

3. COMPULSORY INSURANCE OF MOTOR VEHICLES

A person who is injured by the rash and negligent driving of a motor vehicle has a right to be compensated by the driver. As the driver is often a person of small means, the injured person goes without adequate compensation. Chapter VIII of the Motor Vehicles Act, 1939 required since 1 July 1946, to make insurance of motor vehicles compulsory so that the injured person's ability to get damages will not depend upon the financial position of the driver, but upon the insurer of the vehicle. From 1 January 1973, the General Insurance Corporation of India, which is a Government company with an authorised capital of Rs 75 crores, was the only authorised insurer of motor vehicles and hence of unimpeachable financial standing. The Insurance Regulatory and Development Authority Act, 1999 has thrown open the field of insurance to private sector also.

(i) Motor Vehicles Act, 1988

The Parliament enacted this Act to consolidate and amend the law relating to Motor Vehicles. The earlier Act of 1939 had become out of date in view of the changes

in the road transport technology, pattern of passenger and freight movements, etc. 'Mechanically propelled vehicles' is Entry 35 of the Concurrent list and hence both Parliament and the States can make laws on the subject and any inconsistency between the two has to be resolved in accordance with art 254 of the Constitution. The provisions of Chapter XI relating to insurance of motor vehicles against third party risks, however, cannot be added to or altered by the State Legislatures as insurance is a subject in Entry 47 of the Union list.

The Act requires that no person shall use a motor vehicle, except as a passenger, unless there is in force in relation to the use of the vehicle by him, a policy complying with the requirements of this Chapter, that is, in respect of third party risks. The term 'use of motor vehicle' has consistently obtained an expansive application to include diverse situations, apart from 'driving the vehicle'. Using an uninsured motor vehicle in a public place has been made an offence by s 196 of the Motor Vehicles Act, 1988. Explaining the *raison d'être* for such a provision of compulsory insurance and also interpreting sub-sections (4) and (5) of s 149 making the insurer liable to a third party in the first place, even if there were violations of terms of policy as provided under s 149(2), the Supreme Court observed in *New India Assurance Co v Kamla*¹ that the protection would have remained only a paper protection if the compensation awarded by courts were not recoverable by the victims or dependents of the deceased from the insurer and exposing the claims to fickle resources of the owner and driver.

(ii) Remedy in England

In order to assure that third parties who are injured in motor accidents do not go without compensation for want of insurance, a motor insurance bureau was set up by the general body of insurers in 1946, after the Second World War. The Bureau agreed with the Ministry of Transport to satisfy judgments awarding compensation to third parties under the Road Traffic Acts, where there was no insurance or effective insurance or where the negligent driver was unidentified and untraced. The Bureau pays the road victim or his heirs and gets the Judgment obtained by him assigned in its favour so that it may reimburse itself. Where there is a policy but it is not effective for some reason or other, the insurer concerned will satisfy the claim out of the insurance fund built from premiums received. In this way almost all the third party motor accident victims are fairly compensated.

23. MONETARY LIMITS OF COMPULSORY INSURANCE

(i) Under 1939 Act

“This provision replaces s 95(2) of the old Act which was very cumbersome as it fixed various upper limits for various types of vehicles. Under the Motor Vehicles Act, 1939, a passenger travelling in a passenger bus had only a limited coverage. A passenger alighting from the vehicle or boarding the vehicle will still be treated as a passenger and not a “third party” and the extent of liability will be limited by statute to the extent provided under s 95(1)(b)(ii) of the Act.¹³² Whereas the old Act required coverage only up to a particular amount per person, the new Act requires coverage up to the full extent of the liability that may be incurred. The Act is not concerned with the insurance of other risks as they are optional. When the old Act was in force a bus carrying passengers for hire was insured by a comprehensive policy covering third party risks up to the limit fixed by s 95(2b)(ii). It met with an accident in which a passenger was killed. There was no special contract covering the insured’s liability in excess of the Act liability. The insured claimed indemnity to the full extent on the ground that it was covered by a comprehensive policy. The Supreme Court rejected the claim and stated that the policy being comprehensive was in no way relevant to the claim made.¹³³ The limit of liability operated in two ways. The first limit related to the aggregate liability of the insurer in any one accident. As it stood before 1982 amendment, it was fixed at Rs 50,000 in all where the vehicle was registered to carry not more than 30 passengers, at Rs 75,000 in all where the vehicle was registered to carry more than thirty and not more than sixty passengers and at Rs 1,00,000 in all where the vehicle was registered to carry more than sixty passengers. The provision laid down the other limits in respect of each passenger by providing that subject to the limits aforesaid as regards the aggregate liability, the liability extended up to Rs 10,000 for each individual passenger where the vehicle was a motor cab and Rs 5000 for each individual passenger in any other case. Neither of the two limits could be ignored.¹³⁴

If the risk in excess of statutory liability is sought to be covered, it has to be clearly specified in the policy and separate premium paid for that purpose.¹³⁵ The mere fact that in the insurance policy, the column against unlimited liability was left blank, it would not by itself justify the inference of unlimited liability.¹³⁶

(ii) Limits of liability for damage to property

As per s 147(2)(b), the policy of insurance that is compulsory shall cover liability incurred in respect of any accident up to a limit of Rs 6000 in respect of damage to any property of a third party. As per General Regulation (GR) 39 Limits of cover for Third Party Property Damage (other than for goods carried in the insured vehicle) under Liability Only policies and under S II – 1(ii) of various Package policies are as per the following table:- (This provision shall not apply to vehicles ratable under Class G – Tariff for Motor Trade - Internal Risks)

132. *Noorjahan v Sultan Rajia*, (1997) 1 SCC 6 : LNIND 1996 SC 2792.

133. *New India Assurance v Shanthi Bai*, 1995 SC 1113 : (1995) 2 SCC 539 : 1995 ACJ 470 : (1995) 1 TAC 659. To the same effect, for a decision covered under the Motor Vehicles Act 1939, see also *National Insurance Co Ltd v Jugal Kishore*, (1988) 1 SCC 626 : LNIND 1988 SC 660.

134. *MK Kunhimohammed v PA Ahmedkutty*, (1987) 4 SCC 284 : LNIND 1987 SC 621.

135. *National Ins. Nathi Lal*, (1999) 95 Comp Cas 276 : AIR 1999 SC 623 : (1999) 1 SCC 552;

136. *National Insurance co Ltd v Nathilal*, (1999) 1 SCC 552 : LNIND 1998 SC 1106.

CLASS OF VEHICLES		TPPD COVER (Rs)
1	Commercial Vehicles (Excluding Three Wheelers, Taxis and motorised two wheelers ratable under Tariff for Commercial vehicles)	7.50 lakhs
2	Commercial Vehicles – Three Wheelers and Taxis	7.50 lakhs
3	Private Cars	7.50 lakhs
4	Motorised Two Wheelers – Private and Commercial	1.00 lakh

Where liability for higher sums are undertaken, extra premium is payable.¹³⁷

B. However, the insured can at the inception of the policy, opt to restrict to the TPPD cover to the statutory limit of Rs 6000/- as provided in the Motor Vehicle Act. In such an event, the base TP premium applicable (before any loading/discount) may be reduced by Rs 200/-, Rs 150/-, Rs 100/- and Rs 50/- for Class 1, 2, 3 and 4 as above respectively.

It must be remembered the limit of liability to an insurer is to a third party and the situation of liability of carrier for goods carried for hire are not dealt with here. They shall be governed by terms of insurance at the time of consignment and the provisions of the Carriers Act, 1865.