

The Motor vehicle Act 1988:

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. It is necessary to have knowledge of Motor Vehicles Act passed in 1939 and amended in 1988.

Walker Compensation: In the old days, many of walker 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 walker, the Motor Vehicles Act, 1939, introduced compulsory insurance.

Compulsory for third Party Liability: 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. No motor vehicle can ply in a public place without such insurance

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.

TYPES OF CLAIMS VEHICLE

Theft

Accident

Collision

Fire

Own Damage

Repair Death

Bodily injury

Property damage

Loss or Damage (or "Own Damage"). The risks covered are :

- a) Fire, explosion, self-ignition or lightning.
- b) Burglary, house breaking or theft.
- c) Riot and strike.
- d) Earthquake (fire and shock damage)
- e) Flood, typhoon, hurricane, storm, tempest, inundation, cyclone, hailstorm, frost.
- f) Accidental external means.

- g) Malicious act.
- h) Terrorist activity.
- i) Transit by road, rail, inland waterway, lift, elevator or air.
- j) Landslide /rockslide.

Motor Vehicles Act, 1988

Compensation for Damages: The Law relating to Torts is based on the principle that *every injury should have a remedy*. The concept of compensation and providing damages step in at this very instance. The implications of the word – ‘compensation’ is quite wide. It seeks to provide for the actual or the anticipated losses and does so under various heads and is often awarded subjectively on a case-to-case basis. **The Motor Vehicles Act, 1988** has been described to be a welfare legislation aimed at providing relief to the aggrieved parties.

Amendment of Act: The Motor Vehicle Act, 1939 consolidated all the laws relating to motor vehicles but it had to be constantly amended in order to keep it up to date. With the advancement in road transport technology and development of the road network coupled with the change in the pattern of passenger transport, it was important that the act was amended in order to incorporate all the modern techniques relating to motor vehicles.

The Motor Vehicles Act, 1988 is an Act of the Parliament of India which regulates all aspects of road transport vehicles. The Act came into force from 1 July 1989. It replaced the Motor Vehicles Act, 1938 which earlier replaced the first such enactment Motor Vehicles Act, 1914. The Act provides in detail the legislative provisions regarding licensing of drivers and conductors, registration of motor vehicles, control of motor vehicles through permits, special provisions relating to state transport undertakings, traffic regulations, insurance, liability, offences and penalties etc. Further, in order to exercise the legislative provisions of the Act, the Government of India made the Central Motor Vehicles Rules, 1989.

A review group was thus set up in order to form a comprehensive legislation and based on the suggestions given, the Motor Vehicles Act, 1988 came into being on

July 1, 1988. Sections 140-144 (Chapter X) dealt with **no fault liability**, while Sections 145-164 (Chapter XI) deals with insurance in third party claims and Sections 165-176 (Chapter XII) goes on to deal with claim tribunals. The act is considered to be welfare legislation. It is primarily focused on giving relief to innocent persons on the road who are often victims to accidents and then find themselves not having a claim to the compensation that they should otherwise receive.

A driving license was made mandatory for any of the drivers through the provisions of the MVA, 1988. The act also required the registration of a vehicle under the act which had a validity period of 15 years after which it could be further renewed for another 5 years. These provisions form the tip of the iceberg which extends to cover multiple other sections which goes a long way in making the MVA, 1988 a welfare legislation.

Various Aspects of the Motor Vehicles Act

Insurance and Third-party Claims -

Compulsory Insurance was introduced in order to safeguard the interests of the third party who would be a probable victim of an accident or an injury by the use of a motor vehicle. This gives the victim or the third party for that matter to make claims either from the owner of the motor vehicle or from the insurance party or from both of them as need be and as given in the provisions.

As per **Section 147(5) of the Motor Vehicles Act, 1988** (MVA Act), the insurer has the responsibility to indemnify the persons or the class of persons that the corresponding policy aims to cover. This insurance to the third party was considered to be mandatory under the statute and was not to be overridden on the basis of any clause present in that insurance policy. It was laid out in *National Insurance Co. Ltd. v Faqir Chand* that “third party” was to include everyone except for the contracting parties to the insurance policy.

