CONTRACT OF INDEMNITY

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Abstract

A contract is an agreement enforceable by law. Indemnity is making good of a loss. Contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. Most contracts of insurance belong to the general category of contracts of indemnity. A contract of indemnity is a special type of contract, such as marine insurance, fire, etc. On the other hand, the contract of insurance which is not contract of indemnity, such as life insurance, personal accident insurance and sickness insurance. In all contracts of insurance, whether marine or non-marine, which are contracts of indemnity, the insurer is entitled to be subrogated to the rights of the assured and to a contribution from other insurers where he has paid the whole of the loss or more than his proportionate share of it.

Key words: "indemnity", "making good", "contact of indemnity", "subrogation" and "contribution"

Introduction

Some contracts of insurance are in the nature of contracts of indemnity and some are not. In the case where the contract of insurance is not a contract of indemnity, the amount recoverable is not measured by the extent of the assured's loss, but is payable whenever the specified event happens, irrespective of whether the assured in fact sustains a pecuniary loss or not, as in the cases of life insurance, personal accident insurance and sickness insurance. On the other hand, the amount recoverable is measured by the extent of the assured's pecuniary loss in the case of a contract of indemnity.

Indemnity is compensation for damage or loss. In the legal sense, indemnity may also refer to an exemption from liability for damages. The concept of indemnity is based on a contractual agreement made between two parties, in which one party agrees to pay for potential losses or damages caused by the other party. The principle of the contract of indemnity is the

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cardinal principle upon which the whole contract is founded, and from which the rules relating to the right of claim under a policy emanate.

According to the principle of indemnity, an insurance contract is signed only for getting protection against unpredicted financial losses arising due to future uncertainties. An insurance contract is not made for making profit else its sole purpose is to give compensation in case of any damage or loss. In an insurance contract, the amount of compensations paid is in proportion to the incurred losses. The amount of compensations is limited to the amount insured or the actual losses, whichever is less. The compensation must not be less or more than the actual damage. Compensation is not paid if the specified loss does not happen due to a particular reason during a specific time period. Thus, insurance is only for giving protection against losses and not for making profit. However, in case of life insurance, the principle of indemnity does not apply because the value of human life cannot be measured in terms of money.

The right of subrogation and contribution are corollaries of the principle of indemnity. The rights and liabilities of the parties are dictated by this basic concept, and the amount recoverable by the assured, which is measured by the extent of his pecuniary loss, is also governed by it. According to the principle of subrogation, when the insured is compensated for the losses due to damage to his insured property, then the ownership right of such property shifts to the insurer. This principle is applicable only when the damaged property has any value after the event causing the damage. The insurer can benefit out of subrogation rights only to the extent of the amount he has paid to the insured as compensation. The contribution is, similar to subrogation, to prevent the assured from recovering more than the whole loss. Therefore, if the assured recovers the whole loss from one insurer which he could have recovered from the other, the insurers are permitted to contribute rateably.

Nature of the Contract of Indemnity

Indemnity is defined as "protection against damage or loss, especially in the form of a promise to pay for anything that happens".[1]

Contract of indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.[2]

Most contracts of insurance are contract of indemnity. All contracts of insurance are contingent contracts. A contingent contract is a contract to do or not to do something if some event, collateral to such contract, does or does not happen. Contingent contracts cannot be enforced by law unless and until that event has happened.[3]

One basic feature governing an insurance contract is that the contract is made with reference to the occurrence of a specified event, the occurrence of which is uncertain. This forms the fundamental basis of the contract. It insures against the possible occurrence of a specified event.[4]

The fundamental characteristic found in all insurance contracts, namely, that the contract is made with reference to the occurrence of an uncertain event, is not a characteristic unique to insurance contracts but is also found in other types of contracts. A contract which shares this common characteristic is a contract of wager. In essence, there is very little to distinguish an insurance contract from a wagering contract. If the assured has no interest whatsoever in the marine adventure, the contract which he has entered into will be deemed to be by the way of gaming or wagering.

