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CONTRACT OF INSURANCE AND CONTRACT OF INDEMNITY: A STUDY IN INDIAN SCENARIO

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CONTRACT OF INSURANCE AND CONTRACT OF INDEMNITY: A STUDY IN INDIAN SCENARIO GENERAL

Insurance is meant to protect men against uncertain events which may otherwise be of some disadvantage to them. If it is an assurance that a sum of money will be paid to the person insured if a particular event happened. Insurance business and the need for the insurance cover are growing with the growing complexity of life, trade and commerce, and consequently, there is now bewildering variety of insurance covers. But marine, fire, and life are the most common varieties of insurance. Whatever be the kind of the insurance or the risk insured against there are certain principles of insurance law so fundamental that they impinge upon every variety. Every contract of insurance, except life insurance is a contract of indemnity, every contract of insurance is a contract of absolute good faith and requires some insurable interest to support it, without which it will be a mere wager.

PROPOSAL AND ACCEPTANCE

Like every other contract, a contract of insurance is also concluded through proposal and its acceptance. In Hindustan cooperative Insurance society V. Shyam Sunder after an oral understanding to insurance and the completion of the medical examination the company informed the proposer that if he submitted the proposal forum and deposited the half- yearly

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premium, his proposal would be accepted. He accordingly submitted a cheque but had not yet replied to him their acceptance of the proposal that the proposer died. The question was whether by in cashing the cheque the company had accepted the proposal without there being any formal acceptance. Harris C.J., referred to the English authorities and said:

"Mere mental assent to an offer does not conclude a contract either under the Indian- Contract Act or in English Law. The offeror may, however, indicate the mode of communication acceptance either expressly or by implication both in India and English Law. In the case before us it is clear from the facts that the deceased indicated clearly that of the appellant accepted his proposal. The cheque should be appropriated towards the first premium and that such appropriation would conclude the bargain. The cheque was received on that implied understanding.

Where on the other hand the insurer had received the proposed from along with the first premium and it was still awaiting acceptance when the proposed died, no liability to pay arose.

It was immaterial that the groundwork for acceptance was the under preparation and the agent had assumed that the proposal would be accepted[2].

COMPETENCE OF PARTIES

Whose behalf the goods were insured was a minor and allowed the minor to recover the insurance money. A minor is allowed to enforce a contract which of some benefit to him and under which he is required A person who is not competent to enter in to a contract by reason of the provision in section 11 of the Contract Act 1872. can still be a beneficiary under a contract of insurance. A minor's property may be insured by persons competent to act for him.He would be entitled to recover the insurance money. The court rejected the defence of the insurance company that the person on to bear obligation[3].

The insurer has to be qualified for the job under the Life Insurance Act. 1956, the Life insurance business in India. The general insurance was privileged of the carrying on the life insurance business in India. The general insurance was the exclusive monopoly of the General Insurance

[2] LIC V Vasi Reddy, (1984)2 SCC 719, AIR 1984 SC 1014.
[3] Zafar Ahsan V Zubaida khatun, (1929)27AII LJ 1114.

Corporation under the General Insurance Business (nationalization) Act, 1972. But Development Authority Act, 1999. The Authority can grant a license for insurance business to now this exclusive monopoly has been ended under the Insurance Regulatory and others also.

FREE CONSENT

Where the consent of one party or the other has been induced by coercion, undue influence, misrepresentation or fraud or where both parties were consenting under a mistake of about an essential fact, the resulting contract would be voidable at the option-of the insurer under section 45 of the Insurance Act 1938 within the limits provided in the said section.

