

# MOTOR INSURANCE

## 7.1 MOTOR OWN DAMAGE INSURANCE

With new liberalization policies encouraging FII (Foreign Institutional Investment), Automobile giants all over the world started establishing their base in the Indian Market with companies like Hyundai, Ford etc. flooding the market with technologically advanced new models of vehicles. This boom in the automobile industry and the growing consumerism saw a fourfold increase in the premium income from the motor insurance for all the insurers in India. With the flourishing of Automobile Industry, Motor Insurance has become a lucrative business but requires careful underwriting as the number of accidents has increased due to explosion of vehicle population, bad roads, rash, negligent driving and poor maintenance of vehicles. On the other hand theft of vehicles has also increased disproportionately.

### Did you know....

*NANO is the first indigenous private car with rear engine.*

### 7.1.1 BASIC PRINCIPLES

The following basic principles are applicable for Motor Insurance Contracts (*Refer to section 1.0.1*):

- Insurable Interest
- Indemnity
- Utmost Good Faith
- Subrogation
- Proximate Cause
- Contribution

### Did you know....

*Motor Insurance in India cannot be transacted outside the purview of the Erstwhile IMT unless specifically authorized*

### 7.1.2 SUBJECT MATTER

Any motor vehicle, construction vehicle, plant and machineries on wheels, special purpose vehicle, self powered or driven or being pulled, for private use or public use, irrespective of number of wheels fitted, types of fuel used (Petrol, Diesel, CNG, LPG even electric or battery fed).

### 7.1.3 CLASSIFICATION OF VEHICLE

There are different categories of vehicles plying on the road in accordance with the provisions of the Motor Vehicle Act.

**Motor vehicles:** Any mechanically propelled vehicle used upon roads and includes a chassis to which body is not attached and trailer but does not include vehicle run or fixed rails or specially adopted for use within the factory premises.

- **Private car : Private car is type of a vehicle used for social, domestic, pleasure and professional purpose and not for carriage of goods (other than samples)**

excluding use of vehicle for hire or reward, organized racing, pace making reliability trial and speed testing and use for any purpose in connection with motor trade.

- **Two Wheeler: Motorcycle is a mechanically self-propelled two-wheeler with gear or without gear but a kick starter vehicle is treated as Geared vehicle for Insurance Rating.**
- **Scooter: It is a mechanically propelled two-wheeler with variable gears.**
- **Auto cycles: Pedal cycle mechanically assisted by a motor engine upto 75 cc. Capacity.**
- **Commercial Vehicle:**
  - i. **Good carrying vehicle (private carriers): The owner of the transport vehicle who uses the vehicles only for carriage of goods, which are his properties, or carriage of goods, which are necessary for the purpose of his business.**
  - ii. **Good carrying vehicle (public carriers): The owner of the transport vehicle who uses the vehicles only for carriage of goods, which are not his properties, or carriage of goods, which are necessary for the purpose of his business.**
  - iii. **Public service vehicle: A motor vehicle used for carrying passenger and includes maxi cab, motor cab, contract carriage and stage carriage.**
  - iv. **Maxi cab: means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward ;**
  - v. **Motor cab: Motor vehicle used to carry not more than 6 persons excluding driver for hire or reward.**
  - vi. **Contract carriage: Motor vehicle which carry passengers for hire or reward under a contract and the vehicle used as whole for an agreed sum either on time basis or point to point basis.**
  - vii. **Stage carriage: A motor vehicle which can carry more than 6 passengers excluding driver for hire or reward with separate fares paid by individual passenger for the whole journey or for stages of the journey.**
  - viii. **Miscellaneous Type of Vehicle : All other vehicles, which do not fall under any of the categories enlisted above, are classified under this category. Examples are: Ambulance, Agricultural Tractor and Trailer, Road Rollers, Excavators etc.**

### **Did you know....**

*Semi-Articulated Vehicle is a combination of a tractor and trailer connected through a coupling for universal maneuvering. This combined arrangement can be passenger carrying or goods carrying depending on body type. This trailer cannot be separately taken under Class B while underwriting. Both GVWs together have to be taken for goods carrying type and in no situation this can be taken under miscellaneous class.*

*Dumpers and Tippers have been transferred from the category of Miscellaneous Types of Vehicles to the category of Goods Carrying Vehicles by IRDA vide order Dt. 29.03.2012.*

*Tractors other than Agricultural Tractors like electric trolleys or tractors, traction engine tractors, trolleys and goods carrying tractors have also been reclassified as Goods Carrying Vehicles by the above cited order. Agricultural Tractors*

*continues to remain in the category of miscellaneous and Special Types of Vehicles.*