If a policy is silent as to how an insured is to be paid, the courts will generally apply the principle of indemnity. In practice, an insurance policy will expressly provide that an insurer agrees to indemnify an insured for the insurer's liability. Thus, an insured who sustains a loss under an insurance policy is entitled to be indemnified by the insurer.

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1 Oxford Advanced Learner's Dictionary, 7th Edition, 2005.
2 Section 124 of the Myanmar Contract Act, 1872.
3 Section 32 of the Myanmar Contract Act, 1872.
4 Poh Chu Chai, General Insurance Law, Singapore, Utopia Press Pte Ltd, 1st Edition, 2009, p.3.

One of the underlying principles of insurance law is the doctrine of "Proximate Cause". The application of the doctrine will vary according to whether the issue to be decided is "the loss was caused by a peril insured against" or "the loss was caused by an excepted cause".

The law on the subject of causation in marine insurance, as contained in the Marine Insurance Act 1906, states that "subject to the provisions to this Act and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, as subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against."[5]

According to *Chalmers,*it should be noted that by "proximate" cause is not meant the latest, but the direct, dominant, operative and efficient one. If this cause is within the risks covered, the insurers are liable in respect of the loss, if it is within the perils excepted the insurers are not liable. A loss may be the combined effect of a whole number of causes, but for the purposes of insurance law, one direct or dominant cause must wherever possible be singled out. The time honoured *maxim causa proxima non remota spectatur* must be understood to have this meaning.

Marine insurance is a contract of indemnity and the amount of indemnity is a matter of agreement between the parties. When a loss takes place, the sum which the assured can recover is called the measure of indemnity which will vary according to the nature of the loss. The assured must have an insurable interest in the subject-matter insured. In a contract of marine insurance the underwriter undertakes, in consideration of a premium, to indemnify the assured against loss occasioned by peril incident to a marine adventure. In order to measure the indemnity, especially with regards to the doctrine of proximate cause, forms of loss and valued or unvalued policy have to be considered.

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[5] Section 55 (1), of the Marine Insurance Act, 1906.

Main Types of the Contract of Indemnity

The basic concept of a contract of marine insurance is expressly provided in section 1of the Marine Insurance Act 1906 as follows;

"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."

This section defines "in manner and to the extent thereby agreed" is to give effect not simply to an agreement but to the exact intentions of the parties to that agreement so far as they can be ascertained on the true construction of the contract. This will depend partly on the application of general principles and rules of contractual construction. But that will be subject to at least two particular qualifications.

First, the particular principles and rules of the law of marine insurance apply, as does the general law of insurance so far as it does not differ. Secondly, since there is widespread use in the area of marine insurance contracts of a familiar range of specific standard forms, individual contracts will be, and will have the advantage of being, construed in the light of previous judicial interpretations of the standard clauses incorporated.[6]

The view of Dr. Susan Hodges upon the definition of the contract of marine insurance should be noted. She said:

"The operative word here is 'indemnity'. A contract of marine insurance is essentially a contract of indemnity. This is the cardinal principle upon which the whole contract is founded, and from which the rules relating to the right of claim under a policy emanate. The rights and liabilities of the parties are dictated by this basic concept, and the amount recoverable by the assured, which is measured by the extent of his pecuniary loss, is also governed by it. The very purpose of effecting a policy of insurance, marine or non-marine, is for indemnity of loss."[7]

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[6] F.D. Rose, Marine Insurance: Law and Practice, 2nd Edition, Routledge, 2013,p.8.

[7] Susan Hodges, Law of Marine Insurance, Great Britain, Cavendish Publishing Ltd., 1996, p.1.

Marine insurance is considered one of the oldest of the many forms of commercial protection. The contract of indemnity is the key principle of marine insurance and judges have used this principle confidently in solving many marine insurance problems. In insurance law, the indemnity principle operates to ensure that an insured is fully indemnified for a loss. The principle is also applied to prevent an insured from making a profit from his own losses.

The foresaid remark that the assured shall not be more than fully indemnified was confirmed in *Castellian v Preston*[8]where a house was damaged by fire whilst it was in the process of being sold, the vendors not only received an indemnity from their insurers, but also, later, despite the fire, the full amount of the purchase money from the buyers. Not unreasonably, the underwriters sought from the vendors a return of the payment they had made to them on the basis that they, the vendors, had, in fact, suffered no pecuniary loss. In this, the insurers were successful.

