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LEGAL AND PRACTICAL ASPECTS CONCERNING MOTOR VEHICLE THIRD PARTY INSURANCE IN CASE OF NON-RECEIPT OF PREMIUM BY INSURANCE COMPANY.

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I. INTRODUCTION TO THIRD PARTY INSURANCE:

Insurance is defined as "a financial risk management tool in which the insured transfers a risk of potential financial loss to the insurance company that mitigates it in exchange for monetary compensation known as the premium". [1] Insurance policies are merely an agreement enforceable by law between the policyholder and the insurance companies. The Insurance Regulatory and Development Authority, a Government of India agency regulates and manages the work related to the insurance sector. As a general understanding, Insurance indemnifies insured from a liability to which he is unprepared in return of the premiums which has been paid to the insurer.

There are various kinds of insurance and policies enshrined therein, however, the most frequent and used policies amongst all are the third-party insurance. It ensures the protection of the policyholder against the wrong committed by a stranger. When we say about third-party insurance, the first and foremost thought which strikes our mind is automobile insurance. The importance of automobile insurance is widely spread and known to almost every person due to rapid growth in automobiles in society. By going through the definition of automobile insurance, it would be amply clear as to the intention behind enforcing such type of insurance. The definition speaks as "one against the claims of damages or losses incurred by a driver who is not the insured, the principal, and is not covered in the insurance policy".

For a better understanding of the same, it is clarified that third party against whom the insurance is taken is the driver who caused the actual damage. Third party insurance is purchased by the insured that is also called as the first party, and insurance is issued by an insurer who is the second party, for protecting the claims of some another person that is the

[1]What is meaning, definition, THE ECONOMIC TIMES, http://economictimes.indiatimes.com/definition/insurance (last visited Nov 18, 2018).

third-party. Damages or losses incurred by the first party are to borne by themselves only, no matter how they were caused.

There are two types of third-party liability insurance coverage so far as automobile insurance is concerned viz. a) ***Bodily Injury Liability*** concerns about people are covered by Bodily Injury Liability which includes medical expenses; b) ***Property Damage Liability*** which takes care of the covers costs related to the loss incurred to the property.

It is pertinent to bring it to the notice that whosoever ride vehicles on road are under the mandate to avail a minimal amount of both the types of liability coverage i.e. Bodily Injury Liability and Property Damage Liability.

Motor Vehicles Act plays a pivotal role in the case of Third-Party Insurance. It is referred to as a 'third-party' cover as coverage is beneficial to someone except the parties to the contract. The non-life insurance Companies are under the obligation to promote and provide the third party insurance coverage as the same is mandatory in our Country.

The irony of the mindset of the people is to evade from the duty to pay the premium by not renewing or even taking a Third-Party Insurance, however, they tend to forget that which can lead to a huge amount at situations that may beyond the purview and control of humankind as law is fairly settled that the victim can claim for compensation under 'no fault liability' or 'fault liability' of the Motor Vehicles Act 1988.

The general presumption is that one ought to have claimed damages to it from his/her own insurer the exception to the same is bodily injury, loss of life or damage to property, which can be encouraged claiming against the third person's policy. However, there is no impediment to claim damage of own vehicle from the insurer of a third party.

"This is called a knock-for-knock agreement. Insurance companies have agreed with each other that claims on damage to the vehicle of their customers will be handled by themselves" says Sanjay Datta.[2]

In this paper, the author has made an attempt to delve into the process of liability arising in case of third party claims along with the effect of non-payment of premium. The author has

[2] Rajalakshmi Nirmal, HOW THIRD PARTY MOTOR INSURANCE WORKS@BUSINESSLINE(2018), http://www.thehindubusinessline.com/portfolio/beyond-stocks/how-third-party-motor-insurance-works/article7143599.ece (last visited Nov 25, 2018).

also discussed the consequences of the breach of contract and conditions upon which the same can be ratified. The author has taken a comprehensive approach and explained the practical aspects of non-payment of premium in third-party motor insurances.

