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Insurance dispute settlement mechanism in India: A critical analysis

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Abstract---Insurance is the best way to deal with various risks and losses incurred, be it health, life or property. It is necessary as well as beneficial for both individuals and corporate citizens. However, India still has a limited insurance reach. There is a sizable underserved market because of the overall insurance penetration (premiums as a percentage of GDP) in FY21, which was 4.2 per cent. An inefficient dispute settlement mechanism could be one of the reasons for such low penetration. Therefore, it is necessary to identify the current challenges and loopholes in the regulation of the insurance sector and the litigation procedure followed and how much the interests of the insured are protected. The objective of this research is to critically analyze the insurance litigation process in India, including the interpretation of insurance contracts, the validity of the arbitration clause, the functioning of civil courts and the consumer forums etc. and to find out the scope of the improvements in various provisions, thereby suggesting the appropriate measures to deal with the issues.

Keywords---insurance, IRDAI, litigation, insurable interest, consumer forums, commercial courts, arbitration, insurance fraud.

Introduction

In India, insurance is provided in the form of an indemnity agreement between the insurance company and the client. The majority of insurance disputes are often civil, but they can sometimes be criminal in nature because they center on a contractual term and how it should be interpreted, as well as the coverage's extent. Insurance may be effectively viewed as a social tool that functions with other social structures to diminish the financial risk that might result from the

loss of life or property. It is a tool that aggregates enough exposure units so that the sum of their individual losses may be predicted. In order to guarantee the recovery of a significant unpredictable financial loss which may happen to him owing to the occurrence of some specified uncertain event, the insured person willingly agrees to incur a little financial loss i.e. the regular payment of the premium amount. Today, this action is seen as a crucial component of a person's effort toward prudent fiscal planning and risk mitigation. In India, the rate of insurance penetration is among the world's lowest, and almost 80% of the population lacks life insurance.

The situation with non-life insurance is significantly worse. Insurance is still viewed in India as a tax-saving instrument rather than as a crucial component of managing financial risk. As a corollary, the Indian insurance sector has enormous development potential, making it crucial to develop policies that will allow it to access untapped markets. The insurance sector is overwhelmed with numerous insurance claims including both life and general insurance policies. In the annual report for 2020–21 from the Insurance Regulatory and Development Authority of India (IRDAI), it is stated that for the individual life insurance business, during the year 2020–21, out of the overall 11.01 lakh claims, the insurance companies compensated 10.84 lakh claims, with an overall benefit of Rs. 26,422 crore. There were 3,032 claims rejected and 9,527 claims denied, representing a total of Rs. 60 crore and Rs. 865 crore, respectively. Incomplete claims were 3055 for a total of Rs. 623 crores at the end of the year*. The insurance dispute settlement mechanism is not that well organized in India. An Indian court typically takes from five to seven years to determine a case. Though the government is making efforts to enhance the business climate; As an example, the Commercial Courts† are now open for business disputes and the Consumer Protection Act 2019‡ has been introduced, still there are a lot of statutory loopholes that make the insurance litigation process complex in India.

Regulation of Insurance Industry in India

There are 57 insurance companies in the Indian insurance market; 24 are engaged in the life insurance sector, and 34 are non-life insurance companies. LIC is the only company in the public sector that provides life insurance. In the non-life insurance business, there have been 6 public sector insurers. In addition to these, General Insurance Corporation of India is the only national reinsurer (GIC Re). Agents (corporate and individual), brokers, surveyors, and third-party administrators handling health insurance claims are other market participants in India. The size of the insurance market in India is enormous, and it is expanding at a speed of 15-20 per cent every year. Insurance and banking services together increase the GDP of the nation by around 7%. As it offers long-term funding for

* Sneha Kulkarni, *Latest life insurance claim settlement ratio of companies in 2022*, The ECONOMIC TIMES (July 12, 2022, 10:04 AM), <https://economictimes.indiatimes.com/wealth/insure/life-insurance/latest-life-insurance-claim-settlement-ratio-of-companies-in-2022/articleshow/88725849.cms>

† The Commercial Courts Act, 2015, No. 04, Acts of Parliament, 2015 (India)

‡ The Consumer Protection Act, 2019, No. 35, Acts of Parliament 2019 (India).

infrastructure development, a well-organized insurance sector is seen as a stimulant for the economic development of a nation.[§]

The Insurance Act of 1938^{**}, as revised from time to time, and the Insurance Regulatory and Development Authority Act of 1999, which created IRDA, the statutory supervisor of the market, are the main laws that govern the insurance industry. An important turning point in India's history of insurance regulations was the creation of the IRDA. The purpose of this Act is to both guarantee the interests of the insured as stated in its preamble and to encourage the industry's orderly growth. In fact, these two pieces of legislation have established the legal framework under which the insurance sector must operate going forward. Other organizations and self-regulatory bodies play important roles in the implementation of this fundamental legislative framework, in addition to IRDA.

