

WHY THE CONTRACT OF LIFE INSURANCE IS NOT INCLUDED IN CONTRACT OF INDEMNITY?

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ABSTRACT

The researcher has researched on the topic ‘why the contract of life insurance is not included in the contract of indemnity’. The word ‘indemnity’ simply means security against loss or restoring the status quo ante, here the promisor promises to make good the losses of the indemnity holder, and if we examine all the general insurance contracts they function on the same principle. But, there is one insurance contract that does not fall under the contract of indemnity or does not have the same principle and that is the contract of ‘Life Insurance’. Frequently the contract of life insurance is confused with the contract of indemnity but that is not the case, Life Insurance is a contract between an insurer (promisor) and policy holder (promisee), where insurer promises to pay a certain pre-decided amount in exchange for a premium upon the death of a person or upon the expiry of maturity period. It becomes clear that when it comes to insuring a person’s life it simply means that the loss cannot be ascertained, for the simple reason that human life cannot be measured in terms of money. Also, the doctrine of subrogation which is available with all sorts of contract of indemnity is not provided under the contract of life insurance, as they life insurance is distinct from the indemnity.

KEYWORDS: *Promisor, Loss, Insuring, Human life, Subrogation*

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INTRODUCTION

A contract of Indemnity is one of the most essential commercial contracts these days, many businesses or firms heavily rely on such contracts. The word indemnity which has been derived from the Latin word ‘*indemnis*’ refers to unharmed or undamaged in the simplest sense.

The basic meaning of the contract of Indemnity is enshrined under section 124 of chapter VIII of the Indian Contract Act (ICA), 1872, which reads as “*A contract by which one party promises to save the other from loss caused to him by the contract of the promisor himself, or by the conduct of any other person, is called a “contract of indemnity”*”². The word ‘indemnity’ itself means to compensate for the losses or damages suffered or restoring the status-quo ante³, in such contracts it is not necessary to have ‘three’ parties.

The person who has duty to make good the losses involved or compensate is called as ‘Indemnifier’ or promisor and the person to whom such compensation will be provided is known as ‘Indemnity holder’ or promisee. The contract of Indemnity can be expressed or implied, and for obvious reasons if the contract is formulated for illegal purposes then it won’t be called as contract of Indemnity.

Contracts of Insurance, which are also counted under contract of Indemnity, have the similar principle where one party is the insurer (promisor) and the other is the insured or policy holder (promisee), here also insurer promises to bear for the losses suffered by the promisee in exchange for a payment known as premium.

There are many types of Insurance contracts : -

- Life
- Marine
- Health
- Motor
- Mobile
- Property
- & Many more...

² the Indian Contract Act, 1872, Section 124.

³ Oriental Insurance Co. Ltd. vs. Bhagat Ram, II(2006)CPJ 78 (NC), Para.5

ESSENTIALS OF CONTRACT OF INDEMNITY

- There must be two parties to the contract
- There should be a contract between them where one must promise the other to make good the losses or compensate.
- The loss suffered must be through the conduct of a human agency only and not otherwise.⁴

Willes J in the case explained the interpretation of the word indemnity, “Where a party is liable at law by immediate privity of contract, which contract also confers a benefit, and obligation to the contract is common to him and to the defendant, but the whole benefit of the contract is taken by the defendant, the former is entitled to be indemnified by the latter in respect of the performance of the obligation.”⁵

EXCLUSION OF INDEMNITY

According to ICA, parties are allowed to seek compensation for any loss “which naturally arose in the usual course of things from such breach, or which the parties knew”.⁶ This also means that:

- Loss caused by the receiving party's deliberate acts, like in an insurance contract, the insured should not be indemnified if the trigger event results from their own intentional act (for example if the insured burns their own house intentionally).
- Loss caused by the receiving party's own fraud or crimes: indemnities do not cover the consequences of the receiving party's own illegal acts.

