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Critical Analysis of Marine Insurance Policy in India

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Abstract

Marine insurance refers to the contract of indemnity which covers the loss/damage of ships, cargo, terminals, and includes any other means of transport by which goods are transferred, acquired, or held between the points of origin and the final destination. In the era of globalization, maritime transport plays a very crucial role in fostering trade and commerce. The transportation of high value goods through sea serves as one of the cost- effective modes of transportation. It is the backbone of international trade with most of the world merchandise trade by volume being carried by sea. In this context the maritime insurance becomes a significant component of international trade and commerce as it helps in mitigating risks associated with financial loss to the ship, goods or other movables in maritime transportation. In India Maritime Insurance is governed by the Marine Insurance Act, 1963. With the growth of industrialization and the liberalization of international trade, overseas exports and imports have increased and the shipping of goods by sea, river or other waterways has also increased. This has tended to raise the risk involved in maritime transport. Marine insurance provides a solution to the danger inherent with marine transport. Thus this paper focuses on the evolution and historical background of marine insurance and legislative approach of it.

Keywords

Marine Insurance, Sea, Globalization, Ships, Policy, Indemnity.

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Introduction

Insurance is a contract of reimbursement. In general, insurance is described as a contract, sometimes known as a policy. An insurance policy is a legal agreement wherein a person or organization receives financial security and reimbursement from the insurance company's insurer for any losses. To put it another way, an insurance policy serves as a safeguard against unforeseen loss or harm. Marine insurance provides protection against the loss of marine perils. Marine dangers include things like hitting a rock or ship, being attacked by opponents, getting caught by pirates, and burning. These risks result in non-payment of freight and damage, destruction, or disappearance of the ship and its contents[3]. Thus, ship, cargo, and freight are all covered by maritime insurance. The scope of marine insurance has been split into two sections: inland marine insurance and ocean marine insurance. Previously, only a few minor risks were covered. While the latter covers inland hazards that may occur with the delivery of cargo (gods) from the insured's go-down and may continue until the buyer (importer) receives the cargo at his go-down, the former only covers sea perils.

The expansion of industrialization and the liberalization of global commerce have led to a rise in both imports and exports from outside as well as in the transportation of commodities by river, sea, and other waterways. As a result, the danger associated with marine transportation has increased. One way to mitigate the risk associated with maritime transportation is through marine insurance. Maritime insurance is therefore subject to a number of international rules and regulations as it is a crucial component of global trade. India's maritime insurance laws are governed by the maritime Insurance Act of 1963. With the necessary modifications to fit the Indian economy, this legislation is a considerable replica of the English statute of 1906. The fundamental concept of a marine insurance contract is that the insured party's monetary losses under the contract should be used as the amount to be recovered from the insurer. As a result, a marine insurance contract is one in which the insurer agrees to compensate the insured for losses resulting from nautical adventure, or marine damages. Every marine insurance policy is an indemnification contract[4].

[3] https://www.freightnews.co.za/article/ftw-pick-climate-change-could-cost-marine-insurance-industry-millions

[4] Macura v. Northern Assurance Co [1925] AC 619

Historical Background of Marine Insurance Policy

Marine insurance has existed for a long time. The fact that it exists dates back countless 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. Contrary to popular belief, Lloyds of London was not the first group of people to offer insurance for maritime commerce. The first form of marine insurance dates back to the year 3000 BC when Chinese merchants dispersed their shipments amongst several vessels so as to curtail the possibility of damage to the product(s). 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.

The 11th century until the 18th century saw a few more developments in maritime insurance. In 1132, the Danish started paying back those who had been lost at sea. In order to compensate for losses resulting from piracy, spoiling, or waste, the Merchant State of Venice pooled "insurance premiums" for the first time in 1255. In an effort to protect fabric bales sailing from Pisa, Italy to Savona, the first maritime insurance policy was created in 1384. Lombard merchants established the first insurance business in London within the next century. Ultimately, the hazardous field of insurance underwriting was started in 1688 by Lloyd's of London, which was founded in honor of Edward Lloyd. It began as a coffee shop in London and has since expanded to become the world's biggest insurer of marine insurance.

Both inside and outside of its oceanic borders, India has a long history of maritime trade. Numerous historical records assert that in the past, a large number of traders and merchants traveled to India in order to trade goods and services, and vice versa. There are a lot of laws, rules, and regulations in this industry. Following independence, the Indian government carefully considered passing a number of laws and regulations to guarantee effective and safe marine trade. The Colonial Government enacted a number of laws, including the Indian Ports Act of 1908, the Indian Merchant Shipping Act of 1923, the Inland Steam Vessels Act of 1917, the Coasting Vessels Act of 1838, the Merchant Seamen (Litigation) Act of 1946, the Control of Shipping Act of 1947, the Merchant Shipping Laws (Extension to the Acceding States and Amendment) Act of 1949, and others.