#### **7.1.4 TYPES OF INSURANCE POLICIES**

- **Liability Only Policy:** It is the minimum cover required under the motor vehicles act and provides compensation for death and/or bodily injury and/or property damage to third parties out of use of motor vehicle in public place for which the Insured is liable to pay. The extent of liability is as per the Motor vehicle Act. This also includes Compulsory PA cover for owner-driver
- **Package Policy:** An Insurance policy which covers Accidental Damage to the vehicle involved in an accident along with or in addition to the third party liability.
- **Liability only with Fire and/or Theft:** A restricted cover under comprehensive policy by which the insurer accepts to insure the risk of Fire and/or theft only of the vehicle to be insured in addition to third party liability. This decision is taken by the underwriter after considering the various factors such as make, model of the vehicle, declinature of Insurance by previous insurers, past claims experience etc.  
**Note: This cover is prohibited for vehicles covered under class D of the IMT.**
- **Fire and/or theft only:** This cover is given if the vehicle to be insured is laid up<sup>1</sup> in the garage or if it remains unused.  
**Note: This cover is prohibited for vehicles covered under class D,E,F and G of the IMT.**
- **Motor Trade Policies:** Motor Trade policies are designed to for Motor vehicle Manufacturer, dealer and repairer who deal with Motor vehicles that remain in their custody as part of their trade. Proposers must have their own trade plates by Registered Transport Authority. This policy takes care of damage to the vehicle, death & bodily injury to Third Party. This insurance is not like other motor insurance policy given to the registered owner of the vehicle.
- **Internal Road Risk Policy:** This policy is issued to manufacturer or dealers. This policy takes care of transport risk during the period of transit from one place to another. Usually the vehicles involved are un-registered and uninsured under Normal Motor policy

#### **7.1.5 SCOPE OF MOTOR INSURANCE**

Underwriters and insured mutually agree to the scope of the contract and other terms and conditions such as

- Insured perils
- Conditions to the contract to be observed by the insured and the insurer during the currency of the policy.
- The value for which insurance is done.
- Period of the contract of insurance
- Procedure to be followed in case of material alterations.
- Rate of premium compatible with the risk covered.
- Right of the insurers

(1) *Laid up vehicle is one, which is laid up in garage and not in use for a period of 2 consecutive months or*

more and not left for repairs due to accident. Concession is provided for such vehicles provided period of suspension should not extend beyond 12 months from the original expiry date of the policy. The laid-up period will be counted from the date of surrender of Certificate of Insurance.

- Duties of the insured
- General exclusions (These exclusions cannot be deleted the breach of which will render the contract void *ab-initio*)
- Specific exceptions, which are outside the scope of the contract

### 7.1.6 INSURED PERILS

- Fire/Explosion/Self Ignition or Lightning
- Burglary, housebreaking or theft
- Riot and Strike
  - Earthquake (Fire and shock damage)
- Flood, typhoon, hurricane, storm, tempest, inundation cyclone, hailstorm, frost
  - Accidental external means
  - Malicious Act
  - Terrorist activity
  - Whilst in transit by rail/road/inland water way/Lift or elevator or air
  - Land slide/Rock slide

Accidental external means the happening of something unexpected or unforeseen and it excludes loss arising from natural causes within. The word external refers to outwardly visible. It means that what is not internal. **Example:** Loss or damage to the car due to overheating is not covered.

Self-Ignition: It appears to include the damage or loss caused by the internal defect of the car, which is the direct cause for fire.

The term malicious damage is intended to include loss arising to the malicious act of a third party and not the act of the insured. If it results from the insured, the act becomes willful.

**Accessories:** Accessories are those items, which are not necessary for running of the vehicle, but which the vehicle is required to carry with it under motor vehicles Act. However there can be accessories fitted not as a mandatory requirement as per M V Act. **Example:** Rear view mirror, crash guard

**Electrical/Electronic Items:** Electrical/Electronic Items refers for insurance purpose items that are fitted to the vehicle in addition to those that is provided by the manufacturer of the vehicle including accessories.

With regard to the details of perils for different type of vehicles, the student may refer to the annexure and comparative charts.

### 7.1.7 CANCELLATION & TRANSFER

### **Cancellation of policy:**

- **At the option of the insurer:** With 7 days notice by registered letter to the insured at his last mentioned address. The insured is entitled to refund of premium for unexpired period and the insurer retains the premium for expired period proportionately.
- **At the option of the insured:** With 7 days notice and the insured is entitled to refund of premium on the number of days unexpired and the insurer will retain the premium for the period in which the risk was in force more than proportionately on short period basis provided no claim has been preferred by the insured.

*Refund of premium is subject to retention of minimum premium as per norms.*

*No Cancellation is allowed if the ownership of the vehicle is transferred to the new owner unless the evidence of Policy for the vehicle is produced.*

**Transfer of policy in the event of the death of the Insured:** The policy will lapse after 3 months from the date of death of the insured or until the expiry of the policy whichever is earlier.