It was also said that any Government Vehicles were to be exempted from insurance, under Section 146(2) and Section 146(3), which is then covered by a special fund organised for the same purpose.

Pillion rider driving out of scope: The policy as provided in the act was to include and cover only third-party claims and nothing more. A passenger traveling in a private car or a pillion rider driving a scooter was to be kept outside the scope of the insurance claims. It was also held that the insurance company would not be held liable for the accident to the pillion rider as long as the scooter owner had a policy that did not cover for the rider as well.

Similarly, it was ruled that if the owner of the goods were to travel with the goods in a vehicle, the insurance company was not to be liable in case of an accident that were to occur in the process.

Issuance of Certificate

As per the Act, policy of insurance shall have no effect unless and until a certificate of insurance in the form prescribed under the Rules of the Act is issued. The only evidence of the existence of a valid insurance as required by the Motor Vehicles Act acceptable to the police authorities and R.T.O. is a certificate of insurance issued by the insurers.

Liability under motor vehicle Act:

The liabilities which require compulsory insurance are as follows:

- (a) Any liability incurred by the insured in respect **of death or bodily injury** 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.

CLAIMS (OWN DAMAGE)

On receipt of notice of loss, the policy records are checked to see that the **policy is in force** and that it covers the vehicle involved. The loss is entered in the Claims Register and a claim form is issued to the insured for completion and return. The insured is required to submit a detailed estimate of repairs from any repairer of his choice. Generally, these repairs are acceptable to the insurers but they at times ask the insured to obtain repair estimate from another repairer, if they have reason to believe that the competence, moral hazard or business integrity of the repairer first chosen is not satisfactory.

Assessment

Independent automobile surveyors with engineering background are assigned the task of assessing the cause and extent of loss. They are supplied with a copy of the policy, the claim form and the repairer's estimate. **They inspect the damaged vehicle**, discuss the cost of repair or replacement with the repairer, negotiate as per the indemnity, and submit their survey report. In respect of minor damage claims, independent surveyors are not always appointed. The insurer's own officials or their own automobile engineers inspect the vehicle and submit a report.

Settlement

The survey report is examined and settlement is effected in accordance with the recommendations contained therein. The usual practice is to **authorise the repairs** directly with the repairer to whom a letter is issued to that effect. In this letter the repairers are also instructed to collect direct from the insured the amount of the excess, depreciation, salvage, etc. The repairers are also instructed **to keep aside the salvage of damaged** parts, if there are any, for being collected by the salvage buyer nominated by the Insurers. Or else, if the repairers are willing to retain the salvage, its value, as indicated by the surveyor, is deducted from the claim bill. On receipt of their final bill of repairs after completion of repairs and a satisfaction note or voucher from the insured that the vehicle has been repaired to his satisfaction, the payment to the repairer is effected. Sometimes, the repairer is **paid directly by the insured** in which case the latter is reimbursed on submission of a receipted bill from the repairers. In either case, discharge voucher or receipt is obtained. The Claims Register

and the policy and renewal records are marked that the claim is paid indicating the amount of claim and the amount of salvage, if any.

Claims Documents

Apart from claim form and Survey report the other documents

required for processing the claim are:

- (1) Driving Licence
- (2) Registration Certificate Book
- (3) Fitness Certificate (Commercial Vehicles)
- (4) Permit (Commercial Vehicles)
- (5) Police Report (Taxis, commercial Vehicle need F.I.R./ spot survey if loss is heavy or T.P. loss occurs)
- (6) Final Bill from repairers
- (7) Satisfaction Note from the insured
- (8) Receipted bill from the repairer, if paid by insured.
- (9) Discharge voucher (full and final payment)

Total Loss Claims

Whenever a surveyor finds that a vehicle is either beyond repairs or the repairs are not an economic proposition, he negotiates with the insured to assess the loss on a **Total Loss basis** - for a reasonable sum representing the market value of the vehicle immediately prior to the loss. If the **market value** is more than the insured value, the settlement will be

brought about for the insured value. The Insured will be paid in cash and the Insurers will take over the salvage of the damaged vehicle which will thereafter be disposed of for their own benefit calling tenders through advertisements in newspapers. However, before the actual payment is made to the Insured, the Insurer will collect from him the Registration and Taxation books, ignition keys and blank TO. and T.T.O. forms duly signed by the insured, so that the salvage is usually not encouraged, unless insured desires, so as to avoid the hassle of salvage disposal.

