

## All about Marine Insurance Law in India

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### INTRODUCTION

Insurance connected with the risks of transportation of goods, is one of the oldest and most important forms of insurance. The value of goods shipped by the business firms each year cost billions of rupees. These goods are exposed to damage or loss from numerous perils associated with transportation. These goods can be protected by the marine insurance contracts.

In India, the marine insurance is regulated by:

- THE INDIAN MARITIME INSURANCE ACT, 1963 which is based on the original MARITIME INSURANCE ACT, 1906 OF U.K

### HISTORY OF MARINE INSURANCE

Marine insurance as we know can be described as the mother of the all insurances. It is believed to have originated in England owing to the frequent movement of ships over high seas for commerce and trade. In India, marine insurance has been in vogue for several centuries.

Prior to the development of marine insurance, the people across the world, had a system of:

- Pooling their contributions so that if any one of them suffers loss during voyage,
- He would be compensated from the pool.

Today Marine Insurance has been assumed a vast dimensions due to over expanding trade across the globe.

Marine Insurance is not of recent origin. Its existence can be traced back to several centuries. Questions concerning it have naturally been coming up for a number of years and the law concerning it had taken a definite shape much prior to 1906 when the English Marine

Insurance Act was passed with a view to codify that law. 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.

Another form of early insurance was the 'general average'. During cargo shipments in 916 BC, a merchant would accompany his cargo to see that it was not jettisoned, or voluntarily thrown overboard by the crewmen in times of a storm or sinkage. To guard against this mutual interest of safety and quarreling amongst merchants, the Rhodians initiated the 'general average', which ideally meant that a person would be compensated through pro rata contributions of other merchants if their goods were jettisoned during shipment.

From the 11th century to 18th century, a few additional breakthroughs occurred in marine insurance. In 1132, the Danish began to reimburse those who experienced loss at sea. In 1255, 'insurance premiums' were used for the first time as the Merchant State of Venice pooled these premiums to indemnify loss due to piracy, spoilage, or pillage. The law relating to marine insurance was codified in England by the Marine Insurance Act of 1906, and this Act came into force on January 1, 1907. This was proposed and initiated in an attempt to clarify and set forth the regulations and policy variables associated with marine insurance agreements. This enactment purported to codify only those principles of the law which related exclusively to marine insurance and expressly enacted that the rules of the common law, including the law merchant, save in so far as they were inconsistent with the express provisions of the Act, were to continue to apply to contracts of marine insurance.

## **DEVELOPMENT OF INDIAN LAW**

Since independence Indian shipping had undergone a considerable expansion, and it became mandatory for an Indian legislation consistent with Indian conditions, for the smooth development of Indian marine insurance. Prior to legislation, questions turning on this branch of law had to be decided by the general law of contract and the English decisions based on the common law rules of contract.

The Indian enactment is a substantial reproduction of its English counterpart, following its plan closely and deviating from it at some places, only unnecessarily.

The preamble to the Indian Act states that it is “An Act to codify the law relating to marine insurance.” 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.

But, as in the case of its English counterpart, the Indian Act embodies only some and not all of the legal principles and rules of marine insurance, and its language is so extremely concise and general that its full import and meaning can scarcely be understood without referring to the existing law which it was intended to express or to the decided cases from which that law was evolved. In India the law of marine insurance has been put in a statutory form since 1963.

## WHAT IS MARINE INSURANCE?

Marine insurance has been defined as a contract between the insurer and insured in which insurer agrees to pay an agreed amount to the insured against marine losses. Marine insurance covers transportation of goods by ship, rail, road, air & couriers.

### Features of marine insurance

- It is based on utmost good faith i.e. both the insured and insurers must disclose. Everything which is in their knowledge and can affect the contract of knowledge.
- It is a contract of ‘Indemnity’: the insured is entitled to recover only. The actual amount of loss from the insurer.

## TYPES OF MARINE INSURANCE

Different types of marine insurance are as follows:

- Hull Insurance:** Hull insurance is the insurance against loss caused by damage or destruction of waterborne craft or aircraft to the owner. It is the insurance of the ship which includes all the articles and pieces of furniture in the ship. Hull and machinery insurance are done to protect the ship owner and investment in the ship. It is a property insurance which covers the ship itself, the machinery and equipment. If the ship is damaged, the owner of the ship gets indemnity from the insurance company.

This type of marine insurance is usually, taken out by the owner of the ship in order to avoid any loss of the ship in case of any mishaps occurring.