The IRDA has been given authority under Section 14 of the IRDA Act, 1999^{††}, to provide the required regulatory guidelines for the effective regulation of the insurance industry. By using this authority, the IRDA has established numerous responsibilities for proper market regulation since its establishment. Through these laws, the IRDA has reinforced the game's rules and reframed various areas of insurance activities. In addition to the IRDA, the Indian insurance sector has a variety of self-regulatory organizations that control various parts of insurance activities at various stages of the game and carry out various tasks to achieve their objective. These organizations include the Insurance Institute of India [I.I.I], Institute of Actuaries of India (IAI), Insurance Brokers Association of India (IBAI), Indian Institute of Insurance Surveyors & Loss Assessors (IISLA), General Insurance Council and Life Insurance Council, Tariff Advisory Committee [TAC], and Indian Information Bureau (IIB). Other legislation that applies to this sector are the Exchange Control Regulations (under the Foreign Exchange Management Act), Indian Stamp Act, 1899^{‡‡}, Consumer Protection Act, 2019 and the Insurance Ombudsman Rules, 2017^{§§}. Due to the notification of numerous IRDA regulations and standards, the year 2020 was noteworthy for the insurance industry. The IRDA issued directives on a number of topics, including how to handle cases during pandemic. In order to respond to the covid-19 pandemic crisis, premium payment grace periods were extended, regulatory deadlines were loosened, and the servicing of insurance policies was expedited, ensuring business continuity, and reducing the pandemic's impact on policyholders.

Insurance Litigation Process in India

India does not use the jury system. The judge decides on all claims, and the norms of pleading and evidence are fairly similar to those used in other countries. Most insurance plans have provisions addressing venue and the contract

[§] Kabir Ahmed, *An Overview of the Insurance Sector in India*, 4 INT'L J.L. MGMT. & HUMAN. 2411, 2412-2419 (2021).

^{**} The Insurance Act, 1938, Acts of Parliament, 1938 (India)

^{††} The Insurance Regulatory and Development Authority (IRDA) Act, 1999, § 14, Acts of Parliament, 1999 (India)

^{‡‡} The Indian Stamp Act, 1899, Acts of Parliament, 1899 (India)

^{§§} The Insurance Ombudsman Rules, 2017, No. 41, Acts of Parliament, 2017 (India)

governing law. The clause which specifies the courts that will have the authority to resolve any disagreements that might develop with the policy. However, since parties cannot exclude the jurisdiction of a court with territorial jurisdiction and grant the same to a court without it, any court with territorial jurisdiction generally can hear a case. The details regarding the policy's or contract's relevant and governing law are provided in the governing law clause^{***}. Foreign law cannot be chosen as the policies governing legislation by two Indian parties. Indian courts can resolve any argument relating to how to interpret the jurisdiction and controlling law provision. Section 44-A of CPC 1908, when read in conjunction with Section 13, governs the acceptance and enforcement of foreign judgements and decrees in India. In the case of "reciprocating territories" or other territories, a foreign judgment that is conclusive under Section 13 of the Code may be implemented by instating execution proceedings under Section 44-A read with Order XXI of the CPC, 1908, or by instituting a civil suit on the judgment. If the insurance does not contain a jurisdiction clause, the issue may be decided by any court to whom jurisdiction has been granted in accordance with the Code of Civil Procedure, 1908.

The policymakers have placed a high priority on resolving the complaints of policyholders and protecting their interests. A multi-tiered system for resolving disputes or grievances exists in the insurance industry. Insurance disputes can be added earlier than a civil court or a consumer court if there may be no connection with arbitration within the policy's terms. Consumer forums cannot hear these disagreements if the insurer files the initial lawsuit; instead, the civil courts must hear the case.^{†††} The civil court or consumer court in which the problem is determined relies upon the cost of the dispute and the geographical regulations of the defendant's coverage company's office, in which the reason of motion for the dispute arose. Both civil courts and consumer forums have territorial and pecuniary jurisdiction.

Importance of Insurable Interest

A person engaging in an insurance contract must have an insurable interest in the contract's subject matter, just like is required by English law. All forms of insurance must contain an insurable interest; otherwise, they might be wagering contracts, which can be void^{‡‡‡}. The Insurance Act and IRDA regulations do not define insurable interest explicitly or provide a full list of hazards which can and cannot be insured. But there is advice available in the form of other laws, court rulings, and IRDA rules. ^{§§§} According to Section 7 of the Marine Insurance Act of 1963^{****}, an 'insurable interest' is defined as follows:

^{***} LexisPSL Dispute Resolution expert, *Insurance litigation-India-Q&A guide*, (July 12, 2022, 8 : 30 PM) <https://www.lexisnexis.co.uk/legal/guidance/insurance-litigation-india-q-a-guide>

^{†††} Ibid.

^{‡‡‡} B.S. Bodla, M.C. Garg, K.P. Singh, *Insurance : Fundamentals, Environment and Procedures* 17-43 (Deep & Deep Publications Pvt. Ltd. 2004)

^{§§§} Ibid.

^{****} The Marine Insurance Act, 1963, § 7, Acts of Parliament, 1963 (India)

Every man or woman who's engaged in a marine journey has an insurable interest, problem to the provisions of this Act and someone is especially inquisitive about a marine journey if he has a prison or equitable connection to the journey or to any insurable belongings at chance therein, because of which he can also additionally make the most of the protection or accurate arrival of insurable belongings, or he can also additionally go through damage from its loss, damage, or detention, or he can be held accountable for it.