- a. During the said period the legal heirs can get the policy transferred subject to their application with
  - i. Death certificate of the insured and legal heir ship certificate
  - ii. Proof of title to the motor vehicle
  - iii. Copy of the policy
- a. Insurance company reserves its rights to abide by any order of the court, with regard to declaration about the legal heirs and ownership of the vehicle and the nominee will not have any right to the order of the court.

**Transfer of Policy in case of change of Ownership :** The policy benefits stand to accrue to the buyer of the vehicle once sale consideration is paid and suitable endorsements made in the certificate of registration provided the transfer of insurance from the original owner to the new owner ought to be done within 14 days of sale, as per Motor Vehicle Act, if not done the accidental benefit to the damage or loss of the vehicle is forfeited on the 15th day itself but the Act is generous towards third party liability because it is considered to be deemed transferred.

### **7.1.8 PREMIUM AND RATING**

Various Factors that determine the quantum of premium

- a. Value of the vehicle
- b. Additional accessories
- c. Extra fittings like electronic and non electronic item
- d. Type of vehicle
- e. Age of vehicle/model of vehicle
- f. Zone where the vehicle is plying
- g. Cubic capacity/seating capacity/gross vehicle weight

- h. Perils covered
- i. Combination of risks like comprehensive cover, third party and fire or theft or fire and theft.
- j. Past claims experience

**Annual Premium:** As motor policies are annual policies, the premium consideration is collected for 12 months. It is not permissible to insure for more than one year under motor insurance.

**Pro-rata Premium:** Under some circumstances, depending on provisions made available in the tariff, premium is charged in proportion to the number of days for which the risk has been in force. Such premium is known as Pro-rata Premium.

**Situations where pro rata premium is charged**

- i. Due to the change of ownership of the vehicle, the insurance gets transferred to the new owner. This may happen during the currency of the policy period and the new owner may like to have the extension of policy period so that he gets an insurance policy for not more than complete 12 months. The insured can get such extension of policy with a suitable premium for additional period of insurance without letting the insured to have a revised policy for a period more than 12 months.
- ii. Some insured desire to revise their policy period to coincide with the financial year or assessment year
- iii. When the insured desires to enhance the value of vehicle during the currency of the policy in order to cope with the market value.
- iv. Any additional extra items like electronic or non electronic items subsequently fitted in the vehicle can be added to the value of the vehicle insured during the currency of the policy with suitable additional premium
- v. Sometimes insured may desire to report the extraneous perils like earthquake, flood, riot & strike during the currency of the policy which he had originally opted out by enjoying reduced premium.

**Short Period Premium:** There are occasions where the insured needs insurance for a period less than 12 months. Such facility is allowed but the insured has to pay the premium on short period basis. The premium for short period is slightly higher than the regular premium-rating factor. It means policy for short period is more expensive than normal annual policies.

**Situations under which short period premium is collected**

- i. When the policy is issued for a period less than 12 months
- ii. When the policy is cancelled at the request of the insured.

**Premium Rebates:** The insurer recognizes the merit of claim free clients and the premium for renewal period is reduced by way of bonus. The bonus is rewarded on own damage premium for the value of the vehicle only and not on premium for third party liability. Tables of no claim bonus are provided in the tariff for different category of vehicles.

**This discount goes with the insured and not with the vehicle** i.e., if the vehicle is sold, the new owner is not eligible for the no-claim bonus. However, the previous owner can substitute

the discount for any new vehicle, which he may purchase during three years from the date of transfer. In case if the vehicle is sold to spouse or children or parents, the discount passes on to such persons. Similarly, if a vehicle is used or operated by an employee for an institution and the same is transferred to him at a later date, he can avail the no claim discount.

For persons coming from abroad, discount can be allowed provided he produces a letter to that effect that he is eligible for the discount, within three years from the expiry of the overseas policy. In case of renewals, the no-claim discount can be granted to the insured only if he renews his policy **within 90 days**.

**Vehicles used in Own Premises and Confined Sites:** A reduction in premium is allowed if the vehicle is not licensed for road use and used in own premises where public have no access to. Similar discount is allowed for goods carrying vehicle, which need not be registered, and which are used in confined sites where public has no access.

#### **Did you know....**

*The minimum premium applicable for vehicles specially designed or modified for use of the blind, handicapped and mentally challenged persons will be Rs.25/- per vehicle. For all other vehicles, the applicable minimum premium per vehicle will be Rs.100/-*

**Vehicles Specially Designed for Handicapped Persons:** A Discount in premium is allowed for vehicles, which are specially designed for and used by handicapped persons and institutions engaged exclusively in the service for handicapped and mentally retarded, as per the provision of the MV act.

**Automobile Association Membership:** If the insured is member of a recognized automobile association, a discount of 5% shall be granted subject to a maximum of Rs.50/- for Two-wheelers and Rs. 200/- for Private cars.

**Voluntary Excess Discount:** Some insured desire to avoid preferring insurance claims to the extent, which can be borne by them within their financial limits. The premium is reduced based on the quantum chosen by the insured as per tariff.