Where a 56 years old man got himself insured and died within 2 years of heart ailment. The life insurance corporation refused to pay on the ground that he suffered from diabetes and he did not disclose it, but the family doctor produced by the LIC as a witness could not give any information about the family, it was held that fraud was not proved. The court said that the insurance of a man of that age carried its own risks and the LIC had accepted with its eyes wide open[4]. Where a motor vehicle insurance policy was issued after due verification about the ownership of the vehicle, the company was not allowed, after an accident take place, the plea that the policy was obtained by a misrepresentation and that the claimant was not the owner of the vehicle. Where false, answers as to the state of health were given in a proposed for life insurance, the policy was held to be voidable and it was not material that the medical officer of the corporation had certified the life assured as good[5]. Where a person got his motor vehicle insured in the evening of the day on the morning of which the vehicle had met with an accident, the policy was held to be enforce, the duty of the insurer to check the vehicle notwithstanding.

LEGALITY OF OBJECT

Section 23 of the Contract Act, 1872 prescribes the requirement that the consideration for and the object of the agreement must be lawful. It has been held that there is nothing unlawful in a vehicle insurance policy providing that no compensation would be payable if the vehicle was being driven at the time of the accident by an unlicensed person or by a learning license

[4] Oriented Insurance Company Ltd. V GOVT. AIR 1994 Kant 29.
[5] Sarojan v LIC AIR 1986 Ker 201.

holder[6].Section 64-B of the Insurance Act 1938 prohibits the insurance from entering in to a contract-unless the premium is paid in the advance. The Court said that such a condition could be waived. Law does not help a person to recover anything under his own crime. "The fruit ofa crime are irrecoverable. No person is allowed to benefit from his own crime. It is on this principle that a person is not permitted to participate in a succession which he has brought about through murder. An insured person committed suicide to enable -his representatives to get the insurance money, but they were not allowed to recover. It was an attempt to confer a benefit through his own crime. This brought about an undeserved punishment of the representatives. This position was therefore, changed by the Suicide Act, 1961 [English]. The principle was again applied to prevent a person, who had taken out a policy in respect of liability for bodily injury caused by accident, from recovering but as a result of an unlawful and violent attack. Criticizing such results.

LIMITATION OF TIME

Another kind of agreement rendered void by the section is where an attempt is made by the parties to restrict the time within which an action may be brought so as to make it shorter than that prescribe by the Law of Limitation. According to the Limitation Act, for example, an action for breach of contract may be brought within three years from the date of breach. If clause in an agreement provides that no action should be brought after two years, the clause is void; thus,a clause in a policy of life insurance declaring that no suit to recover under this policy shall be brought after one year from the death of the accused." Was held void. Clauses in a standard from insurance policy curtailing limitation to 12 months of the occurrence of the event or 3 months of the rejection of the claim were not permitted to be invoked to bar claims fields within3 years. However, in a similar case before the Bombay High Court, a clause providing that "No suit shall be brought against the company in connection with the said policy later than of the agreement was not to limit the time but to provide one year after the time when the cause of action accrues". Was held valid, the court saying that the effect for the surrender of rights if no action was brought within that time. The case has been adversely criticized. But such clauses up held by the Supreme court. But that view seemed to have been affirmed by Supreme Court

[6] New India Assurance Co. Ltd. v Kesavan Ramamurthy, (1977) 2 Andh LT 446 (AP)

in Vulcan insurance company v Maharaja Singh. Where the court observed that " it has been repeatedly held that such a clause is not heat by section 28 of the Act and is valid." This was furthers affirmed in National Insurance Company v Sujir Vinesh Nayak and company[7].

PRINCIPLE OF INDEMNITY AND INSURANCE

Every contract of insurance, except life insurance, is a contract of indemnity and no more than an indemnity. The insurer undertaken, within the time limit of the obligation, to compensate the insured for his actual loss, but never to more than compensate to the extent to which the insured is indemnified. But no more than indemnified. The insured cannot make income out of insurance. Castellain v/s Preston[8] illustrates the operation of this principle:

A house was insured fire. The insurer then contracted to sell the house for a fixed sum, the contract containing no reference to insurance. After the date of the contract, but before the date fixed for completion, the house was damaged by fire and the insured received $ 330 from the insurer or indemnity against loss. The sale was afterwards completed, the vendor receiving the full agreed price without any abatement for the damage caused.

