

THE PRINCIPLE OF INSURABLE INTEREST IN THE CONTEXT OF MARINE INSURANCE

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ABSTRACT

The paper addresses the concept of insurable interest in marine insurance. This subject matter is of importance as it is one of the most popularly disputed issues in admiralty marine law litigation in India. The paper begins by elucidating the principle of insurable interest in general and its compulsory requirement in insurance agreements. The concept of insurable interest in marine insurance is analysed in detail along with a sub topic on the time period at which insurable interest should be present in any insurance transaction. The paper concludes by stating the importance of insurable interest in the field of marine insurance and how the law governing the same is comprehensive in the present day scenario of marine trade and does not require any changes or relaxations.

INTRODUCTION

Insurable Interest is one the most important principles in any contract or policy of Insurance. This paper aims at analysing what an insurable interest is and its necessity to be present in an insurance contract. The paper especially deals with insurable interests involved in the sphere of marine insurance. The different statutes such as the English and Indian Marine Insurance Acts and judicial decisions of the courts in England and in India have been perused in order to get a clear understanding of the aspects and necessity of insurable interests particularly in marine insurance. The Nature and the time at which the Marine Insurance has to be present in order for the insured to successfully claim his insurance has also been dealt with in detail. The paper concludes by laying down the reasons as to why insurable interest in marine insurance is of such vital importance that the law as it stands should not be relaxed with regard to the compulsory requirement of insurable interest in contracts and policies of marine insurance.

THE PRINCIPLE OF INSURABLE INTEREST IN INSURANCE LAW

That the insured must have an insurable interest in the subject matter of the policy is one of the first principles of insurance¹. A person has an insurable interest in property when he is so situated with reference to it that by its destruction he will suffer an actual loss of money or legal right, or incur a liability². The insurable interest doctrine requires that the person who holds an insurance policy have some significant interest in the continued existence of the person or property insured by the policy.³ In other words, one cannot take out a life insurance policy for a stranger, nor can anyone take out a fire insurance policy for someone else's house. Only if a person has ownership over a particular subject matter, or by possession in a hire-purchase agreement⁴, will he be said to have interest over that subject matter and thereby be able to take out insurance on it. This insurable interest requirement dates back to nineteenth-century England, and it remains a deeply embedded principle of modern insurance law.

¹ "Insurance: Insurable Interest." Michigan Law Review, vol. 27, no. 1, 1928, pp. 105–106. Available at www.jstor.org/stable/1278697. Last Accessed on 06/09/17

² Vance, LAW OF INSURANCE, p. 106, 3rd ed. (1951)

³ Loshin, Jacob. "Insurance Law's Hapless Busybody: A Case against the Insurable Interest Requirement." The Yale Law Journal, vol. 117, no. 3, 2007, pp. 474–509. Available at www.jstor.org/stable/20455799. Last Accessed on 06/09/17

⁴ New India Assurance Co. Ltd. V. M/s T.T. Finance Ltd., AIR 2011 Del 2012

In the case of *Lucena v. Craufurd*⁵, which involves a marine insurance contract, the Court clearly emphasized the meaning of insurable interest and held that “A man is interested in a thing to whom advantage may arise or prejudice happen from circumstances which may attend it. Interest does not necessarily imply a right to the whole or part of a thing, nor necessarily and exclusively that part which may be the subject of privation, but having some relation to or concern in the subject of the insurance which relation or concern may be so affected as to produce a damage, detriment or prejudice to the person insuring”. Further in the case of *Macaura v. Northern Insurance Co Ltd*,⁶ the insured had taken an insurance policy on the timber which was held in the company’s name. Though the insured party held all but one shares of the company, the fact that the timber belonged to the company meant that only the company could take out an insurance policy on the timber. Therefore the court ruled that since the insured party had no insurable interest over the timber, he couldn’t claim the insurance when the timber got destroyed in a fire.

WHAT IS AN INSURABLE INTEREST IN MARINE INSURANCE

Marine insurance is the method whereby one party, called the assurer or underwriter, agrees, for a stated consideration known as the premium, to indemnify another party, called the insured or assured, against loss, damage, or expense in connection with the subject matter at risk if caused by perils enumerated in the contract known as the policy of insurance.⁷ An insurable interest in marine insurance may consist of ships, the machinery of steamers (usually separately valued), goods of every description, freight, advances on account of freight, profits and commissions, and disbursements to repair damages at a foreign port.⁸

In consonance with the general Insurance law principles, marine insurance too lays down the necessity that there has to be an insurable interest in the subject matter that is being insured. This is a necessity because it aims at prohibiting any person gambling with another person’s misfortunes. Further the necessity of having an insurable interest primarily is to provide for the

⁵ *Lucena v. Craufurd*, (1806) 2 BOS & PNR 269

⁶ *Macaura v. Northern Insurance Co Ltd*, (1925) AC 619.