There ought to be a factor to insure, the insured ought to have a few kinds of legally recognized connection to the factor being insured, and the lack of the item being blanketed ought to bring about monetary damage to the insured so as for there to be an insurable interest in anything. The insured has an insurable interest within the coverage contract's difficulty to rely in the event that they go through a loss or get hold of a benefit. "Insurable interest is not entire ownership," the courts have ruled. It need not even be strictly titled and interested in the covered object. The "Guidelines on Product Filing Procedures for General Insurance Products" of February 18, 2016, paragraph 6(b), additionally says that the product should be an authentic coverage product overlaying an insurable threat with a valid threat transfer. Any type of "exchange threat transfer" or "monetary guarantee" business, which includes oblique coverage merchandise like coverage derivatives, shall now no longer be approved. Trade credit plans must meet certain criteria; for example, they cannot cover bill discounting, factoring, reverse factoring, or any other receivable resulting from financial or consulting services. The regulation will now no longer help a crook in improving any shape of benefit from or for their crime, as any other idea known through Indian regulation. As a result, the results of a crook's behavior are frequently now no longer blanketed through coverage, and the perpetrator gets no benefits.

Direct coverage of actual property placed in India, in addition to insurance for ships, different vessels, and planes registered in India, isn't always accredited through non-admitted insurers^{†††}. However, as long as the full quantity of remittances remains in the RBI-mandated limitations, someone living in India is authorized to buy or hold a medical health insurance coverage issued through a coverage organization out of doors of the United States of America. In this regard, a resident of India can also additionally buy or preserve possession of a lifestyle coverage from an insurer primarily based totally out of doors of the United States of America, problem to the sure forex regulations mentioned within the RBI's Master Direction on Insurance, dated January 1, 2016^{††††}, as modified. Similarly, a resident of India can also additionally buy or preserve possession of a fashionable coverage from an insurer placed out of doors of the United States of America so long as they abide by the regulations set forth within the Foreign Exchange Management (Insurance) Regulations of 2015. In addition to the aforementioned, the IRDA (Lloyd's India) Regulations 2016 allow worldwide reinsurers to go into the Indian marketplace, open department workplaces there,

^{†††} Neeraj Tuli & Rajat Tamni, *Insurance Litigation in India*, LEXOLOGY (July 12, 2022, 9:29PM), <https://www.lexology.com/library/detail.aspx?g=188d7059-fa83-412d-9cb4-75f6d0104f50>

^{††††} Master Direction - Insurance, 2016, Reserve Bank of India, https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10738, last visited July 18, 2022

or conduct commercial enterprise via provider corporations there. In accordance with the IRDAI's rules at the reinsurance of existence and trendy coverage marketplace and in keeping with conformity with the order of precedence for cessions, non-admitted insurers who're indexed with the IRDA as cross-border reinsurers may also have reinsurance dangers in India. Cross-border coverage disputes among insurers and insureds are unusual in this jurisdiction due to the restrictions on non-admitted insurers.

Arbitration Clause in Insurance Policies

In certain situations, the policyholder and the insurer jointly choose an arbitrator, or panel of arbitrators, who is impartial and who will make a decision based on the evidence at hand. An arbitration award is produced following the arbitrator or arbitration panel's conclusion. The amount of the covered losses as well as any fees, additional damages, and/or potential disciplinary actions that may be necessary to settle the issue may all be determined by this award, making it legally enforceable. When there is a disagreement or a dispute between the parties, they may rely on Section 11(6)^{§§§§} of the Arbitration and Conciliation Act, 1996, which deals with the appointment of arbitrator(s) for the adjudication of a dispute. The insurance company must acknowledge culpability under or in connection with the policy before arbitration can be used, as that is a condition precedent to relying on the arbitration provision in the contract. In India, the government and judiciary have repeatedly emphasized the value of alternative dispute resolution (ADR).

As a result, the Code of Civil Procedure Laws were amended to include a provision^{*****}that recognizes arbitration, conciliation, mediation, negotiation, and Lok Adalat (a court-based dispute resolution process) as forms of ADR. The clause states that the court must submit a dispute to any type of ADR if there is a chance of a settlement. The Supreme Court ruled in *Oriental Insurance Co Ltd v. Narbheram Power and Steel Pvt Ltd*^{††††} that the insured must file a civil lawsuit to establish its liability before referring the matter to arbitration to determine the amount of the claim when the insurance company has explicitly and unequivocally denied and repudiated the claim. However, because it is a prerequisite under insurance plans, the insured cannot bring a civil lawsuit without first receiving an arbitral award. As a result, it might be inferred that the insured is rendered totally helpless and the insurer manages to escape responsibility. But in the instance of *Ms Geo Chem Laboratories Pvt Ltd v. United India Insurance Co Ltd*^{†††††}, the insurance company refuted the existence of a disagreement, which made the investigation last longer. Additionally, they argued that the objection should not have been made in the first place and that the dispute should not have been arbitrable. The Delhi High Court held that the party must present a prima facie case that an arbitration agreement does not exist because of these factors, which unwisely limit the scope of the dispute and

^{§§§§} The Arbitration and Conciliation Act, 1996, § 11(6), No.26, Acts of Parliament, 1996 (India)

^{*****} The Code of Civil Procedure, 1908, § 89, No. or, Acts of Parliament, 1908 (India)