Doctrine in Marine insurance law of constructive total loss is adopted solely in order to carry out the fundamental solely in order to carry out the fundamental rule. It is a doctrine which is in favour of the assured because where the loss is not an actual total loss, but is what, as a matter of business is treated as equivalent to total loss, this rule is accepted to carry out the fundamental doctrines and give assured a full indemnity. Grafted on that doctrines come the doctrine of abandonment, which is only applicable to cases of constructive total loss and is introduced in favour of the under writer, so that they may have to pay more than on identity. So, its appear that there two doctrines were introduced in order to carry out the two limits of the fundamental doctrines, namely, that the assured shall get a full indemnity and that he shall get no more." Similarly, the doctrines of Subrogation have been introduced to carry out the fundamental rules of indemnity. Explaining this Brett LJ observed:

[7] (1997) 4 SCC 366. AIR 1997 SC 2049.
[8] [1833] 11 QBD380 at p. 386.

"It (the doctrine of the subrogation) was introduced in favour of the underwriter, in order to prevent their having to pay more thus full indemnity, not on the ground that the underwriter were sureties, for then are not so always, although their rights are similar to those of sureties but in order to prevent the assured recovering more than a full indemnity."

RELATION BETWEEN INDEMNITY AND INSURANCE

It has been noted above that section 124 recognize only such contract as contract of indemnity where there is a promise to save another person from loss which may be caused by the conduct of the promisor himself or by conduct of any other person. It does not cover promise to compensate for loss not arising due to human agency. Therefore, a contract of insurance is not covered definition of section 124. Thus, if under a contract of insurance, an insurer promises to pay compensation in the event of loss by fire, such contract does not come within the purviewof section 124, such contracts are valid contracts, as being contingent contracts as defined in section 31.

In United India Insurance co. v M/S Aman Singh Munshilal[9] the cover notes stipulated deliver to the consignment. Moreover, on its way to the destination the goods were to be stored in a go down and thereafter to be carried to the destination. While the goods were in the go down, the goods were destroyed by fire. It was held that the goods were destroyed during transit, and the insurer was liable as per the insurance contract.

CONCLUSION

Life insurance contract is, however, not a contract of indemnity, because in such a contract different consideration apply. A contract of life insurance, for instance, may provide the payment of a certain sum of money either on the death on a person or on the expiry of a stipulated period of time (even if the assured is still alive). In such a case, the question of amount of loss -suffered by the assured or indemnity for the same, does not arise. Moreover, even if a certain sum is payable in the event of death, since, unlike property, the life of a person cannot be valued, the whole of the amount assured becomes payable. For that reason, also, it is not a contract of indemnity.

[9] AIR 1958 SC 300

SUGGESTION

Indian Contract Act does not specifically provide that there can be on implied contract of indemnity. The Privy Council has, however, recognized an implied contract of indemnity also (Secretary of State v The Bank of India Ltd)[10]. The Law Commission of India in its report (13th report, 1958, on Indian Contract Act, 1872) has recommended, the amendment of the section, 124. According to its recommendation, "the definition of the 'contract of indemnity' in Section 124 be expended to include cases of loss caused by events which may or may not depend upon the conduct of any person. It should also provide clearly that the promise may also be implied." of the law of contract to be applied by the Courts in India or even any particular sub-division thereof. The Act of 1872 does not profess to be a complete code dealing with the law relating to contracts. The legislature, while enacting this Act, did not intend to exclusively codify the whole Thus, it has been held that section 124 and 125 of the Act do not lay down the whole of law of indemnity. As a result, on all matters on which it is silent, the courts have had to resort to title rules of English Common Law, as principles of 'justice, equity and good conscience'. I am of the opinion that this reliance on the principles of English law to supply the deficiencies of an Indian enactment is not conducive to certain or simplicity of the law. I think it is preferable to add to the Act the English Common law principles which have been applied by our Courts for nearly a century, so that it may not be necessary to refer to the English Law in many cases. The formulation of these Principles is thus one of the objects of the revision undertaken by me.

[10] AIR 1938 P.C 191

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