⁷ W. Winter, *Marine Insurance*, 3rd ed., p.121 (1952).

⁸ Morrison, Richard. “On the Principles of Marine Insurance.” *The Assurance Magazine, and Journal of the Institute of Actuaries*, vol. 11, no. 5, 1864, pp. 285–299. Available at www.jstor.org/stable/41135032. Last Accessed on 06/09/17

indemnification of those who will suffer a loss due to the damage done to the subject matter of the insurance, which in the case of marine insurance will include ships, vessels, cargo and passengers travelling on the high seas.⁹

The Indian Marine insurance Act, 1963 defines Insurable Interest as:

“(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) 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 the insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof”¹⁰

The above provision is a verbatim duplication of the English Marine Insurance Act of 1906.¹¹ The section states that every person who is interested in a marine adventure is deemed to have insurable interest in it. 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 in consequence of which he may be benefitted by the safety or due arrival of insurable property or may be prejudiced by its loss, damage or detention or may incur liability in respect thereof.¹² The Indian Marine Insurance Act does not profess to give an exhaustive definition of “insurable interest”. Nor is it possible to define the expression “insurable interest” exhaustively, but the general rule is clear that to constitute “interest” insurable against a peril, there must be an interest such that the peril would, by its proximate effect, cause damage to the assured.¹³

The United States Supreme Court, in a leading case on the subject of insurable interest in marine insurance, has provided some insight concerning insurable interest and held that “A right of property in a thing is not always indispensable to an insurable interest. Injury from its loss or benefit from its preservation to accrue to the assured may be sufficient, and a contingent

⁹ Burke, Richard E. “An Introduction To Marine Insurance.” The Forum (Section of Insurance, Negligence and Compensation Law, American Bar Association), vol. 15, no. 4, 1980, pp. 729–740. Available at www.jstor.org/stable/25761584. Last Accessed on 06/09/17

¹⁰ Marine Insurance Act, 1963 § 7 (India)

¹¹ Marine Insurance Act, 1906 § 5 (England)

¹² Dr. Sachin Rastogi, Insurance: Law and Principles, p.292, 1st ed. (2014)

¹³ Seagrave v. Union Marine, (1866) L.R. 1 C.P. 305, 320

interest thus arising may be made the subject of a policy In the law of marine insurance, insurable interests are multiform and very numerous”¹⁴

In India, a marine insurance contract made without any insurable interest in the subject matter has been held to be a wagering contract and therefore is declared as void under Section 6¹⁵ of the Indian Marine Insurance Act. In the case of *Plata v. Lancashire Hamburg-Amerika Linier*¹⁶, a cargo of tallow was insured “warehouse to warehouse” by purchasers, but when the cargo was delivered it was short of the entire quantity. It was found that the missing quantity was never in transit and never became the property of the purchasers, thereby they were held to have no insurable interest and the underwriters were held not liable for the missing quantity.

Thus the nature of the insurable interest in marine insurance must be such that the interest must be a right in property which is the subject matter of the marine insurance which can include the vessel at sea, the cargo on board and the passengers in transit. Additionally the interest must be pecuniary. It must be capable of being estimated in terms of money. Mere disadvantage or inconvenience or mental distress cannot be regarded as an insurable interest.¹⁷ A claim for damages for mental agony and inconvenience cannot be maintainable under a marine insurance policy. Further the interest must be liable and not be illegal, unlawful, immoral or opposed to public policy. For example one cannot take out a marine insurance policy for the shipment of drugs or smuggled goods or human trafficking, etc. finally the insurance should not be limited to absolute ownership of the property and may include mere lawful possession as that of a lessee, Bailee, carrier of goods, etc. It may also be found on contract, as in the case of reinsurance by the insurer¹⁸.