**Concession for Laid-Up Vehicle:** If a vehicle is laid up in garage and is not put to use for a continuous period of more than 2 months, the liability of the insurers under the liability risk section of the policy is suspended for such period and a concession is given to the insured. The concession is given in two forms and the insured can chose whichever he wants.

- a. Pro-rata refund of premium for such period. This refund is granted in the form of credit and not as cash i.e., such refund can be adjusted against the premium for subsequent renewal.
- b. The policy period can be extended after the expiry of the policy for a period equal to the period of such lay up.

Under Accidental Damage section —The cover is suspended for the period during which the vehicle is laid up in garage and not in use and

- a. Restricted cover for fire and/or theft is granted for the period of lay up and a refund of premium on pro rata basis is made after charging a premium for the restricted cover. Again the refund is on credit basis and not cash.
- b. As an alternative, the insured can extend the policy period after the expiry of the policy for a period equal to the period of lay up.

A notice in writing must be given to the insurers regarding the lay up and the certificate of insurance must be surrendered. Such lay up of vehicle must not be meant for repairing the

vehicle. The period of suspension of cover shall not extend beyond 12 months from the expiry date of the policy.

**Public place** according to Section 2(24) of MV Act means “*a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage*”

### 7.1.9 EXCLUSIONS

Geographical Area: If the vehicle sustains damages or the vehicle is lost and if any liability is incurred, that should have been only due to an accident that takes place within India and in an area within jurisdiction of permit in case of commercial vehicles.

- Contractual liability is excluded
- No insurance claim is payable if
  - i. The insured violates the condition of limitations as to use
  - ii. If the vehicle is driven by any person other than the driver whose name if any is specified in the policy
- The insurers will pay only for the resultant damages or less in consequent to the accident and not for consequential loss that may arise due to the non usage of the vehicle, like
  - i. Rent for alternate car
  - ii. Loss of earning whilst the vehicle is in the garage for accidental repairs.
- No liability arising directly and indirectly or contributed by ionizing radiations, or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel.
- Damage caused by nuclear weapons material is not admissible.
- No claim due to war, warlike operations

The premium must be calculated in accordance with the premium computation tables appearing in the tariff separately for different types of vehicles. Rate of premium is different for accidental damages to the insured's own vehicle and liability risk to third party.

The insured cannot choose to pay premium only for accidental damages and he has to necessarily take third party liability with accidental damage to vehicle; whereas, the risk of third party liability can be separately taken and premium paid.

Premium payable on a policy is based on the value for which insurance is sought and must be calculated in accordance with premium computation tables appearing in the tariff.

**Termination of contract:** A contract of insurance can be terminated on the following circumstances.

- a. At the option of the insurer
- b. At the option of the insured



c. Double insurance

If it comes to the knowledge of the insurer or the insured finds that there are two co existing policies for the same vehicle for the same period, the one which was taken first remains and the next policy gets cancelled and the premium is refunded by retaining a nominal amount towards administrative and document expenses. Retention of minimum premium is necessary in the event of cancellation to take care of administrative expenses.

### 7.1.10 CLAIM SETTLEMENT METHODS

There are two types of losses

**a. Partial loss:** When vehicle sustains damages in an accident and the insured incurs the expenditure in order to repair the damaged parts of the vehicle in addition to the towing charges to the repairer shop which is less than the insured value of the vehicle under the policy, the loss or damages fall under the partial loss.

- i. Accidental damage to the vehicle
- ii. Theft/loss of accessories or parts of the vehicle
- iii. Additional expenses like towing and spot repairs.

Example: Cost of repairs, Cost of parts replaced, Labour charges towards painting and replacing / repairing the damaged parts, Cost of removal from the Accident spot to the repairers workshop etc.

**b. Total loss:** There is a total loss when the insured vehicle is stolen by somebody or the vehicle is so damaged that it cannot be repaired without incurring expenditure more than the sum insured or the vehicle is so damaged that the damaged value of the vehicle be as of no value, such losses fall under Total loss.

The insurance company practices different modes of claims settlement depending upon the nature of claim, extent of repairs and the market value of the vehicle on the date of accident. There are different modes of settlement of Total Losses as detailed below:

- **Repair basis: The surveyor ascertains the total internal and external physical damages to the vehicle and identifies the nature of damages, cause of accident and then determines the extent of damages.**

Once the surveyor is satisfied with the genuineness of the claim taking into account the cause of accident, the perils insured, he arrives at the cost of repairs, cost of replacement of parts and the salvage value. He then discusses and negotiates with the repairer to arrive at a consensus and authorizes the repairers to carry out the repair work relevant to the accident.

Under this repair basis, the insured should bear a portion of the repair cost for depreciation which is based on the age of the vehicle finding place in the policy. The surveyor suggests the settlement of claim on repair basis only when he is satisfied that the quantum involved is economical in comparison with that of market value and sum insured whichever is less.

