs no comments. However, as the CC limit is subject to Hire Purchase Indemnity policy, the bank will not accept a fresh hire-purchase case from either HP company unless the policy is renewed. While the insurance company will be willing to renew the policy in favour of HP Company A, the HP Company will be reluctant because
of the futility of such renewal. The debit balance of Rs.9,78,000 is already covered by the expired insurance policy for the duration of each hire-purchase case. Even if the insurance policy is renewed, the bank will not allow the debit balance to exceed the CC limit.

The scope for insurance cover can be widened by resolving this anomaly. The feasible solution lies in linking the insurance with the debit balance in the CC account just as the bank's CC limit applies to the debit balance on which interest is chargeable.