^{††††} *Oriental Insurance Co Ltd v. M/s Narbheram Power and Steel Pvt Ltd*, C.A. No.-002268-002268 / 2018

^{†††††} *M/s Geo Chem Laboratories Pvt Ltd v. United India Insurance Co. Ltd*, 2021

disturb the process. According to a Supreme Court decision^{§§§§§}, the presence of an arbitration clause does not preclude Indian consumer courts from having jurisdiction. Therefore, despite an arbitration clause in the insurance contract, a policyholder or an insured may file a lawsuit in the consumer courts. Furthermore, any subsequent dispute cannot be submitted to arbitration where a covered party willingly executes the discharge voucher in fulfillment of the claim^{*****}. The rules governing the arbitration process are up to the parties to decide. According to Indian law, an arbitral ruling is final and enforceable and may only be contested in court on the following grounds^{†††††}:

- one of the parties to the arbitration is incapable;
- a legitimate arbitration agreement cannot be found;
- no sufficient notice of the proceedings' selection of an arbitrator was given;
- the arbitration's subject matter is ineligible for arbitration under Indian law;
- the arbitral tribunal's composition did not follow the parties' agreement;
- (iv) the award contravenes Indian public policy.

Civil Courts and Consumer Forums

The Supreme Court of India is included in the large ascending hierarchy of civil courts, along with 600 or so district courts and 25 high courts. The civil courts and judges under 4 of the 25 high courts—Delhi, Mumbai, Chennai, and Kolkata—have authentic jurisdiction to pay attention to disputes exceeding a certain value, therefore they no longer pay attention to instances concerning values extra than that threshold. In another circumstance, district courts and the high courts of the primary example have unrestricted economic authority to bear in mind any coverage claim. The consumer courts function on a three-tiered structure. The District Consumer Disputes Redressal Commissions, State Consumer Disputes Redressal Commissions, and National Consumer Disputes Redressal Commission are indexed in ascending order (NCDRC).^{*****} There are 626 District Consumer Dispute Redressal Commissions, and they could approve claims for as much as approximately US\$28,239 in total. There are 36 State Consumer Dispute Redressal Commissions that may pay attention to appeals in opposition to district fee judgments and take delivery of claims really well worth as much as approximately US\$141,195. At the top is the NCDRC, which hears appeals against state commission judgments and considers cases with a value of over US\$141,195. The 2019 Consumer Protection Act, which aims to raise the financial ceilings, has not yet taken effect.

The Commercial Division and Commercial Appellate Division of High Court Act 2015, which was passed by the government in 2015, established commercial courts for the swift resolution of commercial disputes (the Commercial Courts Act). The Business Courts Act includes insurance and reinsurance disputes in its definition of commercial disputes. Commercial courts can pay attention to instances with values extra than \$148,000 USD. Insurance and reinsurance

§§§§§ M/s Emaar MGF Land Ltd. v. Aftab Singh (2018) SCC 2945

***** United India Insurance Co. Ltd. v. Antique Art Exports Pvt. Ltd (2019) 5 SCC 362

††††† The Arbitration and Conciliation Act, 1996, § 34, No.26, Acts of Parliament, 1996 (India)

††††† B.S. Bodla, *supra* note 12, 17-45

disputes over US\$148,000 will now be heard and determined with the aid of using commercial enterprise courts if they're now no longer heard earlier than customer fora. The pecuniary jurisdiction of the economic courts has been reduced from US\$148,000 to US\$ 4,170 because of a latest alternate in 2018.^{ssssss} Unless a celebration is inquiring for a pressing period in-between remedy, the Act mandates that the events to industrial complaints shall compulsorily take a seat down for the mediation earlier than such fit is filed.

Calculation of Limitation Period (Untimely Notice and Delay)

When an insured's claim is denied (absolutely or partially) by the insurer however the insured believes it must be covered with the aid of using the policy, disputes among the insured and the insurer often result. There can be a distinction of opinion among the insurer and the insured at the insurance furnished with the aid of using the coverage clauses, the quantity payable beneath the policy, the applicability of exclusions, the insured's compliance with the phrases and situations of the policy, etc^{*****}. According to the Indian Limitation Act of 1963, the motive of motion for figuring out the term for bringing a declaration towards the insurer will begin whilst the declaration is refused or whilst the occasion giving upward push to the loss occurs. While there is a two-year limitation time for claiming in the consumer court, there is a three-year limitation time for submitting a claim in civil courtroom docket or in arbitration. Each coverage has a completely unique technique for being aware to insurers, that is generally mentioned within the coverage. The policy also specifies the individual to whom notification should be given and their name and address. Notice may be needed to be sent via letter, email, or facsimile. ⁺⁺⁺⁺⁺

In a policy with a claims-made clause, the insured must notify the insurer as soon as a claim is made against them. A claim against the insured or the circumstances surrounding a claim is what set off this type of coverage. It is recommended that the notification is given quickly whilst the insured receives knowledge of the declaration or event, however, the outer restriction is commonly indicated within the coverage. This may be at some point of the coverage length; at some point of the invention length; or inside a sure length simply after the cease of the coverage time period or the invention time frame, so long as this declare is disclosed inside a fixed time from the date the declare is first made in opposition to an insured. When the insurer can demonstrate that the notice was not sent to the insurer as soon as was reasonably possible and the delay in notification harmed the insurers' evaluation of the claim, the notice is typically seen as being out of time.

