

PGDM (Insurance Business), 2014-16  
Motor Insurance-II (Third Party Insurance)  
INS-502

Trimester-V, End-Term Examination: December-2015

Time allowed: 2 Hrs. 30 Min.

Max Marks: 50

Roll NO.: \_\_\_\_\_

Section-A

*There are 5 questions in this section. Attempt any 3 questions. Each question carries 5 marks and the Word limit is 200 words.*

- A1. Negligence is one of the major causes of motor accidents. Explain how the liability of the insured/insurer is affected in case of contributory and composite negligence?
- A2. When the claimant establishes negligence on the part of the driver of the offending vehicle in a motor accident under sec.166, what defenses the insured/driver should take against negligence?
- A3. As a civil matter, Claim for compensation under MV Act should go to a civil court which require court fee and legal charges coupled with longstanding large number of claims. What is alternative set up was established by Govt. for speedy settlement of claims with the authority of a civil court. Explain its benefits and powers.
- A4. The High Court of Gujarat decided that the insurance co. was not liable to meet the claim for gratuitous occupant carried in a private car or as pillion rider on a 2-wheeler unless the insured had paid additional premium for such coverage. Discuss the issue with the help of related legal cases.
- A5. An appellant of 24 yrs. met with a motor accident, in which he was disabled to the extent of 60% as per certificate issued by the Senior Medical Officer of the Govt. Hospital. He filed a claim under MV Act, 1988 for a compensation of Rs.22 lacs. He had been earning Rs.12,000/- p.m. by doing a clerical job in a private office as per his salary slip and claimed a 50% increment prospect in his future income. However, the court agreed for 40% increment prospect for the future. The other items claimed and allowed by the court were: Cost of artificial leg Rs. 50,000/- ; pain and suffering Rs.75,000/- ; loss of marriage prospectus Rs.Rs.50,000/- ; loss of amenities Rs. 75,000/- ; medical and incidental expenses Rs.1,00,000/- ; cost of litigation Rs. 25,000/-. If the multiplier in the case is 18, calculate the compensation amount.

Section-B

*[Note: Answer 2 out of the 3 questions below. Each question carries 10 marks and word limit is 500.]*

- B1. Section 140 provides compensation to third party without proving any fault, 'No fault liability'. Later Section 163A was included by the legislation in MV Act to provide structured formula to compensate a third party having annual income not exceeding Rs.40,000 per annum and claimant need not to prove the fault of the driver of the offending vehicle. Differentiate both the sections and support your answer with latest Apex court cases to decide over:

Contd.-2-

- (i) Whether S. 163 A is also founded on the "no fault" liability?
  - (ii) Whether it is open to a concerned party (owner or insurer) to defeat a claim raised under S. 163 A by pleading and establishing any one of three "faults" namely "wrongful act, neglect" or "default"? Support your answer with cases.
- B2. There has been huge number of claims pending in MACT courts and therefore the reconciliation method of resolving the motor accident TP cases have gained momentum. Explain the various agencies formed and process of the reconciliation methods.
- B3. The issue as to whether the Insurance Companies are liable to pay compensation to the legal representatives of the deceased or an injured in a motor accident, is statutory; or whether they can seek for exoneration of their liability, towards the insured or the third party, as the case may be; and under what circumstances, they can avoid their liability to the insured, are no longer res-integra, nevertheless, time and again, appeals have been filed by the Insurance Companies, though in many cases, depending upon the evidence let in, by the Companies, leave is granted by the Claims Tribunals to recover the amount, directed to be paid to the third party victims, from the insured, on the grounds, inter-alia, that they have discharged their burden of proving breach of policy conditions by the insured.

Discuss the issues given below:

- (i) Whether the Insurance Companies can avoid their liability to pay compensation to the injured third party or the legal representatives of the deceased third party, under the guise of raising a defence under Section 149(2)(a)(ii) of the Motor Vehicles Act?
- (ii) When MV Act 1988, contemplates compulsory insurance against third party risks, whether the defenses open to the insurers are to avoid their liability for payment of compensation to third party victims or to avoid their liability to the insured, when the insurance companies, prove the breach regarding license?
- (iii) Whether mere proof of non-possession of license alone is sufficient to exonerate the Insurance Companies from their liability towards payment of compensation to the third party victim or it is restricted to avoidance of liability towards the insured, when the Courts have repeatedly held that the introduction of Chapter XI to the MV Act 1988 has to be interpreted to effectuate the object of the Act?

Case Study Compulsory

Max Marks: (15)

Section-C

- (a) The respondent Shri Surdeep obtained an insurance policy insuring his jeep no. UP-06-6244 with a sitting capacity of 6 persons, including driver, for a period of 23.7.2004 to 22.7.2005.