In above case, Mr Justice Brett said that "the contract of insurance contained in a marine or fire policy is a contract of indemnity and of indemnity only, and this contract means that the assured, in case of a loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified".[9]

Insurer's rights on Contract of Indemnity

Right of Subrogation

All contracts of indemnity may be subjected to subrogation which basically, means substituting one creditor for another. In contracts of marine insurance, once the insurer has paid the assured a claim in respect of a loss he is subrogated to all the rights and remedies of the assured. There rights and remedies relate to compensation or recover from third parties for loss caused by them. Following a total loss he may also take over what remains of the property, but in the event of a partial loss he acquires no proprietary interest in

[8] (1883) 11 QBD 380.

[9] Susan Hodges, Cases and Materials on Marine Insurance Law, London, Cavendish, First Publishing, 1999, p. 5.

the property. This means that irrespective of the kind of loss, the insurer is entitled to recover no more than he has paid.

Although the right of subrogation is a statutory right which the insurer is entitled to upon indemnifying the assured, it could be that issues might arise regarding the insurer's right to recovery from a third party. Therefore, insurers usually require a letter of subrogation from the assured authorizing them to institute proceedings to effect recovery in the name of the assured, but at their expense.

The right of subrogation is for the insurer to "stand in the shoes" of the assured in order to recover the whole or part of the claim paid from the party, other than the assured, responsible or partly responsible for the accident causing the loss. In other words, subrogation means substituting one creditor for another. Additionally, the insurer is also entitled to succeed to any contractual rights the insured has against a third party. Subrogation rights are acquired by the insurer for all losses paid whether they are total or partial losses but the insurer who pays a partial loss acquires no proprietary rights.[10]

Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.[11]

Where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to the Act, by such payment for the loss.[12]

There is a clear distinction between total loss and partial loss. In both kinds of loss, underwriters are subrogated to all the rights and remedies of the

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[10] James A.O' Shea, Marine Claims, Redwood Press Ltd, London, 1991, p. 3/6.

[11] Section 79(1) of the Marine Insurance Act, 1906.

[12] Section 79(2) of the Marine Insurance Act,1906.

assured, but following a total loss the underwriters may also take over what remains of the property. In the event of partial loss, however, they acquire no proprietary interest in the property. It appears from section 79 that a further distinction is drawn between total and partial losses, in that sub-section (2) limits the right of subrogation for partial losses to in so far as the assured has been indemnified by such payment for the loss. No such limitation appears in sub-section (1) relating to total losses, and, therefore, by inference, it does not apply to total losses, but this view has been rejected by the courts. Whilst the insurer is entitled to recover, by way of subrogation, damages from a third party in respect of a partial loss, such subrogation rights do not extend to cover compensation for which he has not paid a claim.

In *Wong v Utah Home Fire Ins Co*[13]*;* the rights to which underwriters are entitled on payment of a total loss are of two kinds: rights of ownership (by abandonment) of whatever remains of the subject matter insured, and rights against third parties (by subrogation). There is no obligation on the part of underwriters to exercise these rights and sometimes it is not to their advantage to do so. If rights of ownership are exercised by underwriters, they must also take over any liabilities which attach to the property. An example of this would be the liability of removing a wreck the cost of which might prove to exceed the value of the wreck. Where an insurance company pays a loss in full and assumes control of the vessel, the insurance company becomes the owner of the vessel, just as a purchaser who buys the wreck from the owner after the disastrous event.

Therefore, it can be seen that by abandonment insurers can make a profit if they sell the remains of the subject-matter insured for more than the insured value, but by subrogation they are entitled to keep only up to the amount to which they have indemnified the assured. As the issue of abandonment cannot arise in the case of a partial loss, there is no prospect to the insurer of acquiring any proprietary rights. This is confirmed as follows:

In the event of a partial loss, the only rights and remedies conferred on the insurer are in respect of that portion of the loss for which the insurer has

[13] (1960) AMC 649.

indemnified the assured. The insurer has no proprietary rights in any part of the subject-matter remaining.

