MARINE INSURANCE

The transportation of goods through marine channel is a complex and risky process that depends on both man-made and natural situations. Hence, it is important to take appropriate marine insurance to cover the risks associated with the goods that get transported through this medium.

The insurance had become a fundamental facet of modern society; this is because it was clearly a way to protect property against the economic consequences and natural calamities. Insurance lends protection and security against individuals, organization, goods also to communities. In recent trends, it is acting as the tool facilitating trade and commerce by providing risk-sharing, generating employment, encouraging business betterment through innovation by taking more risk associated activities, which in turn direct to economic betterment. Insurance

increases the domestic savings and help in building financial market (Giaschi, 2015).The world had integrated into the bone for international trade, and 80 percent global trade is flourished through sea routes using maritime transport. Marine transportation associated risk is known as "perils of the sea". Marine insurance helps in mitigating the financial loss to the goods, carriage, ship or other properties that are transported through maritime transport. Insurance thus had become an important component of carrying out international trade, it enables the buyer, seller, and the ship owner to relive their burdensome to some extent and carry out their business effectively, this because the marine insurance covers the financial risk and adds security against loss or damage of goods(www.nos.org). Developing a competitive insurance in the market such as India is an important component to be considered as more than quarter of the Indian

GDP relays on international trade through maritime, which also helping India to integrate with the economy.

In today's time, business knows no boundaries. People have access to all sorts of product and services as cross border business has become prevalent. But, the farther our goods are the more risk is exposed to them. Marine insurance is one of the oldest insurance in the world. In the era of globalisation, maritime transportation has been the spine of international trade having more than 80 per cent of the merchandise transportation done by the sea .But marine transport involves a lot of risk to the goods being carried and also the ship carrying them. Thus, to facilitate trade and commerce and to mitigate the risk of financial loss to property, they should be insured as it provides security and protection to individuals, communities and businesses. It provides for risk sharing and

encourages businessmen to innovate and to engage in more risky businesses which ensure a higher level of economic activity in the country. Marine insurance is thus an important component of international trade and commerce. The marine insurance laws are India governed by Marine Insurance Act 1963 and guided by the clauses under the Institute of London Underwriters (ILU) and international commercial contracts popularly known as “incoterms”.

Without the facilitation of marine insurance in order to manage the long distance trade, it would have been very much complicated to manage the expansion of maritime. The method of trading overseas would have been more risky and costly. And the various developments in maritime would have taken an altogether different route and pace.

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What is Marine Insurance contract?

In a marine insurance contract, an insurer 'underwriter' agrees to assume some portion of the maritime risks on a vessel or cargo, or both, in exchange for a premium. The risks covered may include a variety of risks at sea or in port, for a particular voyage or for a period of time."

The existence of the contract of marine insurance can be traced back to centuries. It is the contract of marine insurance which is the 'earliest authenticated insurance contract' displaying the characteristics of insurance in terms of risk transfer due to any inevitable event in lieu of any payment of premium. The earliest account of insurance came in the form of 'bottomry', a monetary payment that protects traders from debt if merchandise is lost or damaged.

Marine insurance covers the risks faced by ship owners, cargo owners, terminal handlers and various intermediaries in the shipping business. Looking at various conditions that can affect your cargo, including weather conditions, pirates, navigation problem, it is recommended that you avail an appropriate insurance as per the nature of your business and the risks associated with business operations.

It also covers third parties if they happen to get affected directly or indirectly by the activity. There are various types of marine insurance one can choose from as per the need and requirement.

A marine insurance policy is an arrangement, wherein insurer or underwriter agrees upon specific terms of the contract for diversifying the risk to a tolerable level with assurer when the

loss occurred. According to Section 3 of the marine Insurance Act, 1963 “A contract of marine

insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses

incidental to marine adventure”

(Dr. Thiyagu, 2014). Marine Insurance which is also known asperils also includes an assurance to acquisition of money, passage money, commission,pecuniary benefit, security against advance, loans and profit. The provision in marine insurancethat

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the third party can be insured by the owner to extent protection against the goods or other

property, while the third party is making maritime transportation also the protection is extended to losses against inland water, land risk, and sea voyage.