LIFE INSURANCE

Life Insurance is a contract between an insurer (promisor) and policy holder (promisee), where insurer promises to pay a certain pre-decided amount in exchange for a premium upon the death of a person or upon the expiry of maturity period.⁷ However, there are some exclusions in the contract, like if the death is caused due to suicide, pre-existing health

⁴ Gajanan Moreshwar v. Moreshwar Madan, (1942) 44 BOMLR 703

⁵ Moule v. Garrett, (1872) LR 7 Exch 101

⁶ the Indian Contract Act, 1872, Section 73 .

⁷ What is Life Insurance, (13 June, 2020), <https://www.iciciprulife.com/insurance-library/insurance-basics/what-is-life-insurance.html>.

conditions, death by participating in hazardous activities, due to natural disaster⁸ etc. then the insurer gets absolved from the liability to pay. Even Life Insurance policies are of various types –

- Term Life
- Whole Life
- Universal Life
- Variable Life [among other types]⁹

HISTORICAL REFERENCE OF LIFE INSURANCE

In life insurance, "*gaming*" practices developed in the eighteenth century under English law. Popular accounts of that period describe the practice of buying insurance policies on the lives of those being tried for capital crimes. These policies constituted wagers who would decide whether the accused would ultimately be convicted and executed for the alleged offense. A related practice was the purchase of insurance on the lives of famous, elderly persons; the premium would be a function of what was known about the person's health, including any recent illnesses.

Consequently, in order to put an end to life insurance contracts that had no insurable interest in the life of the insured -and which had become a cover for a multitude of wagering and gaming contracts-the British Parliament in 1774 passed a statute holding that any life insurance contract without an insurable interest in the life of the insured would henceforth be null and void.¹⁰ While the first Life Insurance company in India was setup in Kolkata by the Europeans and its name was Oriental Life Insurance Company¹¹.

ESSENTIALS OF A LIFE INSURANCE CONTRACT

- Offer and Acceptance
- Agreement
- Competency
- Legality of object & Consideration(Premium)

⁸ Navneet Dubey, "[8 major death cases which are not covered in term life insurance](https://economictimes.indiatimes.com/wealth/insure/life-insurance/8-major-death-cases-which-are-not-covered-in-term-life-insurance/articleshow/70444745.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps)", (15 June 2020)

⁹ Robert e. Keeton & Alan j. Widiss, insurance law section 1.5(c) (1988)

¹⁰ Life Assurance Act, 1774, 12 Geo. 3, c. 48, section 1 (Eng.).

¹¹ Brief History Of Insurance, (13 June,2020), <https://licindia.in/Top-Links/about-us/History>

- Free Consent
- Meeting of Minds
- *Uberrimae Fides* or Good faith¹²
- Insurable interest¹³

Rights of Indemnity holder or Promisee when sued

There are three types of statutory rights conferred on the promisee, when he gets sued, against the promisor. These rights are discussed under section 125 of the ICA,1872¹⁴.

1. The very first right talks of damages that can be recovered from the promisor, promisor is liable to pay all the damages in a suit of any matter that connects the promise to indemnify. It has a binding effect on the promisor even though he may not be the party to that contract, hence the promisor cannot be absolved from the liability by contending that he was not a party to the contract.¹⁵

Also, in the case of *Parker v. Lewis*¹⁶, it was held that it is obvious for the person who is indemnified and has altered his position and faced action for that action, to be protected from the third party. The measure of damages depends on the extent to which the person is indemnified and if the amount exceeds that limit then it is within the authority of the Promisor to refuse; this was held in the case of *Anwar Khan v. Gulam Kasam*¹⁷.

2. The second right talks of the costs, all the costs which the promisee has incurred in bringing or defending such case, although the promisee should not have defied any order from the promisor and acted as it would have been prudent for him to act in the absence of any such contract, or if the promisor has himself authorized him to bring or defend any such suit. The promisee then has the statutory right to claim the costs.¹⁸

It is well understood that only those costs would be recoverable that are supposed to be incurred by a prudent man. Like, extravagant travel and food expenditure cannot be recovered. The courts have also through its judgments widened the scope of amount

¹² Goparatnam and Ors. vs. LIC of India and Ors., I(2006)CPIJ 78 (NC), Para. 5

¹³ Dr. G. Gopalakrishna, “*Essentials and Legalities of an Insurance Contract*”, https://www.insuranceinstituteofindia.com/downloads/Forms/III/Journal-2008/Journal08_%20pg06-14_ess.pdf