An insurer's right of subrogation constitutes a legal right but the right is legally enforceable only with equity assistance. A right of subrogation accrues to a person who indemnifies another under an indemnity contract. Under his right of subrogation, an insurer is entitled to every right an insured has against a third party including rights in contract and tort. An insurer can exercise his right of subrogation by either suing a third party in an insured's name or taking an assignment of the insured cause of action.

An insurer's right of subrogation arises after the insurer accepts liability or indemnifies an insured for an insured loss. If an insurer does not settle an insured's claim but disputes the claim, no right of subrogation accrues to the insurer. An insurer's right of subrogation is an implied contractual right at common law but this right is only enforceable with equity's assistance. An insured owes a duty not to undermine or jeopardise an insurer's right of subrogation. An insurer right of subrogation is prejudiced if an insured voluntarily gives up his contractual or tortious rights against a third party or admits liability to the third party.

Right of Contribution

The right of contribution applies to all contracts of indemnity, if the insured has taken out more than one policy on the same subject-matter. According to this principle, the insured can claim the compensation only to the extent of actual loss either from all insurers or from any one insurer. If one insurer pays full compensation then that insurer can claim a proportionate claim from the other insurers. So, if the insured claims the full amount of compensation from one insurer then he cannot claim the same compensation from the other insurer and make a profit. Secondly, if one insurance company pays the full compensation, then it can recover the proportionate contribution from the other insurance company.

Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under the contract.[14]

According to this section, the phrase "for which he is liable under his contract" means whether this refers to his maximum potential liability in respect of any one loss, or to his independent actual liability in respect of the particular loss.

In case of double insurance, each underwriter is bound to contribute with the other underwriters and if one of the insurers has paid more than his proportion of the loss, he is entitled under section 80(2) to maintain an action for contribution against the other insurers. In this regard the Act states that:

"If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt."[15]

Where an assured is over-insured by double insurance under valued policies, he may in the event of a total loss either recover in the first place from the policy with the larger agreed value and make no claim under the other policy or he could obtain payment in full under the policy with the lower agreed value and give credit for the amount so recovered and claim the balance of the insured value under the other policy.

When the same risk is insured by two or more insurers and an insured loss is fully paid by one insurer, he is entitled to contribution from the other insurers who have not paid. An insurer's right of contribution is not based on contract but arises from principles of equity that persons who are liable for the same loss should contribute equally toward the loss.

An insurer's right to claim contribution from another insurer arises only if there is double insurance, where the risk insured and the person insuring are the same. An insurer has no right to contribution if the persons insuring the risk are different even though the risk insured may be the same.

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[14]Section 80(1) of the Marine Insurance Act, 1906.
[15]Section 80(2) of the Marine Insurance Act, 1906.

In *North British and Mercantile Insurance Co v London, Liverpool and Globe Insurance Co*[16]*;* goods in a warehouse were insured by their owner, and also by the warehouseman to cover his liability *vis-à-vis* the owner. The goods were destroyed and the owner's insurers paid the policy money. They then sued the warehouseman's insurers for a refund of what they had paid the owner of the goods.[17]

Held that the action succeeded, and the defendants' contention that they need only contribute a proportion failed. This was a case of subrogation, not contribution. The insurer had to pay what without the insurance his assured would have been legally bound to pay, and since the warehouseman was liable to the owner of the goods, his insurers were liable to compensate the insurers of the owner.[18]

Contribution occurs where the same assured insures the same interest with more than one insurer. The contribution is, similar to subrogation, to prevent the assured from recovering more than the whole loss. Therefore, if the assured recovers the whole loss from one insurer which he could have recovered from the other, the insurers are permitted to contribute rateably.

An insurer is only entitled to contribution from a co-insurer if both insurers are on risk at the time of the loss. If only one insurer is on risk at the time of the loss, there is no right to contribution. When a risk insured by two or more insurers is for the same amount, the extent of insurer's liability is easily ascertained by applying the equality principle. This principle is difficult to apply when the levels of liability assumed by the insurers are different.