- b) **Cargo Insurance:** The goods sent through waterway is known as cargo. Cargo insurance is also called marine cargo insurance. It covers physical damage or loss of your goods while in transit by land, sea, and air. It also offers considerable opportunities and cost advantages if managed correctly. It is insured by the owner and insurance of goods shipped through waterways is known as cargo insurance. If the cargo is ruined, the owner gets the indemnity from the insurance company.
- c) **Marine Liability Insurance:** Liability insurance is that type of marine insurance where compensation is bought to provide any liability occurring on account of a ship crashing or colliding. In the course of the marine adventure, one ship may collide with another ship. The goods of another ship may lose. Marine insurance provides the compensation of such liabilities nowadays if insurance has made insurance of such liabilities. A crew member traveling with expensive items, such as laptop computers, gold watches etc. should make sure that he has such items separately insured.
- d) **Freight Insurance:** To transfer the goods from one port to another, the amount paid to the owner of the ship is called freight. The payment of such freight can be made in two ways: either in advance or after the ship reaches its destination safely. Freight insurance offers and provides protection to merchant vessels' corporations. It stands for the chance of losing money in the form of freight, in case the cargo is lost due to the ship meeting in an accident. This type of marine insurance solves the problem of companies losing money because of a few unprecedented events and accidents occurring.

### **Who can insure through Marine Insurance?**

The owner of the ship & the cargo has an insurable interest in the ship. A creditor who has advanced money for the security of the ship has insurable interest to the extent of his advance. The entire member of staff presents in the ship or rail or airways have insurable interest in respect of their wages.

## **CONTRACT OF MARINE INSURANCE**

Most of the law of marine insurance is in essence pure interpretation of the contract contained in the common form of marine policy. The basic principle of a contract of insurance is that the indemnity recoverable from the insurer is the pecuniary loss suffered by the assured under the contract. Thus, as per the enactment, a contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or any land risk that may be incidental to any sea voyage.

Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined, by the Act. The formal instrument embodying the contract of marine insurance is called “the policy”; and “the slip” or “covering note”, is the informal memorandum that is drawn up when the contract is entered into.

The subject- matter insured and the consideration for the insurance are respectively known as “the interest insured” and “the premium”. The person who is indemnified is “the assured” and the other party is styled “the insurer” or “the underwriter” so called because he subscribes or underwrites the policy.

“Loss” includes damage or detriment as well as actual loss of property arising from maritime perils.

“Maritime perils” means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the sea, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

## **REQUIREMENTS OF TAKING AN INSURANCE POLICY**

It is essential that the contract contains an insurable interest in the subject matter, which has a value and is not a contract by way of wagering. Also the policy must be in compliance with the provisions mentioned under sections 24 to 34 of the Indian Act and the Rules mentioned in the Schedule.

### **INSURABLE INTEREST**

Marine Insurance Act, declares void all marine insurance policies where insurable interest does not apply at time of loss. In the Act, Insurable interest is defined as- Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or damage thereto, or by the detention thereof, or may incur liability in respect thereof. The essence of “interest”, is that

(a) There should be a physical object exposed to sea perils, and

(b) The assured should stand in some relationship, recognized by law, to that object, in consequence of which he either benefits by its preservation, or is prejudiced by its loss, or mishap thereto.

The insured must bear some relationship to the insured thing whereby s/he stands to benefit by its safety or be prejudiced by its loss or by incurring liability. That is to say, insurable interest exists where insured stands in a legal relationship to the property or otherwise stands to suffer loss as a result of its destruction.

The Indian Act does not profess to give an exhaustive definition of “insurable interest”. Nor is it possible to define the expression “insurable interest” exhaustively, but the general rule is clear that to constitute “interest” insurable against a peril, there must be an interest such that the peril would, by its proximate effect, cause damage to the assured.

## ATTACHMENT OF INTEREST

*Section 8 of the Indian Act of 1963 states in the following words when “interest” must attach:* —

1. The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected:

Provided that where the subject-matter is insured “lost or not lost”, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

2. Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

The main problem with insurable interest concerns the time at which the interest must attach; as a general rule (given under section 8, above), the assured must, at the time of loss, have an insurable interest in the subject matter insured. In contracts of international sale of goods, it is not always easy to ascertain at any given time whether the property has in fact passed from seller to buyer.

The existence of “interest” is a condition to effective insurance. It is often a difficult question to determine the exact moment when under a contract of sale, the risk passes from seller to buyer. Prima facie, the risk passes when the property passes; but under the terms of the contract they may pass at different times. When the buyer insures goods, the question is whether, on the true construction of the contract, the risk has passed to him at the time the loss occurs.

Thus, the law recognizes certain exceptions to the general rule that the assured must have an insurable interest at the time of the loss. First, if the policy offers cover on a ‘lost or not lost’ basis, then the assured is, according to the proviso to section 8(1) permitted to recover under the policy even though the loss was sustained before the insurance was effected. This exception operates to protect an assured who might have purchased goods without knowing whether or not they have already been lost at sea. Secondly, an assignee of a policy can acquire an interest in the subject matter insured even though the policy was assigned to him

only after the loss, provided of course, that the assignor himself had, at the time of assignment, an interest to assign.