^{ssssss} The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018, Acts of Parliament, 2018 (India)

^{*****} Neeraj Tuli & Rajat Taimni , *A concise guide to Insurance Litigation in India*, LEXOLOGY (June 28, 2022, 10:00 PM)<https://www.lexology.com/library/detail.aspx?g=ca195bb7-cd38-4597-b226-3d37aa2dd8b3#:~:text=A%20concise%20guide%20to%20insurance%20litigation%20in%20India>

⁺⁺⁺⁺⁺ Ibid.

According to the NCDRC's ruling in *Satpal v. United India Insurance Co.*#####, "As far as the merits of the case are concerned, the learned State Commission rightly allowed appeal as there was delay of more than 30 days in intimation to the Insurance Company and thus, petitioner violated terms and conditions of the policy." It was decided in *Hukam Singh and Giriraj v. United India Insurance Co Ltd.*##### that the notification Required to be supplied right away to the coverage business enterprise cannot get replaced with the aid of using the notification supplied to the financing bank. The coverage business enterprise is notified of the robbery so as for them with the intention to take movement to protect their interest with the aid of hiring investigators to discover the automobile. By failing to notify the file of robbery according to trendy circumstance 5(i)(b) of the coverage noted within the impugned order, the petitioners have obviously not protected the pastimes of the insured. The NCDRC concluded that "putting off informing the coverage business enterprise is deadly" within the case of *Bajaj Allianz General Insurance Co. Ltd* with the aid of *Shri Ashutosh Singh, Dty Manager v. Mr. K Eswara Prasad (RP No. 2555 of 2012)*#####. In the modern instance, it seems that there has been a great put off in notifying the insurer about the robbery of the blanketed automobile and submitting FIR with the police. Under those circumstances, the criticism is in all likelihood to be rejected. The NCDRC decided that any put off in reporting a robbery to the police or the insurer below motor car insurance is deadly to the declare with inside the case of *HDFC ERGO General Insurance Co v. Bhagchand Saini RP No. 3049 of 2014*#####. The NCDRC has lately trusted the ruling in *Bhagchand Saini in National Insurance Company Ltd v. Babu A Sirsat, MANU/CF/0772/2014*#####.

According to the phrases of the coverage contract, the insurer ought to be knowledgeable of any claims or the occasions surrounding them within the time body given within the coverage. The implications of non-compliance will, in part, rely as to whether or not the awareness clause is written as a situation or situation antecedent to the insurer's legal responsibility below the coverage. This responsibility can be written as a situation or situation precedent. If the notification clause is a situation, the insurer will want to illustrate that the behind schedule note triggered its damage; but, if the clause is a situation precedent, there has to be no want to illustrate damage so one can rely upon the clause. However, up till recently, courts have consistently ruled that no matter whether or not the notification clause is represented as a situation or situation precedent, the situation regarding note has to no longer bar the agreement of valid claims while there may be a postponement in notification or within the submission of files because of unexpected occasions. This is the stance that the Indian coverage regulatory body, IRDAI, has additionally endorsed in its circulars, in which insurers had been informed now no longer to reject claims until and till the motives for the postpone are mainly decided and documented, and the coverage groups are glad that the deferred claims might've been rejected despite the fact that they have been pronounced in time. The IRDA similarly indicates

Satpal v. United India Insurance Co., (2013) RP No. 2068

Hukam Singh and Giriraj v. United India Insurance Co Ltd., (2012) RP No. 4028

Dty Manager v. Mr. K Eswara Prasad, (2012) RP No. 2555

HDFC ERGO General Insurance Co v. Bhagchand Saini, (2014) RP No. 3049

Bhagchand Saini in National Insurance Company Ltd v. Babu A Sirsat., /CF/0772/2014

that insurers upload language to the coverage documentation that as it should be emphasized that a postpone in notifying a declare or offering the essential office work to the insurer might be excused if it could be proven that the postpone became due to occasions out of doors of the insured's control.

The phrases & situations among the events were enforced through selections made through the Supreme Court of India. The courtroom docket accepted a declaration to be rejected in *Export Credit Guarantee Corp of India Ltd v. Garg Sons International 2013 (1) SCALE 410*^{§§§§§§§§} on the idea that activation notification of claims became beneath a credit score coverage plan. The courtroom docket in addition determined that an agreement's phrases and situations have to be scrupulously adhered to. Under the guise of construing phrases included with inside the coverage settlement, the courtroom docket isn't always accepted to update the phrases of the settlement itself. Equity does now no longer permit for any exclusions. It isn't always accredited for the courtroom docket to interfere with the provisions of a coverage agreement in this permissive manner. The Supreme Court dominated the case of *Sonell Clocks v. The New India Assurance Co Ltd AIR 2018 SC 4146*^{*****} that if the policy's language made the intimation clause's wording a situational precedent, the insured might want to abide by it so that it will keep a valid declaration. Despite the Supreme Court's decision, this technique isn't always usually used, and extra clarification of the state of affairs is needed to set up the law.