HISTORICAL BACKGROUND

The history of marine insurance can be traces back to several centuries, where it merely was seen as a mode of securing the interests of ship or the cargo owners, who faced various difficulties during an overseas voyage. "Marine insurance has facilitated the development of long-distance trade and as such has influenced economic growth and progress of, in particular, seafaring nations in the early modern period."

"In the Middle Ages, contracts such as "loans on bottomry", which were repayable only if a voyage was successful, had served a marine insurance function...However, marine insurance corporations had not yet emerged, and underwriting was still carried out entirely

by private individuals, frequently themselves merchants, who underwrote specific risks on an individual case-by-case basis (several private underwriters each covering portions of a risk).”

Marine insurance can be described as mother of all insurances. It is said to have originated in England due to the frequent movement of ships and cargos over high seas for the purpose of trade and commerce. Marine insurance is the oldest form of insurance. Marine Insurance is not of a recent origin and its existence can be traced back to several centuries. It has been around as long as human existence as the main concept of Marine Insurance is that of spreading risk.

The first written insurance policy can be seen in on a Babylonian obelisk monument where the code of King Hammurabi is carved. The "Hammurabi Code" was one of the first forms of written laws. It offered the basic structure

for an insurance in which the debtor was not topay back his loans in case some catastrophe made it impossible to do so.

The insurance law was first codified in the year 1906. The English Marine Insurance Act was passed in 1906 but the laws concerning it had taken a shape much prior to the passing of this Act.

The origin of maritime law can be traced in Greek and Roman maritime loan. It is known to be the earliest and well-built kind of insurance. Several marine insurance contracts were advanced in cities like Genoa and several other Italian cities during the 14th century and then eventually spread to the northern Europe. Though the origin of modern marine law insurance has its traces in Lex Mercatoria i.e. law of merchants.

A specialised chamber was established in 1601 in England which was separate from the other courts in England. In the late 17th century

London’s importance was growing as a centre for trade which led to the demand for marine insurance. Edward Lloyd had opened a coffee shop on the Tower Street in London in the late 1680’s. His coffee shop soon became a popular place for ship owners, ship captains, and merchants, and thereby a reliable source for the latest shipping news.

Lloyd's Coffee House soon became the first marine insurance market. It had become the meeting place for people in the shipping industry who were wishing to insure cargoes and ships, and also those who were willing to underwrite such ventures. Owing to these informal meetings soon the Lloyd’s coffee house became an insurance market. The members who were participating in the insurance arrangement eventually formed a committee as the Society of Lloyds’ and moved to the Royal Exchange on Cornhill. The establishment of insurance companies, the

growth of British Empire and a developing infrastructure of specialists (like shipbrokers, admiralty lawyers, surveyors, bankers, loss adjusters, general average adjusters, etc) gave English law a prominence in the area of Marine Insurance and it is due to this reason that it forms the basis of almost all modern practices.

The law on marine insurance was first codified by the Marine Insurance Act of 1906 in England, and this Act came into force on January 1, 1907. It was proposed to clarify and set forth the regulations associated with marine insurance agreements. This enactment codifies only those principles of the law which relate exclusively to marine insurance and expressly enacts the rules of common law; including the law merchant, save in so far as they were inconsistent with the express provisions of the Act.

Types of Marine Insurance

Before going ahead with buying a marine insurance, you should be aware of the types of this insurance in order to be able to choose the most suitable one for your business. The types are:

Hull and Machinery Insurance: The hull is the main supporting body of the vessel without masts. Thus, hull insurance covers the applicant from any mishap to the ship. It is generally taken by ship owners. Along with hull insurance, one should also go for machinery insurance to cover the machinery of the ship. It insures the applicant against operational, mechanical and electrical damage to the ship machinery. Since both the sections cover the ship as a whole, it is jointly issued as Hull and Machinery Insurance by the insurance company.

Marine Cargo Insurance: Cargo owners are exposed to the risk of mishandling of the cargo at the terminal and during the voyage of the

ship. It might get damaged, lost or misplaced. Hence, to protect the cargo owner from the financial losses arising out of such cases, marine cargo insurance is issued against appropriate premium payment. It comes with a third-party liability insurance which covers any damage done to the port, railway track, ship, other cargo or humans due to your cargo.

Liability Insurance: The ship may be exposed to crash, collision or piracy attack. Under such situations, the valuable cargo is exposed to a high risk. Moreover, the life of crew members and others on the ship is also in danger. The appropriate liability insurance indemnifies the ship owners out of any such liabilities due to events not under his control.

