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10.INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

10.1 Authorised Insurer (MVA S 145) — “authorised insurer” means,

(i) an insurer carrying on general insurance business in India under the General Insurance Business (Nationalisation) Act, 1972,

(ii) any Government insurance fund authorised to do general insurance business under the above Act.

10.2 Certificate of Insurance (MVA S 145, CMV R 141, 142, 143) —

“certificate of insurance” means a certificate issued by an authorised insurer in Form – 51 and includes a cover note in Form – 52, and duly authenticated by a person authorised by the insurer.

10.3 Policy of Insurance (MVA S 145) — “policy of insurance” means a contract of insurance describing the term, coverage, premiums and deductibles and also includes “certificate of insurance”.

10.4 Third Party (MVA S 145) — “third party” means another party besides the two principals and includes the Government.

10.5 Necessity for insurance against third party risk. (MVA S 146) —

(1) A person should not use, except as a passenger and owner of a vehicle should not allow any person to drive vehicle in public place, unless there is in force, a policy of insurance.

(2) A vehicle carrying, or meant to carry, dangerous or hazardous goods, is also required to obtain a policy of insurance under the Public Liability Insurance Act, 1991.

(3) Requirement of policy of insurance is not applicable to any vehicle owned by the Central Government or a State Government, which is used for Government purposes, unconnected with any commercial enterprise.

(4) The State / Central Government is empowered to exempt by order, from obtaining policy of insurance for any vehicle owned by any of the following authorities, namely:—

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking.

(5) The appropriate Government should not made the exemption order unless a fund is established and is maintained by that authority. The fund should be used for meeting any liability arising out of the use of any vehicle of that authority.

Explanation.— “appropriate Government” means the Central Government or a State Government, as the case be, and—

(i) in relation to any corporation or company owned by the Central Government or any State Government, means the Central Government or that State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central Government;

(iii) in relation to any other State transport undertaking or any local authority, means that Government which has control over that undertaking or authority.

10.6 Requirements of policies and limits of liability. (MVA S 147) — (1) A policy of insurance is a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons.

(i) against any liability, in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

(2) A policy of insurance should not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923

(ii) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(iii) to cover any contractual liability.

(3) A policy of insurance should cover any liability incurred in respect of any accident, up to the following limits:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand.

(4) A policy should be of no effect unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the Form – 51.

(5) Where a cover note issued by the insurer, is not followed by a policy of insurance within the prescribed time, the insurer, within seven days of the expiry of the period of the validity of the cover note, intimate the fact to the registering authority.

(6) An insurer issuing a policy of insurance is liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

10.7 Effect of death on certain causes of action. (MVA S 155) — The death of a person in whose favour a certificate of insurance is issued, occurs after the happening of an event which has given rise to a claim, should not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

10.8 Effect of certificate of insurance. (MVA S 156) — When an insurer has issued a certificate of insurance, then—

(a) if and so long as the policy has not been issued by the insurer to the insured, the insurer, as between himself and any other person except the insured, be deemed to have issued to the insured person a policy of insurance conforming in all respects with the description and particulars stated in such certificate; and

(b) if the insurer has issued to the insured the policy, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the

policy against the insurer either directly or through the insured than the particulars of the policy, the policy, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects with the particulars stated in the said certificate.

10.9 Transfer of certificate of insurance. (MVA S 157, CMV R 144) —

(1) Where a person who has obtained a certificate of insurance, transfers the ownership of the vehicle in respect of which insurance is obtained with the policy of insurance, the certificate of insurance and the policy is deemed to be have been transferred in favour of the person to whom the vehicle is transferred with effect from the date of its transfer.

(2) The person who has purchased the vehicle should within fourteen days of the date of transfer, is required to intimate to the authorised insurer, the details of the registration of the vehicle, the date of transfer of the vehicle, the previous owner of the vehicle and the number and date of the insurance policy.