The insured is required to submit the relevant bills for cost of labour, the cost of parts and the cost of removal from the spot of accident to the repairer's workshop. On

submission of bills and surrendering of salvages to the insurer the claim will be processed and settled.

The settlement of claim under repair basis fall under partial loss as the repair liability of the insurer less than the value insured.

- **Total Loss Basis or Total Loss Net of Salvage Basis:** Under many circumstances, the insurance company may opt to make over the damaged vehicle if the claim on repair liability found to be on the higher side, uneconomical as compared to the market value under this basis. In fact, if gross repair cost exceeds 75% of IDV then only CTL (Constructive Total Loss) can be considered.

The insurer may have to incur additional expenditure like garage charges; cost of disposal in the form of advertisement, auction charges and/or sales charges and total insured value may be paid, if it is less than the market value just prior to the loss.

- **Cash Loss Basis:** This is a kind of settlement when the insured chooses to retain the damaged vehicle and insists for immediate payment without undertaking repairs but based on the probable cost of repairs. This can happen when repair is delayed for want of parts or for some compulsions. Cash loss settlement can be done at the option of insurer only if the insured requests provided the vehicle is repairable but the insured is unable to repair. Since cash loss compensation is not on reimbursement basis, submission of bills need not be insisted upon. The insurance company chooses one of the above three modes of settlement whichever is more economical

### **7.1.11 CLAIM DOCUMENTS**

#### **Common Documents for all types of vehicles:-**

- 1) **Intimation Letter**
- 2) **Claim Form**
- 3) **Estimate of repairs(Except Theft)**

#### **Two Wheeler/private cars**

- Registration certificate
- Driving license (except for parked vehicles and theft or Burglary of the vehicle in parked condition)
- Taxation book

#### **Commercial Vehicles**

- Registration Certificate
- Driving license
- Taxation book
- Fitness certificate
- Permit
- Authorisation for National Permit.

- Trip sheet
- Weigh slip/load challan
- First information report (FIR)

**Theft Claims**

- First Information Report
- Non-Traceable Certificate
- Final Investigation Report
- Court Acceptance of Final Investigation Report.
- Letter of Subrogation

**Knock-for-Knock Agreement:** The Knock-for Knock agreement is an agreement entered into among the Insurers underwriting motor insurance. The agreement provides that in the event of damages caused by collision or attempt to avoid collision between two vehicles, the Insurer of each vehicle will bear his own loss within the limits of his policy, irrespective of legal liability and will not enforce his subrogation rights, if any against the other insurer.

**7.1.12 RATES OF DEPRECIATION FOR PARTIAL LOSS**

Rate of depreciation for all rubber/nylon/plastic parts, tyres, tubes, batteries and air bags.....50%  
 Rate of depreciation for all fibre glass components.....30%  
 Rate of depreciation for all parts made of glass.....Nil  
 Rate of depreciation for all other parts including wooden parts.....as per metal parts scale  
 Rate of depreciation for paint material.....‘ .....50%

**LAST BUT NOT THE LEAST**

- Private car applicable compulsory excess has been revised from 500/- to 1000/- and 1000/- to 2000/- with effect from 29.03.2012. Excess for two wheeler is changed to 100/- from 50/- Premium for WC liability for driver has been increased from Rs 25 to Rs 50
- Vintage cars are those cars manufactured prior to 31.12.1940 and certified by the Vintage and Classic Car Club. Vintage cars will be eligible for 25% discount on basic OD and/or TP Premium. No discount or special rating is provided for in the IMT for classic cars.
- Classic cars are those manufactured after 31.12.1940 but before 31.12.1970 and certified by Vintage and Classic Club
- Depreciation is not applicable to arrive at IDV for brand new vehicles covered under Motor Trade policy

- Compulsory PA cover for owner-driver is to be taken for all the vehicles under ownership.
- Policies issued to cover imported vehicles belonging to Embassies, High Commissioner or Consulates and for such other Diplomatic Missions where import duty element is not included in the IDV, premium under Section-I should be loaded by 30%.
- Where the vehicle is fitted with only CNG/LPG or Bi fuel system as approved by RTA and value of the CNG/LPG kit is not separately available 5% extra is to be charged on OD premium.
- Certificate of Insurance for a motor vehicle is to be issued only in FORM 51 in terms of Rule 141 of Central Motor Vehicles Rules 1989.
- Nil Depreciation cover- Different Insurers have different Add-On Covers as per material filed by them under File and Use guidelines but with Nil Depreciation Add-On Cover, no depreciation is applicable in case of replacement of parts in case of a partial loss. However rate of depreciation applicable for arriving at IDV will continue to be applicable.
- Return to Invoice/ Invoice Protect- These are two of the various name given to an Add-On Cover where an insurers pays the current invoice price of the Insured Vehicle in case of Total Loss/CTL. Actual terms and conditions vary from insurers to insurers. Additional expenses like registration costs, Tax paid etc may also be reimbursed under this Add-On Cover.
- Long Term Motor Two Wheeler Insurance Policy:- NIC has launched after IRDA approval of standalone motor third party insurance policy for Two wheelers for a period of 2 and 3 years subject to various conditions such as insurers will not be able to cancel the standalone TP cover except in TL, premium shall not be revised upwards or downwards during the period of policy etc. Since the approval and basic terms and conditions are as per IRDA directive, these are common for all insurers in India.