¹⁴ the Indian Contract Act,1872, Section125

¹⁵ Ibid,(1)

¹⁶ Parker v. Lewis, (1873) LR 8 Ch 1035

¹⁷ Anwar khan v. Gulam Kasam, AIR 1919 Nag 126

¹⁸ *Supra note 14, at (2)*

can be recovered, in the case of *Mangladha Ram v. Ganda Mal*¹⁹, the court held that the amount which the promisee is entitled to claim should not be limited to only taxed costs.

3. The third right talks of all sorts of sums that might have paid by the promisee in compromising in a suit. The said compromise should not be in violation of orders of the promisor and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit. The promisee is then allowed to recover such sums.²⁰

In the landmark case of **Alla Venkataramanna v. Palacherla Manqamma**²¹ the court held that to recover the amount in the case of compromise the promisee has to fulfill certain conditions:

- The compromise must take place with bona fide intentions.
- It should have been resolved without any sort of complicity.
- It has not been impeached as an immoral bargain.

Rights of indemnifier or promisor

The rights of Indemnifier are not mentioned anywhere in the act, but in the case of *Jaswant Singh v. Section of State*²², the court held that the Indemnifier is bestowed with the same rights as to that of the surety under section 141 of the act²³. And the are:

- Surety’s right to benefit of securities.
- To the extent of value of securities.
- When surety becomes entitled to the benefit of creditor’s securities.²⁴

GENERAL INSURANCE VS. LIFE INSURANCE

General insurance generally refers to all types of Insurance contracts other than the contract of Life Insurance.

¹⁹ *Mangladha Ram v. Ganda Mal*, AIR 1929 Lah 388.

²⁰ *Supra* note 13, at (3)

²¹ *Alla Venkataramanna v. Palacherla Manqamma*, AIR 1944 Mad 457

²² *Jaswant Singh v. Section of State*, 14 BOM 299

²³ the Indian Contract Act, 1872, Section 141

²⁴ Frederick Pollock, *Dinshah Fardunji Mulla*, ‘Indian Contract and Specific Relief Acts (1919)’, Page number’s 601- 603

1. The contract of Life Insurance secures the life risk, and the contract of general insurance makes good the losses.
2. The sum that has to be paid by the promisor in Life Insurance is paid upon the death of the promisee or on the maturity of the contract, whereas in general insurance the amount is paid on the happening of certain event against which the person is indemnified.[Like goods destroyed by fire]
3. Life Insurance is a long term contract, on the contrary General insurance is a short term contract and generally needs to be renewed annually.
4. The time period for which the premium has to be paid in both, also differs based on the time frame of the contract. Like, for Life Insurance sometimes the premium is to be paid throughout the life of a person.
5. The insurable interest i.e. the holder of such policy must be present at the time of contract in Life Insurance and in general insurance both at the time of contract and the time of loss.²⁵

INDEMNITY VS. GUARANTEE

Usually these two types of contracts are confused, but they are varied in various aspects and some are:

1. In the contract of Indemnity one party promises to other to compensate for the losses, whereas in the contract of guarantee the party promises to perform the obligation or pay for the liability.
2. In indemnity there are generally two parties, while in guarantee there are three parties surety, principal debtor and creditor.
3. The liability to repay in the contract of indemnity depends on the happening of an uncertain event, whereas in guarantee such liability already exists surety just guarantees the performance of such liability.
4. The liability of promisor in the contract of indemnity is primary, but in the contract of guarantee the liability of surety is secondary.²⁶

²⁵ Life insurance Vs General Insurance: A Quick Overview, (15 June,2020) <https://www.adityabirlacapital.com/abc-of-money/life-insurance-vs-general-insurance#:~:text=Claim%20of%20Insurance%20Amount%3A%20In,the%20policy%20terms%20and%20conditions.>