10.10 Production of certain certificates, licence and permit in certain cases .

(MVA S 158)— (1) A person driving a vehicle in any public place, on demand by a Police Officer in uniform should produce, the —

- (a) certificate of insurance;
- (b) certificate of registration;
- (c) driving licence;
- (d) certificate of fitness
- (e) road permit,

(2) After occurrence of an accident, if the driver of a vehicle does not produce the above documents, he has to produce the same at the police station at which he makes the report required by MVA S 134.

(3) The expression “produce his certificate of insurance” means produce for examination the relevant certificate of insurance.

(4) Any information regarding any accident involving death or bodily injury to any person is recorded or report is completed by a police officer, the officer-in-charge of the police station should within thirty days from the date of recording of information forward report to the claims tribunal and copy to insurer.

10.11 Duty to furnish particulars of vehicle involved in accident. (MVA S 160)— A registering authority or the officer-in-charge of a police station have to furnish any information relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it and the property, if any, damaged to a person who alleges that he is entitled to claim compensation or to a insurer on payment of prescribed fee.

10.12. Furnishing of copies of reports to Claims Tribunal. (CMV R 150)—

(1) The police report of an accident should be in Form 54.

(2) A registering authority or a police officer, should within seven days from the date of receipt of the request, furnish the information in Form 54, on payment of a fee of rupees ten to the person eligible to claim compensation under MVAS 160.

10.13 Supply of information. (CMV R 149)— An authorised insurer should furnish any particulars to the Central Government or a State Government or to any police officer without any charge, on request.

10.14 Special provisions as to compensation in case of hit and run motor accident. (MVA S 161)— (1) “hit and run motor accident” means an accident arising out of the use of a vehicle or vehicles, the identity of which cannot be ascertained in spite of reasonable efforts.

(2) The General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 and the insurance companies for the time being carrying on general insurance business in India should provide for paying, compensation in respect of the death of, or grievous hurt to, persons resulting from hit and run motor accidents.

(3) The compensation for hit and run motor accidents in respect of —

(a) the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;

(b) grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees.

10.15 Scheme for payment of compensation in case of hit and run motor accidents. (MVA S 163)— (1) The Central Government is empowered to make a scheme specifying, the manner in which the scheme —

(i) administered by the General Insurance Corporation,

(ii) the form, manner and the time within which applications for compensation be made,

(iii) the officers or authorities to whom such applications be made,

(iv) the procedure to be followed by such officers or authorities for considering and passing orders on such application.

(2) The Government of India notified the above scheme vide S.O. No. 440 (E), dt. 12/6/1989.

10.16 Option to file claim in certain cases. (MVA S 163B)— When a person is entitled to claim compensation under MVAS 140 and MVAS 163-A, he should file the claim under either of the said sections and not under both.

10.17 Certificates or cover notes lost, destroyed, torn, soiled, defaced or mutilated (CMV R 146)—(1) Where the policy holder —

(a) lodges with an authorised insurer a declaration in which he declares that a certificate of insurance or cover note issued to him by such insurer has been lost, destroyed, torn, soiled, defaced or mutilated.

(b) returns to the authorised insurer the certificate of insurance or cover note issued to him, in a torn, soiled, defaced or mutilated condition; and

(c) pays to the insurer a fee of rupees twenty in respect of each such certificate or cover note.

(2) The authorised insurer, if satisfied that such certificate or cover note,

(i) has been lost or destroyed and that all reasonable efforts have been made to find it,

(ii) that it has been destroyed or is soiled, defaced or mutilated,

(iii) issue in lieu thereof a duplicate certificate of insurance or cover note with the word “Duplicate” prominently endorsed to the effect.

10.18 Records of exempted vehicles. (CMV R 148)— (1) In the case of a motor vehicle owned by the Central Government or a State Government, which is used for Government purposes, unconnected with any commercial enterprise and the vehicle belongs to —

(a) the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;

(b) any local authority;

(c) any State transport undertaking.

Have to produce Form – 53 signed by a person authorised in that behalf.

(2) The authority which signed Form – 53 have to keep a record of the vehicles owned by it in respect of which a policy of insurance has not been obtained.