## **MOTOR THIRD PARTY INSURANCE**

Motor Third Party Insurance (TP Policy/Liability only policy/Act Policy) is issued under the provisions of Motor Vehicles Act, 1988. It is compulsory under law. It is designed to protect the interest of third parties. When a motor vehicle is in use in a public place, when running or stationary, it can accidentally cause harm to others. Members of public i.e. pedestrians, passengers in bus, people travelling in the opposite vehicle, cyclists, employees engaged in the commercial vehicle etc. may be injured or killed in accident. Property belonging to third party may be damaged. The object of motor third party insurance is to cover the risk of vehicle owner who is likely to incur liability for payment of compensation to third party.

Motor TP Insurance is different from other branches of insurance. It covers statutory liability which is unlimited, whereas other branches of insurance covers contractual liability limited to the sum insured. Financier has an interest in the other branches whereas no such term is there in third party policy.

Motor vehicles belonging to Central and State Government, any Local Authority, any State Transport Undertakings are exempted from the provision of compulsory insurance provided under Section 146(3) of Motor Vehicles Acts 1988, provided any such authority has to establish and maintain a fund to meet the liability arising out of the use of any vehicle belonging to such authority.

Motor TP Policies are governed by Motor Vehicles Act, WC Act, Legal Services Authority Act, Courts, Lok Adalat etc. The terms 'Tort', 'Negligence', 'in course of employment', 'Vicarious liability' are relevant for the purpose of dealing third party claims. Death/injury/property damage of third party is caused due to the fault of the driver. The vehicle owner being the master becomes vicariously liable for the fault committed by the servant (driver) under the law of Tort. Similarly employer is liable for the damage caused to employees connected to the vehicle in course of employment.

<b>7.2.1 RELEVANT SECTIONS OF MV ACT, 1988</b>
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Section 133 - Duty of owner to give all information relating to accident to police officer on demand.

Section 134 —Duty of driver or other person in-charge of the vehicle to take all reasonable steps to secure medical attention for the injured person.

Section 146 —Compulsory insurance against third party risk .

Section 147 —Requirements of policies and limits of liability.

Section 148 —Validity of policies of insurance issued in reciprocating countries .

Section 157 – Deemed transfer of policy in case change of ownership of vehicle.

**Section 158(6)**-Statutory duty of Police Officer to forward report within 30 days from recording of any accident or completion of such report to claims tribunal and concerned Insurer .

**Section 160**- Registering authority or the Police officer shall furnish information if asked for relating to particulars of vehicle involved in accident

**Section 170**- Insurer to obtain permission to contest the claim on all or any of the grounds without prejudice to the provisions contained in Section 149(2).

**Section 196** – Driving uninsured vehicle – up to 3 months imprisonment or fine up to Rs.1000/= or both.

**Section-197**-Taking Vehicle without authority.

**Section-194**- Driving Vehicle exceeding permissible weight.

**Section-192**- Using Vehicle without registration

**Section- 192-A**- Using vehicle without permit.

**Section -184-** Driving dangerously.

**Section -185-** Driving by a drunken person or by a person under the influence of drugs.

**Section -183-** Driving at excessive speed .

**Section 3 & 4 read with Sec 181-** No DL / Invalid DL / ineffective DL.

**Section 163 A-**Special Provisions as to payment of compensation on structured formula basis-claimants need not prove negligence of driver to be assessed as per the schedule- Notional income of Rs.15,000/- p. a. in case of non earning person- claim not entertainable if annual income exceeds Rs.40,000/-

**Section 149(2)-**Deals with the statutory defenses of the Insurer of a specified condition of the policy etc.

**Section 140- No fault liability**

Death .50,000/-

Permanent disability-Rs.25,000/-

**Section 166-**Application for compensation under fault liability removed for accidents occurred on or after **14/11/1994**-Jurisdiction widened.

**Section 167** —Option regarding claims for compensation either under MACT or under WC Court.

**Section 169(2)** - Power of the Claims Tribunals enforcing attendance of witnesses and of compelling the discovery and production of documents and material objects.