II. HOW DOES LIABILITY ARISE IN THIRD PARTY CLAIMS?:

Section 146 of Motor Vehicles Act, 1988 which mandates every motor powered vehicle plying on the road for any purpose to indemnify the third party to the contract in case of an unfortunate event. Section 146 which defines as under:

Section 146: Necessity for insurance against third party risk[3]:

(1) "No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter: [Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).]

Explanation: A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

(3) The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking:

[3] Section 146 of Motor Vehicles Act, 1988 (India).

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties. Explanation: For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case may be, and:

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority".

Prohibition on use of motor vehicles without a statutory insurance policy, if not strictly followed then the same is punishable under section 177 of the Act.

At the cost of reiteration, it is apt to put forth here that in the third-party claims the liability arises when the insured vehicle meets with an accident involving the third party (victim) while adhering to the terms and conditions of the insurance policy and Traffic rules.

There are two kinds of liability which arise out of an insurance contract when the insured vehicle is involved in an accident with the third-party. Which are as follows:

- No fault liability
- Fault-based liability

In the cases of fatal accident, the insurer is required to pay a certain predefined amount to third party irrespective of the fault of the parties under no-fault liability. While for a claim under fault-based liability the victim has to prove before the court or tribunal that the accident happened due to the fault of the insured.

II.I NO FAULT LIABILITY:

The term 'no fault liability', for the first time was discussed by the Hon'ble Supreme Court in the case of ***Manushri Raha v. B.L. Gupta***[4] and pursuant to such observation, the Law

[4]A.I.R.1977 S.C. 1158 (India).

Commission of India thought it prudent to recommend for incorporation of "no-fault" liability as a result of which, the 1939 Act was amended by Motor Vehicles (Amendment) Act, 1982, thereby introducing Sections 92-A to 92-E.

On a bare reading of the provisions enshrined in the Act, it is manifestly evident that the sole requirement in order to attract the liability under section 140 is an accident caused by a motor vehicle leading to death or permanent disablement of any person.

It is to be kept in mind that no-fault compensation can only be considered as an interim relief and that cannot be construed as final determination of the liability meaning thereby, If the person applying under this provision is found not entitled to any fault compensation at the end of adjudication, he is under the obligation to refund the compensation amount received along with interest as deem and proper by the authority granting the same.

From the aforementioned analysis of the provision, it can be said that the legislative intention behind enacting the provision is to make summary inquiry and award interim compensation immediately, so that family members of the victim may not suffer.[5]

The definition of "Liability" implies that liability to pay compensation also includes the insurer and therefore the words used in subsection (1) "or as the case may be" are to be read in consonance with the definition of liability given 145(1) of the Motor Vehicle Act. Similarly, the words "as the case may be" do include liability of the insurance company as well, if the vehicle is insured.

As discussed above, the provisions put liability on the insurer regardless of the fault of the accident occurred.

II.II FAULT BASED LIABILITY:

The Hon'ble Supreme Court in the case of ***Oriental Insurance Company v. Meena Variyal & Others***[6] has observed that, Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third-party risks". The definition of "third party" is an inclusive one since Section 145 (g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for insurance to be taken out before a motor vehicle could be used on the road. The heading of that Section itself is "Necessity for insurance against third party risk". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets

[5]Safia Noor Mohamed v. Nalini Shingote, 2003 (2) TAC 115 (Bom) (India).
[6](2007) 5 S.C.C. 428 (India).

out the requirement of policies and limits of liability. It is mentioned that in order to bring the case within the purview of Chapter XI of the Act, the insurance policy, issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place is a mandate.

As per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, save and except, the liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy.

The proviso to the said provision makes it clear that the policy shall not cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception to the same is provided that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage.