¹⁴ Hooper v. Robinson, 98 U.S. 528 (1879)

¹⁵ Marine Insurance Act, 1963 § 6

¹⁶ Plata v. Lancashire Hamburg-Amerika Linier, (1957) 2 Lloyds Rep. 347

¹⁷ Mushtaq Ahmad Sumji and Anr. V. Divisional Manager, AIR 2005 J&K 66

¹⁸ R.N. Chaudhary, General Principles of Insurance Law, 1st ed., P.43, Central Law Publications, Allahabad (2012)

WHEN MUST THE INSURABLE INSURANCE BE PRESENT IN CASES OF MARINE INSURANCE

In Insurance, the occurrence, time and duration that insurable interest must exist varies for different types of insurances. In the case of Life Insurance, the presence of insurable interest is necessary at the commencement of the policy and at that date only¹⁹ and it is not necessary afterwards. In the case of Fire Insurance, it is required both at the commencement of the policy and at the time when the loss occurs. In the case of Marine Insurance, the presence of insurable interest is necessary only at the time of the loss. It is immaterial whether the party has or has not an insurable interest at the time when the policy is taken.

Section 8 of the Indian Marine Insurance Act, 1963 lays down the rule as to when the Insurable Interest must be attached. The Section states that the insured must be interested in the subject-matter at the time of the loss. It is not necessary that the insured be interested when the insurance is affected. However when the parties are not aware about the existence or loss of the goods, they are permitted to insure them under a clause “lost or not lost”. This type of policy is valid and the assured can recover even if he acquires interest in the goods after they have been lost. This proviso has been provided under Section 8(1)²⁰ of the Act and has also been held so in the case of *Sutherland v. Pratt*²¹. This exception operates to protect an assured who might have purchased goods without knowing whether or not they have already been lost at sea. Further it has been expressly stated that if the insured party has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss, including any clause in the insurance policy to that effect. Similarly in the case of *Wilson v. Jones*²², it was held that a contingent buyer of certain goods which were not yet shipped to him, and thereby since he has not obtained the property, risk or possession, he cannot take out an insurance policy on the goods despite him believing that it will reach him on a particular date in the future.

The Supreme Court of India in the case of *New India Assurance Company Ltd vs Shri G.N. Sainani*²³ held that “The interest of the insured must exist in the case of marine insurance at

¹⁹ Dalby v. Indian and London Life Assurance Co., (1854) 15 CB 365

²⁰ Marine Insurance Act, 1963 § 8(1)

²¹ Sutherland v. Pratt, (1843) 11 M&W 296

²² Wilson v. Jones, (1867) LR 2 Exch 139

²³ New India Assurance Company Ltd vs Shri G.N. Sainani, (1997) 6 SCC 383

the time of loss and the assured must have some relation to or concern in, the subject of the insurance. The service which the insurer offers is with reference to the goods and the insurable interest has to be in respect of the goods. To put it in other words, insurable interest in property would be such interest as shall make the loss of the property to cause pecuniary damage to the assured. Unless the assignee has some insurable interest in the property subject matter of the insurance the time the policy terminates he cannot be beneficiary of any service required to be rendered by the insurer under the policy.” Thus the well-established law in Marine Insurance is that the Insurable Interest must be present at the time of loss suffered by the insured party.

CONCLUSION

In this paper the meaning of insurable interest and the necessity of it as a vital part of an insurance contract, particularly in marine insurances has been examined in detail. In light of this there have been various views expressed by the players involved in the insurance market that the laws related to marine insurance must be relaxed and that there has to be a more liberal approach with respect to the necessity of having insurable interest as a compulsory requirement in marine insurance contracts. However on analysing the position of law regarding insurable interests in marine insurance, it is suggested that the traditional position of the law must be retained and that relaxing the rule on insurable interests would cause more harm than good in the insurance market.

The reason for advocating for the continuance of insurable insurance being a compulsory principle of marine insurance is that if there was no insurable interest involved, then the insurance automatically takes the form of a gamble or wagering contract. The primary purpose of an insurance contract, which is to be indemnified for a loss suffered, is defeated. If there was no particular insurable interest involved then any person or third party can take insurance on a subject matter and seek to gain profits from the policy. This is the same principle on which betting games and gambling is based on. Instead of betting on horses or cards, people will take to betting on ships and vessels to see if they can survive a voyage or not. Therefore in order to avoid the deterioration of marine insurance law into a void wagering contract, the position of law with respect to making insurable interest a compulsory requirement in marine insurance contracts must be followed and if there is any change to be made, the State should ensure that

the regulations and laws relating to insurable interests of marine insurance must be developed which in turn will result in the growth of marine insurance law and the marine insurance market as a whole.

