JULY 2022

INSURANCE
INSIGHT

Award of interest on interest legally permissible

IRDAI permits 'Use and File' procedures for insurance products

IRDAI reduces compliance burden on insurance companies

Determination of compensation to be on realistic approximation

Presumptuous assessment of loss not legally tenable

ANIMESH SINHA & PARTNERS
ADVOCATES & SOLICITORS

Regulatory Developments

IRDAI permits 'use and file' procedures for insurance products

The filing of all general insurance products are governed by the 'Guidelines on Product Filing Procedures for General Insurance Products' dated 18.02.2016. As per para 7.2(l) of the said Guidelines, insurance products are mandatorily required to be registered with the Insurance Regulatory and Development Authority of India (IRDAI) before they are marketed, i.e. they are governed by the 'File and Use Procedures'. Such insurance products include all retail products and commercial products offered to commercial customers with a policy sum insured upto Rs. 5 crore.

Other commercial products offered to commercial customers with policy sum insured above Rs. 5 crore are on the other hand governed by the 'use and file' procedures under the Guidelines. The 'Use and File Procedures' enable the insurers to market the products on being filed with and UIN allotted by the authority.

IRDAI through its circular dated 01.06.2022 has modified the above Guidelines and permitted general insurers to file all products under Fire, Marine, Motor and Engineering lines of business under 'Use and File Procedure' for both retail and commercial categories. However, the retail products of miscellaneous lines of business having initial sum insured up to Rs.5 crore shall continue to be filed with the authority under the file and use procedures.

According to the circular, the modification has been brought about to facilitate the industry to respond faster to the emerging market needs in terms of designing and pricing of general insurance products and to promote efficiency in the conduct of general insurance business.

The IRDAI has extended the above modifications to health and life insurance products through its circular and press release dated 10.06.2022.

Reduced Compliance Burden for Insurance Companies

The IRDAI, through its circular dated 10.06.2022, has reviewed and rationalised the regulatory returns to be filed by insurance companies. The number of off-line returns being submitted by life insurance companies has been reduced from 42 to only 4 and the number of online returns from 8 to 5. Three separate certification requirement have also been consolidated into one.

The circular has been passed with the expectation that reduced compliance burden will enable insurers to better focus their efforts and time in reaching every citizen and improving coverage and penetration.

Circular on Accounting of Premium, Claims and Related Expenses on Estimation Basis

As per circular dated 15.06.2022, IRDAI has laid down the framework requiring reinsurers to ensure that in annual financial statements no premium is accrued/accounted on estimate basis at least up to 3rd quarter of each financial year.

However, for the fourth quarter ending on 31st March, where the statement of accounts has not been received on time, the premium, losses and related expenses may be accounted on estimation basis. The circular lays down qualifications to be ensured by the the insurers while estimation of said income and expenses.

The circular has been made effective from financial year 2022-23 onwards.

Case Watch:

Delhi High Court reiterates survey report not binding and award of interest on interest legally permissible.

The Apex Court on its decision in the matter of National Insurance Co. Ltd. vs Digital World [2022 SCC Online Del 988] has reiterated that the insurance company is not bound by the survey report. The reliance upon the survey report must not be mechanical in nature but must be premised upon sound reasoning.
The court has further clarified that survey report may be relied upon in part too. It is trite law to place reliance upon the assessments made in the survey report only to the extent the said assessments adequately reasoned. No reliance shall be made on assessments lacking reasoning.

In the above matter, The Arbitral Tribunal had awarded interest @11% p.a. till the date of award and a further post-award interest @12% p.a. The Court held that the word 'sum' in Section 31(7)(b) of the Act, would include not only the principal amount but also the pre-award interest. Thus, it is permissible in law to award interest on pre-award interest.

Reconciling MACT and Workmen Compensation Act

The Hon'ble High Court of Madras in the case of Bajaj Allianz General Insurance Company Ltd vs K Usha Rani & Ors [2022 SCC Online Mad 1655] has harmoniously construed a case of payment of compensation in case of a motor vehicle accident. The court has observed that in a compensation case under the Workman Compensation Act, where the employer has been directed to compensate the employee for a motor vehicle accident during the course of employment, the employer is entitled to seek recovery of the compensation from the insurance company with whom the vehicle in accident was insured.

Does coverage under an insurance policy extend if premium is not paid?

The Hon'ble Jharkhand High Court has observed that liability of the insurance company to indemnify the insured in cases of motor vehicle accident is founded on the contractual liability with the insured during the subsistence of the insurance policy.
If the insured fails to pay the premium promised, or when the cheque issued by him towards the premium is returned dishonoured by the bank concerned the insurer need not perform his part of the promise. The corollary is that the insured cannot claim performance from the insurer in such a situation.

However, the determining factor is the subsistence of a policy as on the date of the accident. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party.

From the above, it follows that in cases where the cheque drawn for payment of the premium for renewal of insurance policy is dishonoured or premium is not paid for any reason, it is incumbent upon the insurance company to immediately intimate the insured about cancellation of the insurance policy on account of non-payment of the premium amount. When such intimation is given before the date of accident the insurance company shall not be liable to indemnify the owner of the vehicle to pay any compensation amount to a third party.

Determination of compensation to be based on realistic approximation

The Hon'ble Bombay High Court has observed in the matter of Reliance General Insurance Co. Ltd. v. Master Siddhant Mahendra Kadam, 2022 SCC OnLine Bom 880, that there cannot be actual compensation for anguish of the heart or for mental tribulations. The quintessentiality lies in the pragmatic computation of the loss sustained which has to be in the realm of realistic approximation. Therefore, section 168 of the Motor Vehicles Act, 1988 stipulates that there should be grant of 'just compensation.'. thus, it becomes a challenge for a court of law to determine 'just compensation', which is neither a bonanza nor a windfall, and simultaneously, should not be a pittance."

One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the Tribunals assessing the compensation in a case of 100 per cent disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation.

Take Add-on Covers – NCDRC says no claim payable when cause of loss specifically excluded

The NCDRC has observed in the matter of United India Insurance v. Dalas Biotech, NCDRC, RP/2096/2013, that if spontaneous combustion was to be covered under the Policy, 'add on' cover ought to have been taken to cover the same by paying an extra premium. Spontaneous combustion is a form of fire but the same has been specifically excluded from the Policy only to be taken as an 'add on' cover by paying an extra premium. The Complainant having admitted that the fire was caused due to spontaneous combustion and having not taken 'add on' cover of spontaneous combustion, it certainly gets excluded from the Policy and hence, howsoever

was damage and loss caused, the Complainant/Insured, is not entitled to claim for the same under this Policy and the Insurance Company was well within its right to repudiate the claim arising out of the spontaneous combustion. The cause of fire was not electric short circuit or any other source and according to the Surveyor Report, there was no fire but only fumes due to spontaneous combustion at the time of loss.

Assessment of loss based on presumptions and surmises not legally tenable

In recent years, survey reports have been found wanting in attribution of reasons behind computation and assessment of losses, if only in only certain aspects of assessment and computation. The NCDRC has recently in the matter of Shree Balaji Trading Company v. Oriental Insurance, RP/1667/2013, observed as regards the assessment of loss, the Surveyor has made deductions in the total loss based on many assumptions, presumptions and surmises which are not backed by documents or evidence. On the other hand, the District Forum was held to have dealt with each issue in detail, based on documents and evidence. Accordingly, the order passed by the State Commission was set aside with the order of the District Forum upheld as very well-reasoned.

E 10 SF Defence Colony
New Delhi - 110024

asp@sinhapartners.com
www.sinhapartners.com

+91 11 41 046 911
+91 11 40 536 008