Section 149 (1) puts the insurer under the obligation to satisfy an award and also speaks only of an award in respect of such liability as is required to be covered by a policy under clause (h) of sub-section (1) of Section 147.

This leaves us with the interpretation to the effect that the contracting parties to the insurance policy, the expression “third party” for which, we should include everyone be it a person travelling in another vehicle, one walking on the road or a passenger in a vehicle itself which is the subject-matter of the insurance policy.

Under Section 147 the act prescribes compulsory coverage against the death of or bodily injury to any person including the owner of goods or his authorized representative carried in the goods vehicle. Further, it also prescribes coverage against the damage to any property of a

third party caused by or arising out of the use of the vehicle in a public place. Except this, this section also prescribes the coverage against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in public place. The compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to the liability under the Employee Compensation Act. The meaning of the words 'any person' must also be attributed having regard to the context in which they have been used i.e. 'a third party'. But, a plain reading of the proviso to subsection (1) of section 147 of MV Act states that an insurer is not compulsory required to cover the risk of all employees of the insured but is only required to cover the risk in respect of certain employees of the insured stated therein to the extent of the liability arising under the W.C. Act in respect of death or bodily injury to any such employees.

If we look at this aspect in its technicalities, Persons covered under this section are the third-party, owner of goods, and legal representative of the owner of Goods carried in the vehicle.

III. DEFENCES AVAILABLE TO INSURANCE COMPANY UNDER MOTOR VEHICLE ACT, 1988:

1. *Use of vehicle for hire and reward not permit to ply such vehicle:*

In the event, the vehicles, registered as private commuters, if used on the roads for commercial purpose, the same in effect makes the policy voidable for the insurer. In such cases, if any accident occurs then the insurer would be exonerated from the liability of the indemnifying the insured meaning thereby, the entire liability of the same would lie on the insured to indemnify the victim.

2. *For organizing racing and speed testing:*

Accidents caused due to rash or speed driving are not covered under the policy which in effect exonerates the insurer and reverts the liability back on the insured.

3. *Use of transport vehicle not allowed by permit:*

If a particular vehicle has been permitted to do a certain thing and it deviates from such permission, any accident caused during such deviation/violation does not bind the insurer to indemnify the claims.

4. ***Driver not holding a valid driving license or have been disqualified for holding such license:***

Illegal driving license or any violation with regard to the driving license is an exception to the process of insurer indemnifying the third party.

In ***Sohan Lal Passi's v. P. Sesh Reddy***[7] it has been held by the Supreme Court that *"the breach of the condition should be with the knowledge of the owner. If an owner's knowledge with reference to the fake driving licence held by the driver is not proved by the Insurance Company, such defence, which was otherwise available, cannot absolve insurer from the liability."*

In a recent decision rendered by the Hon'ble Supreme Court, i.e. in case of ***Swaran Singh***[8], the Supreme Court has almost taken away the said right by holding that;

(i) *Proving breach of a condition or not holding a driving licence or holding a fake licence or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of the owner.*

(ii) *Learner's licence is a licence and will not absolve Insurance Company from liability.*

(iii) *The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of the accident and thereby absolving requirement of driving licence to those accidents withstanding vehicle, fire or murder during the course of use of a vehicle.*

5. ***Policy taken is void as the same is obtained by non-disclosure of material fact:***

The principle of utmost good faith is one of the main pillars of any insurance contract, and violation of it makes the policy voidable for the insurer. The insurer will not have any liability to indemnify the other party if it is found out the party has played fraud on the same.

IV. EFFECTS OF NON PAYMENT OF PREMIUM:

Section 64-VB of the Insurance Act, 1938 speaks as follows, "no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be

[7] A.I.R. 1996 S.C. 2627 (India).
[8] (2004) 3 S.C.C. 297 (India).

paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner."

On a bare reading of the said provisions, it is manifestly clear that the legislature while enacting such provisions has made it clear that the insurer is no way liable to any risk unless premium payable is received in advance.