**Section 174** – Recovery of award amount from insurer as arrear of land revenue.

**Section 174 read with Section 149(4)-**Recovery from insured in Fake DL cases.

**Section 173** - Appeal-90 days limitation - Statutory Deposit of Rs.25000/= or 50% whichever is less.

### 7.2.2 RELEVANT SECTIONS OF EC ACT 2009

Section 2(dd)(ii)(c) —Employee under Motor policy means a person recruited as driver, helper, mechanic, cleaner or any other capacity engaged in connection with the motor vehicle.

Section 4 —Assessment of compensation by WC Commissioner —Formula to be adopted for calculation taking the relevant factor from Schedule IV.

**Section 30-Appeal before High Court** -60 days limitation- Substantial question of law penalty - scope to entertain appeal is limited –Entire award amount to be deposited along with filing of appeal.

**Section 30-A**-Prayer to be made before commissioner to withhold release of amount deposited till disposal of appeal.

**No case shall be referred without giving reasonable opportunity of being heard to the parties.**

**Section 22 - Permanent Lok Adalat have the same powers vested in a civil court.**

**Section 22(3) - Award of permanent Lok Adalat shall be deemed to be a decree of Civil Court.**

**Award Passed by Lok Adalat is final and cannot be questioned in any court and not appealable.**

Conciliatory Settlement/Lok Adalats

To settle cases on conciliation where quantum is the only dispute and liability of company is otherwise in order.

### 7.2.3 LEGAL SERVICES AUTHORITIES (AMENDMENT) ACT, 2002

Object provide free and competent legal services to the weaker section of the society and to organize Lok Adalats to ensure speedy and inexpensive justice through conciliation

**Section 19 (5)**-To determine and to arrive at a compromise settlement between the parties to dispute in respect of:

a) any case pending before court; or

b) any case not filed in court, but falling within the jurisdiction of Lok Adalats.



**Section 20** —Court to refer any case to Lok Adalat for settlement where both the parties agree or one of the parties make an application to the court for referring the case to the Lok Adalat for settlement and the court is prima facie satisfied that there are chances of settlement and the matter is fit for Lok Adalat settlement.

<b>7.2.4 FORUMS OF COMPROMISE SETTLEMENT</b>
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Lok Adalat organised from time to time ,

Permanent & continuous Lok Adalat

Conciliation meeting called by court

RICC & DICC

Common Mechanism Centre For Compromise Settlement Of Motor Third Party Claims (CMCSTPC)

Joint memo to be signed by both party after the amount is agreed by both party and consent order to be passed by Lok Adalat/Court.

Jalad Rahat Yojana (JRY) --Prelitigation settlement conciliatory committee injury cases of majors(non-minors) can be decided.

## **7.2.5 DOCUMENTS**

### **Common Documents in Death & Injury Cases**

FIR, Charge-sheet/ Final form, Seizure List, MVI report, site plan, claim form, Investigation report, DL, Permit etc.

### **Additional documents in Death cases.**

Post Mortem Report with Dead body challan

Inquest Report/Spot Mahazar

### **Additional Documents in Injury Cases**

Injury Report/Wound Certificate (Medical Examination on police requisition), Outdoor ticket /discharge certificate of initial and subsequent treatment, medical papers with bills, disability certificate if any, accident register at hospital.

### **Common Documents in case of Service holders/Students/IT assessee**

Salary Certificate, Form 16, Service record with date of birth, High School/School leaving certificate, Education/qualification /occupation proof, IT returns with assessment of IT authority, business proof etc.

### **Additional documents in TPPD**

Extent of damage to property ,insurance details of TP vehicle if damaged

### **IPC Sections relevant to MV Act**

Section 279 - Rash and negligent driving or riding on a public way.

Section 337 - Causing Hurt by act endangering life or personal safety of

Others (simple injuries).

Section 338 - Causing Grievous hurt (grievous injury)

Section 304(A) - Causing death by negligence.

### 7.2.6 TP CLAIM INVESTIGATION

Genuineness of Accident.

Obtaining witness statement.

Obtaining GR Records (Police Case Record).

Verification of age, income, occupation and dependency of victims.

Verification of Medical records/expenses.

Verification of vehicular documents i.e. DL, RC, Permit , Insurance policy etc.

### 7.2.7 CONTRACT OF INDEMNITY

- Sec. 147 —Requirements of policies and limits of liability —concerned with the liability towards a third party
- Expression 'third party' would mean any one and every one, except the insurer and the insured
- Distinction between 'passenger' and 'third party' —persons or classes of persons required to be covered by the policy of insurance u/s 147, would all fall under the broad genus of third party
- Insurance with two insurers —effect —claimants can recover amount from either — paying insurer can settle its score with the other insurer —Ganga Ram Patel vs. Md. Jahid Khan, 2008 ACJ 2763 (MP) (DB)
- Pillion rider —insurer not liable under 'Act only' policy —risk covered under 'package policy' as per TAC circular —Ull vs. M Laxmi, 2009 ACJ 104 (SC)
- Gratuitous passengers in goods vehicle- insurer not liable —CRPF jawan going on a goods carriage to join his duty along with a box, suitcase and bed holder —no liability vs. Phool singh, 2008 ACJ 58 (SC)