The prevalent Indian system did not align with any of the aforementioned laws and ordinances. In order to enhance the current coastal commerce practices, the government passed new laws and regulations after independence. In addition to the aforementioned Acts, between 1823 and 1940, British lawmakers passed a number of laws and legislation that governed several facets of the Indian shipping industry, such as salvage, seafarer certification, ship liability, owner safety, and line conventions, among others. The High Courts in Madras, Bombay, and Calcutta were given the authority to try and decide issues pertaining to the Shipping and Admiralty Acts in India. Even after India gained its independence, the colonial authorities retained authority over the Admiralty Courts of India.

Legislative Approach

Marine insurance is defined under Section 3 of the Marine Insurance Act, 1963[5] as 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. To put it simply, marine insurance is a contract that shields the insured from losses in inland waterways or any land risk that can arise during a maritime cruise. The Act requires that the marine insurance contract be included in a policy. The official documents that often comprise the terms of a contract under marine insurance legislation are "the policy" and "the slip." A "covering note" is an informal memorandum that is created at the time of contract entry. Given its nature and use, it is important to remember that marine insurance is a unique kind of insurance rather than a generic one. A maritime insurance policy in India must be precisely drafted in accordance with the Act; otherwise, it would not be acceptable as evidence. Furthermore, because marine insurance, like all insurance, is founded on the principle of "uberrimae fidei," or the utmost good faith, the assured is required to provide the insurer with all relevant information about the subject matter guaranteed, and the insurer has the right to cancel the marine insurance contract if the assured fails to do so. Since marine insurance is fundamentally an indemnity contract, the insurance provider is only responsible for the actual losses or damages incurred by the policyholder. But the insurer cannot be held accountable for every single loss. According to the Act, a marine hazard must be the cause of the loss of an insurable property[6].

India's civil and consumer courts, which possess the necessary monetary and territorial jurisdiction, can hear cases involving marine insurance. Nonetheless, the disagreement will be resolved by arbitration if the marine insurance policy has an arbitration clause.

Its foundation is the highest good faith, which requires disclosure from both the insured and the insurers. It's a "Indemnity" contract, meaning the insured can only get their money back.

[5] India Marine Insurance Act, 1963.https://www.indiacode.nic.in/bitstream/123456789/1520/5/A/1963-11.pdf

[6] Kyriaki Noussia The Principle Of Indemnity In Marine Insurance Contracts (Springer company, Berlin),5th edu(2007)

the precise amount of the insurer's loss. Features of marine insurance includes offer and acceptance, payment of premium, contract of indemnity, utmost good faith, insurable interest, contribution. Period of marine insurance. Deliberate act, claims. Marine Insurance Act, declares void all marine insurance policies where insurable interest[7] 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.

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. 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 detentionthereof. 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 consequences 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 benefitby 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". Noris 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.

The Supreme Court in Peacock Plywood (P) Ltd. vs. Oriental Insurance Co. Ltd.[8] 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. A claim by way of constructive total loss on account of a ship being stranded

[7] http://www.staff.ul.ie/greenfordbclaims/Lecture17 Insurable interest.ppt.
[8] 2006(12)SCC673

on sea on account of its unseaworthiness was maintainable, although the goods themselves were not damaged.

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 andgetting 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.

In New India Assurance Co. Ltd. vs. Hira Lal Ramesh Chand & Ors[9] this court described a marine policy as follows: Marine Insurance is a contract whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed, against marine losses, that is to say losses incident to marine adventure. The instrument in which the contract of marine insurance is generally embodied is called a policy. The thing or property insured is called the subject matter of insurance and the assured's interest in that subject matter is called his insurable interest. That which is insured against is the loss arising from maritime perils and casualties, and these are called the perils insured against or the losses covered by the policy. When the insurer's liability commences under the contract, the policy is said to attach; or in other words, the risk is said to attach or to begin to run from that time. A marine insurance cover applies to the shipment and if the shipment reaches the destination, in a safe and sound condition, no claim can arise against the insurer. A contract of marine insurance may, however, by its express terms or by trade usage, be extended so as to protect the assured against losses on inland waters or against any land risk which may be incidental to a sea voyage. Warehouse risks, combined with voyage and other marine risks, are considered as part of marine insurance policies in India. Hira Lal (supra), this Court, after considering Section 4 of the Marine Insurance Act, held as follows: “. In view of the insurance cover extending `warehouse to warehouse' the consignments are covered by insurance not only during the sea journey, but beyond as stated in the policy. Therefore, the contention of the insurer that the insurance cover is available only in regard to maritime perils that is perils relating to or incidental to the navigation of the sea may not be correct. Having regard to Section 4 of the Marine Insurance Act and the terms of the policy undertaking insurance cover against wider risks, the policy of insurance would cover the loss not only while goods or navigating the sea but also any loss or damage during transit from the time it leaves the

[9] (2011)4SCC231

consignor's warehouse till it reaches the consignee's warehouse. The cover against risks will however cease on the expiry of 60 days after discharge of the consignment from the vessel at the final port of discharge, if the goods do not reach the consignee's warehouse or place of storage for any reason within the said 60 days."