Section 149 (1) of Chapter XI of Motor Vehicle Act reads as under:

"If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he was the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

In view of the same, it is understood that in the case of third party insurance even when an insurer can or had cancelled the policy than also they have to oblige to those third-party claims.

The Hon'ble Apex Court while coming across the dispute involving Section 149(1) of the Act, in the case *of* ***Oriental Insurance Co. Ltd. v. Inderjit Kaur and Others*** has held that despite the bar created by Section 64-VB of the Insurance Act 1938, insurer has issued policy of insurance to cover the bus without receiving premium and by reason of Section 147(5) and Section 149(1) of M.V. Act, the insurer became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof. Court by invoking the doctrine of public interest held that the insurance company would be liable to indemnify third parties in respect of the liability which the policy covered. In this case, Court did leave open the question of insurer's entitlement to avoid or cancel the

policy as against insured when the cheque issued for payment of the premium was dishonoured.

In the case of ***New India Assurance Co. Ltd. v. Rula and others***[9], the Two-Judge Bench of the Court observed that subsequent cancellation of the insurance policy on the ground that the cheque through which premium was paid got dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If on the date of the accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party.

In ***National Insurance Co. Ltd. v. Seema Malhotra and others***[10]**,** Court was concerned with the question whether the insurer is liable to honour the claim of damage to the owner himself and the vehicle where the insured gave a cheque to the insurer towards the premium amount but the cheque was dishonoured by the bank due to insufficiency of funds in the account of the drawer. Supreme Court by applying the equitable doctrine of no one should take the benefit out of his wrong, has clearly held that when the insured fails to pay the premium promised, then in such a case he can't take benefit out of it and the insurer is not required to honour such claims of the owner's own damage.

The Hon'ble Supreme Court while dealing with the case of ***Deddappa and others v. Branch Manager, National Insurance Co. Ltd.***[11]has held that if the insurance policy has been cancelled and all concerned have been intimated thereabout, then the insurance company would not be liable to satisfy the claim. But by invoking its extraordinary jurisdiction under Article 142 of the Constitution of India, directed the insurance company to pay the amount of claim to the claimants and recover the same from the owner of the vehicle.

The Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. v. Laxmamma and others***[12]has observed that "where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by

[9]2000) 3 S.C.C. 195 (India).
[10](2001) 3 S.C.C. 151 (India).
[11](2008) 2 S.C.C. 595 (India).
[12]2012) 5 S.C.C. 234 (India).

reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

Therefore, Law is no more *res integra* on the said aspect as has been settled in the referred to above that even in case of non-receipt of premium by the insurance company and before the cancellation of such policy, if some accident has taken place, the effect of such non-payment would be null on the right of third parties which has been created by such a policy. Supreme Court by not adopting the narrow approach and by giving importance to the greater public interest has subscribed to this view in its all cases.

V. WHETHER NON-PAYMENT AMOUNTS TO BREACH OF CONTRACT?:

Premium is the consideration for which the insurer undertakes to discharge the liability arising under the contract. If we go by the law laid down in the Statute, payment of the premium is not a condition precedent to complete a contract of insurance. However, in the practical aspect of the matter, payment of premium has been made a condition precedent only in the case of the first premium but not in case of subsequent premiums. A condition that the insurance shall not attach until the premium is paid will not be implied. If there is such a condition expressly provided in the policy the insurer will not be liable until the premium has been paid.

Generally, in Motor insurance, the payment of premium is a condition precedent. But the payment of premium without acceptance or issuance of policy may not always amount to acceptance.

In the case of ***New India Assurance Co Ltd v Rula***[13], the Hon'ble Supreme Court has held that non-receipt of the premium is not one of the permissible defenses under Section 149(2) of Insurance Act, 1938.