Awards at the discretion of courts

In Indian court cases involving insurance issues, specific performance and damage claims are the potential forms of remedies. The insured might also additionally ask the insurer to mainly perform its obligations below the coverage or to pay the coverage declared in a felony procedure. From the time the reason of motion first materialized till the judgment became enforced, Indian courts and tribunals might also additionally award hobby. Typically, an interest is granted at a fee of 9 to 12 per cent, however in a few circumstances, relying on how the events behaved, the interest of 18 per cent will also be granted. The courts additionally might also additionally provide the successful aspect of its prices, however the selection is as much as them. It is standard for price awards to take delivery of in a success party's favor; nevertheless, those quantities hardly ever come near protecting the genuine prices of the litigation. In connection with 4,000 Rupees statutory most for prices awards in vexatious litigation, the Supreme Court endorsed that Parliament keep in mind elevating the most to 1,24,000 Rupees.^{††††††††} Making a previous provide in civil instances does now no longer have any cloth blessings because of a low degree of prices granted. The statutory price cap does now no longer follow in a commercial enterprise lawsuit, permitting prices to be allotted in keeping with the triumphing party's real outlay. The courtroom docket has the choice to award prices; it isn't always required to do so.

^{§§§§§§§§} *Export Credit Guarantee Corp of India Ltd v. Garg Sons International*, 2013 (1) SCALE 410

^{*****} *Sonell Clocks v. The New India Assurance Co Ltd AIR*, (2018) SC 4146

^{††††††††} Neeraj Tuli & Rajat Taimni, *A concise guide to insurance litigation in India*, LEXOLOGY (June 28, 2022, 10 : 52 PM), <https://www.lexology.com/library/detail.aspx?g=ca195bb7-cd38-4597-b226-3d37aa2dd8b3>

Temporary injunctions and interlocutory orders, which can be approved with the aid of using the Civil Procedure Code of 1908, are examples of period in-between reliefs which might be usually accessible. The Specific Relief Act of 1963's provision for transient compulsory injunctions is some other request made with the aid of using parties. In suitable circumstances, a court can also additionally impose an order to live and save you the alienation, sale, removal, or disposal of belongings or problem a transient injunction restraining any act or omission to act. Ordering the coverage organization to pay the insured the mentioned quantities due below the coverage is some other form of period in-between alleviation, leaving handiest the disputed quantity for a very last determination. The court will decide if any period in-between alleviation has to be granted, the situations below which it must be provided, and the way lengthy the treatment must last.

Punitive or extra-contractual damages can't be provided below Indian settlement regulation. The courts pay affordable damages that have been suffered with the aid of using a celebration while there aren't any damages laid out in a settlement. There is a stage of reasonableness associated with the quantity the courtroom docket should ultimately award, and courts usually have to observe the real losses sustained, even in contracts wherein the harm sum is mentioned. When figuring out whether or not an agreed sum is a penalty, the courts will have to observe whether or not it's miles within the shape of a penalty and might decrease the quantity. In *Fateh Chand v. Balkishan Das (AIR 1963 SC 1405)*, the Supreme Court installed the regulation on the problem and reaffirmed the same within the next case regulation.

Interpretation of rules mentioned in the policy

It is established law that the words used in an insurance contract must be given top priority when interpreting its provisions and that the court is not allowed to alter, delete, or substitute any phrases. It is likewise broadly well-known that a coverage policy's phrases ought to be strictly interpreted to examine the quantity of the insurer's legal responsibility because, upon the difficulty of the policy, the insurer commits to protecting the loss incurred through the insured because of dangers included through the policy. It is normally well-known that once a settlement is expressed in writing, oral testimony cannot be used to make clear or regulate the phrases of a written settlement. In spite of the fact that a contract must always be interpreted in accordance with the parties' intentions, this intention can only be determined from the instrument itself, and all other proof of the parties' intentions is disregarded because, when a contract is reduced to writing, the stakeholders thereto are bound by its terms and conditions. In *United India Insurance Company Limited v. M/s Orient Treasures Private Limited Civil Appeal No. 2140 of 2007*, which hooked up this principle, the Supreme Court held that once the phrases of a coverage are clear, plain, or unambiguous and fairly liable to one that means, the courts have to supply that means impact

***** The Specific Relief Act, 1963, No. 47, Acts of Parliament, 1963 (India)

***** Fateh Chand v. Balkishan Das, AIR 1963 SC 1405

***** United India Insurance Company Limited v. M/s Orient Treasures Private Ltd., CA No. 2140 of 2007

no matter the results. The agreement is to be interpreted contra proferentem, or towards the coverage company, if there may be any uncertainty or doubt concerning its requirements.†††††††††† When the aim or interpretation of a clause in an insurance policy is unclear, the clause is considered ambiguous. When the same word has two distinct meanings, it can also happen. Since the provisions of an insurance policy are often drafted by the insurer, when such ambiguity exists in one, it is to be read contra proferentem. The rule of contra proferentem, However, does not virtually observe with inside the case of business contracts due to the fact the phrases are bilateral and feature additionally been together agreed upon, consistent with a current ruling with the aid of using the Supreme Court of India with inside the case of *Export Credit Guarantee Corporation of India Ltd v. Garg Sons International (2014) 1 SCC 686*††††††††††.