Freight Insurance: This section covers the loss of freight. In case the freight is lost or damaged or the ship is lost, the shipping company will not have to bear the loss. They can be

compensated for the loss through this insurance.

The cargo movement is not uniform for every customer. The need for insurance is also different for different customers and at different point of time. Some of the common points covered under marine insurance are:

- Sinking, stranding, fire, explosion
- Loss in loading or unloading cargo
- Total loss coverage
- Earthquake or lightning
- Unforeseeable administrative expenses
- Jettison or washing overboard
- Collision, overturning, derailment, accident
- Natural calamities
- General average

It offers coverage under various sections. Let us understand them:

Voyage Policy: The validity of the insurance policy is limited to the specified voyage; hence, such policy is also known as voyage policy.

Time Policy: Many a times, customers want coverage for a particular period. Such a coverage is called time policy.

Mix Policy: When the marine insurance policy extends the insurance cover for a particular voyage and for the desired duration of time, it is called mix policy. It gives flexibility to customers to handle various uncertainties related to the movement of the ship and the cargo inside the ship.

Single Vessel Policy: For ship owners who own only one ship, this policy is ideal, considering the cost and coverage. For ship-owners having a fleet of ships, single vessel policy for each ship is not cost effective.

Fleet Policy: If the ship-owners have multiple ships (fleet of ships), the fleet policy is cost effective and easy to administer.

Floating Policy: The floating policy is issued to the shipping line on an ongoing basis. The only specified detail is the maximum sum insured in the policy. All other details are informed to the insurance company when the ship starts its voyage. For regular cargo owners, who need frequent transportation of goods through shipping line, this is the best policy, to save time and money.

Unvalued Policy: The value of the cargo is usually mentioned while taking the marine cargo policy. However, when the value of the goods and consignment is not defined before uploading the cargo, the unvalued policy is issued. It is also called open policy. The value is mentioned in case of claim after due verification and validation of the facts related to the consignment under the claim.

Valued Policy: When there is no ambiguity regarding the value of the consignment, it is mentioned during issuance of the cargo

marine policy. In case of any claim, the amount of reimbursement is limited to value mentioned in the policy, subject to other terms and conditions of the policy.

Block Policy: The movement of the cargo includes rail, road, water and air mode before it reaches its destination. To cover the cargo for the complete journey, block policy is most suitable. In case of any loss at any point in the transit, the amount of insurance policy is payable to the applicant.

How this Insurance Functions?

The basic requirement of marine insurance is to provide you with peace of mind while conducting your business. Let us understand how it works:

- Evaluate and analyse your requirement regarding the risks involved and the loss that you would incur in case of any eventuality

- After preparing your list, check and compare the companies and policies to understand where you would get the best deal
- After zeroing in on the plan, get the documents in place for purchasing the policy
- In case of any untoward incident for which you would need a claim, immediately inform the insurance provider
- Submit the duly filled in claim form along with the required documents, proofs and certificates
- In case the claim is considered fit, you would get the claim, else it will be rejected

Eligibility Criteria

Let us look at the sections of people who are eligible for marine insurance. They include manufacturers, buying agents, buyers, import/export merchants, sellers, banks, contractors or any one who is into the business of movement of goods.

Claim Process

After purchasing the marine insurance, in case there arises a situation when you need to make a claim under the policy, you can follow the below mentioned steps:

- In case of loss or damage to the cargo or the ship, you need to immediately inform the insurance provider
- A surveyor will assess the damage or loss mentioned
- All the proofs and witnesses need to be submitted along with the duly filled in claim form
- For a missing package, the insured must lodge file a monetary claim with the insurance provider and get an acknowledgement for it
- If the provider finds the case fit, it would approve the claim, else it would reject it
- In case you are not satisfied with the case, you can approach the court of law

Documents Required for Claim Process

To make the claims under marine insurance and be able to reap the benefits, the correct documents should be submitted. In case of any lapse, there is a chance of the risk being rejected. Some of the documents are:

- Duly filled in claim form
- Original insurance certificate with the policy number
- Copy of Billing Lading
- Survey report or missing certificate
- Original invoice, packing list, shipping specification
- Copies of correspondence exchanged

Exclusions

Marine insurance has various kinds of coverage for the benefit of all. However, the policy does not cover certain situations, also called exclusions. Some of these cases are:

- Wilful, planned or intentional misconduct
- Strike, rioting, war
- Poor packaging quality of the cargo
- Delays
- General leakage or wear and tear of the cargo
- Financial distress or insolvency of the shipping line
- Removal of wreck

Advantages

While conducting business involving cargo and sea ways, it makes sense to opt for a marine insurance. Some of the advantages of purchasing this insurance are:

- The insurance provides financial stability to the business
- It helps manage the risks and conduct business without much worries

- It compensates for any financial loss that one faces during the transit of goods

Types of Marine Losses:

Marine losses may be divided into the following categories:

A. Total Loss:

Total loss is divided into two categories:

1. Actual Total Loss:

Actual total loss occurs under these following situations:

(a) The subject-matter is completely destroyed.

(b) The goods are so damaged that they cease to be a thing of the kind which were insured.

(c) The insured is deprived of the subject-matter.

When a ship is sunk or is completely destroyed by fire, it will be a case of actual total loss.

There may be a case when the goods are so damaged that they do not look like goods which were insured e.g. if crockery is reduced to pieces, it is a case of actual total loss.

In another case if the insured is not able to get the things back i.e., if the ship is missing and there is no trace of it, it is also a case of actual total loss. In case of actual total loss the insured is entitled to recover full amount of loss. When the insured has been compensated the title of goods passes on to the insurer. If some amount is received from the sale of damaged goods, the amount will go to the insurer and not to the insured.

2. Constructive Total Loss:

This occurs when the ship is abandoned for certain reasons. It is not commercially viable to retrieve the ship or cargo. The ship or the cargo is not wholly destroyed but it is not practicable to get it repaired and restore it to its original position. When a ship is badly damaged, and

the cost of repairs is expected to be more than the value of the ship, it will be advisable to abandon the ship.

In the same way if the cargo is safe in the abandoned ship but the cost of bringing the cargo to the coast is more than the cost of cargo, then it will be proper to leave the cargo. In the case of constructive total loss, the insured gives a notice of abandonment and surrenders its interest in the subject-matter to the insurer. The insured can claim damage for total loss.

B. Partial Loss:

When the subject-matter is partially damaged, it will be a case of partial loss. It is of two types:

1. Particular Average Loss:

A particular average loss has been defined as, "a partial loss of subject-matter insured, caused by a peril insured against, and which is not general average loss." A particular average

loss is not caused voluntarily. The insured subject-matter should be damaged and this damage should be caused by marine peril which is insured.

2. General Average Loss:

A general average loss is caused voluntarily to avoid an impending danger. "A general average loss is one which is caused by an extra-ordinary sacrifice or expenditure voluntarily and reasonably made or incurred under fortuitous circumstances, for the sole purpose of preserving the common interest from an impending peril."

If a ship is sinking because of overload, some of the cargo may be thrown out of the ship with a purpose to save the ship and the crew. It will be a case of general average loss.

Some conditions are to be satisfied before deciding about a general average loss:

(a) There must be an extra-ordinary situation.

(b) The peril must be real and not imaginary.

(c) The loss must be voluntary and deliberate.

(d) The sacrifice must be made prudently.

(e) The purpose should be to save the whole adventure.

(f) The act should be successful at least partially.

Basic Principles of Marine Insurance

The basic principles which govern the insurance are –

(1) Utmost good faith

(2) Insurable interest

(3) Indemnity

(4) Subrogation

(5) Proximate cause

(6) Contribution

(7) Abandonment

Utmost good faith:

In the contract of marine insurance, each party is supposed to observe utmost good faith and to disclose all material facts to the other party. By material facts are meant those which are likely to influence the judgment of the other party. For example, the declaration by the insured of the shipment on the deck of cargo which would be the normally carried on under the deck. The holding back of the material facts by the party either party is fraud.

Insurable interest:

Insurable interest means that the insured should have an interest in the subject when it is to be insured. He should be benefited by the safe arrival of commodities and he should be prejudiced by loss or damage of goods. The insured may not have an insurable interest at the time of acquiring a marine insurable policy, but he should have a reasonable interest in the case of a loss of goods or damage of goods. The insured must have an insurable interest at the

time of loss or damage otherwise he will not be able to claim compensation. The insurable interest must exist at the time of the loss though it is a not required at the time of a taking insurance.