The Supreme Court by taking aid to Sections 146 and 149(2) of the Insurance Act and held that Notwithstanding Section 64VB of the Insurance Act, 1938, the policy of insurance issued by the insurance company entitles the authorities and third parties to rely and act upon the representation made by the insurance company. Once a policy of insurance is issued, the liability of the insurance company to third parties is not absolved and continues in spite of bouncing of the cheque and non-payment of the premium.

Therefore, if the insurer had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of S. 64 –VB of Insurance Act, it was held that the public interest in regard to insurance policy must clearly prevail over the interest of the appellant. Therefore, non-receipt of payment of premium cannot be a Defence in view of Section 149(2) and the insurer will be held liable.[14]

In the case of ***United India Insurance Co. Ltd. v. Laxmamma***[15], the Hon'ble Supreme Court while dealing with a complex issue was of the view that "where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonored, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V. Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonored and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof."

[13](2000) 3 S.C.C. 195 (India).
[14]Oriental Insurance Co Ltd v. Inderjit Kaur, (1998) 1 S.C.C. 371 (India).
[15](2012) 5 S.C.C. 234 (India).

In the case of ***New Asiatic Insurance Co. Ltd v. Pessumal Dhanama Aswani***[16], it was held that whether the premium has been paid or not is not the concern of the third party. The third party is only concerned that there was a policy issued in respect of the vehicle involved in the accident and then only the third party can ask for a claim on the basis of that policy.

VI. CONSEQUENCES OF THE BREACH:

The Hon'ble Apex Court in the case of ***Clarke v. Clarke***[17] has held that

"A contract by which one party undertakes, in consideration for a payment (called a premium), to secure the other against pecuniary loss, by payment of a sum of money in the event of the death or disablement of a person is a contract of insurance (disability or life insurance)."

No contractual liability exists between the parties and in case of any accident; no claim can be processed by the insurance company if the premium amount is not paid.

In another scenario where the premium is only a condition subsequent to the formation of the contract, non-payment of premium amounts to the breach of a contract. It depends upon the subject matter of the insurance policy. If the clauses of the insurance policy provide that payment of premium is an essential condition to be fulfilled upon conclusion of the contract in order to bring the contract in force, non-fulfillment of that condition can amount to a breach of the contract. The consequence of a breach of contract is a suit for damages as the contract stands terminated.

Section 73 of the Indian Contract Act, 1872 provides that[18]:

"*Compensation for loss or damage caused by breach of contract: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it."*

When a policy provides for a lapse in the case of non-payment of a premium, the rights of the insured are determined by the terms of the policy. The usual results of such non-payment are

[16] A.I.R. 1964 S.C. 1736 (India).
[17] (1993) 84 B.C.L.R. 2d 98.
[18] Section 73 of the Indian Contract Act, 1872 (India).

(a) forfeiture of all rights, or (b) by extension of insurance for a certain period, or (c) granting paid-up insurance for a certain period. The non-payment of a note given for a premium does not affect the rights of the parties unless it is expressly provided that the policy shall be forfeited by such non-payment of the note.[19]

Non-payment of premium makes the contract of insurance voidable at the option of the Insurer Company. However, upon deliberation and examination of facts, the company may ratify such a contract and render it in effect. Such ratification will then enable the policy to become operative in full swing and upon any claim arising, such will have to be honored by the insurance company.

Usually, the insurance companies repudiate claims of third-party insurance policies upon the grounds of invalid driving license or improper intimation in case of any accident or any such non-fulfillment of the policy conditions. Accordingly, non-payment of premium can also be a relevant ground for repudiation, because the liability arises out of the contract and without consideration, the contract seems breached.

The issue of non-payment may also arise when with every renewal of the policy, there is a revised rate of premium or with additional information adduced, the company revises the tariff for the policy and subsequently, the insured fails to pay the renewed amount of premium, it can be considered a case of breach of the contract. However, in such a case, any liability appertained to the insurance company will not be met with. In case of any litigation commenced against the insurance company, the non-payment of premium will be considered as absence of insurance cover and there will be a misjoinder of parties as far as the insurance company is concerned. Also, these policies are on the basis of a one year renewal period owing to which, with every failure of non-payment, there will be a breach which must be separated from the previous breach and the liability will be apportioned to as and when there is valid insurance cover for which the claim can be processed.