Insurer's Duty to defend

Insurance corporations that encompass a duty-to-protect clause of their guidelines are obligated to address the felony complaints beginning with the claim's notification. In addition, insurers are permitted to choose the defense attorney who will be appointed. The defense attorney chosen is typically not under the insured's control. The responsibility-to-protect provision in a coverage settlement basically states that the insurer imparting insurance on the time has a responsibility to protect the claim, although it is finally located to be unfounded, false, or fraudulent. This is the case within the occasion that a declaration has been made in opposition to the named insured for an accused wrongful act. As a result, even though the claim is unfounded, the insurer must nevertheless defend it. There doesn't seem to be any case law in India expressly handling an insurer's failure to uphold its obligation to guard§§§§§§§§§§. We are conscious that that is a contentious trouble withinside the United States, and it might seem that an insurer who erroneously declines to guard an insured will now no longer be accredited to later depend upon coverage defenses and document an attraction towards the court's selection. But one of the most important risks of a coverage corporation making the incorrect selection to say no to guard an insured is that it may be held liable for a breach of contract, particularly if the insured can display that the declaration is absolutely blanketed via means of the coverage. As defined in extra element below, as soon as a corporation has unreasonably did not guard, the insurer isn't best barred from bringing coverage defenses however is likewise accountable for the overall quantity of any judgment or agreement rendered towards the insured in addition to any extra charges introduced on via way of means of the insurer's breach of the coverage contract.

That said, it is now no longer a reason that the enterprise is liable for extra than what its coverage might cover. The insurer isn't always answerable for the part of

†††††††††† John Lowry & Philip Rawlings, *'That wicked rule, that evil doctrine . . .': Reform Law on Disclosure in Insurance Contracts*, *The Modern Law Review*, 75, pp. 1099-1122 (2012)

†††††††††† *Export Credit Guarantee Corporation of India Ltd v. Garg Sons International*, (2014) 1 SCC 686

§§§§§§§§§§ Ray, Saon & Thakur, Vasundhara & Bandyopadhyay, Kuntala (2020), *India's Insurance sector: Challenges and Opportunities* 10.13140/RG.2.2.15872.46085.

the judgment or agreement above the coverage limits until the insurer refused to guard its insured (or did not act nicely to settle a claim inside its coverage limits) in proper faith. When the reluctance to guard is stimulated with the aid of using a war of interest, it isn't always an unjustifiable rejection. Additionally, wherein an insurer gives a defense beneath a reservation of rights however the insured rejects the reserve of rights, the insurer has now no longer unjustifiably declined to guard. The insurer isn't always forced to provide a whole defense whilst insurance is in doubt. In India, the insurer's duty to guard the insured isn't always required with the aid of using law, and the situations of the insurance will commonly decide if this duty exists.***** In maximum cases, the coverage specifies who's liable for the duty—the insured or the insurer—and should, ideally, dictate how a claim is to be handled. Insurance carriers who've a duty-to-guard clause of their guidelines are required to begin the criminal court cases as quickly as they're privy to the declaration††††††††††. In addition, insurers have the choice of selecting the appointed defense lawyer. Typically, the insured has no say within the defense lawyer so that it will be taught.

Insurance frauds and the need for a separate statute

The word "fraud" has its origins in the Latin word "fraus-fraudis," which describes the performance of an act in ill faith to make a profit. In India and many other countries around the world, insurance fraud is a very common occurrence. One significant shortcoming in this regard is that, despite being a serious issue and perhaps not occurring as frequently as other financial and economic criminal actions, it does not receive enough attention. The Insurance Act of 1938 does not define the word "insurance fraud," which is another cause for concern. The Insurance Act of 1938 doesn't define the phrase "insurance fraud." Our legal system has laws that deal with things like forgery, fraudulent acts, cheating, etc., such as the Indian Penal Code, 1860. But none of these rules is really focused on reducing insurance fraud, and they are ineffective at acting as a disincentive to slow down the spread of the same. Since the beginning of time, the insurance industry has been susceptible to fraudulent schemes, and it has shown to be profitable to manage the former's presence. In the United States, one out of every ten claims submitted to insurance with the purpose of receiving the payments is either partially or completely false††††††††††. In India, the insurance sector suffered a loss of Rs. 45,000 crores due to insurance fraud in 2019. Wide-ranging and quite severe effects can be had on a country by widespread health care fraud. Since the beginning of time, there has been a significant problem with the number of cases that are pending before the courts in our nation. Given this steadily growing backlog of cases, bringing legal action against insurance frauds is not something that happens frequently, and after a certain point, the litigants who brought the action stop pursuing frauds that do not involve very large sums of money. This is mostly because so much time is spent on these issues as well as the significant amount of energy needed to pursue the exact same goal. The

***** Ibid.

†††††††††† S.S. Rana & Co., *Insurance Law and Insurance Claims-India*, <https://ssrana.in/corporate-laws/insurance-law/insurance-law-and-insurance-claims-india> (last visited on July 12, 2022)