- Occupants in private car —risk covered under 'package' policy —TAC circular dt. 17.03.1978 & IRDA circular dated 16.11.2009
- Owner of goods and their representatives —policy covers the risk of owner of goods or his authorized representative accompanying the goods in the goods vehicle, provided the entire vehicle is hired by the goods owner and there is documentary proof of hiring.
- Vehicle hired by deceased for transporting goods - Headload workers not treated as owner of goods —luggage or personal effects are not goods.
- Passenger in goods vehicle —vehicle owner has no statutory responsibility to get his vehicle insured for covering any passenger travelling in the goods vehicle
- Employees of insured —IMT 18 makes it clear that risk of driver, conductor, cleaner or person employed in loading or unloading are covered but not exceeding 7 (seven ) in number —liability restricted up to WC limit if no additional premium paid
- Public place —Statute mandates the necessity for a valid policy in force if the vehicle is intended for use in a public place —Tribunal has jurisdiction to try an accident case occurring in a private place —package policy cover is not restricted for use of the vehicle in a public place

<b>7.2.8 SEC. 140, 163A &amp; 166 OF MV ACT</b>
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The issue of negligence need not be touched under sec.140 and sec.163A of MV Act, 1988 whereas in case of sec.166 of MV Act proof of negligence of the driver of offending vehicle is an essential requirement. If there is prima facie proof of accident, the victim of the accident is entitled to get compensation under sec.140 and 163A of MV Act. In both these sections the claimant is not required to

plead or establish negligence on the part of the driver of the offending vehicle. But in proceeding under sec.166 of MV Act burden lies on the claimants to prove rash and negligent driving on the part of the driver of the offending vehicle.

### 7.2.9 NEGLIGENCE

- Negligence means the omission to do something which a reasonable man would do or the doing of something which the reasonable and prudent man would not do. Thus, it is not only commission of an act but is also an omission to do something which a reasonable man would do or is obliged to do.
- Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances.
- Negligence as a tort is the breach of a legal duty to exercise due care.
- **Res ipsa loquitur:** It means “accident speaks for itself”. Whenever the presumption of “Res ipsa loquitur” is raised, the claimant need not adduce any evidence to prove negligence, rather the burden shifts to the respondents to explain for rebutting the negligence on the part of the driver.
- **Last opportunity rule:** It means that as between the driver of the offending vehicle and the victim of the accident whether the driver had with him the last opportunity to avoid the accident. Thus, whoever had the last opportunity, he will be held responsible.
- **Defense available with the respondent:** Against the plea of negligence, the driver/respondent can take following defense:
  - (a) **Act of God (Vis Major):** Accident caused due to natural causes directly and exclusively, without human intervention, and the same could not have been prevented by any amount of foresight and pains and care reasonably expected from the driver.
  - (b) **Victim, the wrongdoer:** Own negligence of the victim- self negligence- claim not maintainable.

- Classification of negligence
  - (a) Sole negligence
  - (b) *Composite negligence*
  - (c) Contributory negligence

**DIFFERENCE BETWEEN COMPOSITE AND CONTRIBUTORY NEGLIGENCE :**

- *SOLE NEGLIGENCE: Where in an accident two or more vehicles are involved but the accident has occurred due to negligence of one vehicle only, the driver of the offending vehicle is solely negligent.*
- *COMPOSITE NEGLIGENCE : Where a person is injured or died as a result of negligence of two or more wrong doers, each wrongdoer is jointly and severally liable for payment of entire damages and the injured / LRs of the deceased have the choice of proceeding against all or any of wrongdoer*
- *CONTRIBUTORY NEGLIGENCE : Where a person is injured or died as a result of partly due to negligence of another person/or persons, and partly by his own negligence, then negligence on the part of the injured/deceased is referred to as his contributory negligence.*

**DIFFERENCE BETWEEN HIRE AND REWARD:**

'Hire' means availing the motor vehicle for use or service in exchange for payment whereas 'Reward' means something given or received in return for service or merit.

### **PAY AND RECOVER THEORY:**

In case the driving license of the driver of the insured/ offending vehicle is found to be fake, the tribunal directs the insurer to pay the awarded amount to the third party and to recover the same from the insured by filing recovery petition under sec.174 r.w. 149(5) MV Act before the same MACT. The Tribunals are passing pay and recover awards following the decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh (2004) ACJ D.

**Difference between fake, ineffective and invalid DL** • **Fake DL - On verification from the licensing authority if the DL is found to have been issued in some other name or the DL is not at all issued.**

- **Ineffective DL** - means with regard to the type of the vehicle i.e. DL issued for LMV but the driver was driving HGV.
- **Invalid DL** - means with regard to the period of DL i.e. on the date of accident the DL was not in force.