Therefore, to conclude, the premium paid by the insured forms consideration for the contract and upon non-payment, the contract is either void if it is the first payment or is breached if it is one of the later payments, subject to terms and conditions of the policy document.

[19] 19 Albert H. Putney, "Popular Law Library Bills And Notes, Guaranty And Suretyship, Insurance, Bankruptcy.

VII. PRACTICAL ASPECTS OF THIRD PARTY INSURANCE PREMIUM:

Generally, two insurance covers are provided together in a comprehensive motor insurance policy i.e. (i) The Third Party Insurance and; (ii) The Own Damages Cover. Others may also come with some built-in personal accident cover. As per their names, both the aforesaid insurance covers i.e. the 'own damages' insurance covers losses pertaining to damage to the car or personal injuries and 'personal accident' insurance covers losses pertaining to disability and death.

It is pertinent to note here that as per the provisions of the Motor Vehicle Act, the third-party insurance is mandatory for all the vehicle owners, unlike the two insurance covers, discussed hereinabove which are optional in nature. Due to the said reason, the third party insurance is also known as the 'Act only' insurance. Due emphasis is laid on the fact that a third-party insurance covers the legal liability of the insurance policyholder towards the third party with regard to any bodily injuries, death or any damage to the property of the third party and not policyholder himself/herself or his/her vehicle. The party to whom injury or damage is caused is the real beneficiary of the third-party insurance and the policyholder is only a nominal beneficiary who actually facilitates the transfer of the insurance amount in favour of the injured party.

With respect to the parties involved in third-party insurance, the person insured forms the first party and the insurance company forms the second party in such a policy. It is to be noted that the third party is the person to whom damage or injury is caused. Through this third-party insurance policy, the third party obtains a right to file a claim for compensation against the first two parties for the injury or damage caused to the third party or his/her vehicle. Though there is a limitless liability towards any bodily injury or death caused to the third party, however, the cover amount is capped at Rs. 7.5 Lakh for any damage to the property (the vehicle) of the third party and in any case where such damage to the property (the vehicle) of the third party exceeds the said upper limit, the balance amount shall be paid by the policyholder i.e. the first party.

The third party who has been hit by someone else's car can claim damages from the person by whom he/she has been hit. Such damages may majorly entail medical expenses including medical for bodily injuries, treatment compensation of any bodily disfigurement and also

consequential damages such as if the injured person is unable to work for his earnings/livelihood after the said injury. In cases of death, compensation may be decided on the basis of the loss of income due to the death of the person. In order to assess the damage caused to the property, report of the authorized surveyor, original bills and receipts from an authorized garage and motor vehicle inspection report some of the pertinent documents in order to quantify the loss caused. On being held entitled for the claim of compensation, the injured party is paid such amount as compensation as prescribed by the policy, by the second party.

It is to be noted that IRDAI has fixed and prescribed premium rates for third party insurance and are the same for all insurance companies. However, such amount may differ on certain parameters such as the engine capacity of the car et al. For example, owner of a mid-segment car such as Maruti WagonR has to pay around Rs 1,500 whereas for a high segment car such as Hyundai Verna, the annual third-party insurance premium to be paid is around Rs 5,000. The authority reviews However, these fixed third-party insurance rates are reviewed annually by the IRDAI and hence, adjustments are made accordingly.

a) COMPLEX CLAIMS PROCESS:

The procedure for making a claim under a third-party insurance policy is a complex one. It does not begin with any civil proceedings but by filing an FIR in the appropriate police station and proceeding further by obtaining a certified copy of the charge sheet which is not an easy task. Thereafter, one has to engage a lawyer who deals with such claims and subsequently file a case in the Motor Accident Claims Tribunal, a special tribunal meant for such claims. The jurisdiction of the tribunal is decided by either the place where the accident occurred or the place where the claimant or the defendant resides. The tribunal then decided the rights and liabilities of the parties on the basis of the evidence adduced and arguments advanced. If the decision is in the favour of the claimant, the claimant gets compensated for the loss.