On 18.8.2004, the aforesaid vehicle carrying 15 passengers from a village Nansu to Dharkot Thapli, in UK, while being driven by Bharat Singh, the father of respondent herein, fell into a ditch resulting in his and the death of the majority of passengers while causing

serious injuries to the remaining passengers. The Respondent Nos. 1 to 4 as the legal representatives of the deceased filed an application for compensation before the MACT, Pauri, UK. The issues relevant were- whether the accident occurred due to negligence of the driver Bharat Singh or mechanical failure?; whether the vehicle was being plied according to the conditions of insurance policy and permit?; whether all the claimants, more than 6 are entitled to any compensation? If yes, then how much and from whom?

Contd...3/-

The DL, RC and insurance were found in order but the passengers were found to be more than the permitted limit. MACT made the insurer liable for compensation to all claimants and did not agree to breach of policy terms & conditions.

The case moved to High Court and then to Supreme court in which Insurance Company was appellant.

As legal officer of the insurance company, you need to envisage the likely final outcome of the case and discuss the case with your lawyer with earlier judgments under MV Act, 1988. Discuss the case and liability of Insurer. (7.5)

- (b). Misc. Appeal no. 527 of 2002, AP. The claimant, the mother of the deceased, filed Claim under Section 163A of the Motor Vehicles Act, 1988, alleging that on 20.09.2000 at about 6:45 p.m. Manoranjan Prasad Gupta, who is the owner of the Suzuki motorcycle No. BR 0416345, having insured with National Insurance Company Limited, Chapra, while travelling on the motorcycle, met with the accident and died on the spot. The income of the deceased was Rs. 6,000/- per month. The claimant is the mother of the deceased.

The Insurance Company appeared and filed the written statement, stating therein that the claimant's son met with an accident at road bridge on Patna-Chapra Road while he was driving the motorcycle with Dharm Prasad pillion rider. The said Road bridge was half portion opened for construction and other half left for traffic. The deceased could not notice that the half portion open for construction straightway drove the motorcycle negligently on the opening portion of the bridge, by which fell along with vehicle in the river and both the persons on the motorcycle died. It is submitted that occurrence took place due to rash and negligence act of the driver, as mentioned in the First Information Report, and hence the accident took place due to rash and negligence act of the driver of the vehicle, who was also owner and hence was not a third party to claim compensation.

However, before the Tribunal, objection was raised by the insurer that the claim was not maintainable, accident took place due to the fault of the deceased who was the driver-cum-owner of the vehicle and hence no claim established against the insurer as the insured is himself the driver. However, the Tribunal taking into consideration of 1997 (1) P.L.J.R. 827 (Oriental Insurance Company Ltd. Vrs. Most. Baidehi Devi and Ors.), where claim given to a driver of motorcycle under Workman Compensation Act, allowed the claim of the claimant illegally and held that claim petition is maintainable.

The learned counsel for the appellant the Insurance Company in Miscellaneous Appeal No. 527 of 2002, has contended that in the Claim Petition, it has been admitted that the deceased was the owner, was driving the motorcycle at the time of the accident. Since the owner of the vehicle is not a third party, within the meaning of Section 147 of the Motor Vehicles Act, 1988, and hence is not entitled to claim compensation and hence the Application under Section 163 A of the Motor Vehicles Act, 1988, is not maintainable.

The learned counsel for the claimant, however, contended that even if Application under Section 163A of the Motor Vehicles Act, 1988, is not made out, the application may be treated under Section 166 of the Motor Vehicles Act, 1988, as the policy condition covers the risk of owner. It has been asserted that the Insurance Company, in the written statement has not taken any plea that the policy does not cover the risk of owner. It has further been asserted that no issues were framed whether the death of owner was covered under the policy or not. Hence it has been contended that since no issue was framed whether policy covered the risk of the owner remaining to be decided. However, the insurance policy has not been brought on record.

Contd.4/-

Hence the question for consideration is whether the policy covered the risk of owner and further whether the heir of owner entitle to a claim under Section 163 of the Motor Vehicles Act and if not whether entitle to claim under Section 166 of the Motor Vehicles Act.

Hence taking in consideration the admitted fact in the case that claim petition filed with regard to death of owner while driving the vehicle. The question for consideration is whether the heir of owner who are claimant are entitle to compensation. Now I proceed to consider first the various decision filed by the parties to desire the principle with regard to claim by heir of owner of motorcycle in case of death of owner of the vehicle.

1. Who is a third party?
2. Is the claim payable? If you are the legal officer of the Insurer, quote two decided cases in defense of the case. (7.5)

\*\*\*\*\*