Moreover, a defeasible or contingent interest (section 9 of the 1963 Act), partial interest (section 10), Bottomry (section 12), masters and seamen's wages (section 13), Advance freight (section 14) and charges of interest are all cases of insurable interest.

*With reference to assignment of interest, Section 17 of the Indian Act provides: –*

“Where the assured assigns or otherwise parts with his interest in the subject matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law.”

Where a cargo of tallow was insured “warehouse to warehouse” by purchasers and the cargo was delivered short for transit and the missing quantity was never in transit and never became the property of the purchasers, they were held to have no insurable interest and the underwriters were held not liable for the missing quantity.

## **VALUATION OF INSURANCE**

The insurable value of the subject matter insured is relevant in determining the measure of indemnity in the case of an unvalued policy, and in the case of a valued policy when the valuation is not conclusive or has to be apportioned.

A clear delimitation of insurable value is necessary (a) to fix the measure of indemnity in the case of an unvalued policy, (b) to fix the measure of indemnity in the few cases in which a valued policy can be opened up, and (c) to furnish an approximate standard for fixing the value in a valued policy.

According to modern practice, unvalued policies are very rare, being practically confined to goods and in a few instances to freights payable on arrival. Other interests are almost invariably insured by valued policies. As regards goods, a voyage policy on goods is an insurance of the adventure, as well as an insurance on the goods themselves.

## LATEST JUDGMENTS RELATED TO MARINE INSURANCE

➤ **Peacock Plywood (P) Ltd. Vs. Oriental Insurance Co. Ltd. [2006(12)SCC673]**

This Court held that where the policy contained a wider term of risk coverage, the decision in Bihar Supply Syndicate (supra) will not apply. In Peacock Plywood, the extended warranty clause in the **insurance** policy specifically extended the coverage to include the risks of theft, pilferage and non-delivery. In view of it, this Court held that a claim by way of constructive total loss on account of a ship being stranded on sea on account of its unseaworthiness was maintainable, although the goods themselves were not damaged. I

n that case when the ship carrying the goods got stranded at a port due to its unseaworthiness, the assured took steps to recover the value of the cargo with a view to minimize its total loss due to non delivery, but found that the cost of recovering and getting the cargo back to the destination port would be more than the value of the goods.

Therefore the assured effected sale of the insured goods at the port where ship was stranded. Insurer was found liable to pay the insured value of the goods (less the amount actually recovered by such sale.

➤ **New India Assurance Co. Ltd. vs. Hira Lal Ramesh Chand and ors. and Ratan Chand Deep Chand and Ors AIR 2008 SC 2620**

Complainants are manufacturers of Rugs and Durries, carrying on business at Mirzapur, UP. In pursuance of orders placed by Atlanta Rugs Inc., Atlanta (for short the `buyer'), M/s. Hira Lal Ramesh Chand dispatched 17 consignments of rugs and durries of the value of US \$ 4,06,096 between 15.3.1995 and 29.6.1995; and M/s. Ratan Chand Deep Chand dispatched 38 consignments of the value of US \$ 8,87,973 between 23.8.1994 and 4.7.1995.

The consignments were entrusted to M/s Overseas Container Line Inc., a non- vessel owning shipping Agent represented by its Agent Niranjant Shipping Agency (P) Ltd., for transshipment from Mumbai to Atlanda (USA). The Bill of Lading issued by

Overseas Container in regard to each of the consignment showed the consignee as "Unto order" and party to be notified as "Atlanta Rugs Inc."

All the consignments were insured by the consignors, with the New India Assurance Co. Ltd. The original documents relating to the consignments were forwarded by Niranjana Shipping to the Bankers of complainant - Punjab National Bank.

The complainants obtained credit facilities from Punjab National Bank by discounting the Bills and endorsed the Bill of Lading in favour of the said Bank. The said Bank, in turn, forwarded the original documents of title to its agent Sun Trust Bank (earlier known as Trust Company Bank) Atlanta, for collection, by endorsing the documents in their favour.

The buyer (Atlanta Rugs Inc.) did not make payment and obtain release of the documents of title. They therefore made efforts to contact the buyer and the shipping Agent- Overseas Container. They were also not able to locate them. Nor were they able to find out the whereabouts of the consignments. Therefore they telephonically lodged an oral claim with the insurer on 2.2.1996 seeking payment of the value of the consignments.

The insurer directed them to get in touch with their Surveyor-cum-Claim Settlement Agent at Atlanta -- M/s. Toplis and Hoarding Inc. They accordingly requested the said Surveyor to inquire and investigate the matter and issue necessary certificates.

The surveyor submitted their reports to the Insurer, but failed to furnish copies thereof to the complainants. Their claim was not settled by the Insurer for more than a year in spite of reminders.

Such failure amounted to deficiency in service and consequently the insurer became liable to pay the value of the consignments and the other amounts claimed, as compensation.