However, it is to be noted that said process is lengthy and cumbersome and is not as simple as it appears in the statute books.

The author in the following paragraphs has discussed various permutations and combinations of situations where ‘A’, a person makes a claim against ‘B’, another person for the reason

that B's car has damaged A's car in an accident and hence, the legal solution(s) in each case have been discussed accordingly.

(i) WHEN A HAS ONLY 'BASIC THIRD-PARTY INSURANCE':

In cases the person A has only basic third-party insurance, and then he/she can claim compensation only under the third-party insurance of B. It is pertinent to note here that in such cases, the insurer of A will neither compensate him/her or help him/her in filing a complaint against B as the insurance policy which A holds is an agreement with A's insurer solely meant for A's liability towards third-party claims and not for his own personal claims against the third parties.

Hence, in the present case i.e. in absence of any personal damages cover or insurance, A's car is covered under the third party insurance policy of B and not of his own third-party insurance policy. In order to proceed further with such claim, A has to identify B's vehicle with which the third party insurance has been attached and hence, file a complaint against B with mentioning of the B's vehicle through which damage was caused to A's vehicle. The only task of A here is to establish the fault of B through his vehicle as mentioned in the complaint.

The major task of A is to establish negligence on the part of B while driving and prove a nexus between such negligence and the damage caused to A or A's vehicle. Hence, A cannot be assured of getting the compensation amount until the tribunal decides in A's favour. Moreover, it is not necessary that the claim amount mentioned in the claim is granted in full to A in case the matter is decided in A's favour. It is up to the court what amount it decides as the claim amount on the basis of the nature and gravity of the matter and hence, A will get only such amount as will be decided by the tribunal.

Furthermore, due emphasis is laid on the fact that if the amount of compensation decided by the court is less than the compensation amount sought by A, then thereafter, A cannot approach his own insurer for the remaining amount under the 'own damage' policy because as per the laws, once the compensation is awarded for an accident by the court, the claimant cannot seek any additional compensation for the same accident by any insurance company. Also, the same abovementioned process is applicable irrespective of whether B holds either a comprehensive motor insurance or third-party insurance only.

(ii) WHEN A HAS A 'COMPREHENSIVE MOTOR INSURANCE':

In the second case where A holds a comprehensive motor insurance, he may opt for one course of action from the following mentioned herein below:

- Firstly, A can invoke the own damage section of his policy and claim compensation from his/her insurer under the same. Generally, this is the most common method adopted by the masses and is considered to be one of the easiest courses of action for claiming compensation for one's damages. However, it is to be noted that opting this method would result in loss of NCB to A, if any has been earned by him/her.
- Secondly, A can file a claim under B's third-party insurance policy and get himself/herself compensated for the damages caused by B to A. This course of action would be suitable to A when only holds a basic third party insurance policy and not a comprehensive one.
- Thirdly, A can file a request with his own insurer to subrogate the case and contest the case on A's behalf for A's claim of compensation. This compensation would be claimed by A's insurer under the third party insurance policy of B. In case A's insurer refuses to subrogate the case, then A is left with only options (i) and (ii) to choose from.

It is pertinent to note here that while A invokes any of the aforesaid three options; it makes no difference to his claim whether B holds either a comprehensive motor insurance or a third party only policy.