†††††††††† Abhijith Christopher, S.B. Aditi, *The Exigency for an Insurance Frauds Control Act in India: Challenges to be addressed*, 10 Nirma University Law Journal (2020)

number of cases that are now pending in our country is 4.7 crore. Nearly 1,82,000 of them 87.4% are still pending in lower courts after more than 30 years, with the remaining 12.4% in high courts. §§§§§§§§§§ Additionally, since cases of insurance fraud generally come under the category of criminal offenses, it is impossible to examine alternate dispute resolution procedures for handling such situations. Different statutes in India and Singapore have used the phrase “no prosecution without permission” to underline the idea that an offense cannot be prosecuted unless a predetermined sanction authorizes it. The Insurance Act of 1938 does not define the phrase "insurance fraud," as was already mentioned. Our legal system has laws that address things like forgery, fraudulent acts, cheating, etc., such as the Indian Penal Code, 1860. However, none of these laws are particularly focused on reducing insurance fraud in our country. Furthermore, every insurance business is required to construct a Fraud Monitoring Network, according to the IRDA policy. Measures to reduce, identify, prevent, and safeguard insurance company workers, intermediaries, and policyholders from fraud risks must be included in the context of such a network. Furthermore, such laws are useless if there are no efficient means of bringing those who break them to justice. And only a statutory body, such as a proposed Insurance Fraud Control Act in this case, can sanction such prosecution in this instance.

Conclusion

It has significantly changed and grown, going from being a public monopoly and a closed market to one that is open and competitive. The Indian insurance industry still needs to make significant improvements before it can be compared to the insurance sectors of other advanced economies, despite having implemented a wide range of reform measures. India's market share in terms of insurance is pitifully little. The fundamental issues must be resolved in order to increase its share globally. Some of the suggestions to cope up with these challenges are mentioned below:

- If insurable interest were not necessary, a fraudster may fraudulently buy another person's property insurance and then purposefully cause a loss to get the proceeds; but, if the insured stands to lose money, nothing is gained by the intentional loss. Moral hazard is thus diminished. The need for insurable interest in life insurance lessens the incentive to kill the insured to receive policy benefits. However, anyone can set fire to the insured's home to make a fire insurance claim, or one can kill any other insured party. Measurement of the insured's loss in insured property also requires consideration of the idea of insurable interest. The insurable interest of the insured serves as the measure of recovery in the majority of property insurance contracts of indemnity. Payments made in the case of a loss cannot be greater than the value of the insured party's interest since the indemnity principle must be followed. Thus, it may be claimed that the

§§§§§§§§§§ Sumeda, *Explained | The clogged state of the Indian judiciary*, The Hindu (June. 29, 2022, 10:04 AM), <https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justiceundertrials/article65378182.ece>

insurable interest is a crucial component of insurance and that there cannot be insured if there is no insurable interest in the insurance's subject matter.

- An arbitration language incorporated into an insurance policy must be carefully interpreted and clearly indicate the aim of the arbitration without any ambiguity. Additionally, it acknowledged that a stringent interpretation of such terms would deny the insured the advantages of arbitration. By completely rejecting the claims, insurers are also given the opportunity to avoid arbitration proceedings thanks to such clauses. In order to pursue arbitration for both problems of liability and quantum, parties must be aware of such arbitration clauses and ensure that the arbitration clause covers all disputes relating to their insurance policies. Insurance consumers face a serious threat from the rising usage of binding, pre-dispute arbitration clauses. Lawmakers and insurance regulators must handle it because it signals a significant change in the power dynamics between insurers and consumers.
- The fact that while interpreting the terms of the contract, the court can only give the judgment according to the literal meaning of the words written in the expressed contract of insurance can be proven unfair on the part of the insured. This is because the insurers will always try to protect themselves against any kind of liabilities by including different conditions in the contract that the insurer might not even bother to read at the time of entering into the insurance contract. The court must be given some sort of liberty in interpreting the given clauses to provide justice to the insured.
- The main objective of the insured when he subscribes to any insurance policy is to be duly reimbursed for the losses he has incurred due to the occurrence of the probable condition. The awards such as the costs of the litigation and the interest charges must be made compulsory for the aggrieved party. This will also make the insurers think twice while unnecessarily bothering the insured person.
- There is no clear instruction for the computation of the limitation period regarding the cause of action to file a suit in the forums. It is being given that the period should be calculated from the date when the claim is rejected or when the loss occurred. There should be a clear guideline related to the scrutinization of the date of cause of action as an untimely delay in the notice may result in the dismissal of the suit.
- If we look at various business insurance claims including commercial property insurance, liability insurance or even life insurance and health insurance, the claim amount is often higher than the pecuniary jurisdiction of the commercial courts and in certain cases, of the civil courts too. Since the commercial courts have been set up to provide speedy remedies to the parties, the pecuniary jurisdiction should be increased for the same cause. In addition to that, the compulsory mediation clause unnecessarily makes the procedure more time-consuming. Moreover, it would be better if a separate judicial court is set up to solely look into insurance-related matters.
- In favor of market-oriented, fair competition, the Indian Insurance Industry has also witnessed a paradigm shift from just being a public sector exceptionality to an insurance business. Due to this important development, which has been consistently overshadowed by the spreading

pandemic and the state of the economy, insurance fraud has also increased across the country. These scams hinder the operation of the whole insurance sector in addition to constituting a repulsive violation of the concept of absolute good faith. Due to the lack of specific legislation in the nation to curb insurance fraud and the Insurance Act, 1938, which was passed during the British rule to regulate the Indian insurance sector, the problem is sometimes described as a low-risk, high-reward game for criminals. There is a need to take strict actions against insurance fraud and that would only be possible if there's a separate legal compliance mechanism i.e. the Insurance Frauds Control Act just like other nations have.

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