Theft Claims

Total losses can also arise due to the theft of the vehicle and its remaining untraced by the police authorities till the end. These losses will have to be supported by a copy of the First Information Report (FIR) lodged with the Police authorities immediately after the theft has been detected. The police authorities register the complaint allotting it a number of the entry made in the Station Diary. This number which is usually known as SDE No. or C.R. No. (Crime Register) has to be quoted by the Insured in the claim intimation to the Insurers.

The police keep the investigations going until the vehicle is traced and delivered to its owner. However, if they do not succeed in recovering the vehicle after a period of, say 1-2 months, they file away the case certifying that the case is classified as true but undetected. This police certificate referred as "Non-Traceable" certificate is essential before a total loss following theft is settled by the insurers. The documents to be submitted by the Insured will be the same as those described above. If the **R.C. Book** and **Taxation Certificate** are **also stolen along with the vehicle**. It will be necessary for the insured to obtain duplicate ones from the Registering Authority and thereafter deposit them with the Insurers. The only additional documents will be addressed by the Insured to the R.T.O. informing about the loss of the vehicle due to theft and filing a Non User Form so that he is not made liable to pay the taxes. Some insurers also obtain from the insured a special type of a Discharge on a stamped paper whereby the Insured undertakes to refund the claim amount if the vehicle is subsequently traced and delivered to him by the police. He also undertakes in the Discharge Form to pay any taxes which may be outstanding against the stolen vehicle. The ignition keys R.C.Books etc. are preserved by the Insurer in their custody so that these are made readily available if the vehicle is traced at a later date. It is always prudent to inform the concerned Registering Authority by a Registered A/D letter that a total loss claim is being processed for

payment in respect of the stolen vehicle and to request them not to transfer the ownership of the vehicle to any one. This will prevent the thief from disposing of the stolen vehicle.

THIRD PARTY CLAIMS

Section 165 of the Motor Vehicles Act 1988, empowers the State Governments to set up Motor Accident Claims Tribunals (MACT) for adjudicating upon third party claims. When a tribunal has been set up for an area, no civil court has any jurisdiction to entertain any claim falling under the tribunal's jurisdiction.

The aggrieved party has to move the tribunal within a period of six months from the date of accident. While making the award, the tribunal has to specify the amount payable by the insurer.

The procedure for third party claims is briefly described as follows:

On receipt of notice of claim from the insured, or the third party or from the MACT, the matter is entrusted to an advocate. Full information relating to the accident is obtained from the insured. The various documents are collected and these include

- Driving Licence
- Police report
- Details of driver's prosecution, if any
- Death certificate, coroner's (PM report) report, if any (fatal claims).
- Medical Certificate (bodily injury claims)
- Details of age, income and number of dependants etc.

A written statement is then filed on the facts of the case with the MACT by the advocate. Eventually, if the award is made by the MACT, the amount is paid to the third party against proper receipt.

Compromise Settlements

Where there is clear liability under the policy, claims are negotiated with the third party to accept a compromise settlement, which if accepted by the third party, is registered with the MACT and its consent obtained. The cheque is deposited with MACT for disbursement to the rightful beneficiaries.

Lok Adalats

Pending cases with the MPACT where the liability under the policy is not in doubt are placed before the Lok Adalat or Lok Nyayalaya, for a voluntary and amicable settlement between the parties. A copy of decision in the prescribed memo and the cheque is deposited with MACT. Lok Adalat sessions are organized regularly by the insurance companies in liaison with the Legal Aid Board of each State and MACT to effect amicable settlement of third party claims.