²⁶ Vera Lee, “*What are guarantees and indemnities and how do they differ?*”, (15 June 2020) [https://www.cbp.com.au/insights/insights/2016/march/what-are-guarantees-and-indemnities-and-how-do-the,](https://www.cbp.com.au/insights/insights/2016/march/what-are-guarantees-and-indemnities-and-how-do-the)

LIFE INSURANCE VS. CONTRACT OF INDEMNITY

It is quite clear that life insurance does not fall under the ambit of general insurance, also general insurance is included in the contract of indemnity but not Life Insurance, because-

1. Indemnity means an assurance to make good the losses or compensate or put the indemnity holder in the same financial position as before the happening of an uncertain event, whereas if we talk of life insurance the event which is insured is not an uncertain one as death of a person cannot be called as ambiguous.
2. The most important thing is, in the indemnity the loss that is caused due to an uncertain event can easily be ascertained in terms of money, but when referred to the death of a person it cannot be measured in terms of money as nothing can be valued in proportion to the life of a human.²⁷
3. In the case of indemnity insurance only the real loss can be indemnified. If the same subject matter is insured with more than one insurer, the insured is entitled to the real loss in proportion to the insured sum on different policies obtained from different insurance companies. While in Life Insurance the assured can claim the sum insured with different policies on maturity or to his nominee after his death. This feature is called as ‘double insurance’.²⁸

DOCTRINE OF SUBROGATION

The dictionary meaning of the word ‘subrogate’ is substitute for another, and the same goes with the legal context. The literal meaning of the doctrine of subrogation is “stepping in the shoes of the insured”, The doctrine of subrogation provides that if an insurer pays a loss to its insured due to the wrongful act of another, the insurer is subrogated to the rights of the insured and may prosecute a suit against the wrongdoer for recovery of its outlay.²⁹

This is a legal right which is held by major insurance policy carriers to legally pursue a third party that caused an insurance loss to be insured. This doctrine also proves to be a major

²⁷ Dalby v. India and London Life Assurance Company (1854), 15 CB 365:139 AII ER465

²⁸ M. J. Mathew, “*Insurance Principles and Practice*”, (2005), Page no. 71

²⁹ FindLaw Attorney Writers, “*The Right of Subrogation by an Insurer Against Its Insured and the Impact of Recent Legislation*”, 17 June 2020

distinction between Contract of indemnity and the contract of life insurance, as the doctrine is available only for the contracts of indemnity.³⁰

The very first time it was discussed in an English case, where the issue raised was whether contract of fire insurance is indemnity or not. The court held that “*policies under which things or goods are insured against loss, are contracts of indemnity because they indemnify against loss and the doctrine of subrogation is attracted when amounts are paid under them*”.³¹ Also, the Andhra Pradesh HC observed that “*the contract of insurance against the loss was a contract of indemnity and on payment of the loss, the insurer as indemnifier has an equitable right of subrogation to the claim of the assured against the carrier*”.³²

The statutory relevance of this doctrine can be seen in ‘The Marine Insurance Act, 1963’, in which it is stated that “*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*”.³³

CONCLUSION

It is concluded that the law of Indemnity is used to save a person from incurring losses caused by the conduct of promisor or any other person and if we look at the common insurance contracts like car insurance, mobile insurance, they all follow the same principle. This is the reason why the contract of Life Insurance is usually confused with the indemnity, however, as it is clearly explained that when we look at Life Insurance contract it is used to provide a sum to the near one’s or any other person as mentioned in the contract, after the death or upon the expiry of maturity period. Here, the contract is not trying to make good any losses, and this needs no explanation that a life of a person is not measured or ascertained in terms of money.

³⁰ “What Is the Principle of Subrogation in Insurance” (17 June 2020), <https://www.bajajfinserv.in/principle-of-subrogation-in-insurance#:~:text=To%20make%20up%20for%20the,to%20insurer%20is%20called%20subrogation..>

³¹ In Darrel v. Tibbitts (1880) 5 QueBen 560

³² Hindustan Corporation (Hyderabad) Pvt. Ltd. v. M/S. United India Fire And General Insurance Co. Ltd., Hyderabad and Ors., AIR 1997 AP 347, Para no. 18

³³ The Marine Insurance Act, 1963, Section 79