(iii) SUBROGATION:

Subrogation is a case when the claimant may request his insurer to file a claim on his behalf and contest the case to get him compensated. In the present case through the process of subrogation, A can request his insurer to subrogate his case to claim compensation from b under B's third-party insurance policy. It is to be noted that A can subrogate his case only if A has a comprehensive motor insurance and not only the basic third party policy.

The process of subrogation is not as easy as it seems to be as after filing a request of subrogation by A, it is up to the A's insurer whether it accepts A's request or not. However, this decision of accepting or rejecting A's request will be taken by A's insurer only after conducting a due inquiry and requisite investigation of A's claim. Once the request of subrogation is accepted by the A's insurer, it becomes its right to file a claim on A's behalf

and seek compensation under B's third-party insurance policy. For a valid subrogation, A has to sign a document providing subrogation right to his insurer after A gets reimbursed for his losses. Thereafter, A insurer would approach the B's insurer to recover the amount of the claim paid to A as compensation for the losses incurred by A due to However, there are very few cases of subrogation and the same mostly happen in matters pertaining to death or serious bodily injury of the insured (in this case A).

(iv) WHEN BOTH THE PARTIES HAVE COMPREHENSIVE COVERS:

In case even both A and B have comprehensive insurance covers, A's insurer will not help him/her to file his claim until and unless the claim pertains to bodily disability or death as in such cases other than that of bodily disability or death, the insurer does not agree to subrogate one's case. Generally, insurers of motor accidents have a 'knock-for-knock agreement' wherein the insurers bears the responsibility for damages to vehicles insured with them given such vehicles are covered under the 'own damage' policy, regardless of the fact that which insurer i.e. insurer of A or B, is liable to pay. The expenses pertaining to repairs of the vehicle and medicine are to be provided by the insurer covering the same and hence, no subsequent claim shall lie upon the insurer of the vehicle which is responsible for the accident.

Due emphasis is laid on the fact that insurers rarely receive cases wherein claims pertain to third-party compensation for only damage to the vehicle. It is due to the fact that the parties are advised to settle the said matter out of court due to the cumbersome and time-consuming process of the courts. Moreover, third-party claims which are mostly filed for bodily injury and death takes a long time for settlement and award of compensation to the victims. In general, the turnaround time for third-party claims involving bodily injury is one to two years and in cases of death, it extends to three to four years.

It is to be noted that persons covered under comprehensive covers avoid taking trouble by invoking third-party claims and settle the matters under the own damage policy even if it means losing out on the NCB except in cases where no comprehensive insurance cover has been held by such persons. Hence, in the present case, if A still choose to move to the tribunal, he/she must ensure that he has all the documents in place. Also, apart from the

aforesaid process, A must ensure proper and substantial narration of the facts of the incident to be recorded in the FIR filed by him and authentic records of expenses are in his possession in order to substantiate the pecuniary losses suffered by him/her. The entire aforesaid are crucial for A to get a verdict in his/her favour.

VIII. CONCLUSION:

In the light of this research paper, the author comes to the following conclusion that it is important to learn about third-party motor insurance so as to get maximum benefits out of it as it is a mandatory cover for which we have been paying premiums for so long.

Moreover, it is pertinent to note that a third-party insurance covers the legal liability of the insurance policyholder towards the third-party with regard to any bodily injuries, death or any damage to the property of the third-party and not policyholder himself/herself or his/her vehicle. The party to whom injury or damage is caused is the real beneficiary of the third-party insurance and the policyholder is only a nominal beneficiary who actually facilitates the transfer of the insurance amount in favour of the injured party. The third party who has been hit by someone else's car can claim damages from the person by whom he/she has been hit. Such damages may majorly entail medical expenses including medical for bodily injuries, treatment compensation of any bodily disfigurement and also consequential damages such as if the injured person is unable to work for his earnings/livelihood after the said injury. In cases of death, compensation may be decided on the basis of the loss of income due to the death of the person and on being held entitled for the claim of compensation, the affected party is paid such amount as compensation as prescribed by the policy, by the second party.