Issues on Contract of Indemnity in Myanmar

Issues on Marine Insurance

With regard to the marine insurance in Myanmar, ship and freight covers can be acquired only at Myanma Insurance. Marine Cargo is permitted to private insurance companies. Institute Cargo Clause (C) (1.10.82) is used for marine cargo and Institute Time Clause Hull (1.10.83) is used for ships.

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[16] (1877) 5 Ch D 569.

[17] NJJ Gaskell, C Debattista and RJ Swatton, Chorley and Giles' Shipping Law, London, Pitman Publishing, 8th Edition, 1987, p.544.

[18] Ibid.

The following events illustrate the current indemnity issues in marine insurance in Myanmar.

In 2016, the Alternator of the No/1 Generator of the "M.V Myit Kyi Na" burnt out at port of Myeik during the time of manoeuvring while G/E 1 and G/E 3 were running in parallel and were fully loaded. It was noticed that sparks and smoke were being emitted from the Alternator. Then generators were stopped and urgent extinguishing of the sparks and flame was carried out with fire extinguishers. The inspection showed a fault in the winding of the alternator.

The damage survey carried out on No. 1 alternator showed that

(1) the stator winding burnt out and damaged

(2) the rotor winding needed to be serviced

The above damaged items needed to be repaired or renewed at the earliest occasion or opportunity.

In this event, the vessel was fully loaded. Over loading is a question of fact and this fact is not included under the heading of the "perils of the sea" in the policy (1.10.83) according to the surveyor's report. So, the insurance company was not liable to pay for the cost of repair of the engine.

In 2015, the "M.V Dawei" whilst discharging a break-bulk cargo of cement in bags, suffered damage to her No. 1 Crane by the rough handling, carelessness and negligence of the stevedore.

According to the surveyor's report, both right jibs and left jibs were damaged which came into contact with No. 2 Crane while swinging outboard with the cargo sling.

In this event, the damage was caused by the negligence of the stevedore according to the surveyor's report, the master's report and the deck log book entry. The negligence of the stevedore was not covered by policy (1.10.83). So, the insurer was not liable for this damage.

In 2013, the "M.V Han Lin" lost her starboard side anchor & chain whilst alongside at Sulae Port when the ship's bow passing a buoy in strong currents and with insufficient main engine power was unable to control the starboard anchor chains which came out forcefully. A starboard chain 10 shackle was parted from the end of the chain locker and lost in the river.

In this case, according to the surveyor's report the loss of the starboard side anchor & chain 10 shackle was due to the strong current and insufficient main engine power. The case of, "strong current" is contained as the "perils of the sea" under clause 6.1 of the policy (1.10.83). Also, normally, if insufficient ship's engine power is due to unseaworthiness, it is excluded in the policy but in this instance, it was not expressly excluded in the policy. However, there were two chains of events; strong currents and insufficient engine power. The cause of loss in this case was due to strong current because if there has not been a strong current, there would have been sufficient engine power. Thus, the insurer was liable to pay compensation for the loss.

According to the above events, "proximate cause of loss" is the question of fact which was settled by the surveyor's report and the master's log book. Myanmar's marine insurance conflicts are settled according to the marine surveyor's report on the findings that refer to the Marine Insurance Act 1906 and to the British Common Law.

Issues on Fire Insurance

A fire insurance policy is also based on the contract of indemnity. According to the principle of the contract of indemnity, subrogation and contribution are applied in fire insurance. In Myanmar, fire insurance cover is popular one among insurance covers. There have been some disputes between the assured and the insurance company.

In 2015, an oil mill in HlaingTharYar Township, Yangon was damaged by fire due to the overheating of the straw stove. The insured machinery was totally lost but raw materials were partially lost. The depreciation value of raw materials and the cost of hiring the adjuster are questions of fact in this event. Finally, without hiring the adjuster, the insurance company and the assured negotiated to pay the depreciation value of raw materials according to the list of goods, the insurance company and the coinsurers agreed to proportionately contribute to the compensation between them.