Given these resources, it is evident that the STP strategy was a maritime strategy that addressed all aspects of transportation, transit, journey, and warehousing hazards. The policy's language and other explicit provisions make it clear that all risks, including marine hazards, were covered. In actuality, distinct restrictions were given for "retail locations," and Clause 6 also included dangers associated with warehouses. In this instance, the cover unmistakably and explicitly mentioned maritime hazards. It was a marine cover as a result. The SFSP Policy, which was a contract between the parties, specifically anticipated a scenario in which the insurer would not be held accountable if Levi (or someone acting on its behalf, such as the parent company in this instance) was entitled to make a claim under a marine policy in the event that an insurance risk materialized.

Conclusion

The aim of marine insurance was to encourage the ship's owner and the buyer and seller of goods to operate their respective business while at least to an extent relieving themselves of the burdensome financial consequences of the loss or damage to their property as a result of the numerous threats of the high seas. To put it another way, marine insurance provides a crucial component of financial security to guarantee that the potential for shipping-related mishaps does not impede international trade. The Indian economy benefits greatly from maritime insurance, but it is also crucial that all terms and conditions are followed in order to eliminate any potential future misunderstandings[10].

It is always possible that the insured is taking advantage of the insurance contract by arguing that the losses were either miscalculated or misconceived. Therefore, there shouldn't be any ambiguity in the indemnification computation. It is well-founded that prior to the Indian Marine Insurance Act of 1963 taking effect in India, the courts followed English law, namely the Marine Insurance Act of 1906. Therefore, it is reasonable to presume that Indian law is a

[10] R. Sinde, Development of law relating to Marine Insurance in India, (April 30, 2011)1.html (last visited on 26th February, 2025)

direct descendant of its English equivalent. If this is not the case, it is appropriate to examine case law between the two nations in order to determine the truth.

Marine insurance has always been more popular than its peers, mainly because of the persistent and comparatively larger number of threats faced by marine transport. With the deteriorating conditions of the environment, and an upward trend of cyclones and hurricanes forming in seas in recent years, no one can foresee the potential risks to marine transport. In this vast pool of uncertainties, the only certainty cargo and ship owners have is of the compensation by way of insurance, as the law in India mandates all the people engaged in commercial transport to buy an insurance policy suitable to their business. Marine insurance has an impressive array of policies, which cater to the needs of almost all of the business owners and people associated with a particular shipment or consignment. It ensures that not even the smallest intermediary is left with losses due to events out of their control. However, irrespective of the benefits it provides, marine insurance is not void of limitations, drawbacks, and loopholes. Therefore, it is always advised to the people buying a marine insurance policy to determine their needs before they make any agreement with the insurer.

References

Articles from journals

- Mukul Sharma & Abinas Agrawal Marine Insurance: The Legal Instruments Guiding ItIn The Economic Market International Journal Of Law
- Amiran Bakshayesh ISA & Bariklou Alireza - the Principle of Indemnity In InsuranceLaw Majlis & Rashbord

Websites

- https://www.sid.ir/en/journal/ViewPaper.aspx?id=466006
- https://legal-dictionary.thefreedictionary.com/subrogation
- https://www.iedunote.com/types-of-marine-losses
- http://www.legalservicesindia.com/article/article/development-of-laws-relating-to-marine- insurance-inindia-654

Books

1. The law of marine insurance in India-Ambalal b. Gandhi
2. Marine insurance its principals and practice-William D. winter

3. Guide to Marine cargo insurance -Marine cargo Technical Department. The New Indiainsurance company limited
4. Marine jurisdiction and admirality law in India- Someshwar Mahanty
5. The law relating to marine insurance-B.C. Mitra
6. Indian Insurance Guide by Dr. L. P. Gupta
7. Modern Law Insurance in India Dr. K.V.S. Sarma

Table of Cases:

1. Ricards v. Forestal land, Timber and Railways co [1941]3A11ER62, HL.
2. Lufeng shipping company Ltd v. M.V. Rainbow Ace 2014 (4) BOMCR 241
3. Fisk v. Masterman (1841)8M&W165
4. Macura v. Northern Assurance Co [1925] AC 619

Acts

1. Marine Insurance Act 1906
2. Marine Insurance Act 1963
3. Insurance Act 2015
4. Consumer Protection Act 2019
5. Civil Procedure Code 1908

List Of Statues Referred:

- The Indian Marine Insurance Act, 1963-3,6-9 29, --56-57,60,64,79-80.

List Of International Statues Referred:

- The Marine Insurance Act, 1906-7-9,21-23,30-35--38-43,65-66.
- The Marine Insurance Act, 1745--6,31,42-43
- The Marine Insurance (Gambling Policies) Act 1909--8,24,31,43