The following parties may be said to the have insurable interest.

(a) Cargo owners on their cargo to be shipped

(b) Ship owner on his ship

(c) Shipping company on their freight receivable

(d) An insurer on the insured properties for reinsurance

(e) Captain and crew in respect of their wages and salaries

Indemnity

This principle means that the insured will be compensated only to the extent of loss suffered. He will not be allowed to earn profit from marine insurance. The underwriter

provides to compensate the insured in cash and not to replace the cargo or the ship. The money value of the subject matter is decided at the time of taking up the policy. Sometimes the value is calculated at the time of loss also.

There is one exception to the principle of indemnity in marine insurance. Some profit margin is also allowed to be included in the value of the goods. The assumption is that the insured will earn a profit when goods reach their destination.

Subrogation

The transfer of rights and remedies of insured to an insurer who has indemnified the insured in respect of the loss. Subrogation follows the principle of indemnity insured should not make any profits out of loss.

Ex.: Furniture is insured for Rs. 1 lac against fire, it is burnt down and the insurer pays the full value of Rs. 1 Lac to the insured, later on, the damage Furniture is sold for Rs. 10000. The

insurer is entitled to receive the sum of Rs. 10000.

Proximate cause

It helps in deciding the actual cause of loss when a number of causes have contributed to the loss. The immediate cause of a loss should be determined to fix the responsibility of the insurer. The remote cause of a loss is not important in determining the liability. If the proximate cause is insured against, the insurer will indemnify the loss.

Ex.: Fire destroying goods and Insured losing profits also. Fire is proximate cause payable, loss of market profit is a remote cause and it’s not payable.

Contribution:

Particular goods may be insured with two or more insurers against the same risks. In such cases, the insurers must share the burden of payment in proportion to the amount insured

by each. If one of the insurers pays the whole loss, he is entitled to contribution from other insurers

Ex.: B gets his goods insured for Rs. 15000 with insurer P and for Rs. 15000 with insurer Q. A loss of Rs. 15000 occurs, P is liable to pay for Rs. 7500 and Q is labile to pay Rs 75000. If the whole amount of loss is paid by Q, then Q can recover Rs. 7500 from P.

Abandonment:

In abandonment, not only the right but also the property is transferred to the insurer.

Ex.: Furniture is insured for Rs. 1 lac against fire, it is burnt down and the insurer pays the full value of Rs. 1 Lac to the insured, later on, the damage Furniture is sold for Rs. 1 lac or 1.5 lakhs. The insurer is entitled to receive the sum of Rs. 1 lac or 1.5 lakhs. The insurer is not entitled to transfer the profit to the insured.

Development of Indian Law

Since independence, Indian shipping has undergone a considerable expansion. Thus, it became mandatory to enact an Indian legislation for the smooth development of marine insurance law in India which would be consistent with the conditions in India. Prior to legislation, questions relating to marine law were decided on the general law of contract and the English decisions which were based on the common law rules of contract. The Indian law on marine insurance is in essence an interpretation of the rules contained in the common form of marine policy.

“In India, insurance has a deep-rooted history. It finds mention in the writings of Manu (Manusmrithi), Yagnavalkya (Dharmasastra) and Kautilya (Arthasastra). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire,

floods, epidemics and famine. This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers' contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular."6

The Oriental Life Insurance Company was set up in Calcutta in the year1818 which started the life insurance business in India. The company however failed in 1834. In 1829, the Madras Equitable began transacting life insurance business in the Madras Presidency. The British Insurance Act was enacted in the year 1870. In 1907, the Indian Mercantile Insurance Ltd was set up. It was the first company which began to transact all classes of general insurances. In 1914 the GOI established the publishing returns of Insurance Companies in India. Specifically in shipping law

India has undergone a wide change and considerable expansions and thus it became mandatory to codify it for smooth working and development of Marine Insurance law in India.

In India the marine insurance law was put in a statutory form in the year 1963- Marine Insurance Act, 1963. The preamble to the Act states that it is “an Act to codify the law relating to marine insurance.” In the case of Bank of England v Vagliano Brothers7, Lord Herschel said that “The canon of construction generally applicable to a codifying statute is well known: the language of the statute must be given its natural meaning, regard being had to the previous state of the law only in cases of doubt or ambiguity.