In this event, it has been noted that the method of adjustment of the depreciation of goods is a question of fact. Other questions which arise are how to confirm the cause of the fire and how to apply the right of subrogation. Here, the company did not hire an adjuster because the adjuster's fee is very expensive. Instead, they negotiated the amount of depreciation according to the contract. The cause of the fire was confirmed by the police station and fire station report.

Two years ago, one of the supermarkets in Yangon was damaged by fire. This supermarket was insured under a valued policy. The fire was caused by a child, according to the fire station and police station report. The assured claimed his insurance cover for damage. A conflict arose between the supermarket and the insurance company regarding a difference in the depreciation value. They hired the services of an adjuster company to settle the matter. Finally, the insurance company compensated the supermarket for the damage according to the assessment of the adjusters.

In this case, not only the supermarket's depreciation value but also the adjuster fee was proportionately contributed to by the original insurance company and six coinsurers.

It has been noted that, in the above case involving fire insurance in Myanmar, the source of fire was confirmed by the approval letter of the fire station and the police station and the issue of assessment of the depreciation value of the building was confirmed by the adjusters's decision. The right of subrogation did not apply because the person who caused the fire was a minor, according to official reports.

In 2015, one of the houses in Chan Aye Thar Zan Township in Mandalay caught fire through the short circuit of an electric wire of the house next door. The owner of the house did not lose the whole house but some of the rooms were destroyed by the fire. The source of the fire was confirmed by the police station and the fire station. The insurance company paid the value of the depreciation of the house to the owner.

In this case, the depreciation value of the house was decided by the engineers of the insurance company. The cause of the fire was confirmed by the official records.

According to the above events, the most common issue found in fire insurance cases in Myanmar is the adjustment of depreciation which is settled by hiring adjusters or by negotiation. Actually, the amount of depreciation is the indemnity for loss. So, it should be settled by the principle of the contract of indemnity. But, there are some difficulties in using the applicable law and precedents.

Issues on Comprehensive Motor Insurance

In Myanmar, if different persons insure their cars in different insurance companies and there is a loss or damage, they apply the Knock for Knock agreement for convenience of prosecution. Knock for Knock means insurance companies are liable to their insured car. They do not prosecute each other whether they may be at fault or not. The following events show issues on prosecution of comprehensive motor insurance.

A motor accident occurred in Kalay, in March 2017, at Yan Choon Hill while the driver of the vehicle was sending rocks from Kalay to Kalaywa. The Car was insured under a valued policy and was being driven by the owner. While driving along the hillside, something went wrong with the engine and the car fell off the cliff. The car driver, the assured, died. The insurance company paid his family for the total loss of the car and took over the proceeds of the damaged car.

In this event, the insurance company applied the right to ownership by abandonment according to the principle of contract of indemnity.

Another event of a motor accident happened in Hmawbe, Yangon in 2016. The accident was caused by the car driver of the car braking suddenly. So, the car behind, the insured car, could not control its speed and collided with the car in front. The assured had insured his car with an undervalued policy. The undervalued agreement was contained a comprehensive motor insurance policy. The value of the insured's car was 250 lakhs but the insured value was equal to 70 % of the actual value of car. The cost of repairs was 19 lakhs. The insurance company actually paid to the assured only 1,330,000 ks, which was 70 % of the actual value of the insured car.

Therefore, the assured did not receive the entire pecuniary indemnity covering his loss.

In 2015, an insured car was damaged in a headon collision. This car did not have a car registration licence and neither did the driver have a licence. But the assured and the driver of the other car came to an agreement for the other driver to pay the assured a compensation of 120 lakhs. The insured value of car was 120 lakhs. The insurance company paid a total loss of 120 lakhs to the assured. The driver who was at fault did not pay the compensation. The insurance company did not directly sue the wrongdoer for compensation. So, the insurance company requested to the assured to sue the other driver for payment of the agreed compensation. As the compensation for damage is a civil action, the cost of court and other lawyer fees would have amounted to more than the amount of compensation. Finally, the wrongdoer paid the insurance company 15 lakhs instead of 120 lakhs.

The insurance company had paid the total loss but could not sue the wrongdoer directly, due to a question of law.The measure of indemnity of marine insurance, fire and motor insurance is the matter of agreement between the parties under contract of indemnity. The right of subrogation and contribution may be applied in contract of indemnity based insurances.

Conclusion

In Myanmar, there are many conflicts in respect of the contract of indemnity. Mostly contracts of indemnity are used in insurance market in Myanmar. Myanma insurance market came into being in 2013 with 11 private insurance companies being granted licenses by the Insurance Business Regulatory Board (IBRB) to write both life and non-life insurances such as Endownment Life, Fire, Comprehensive Motor, Cash in Safe, Cash in Transit, Fidelity Guarantee, Marine Cargo, Health, Snake Bite, Sportsman Life, Special Travel and Group Life. Therefore, now the market is about 4 years old, during which period of time public awareness of insurance has steadily grown. Before its advent, for about 60 years the state-run Myanma Insurance was the sole insurance enterprise in the country, underwriting necessary insurance covers. Now, Myanma insurance provides about 30 kinds of insurance and private insurance companies provides about 14 kinds of insurance. Marine, fire and comprehensive motor insurance are based on the contract of indemnity under common law practice in Myanmar.

Myanmar has a relatively low volume of export trade and is more depend on import trade. Some exports of goods are carried out under the FOB system and imports under the system of CIF. So, marine insurance charges flow to foreign countries. The Myanma economy is still struggling even to reach the first stage of what the economist call, the take-off period, and accordingly, the role that insurance plays within the economy is currently small. The development of the state economy is the most important factor required to grow the marine insurance industry. One other factor that could contribute to the development of the marine insurance industry in Myanmar, would be to permit export trade to be carried out on a CIF basis only, in future. Some of Myanmar's marine insurance conflicts are settled according to the marine surveyor's report on the findings which is negotiation system that refers to the Marine Insurance Act 1906 and to the British Common Law.

The laws and rules relating to insurance in Myanmar are the Myanma Insurance Law (1993), the Insurance Business Law (1996), the Insurance Business Rules (1997), the Life Insurance Rules (1976), the Third Party Liability Insurance Rules (2003) and the Arbitration Law (2016) which is one of the modes to solve insurance issues. The parties agree to settle under the arbitration clause in the policy. Until now, there has been no case which has been decided by arbitration.

Almost all contracts of insurance are based on contract of indemnity except in cases of life and accident. The contract of indemnity is based on the agreement between the parties. Moreover, the contract of indemnity is based on the occurrence of a specified event which is uncertain and the assured must have an insurable interest in the subject matter of the contract.

The contract of insurance, marine or fire policy is a contract of indemnity and of indemnity only, and this contract means that the assured, in case of a loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified.

Subrogation and contribution are corollaries of the principle of indemnity. According to right of subrogation, the insurer is entitled to upon indemnifying the assured, it could be that issues might arise regarding the insurer's right to recovery from a third party. Therefore, insurers usually require a letter of subrogation from the assured authorizing them to institute proceedings to effect recovery in the name of the assured, but at their expense. On the other hand, the insurer's right of contribution based on the principle of equity. This right is used between coinsurers under contract of indemnity. So, the assured cannot get more than indemnity. The contracts of indemnity are contracts which are commonly used in insurance contracts except life, accident and sickness insurance.

The right of the third party to subrogation is a statutory right in the UK. It is an implied contractual right at common law. In Myanmar, this right is not given by statute but it is a contractual right under contract of indemnity.

The current indemnity issues in Myanmar are the adjustment of depreciation, the hiring of adjusters, ascertaining cause of loss and prosecution. Among these, adjustment of depreciation and hiring of adjuster are questions of fact. Ascertaining of cause of loss and prosecution are questions of law. According to the policy, Arbitration is the first mode to settle the disputes between the assured and insurance company. But this mode is not easy to implement in Myanmar because of the appointment of Arbitrators whether person or institution. The second mode is to go to the Court.

In conclusion, this research has shown that there is still a need in Myanmar for professionals such as arbitrators, lawyers, surveyors and claim adjusters.

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