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Fire Insurance: A Social Security Tool

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Abstract
It is a generally acknowledged phenomenon that there are enormous risks in every sphere of life. Our life and property are not safe and there is always a chance of losing it; to recover that loses and damage is to get insured. Insurance is a contractual agreement for transferring and allocating risks where the risk is the uncertain event. In simple words insurance is a contract of consideration for a happening of an event. The chances of occurrence of the events causing losses are quite uncertain because it may happen or may not happen; when such risk happens, the insurer indemnifies the risk and losses in return for the payment of premium. For property, there are fire risks, for shipment of goods there are perils of sea, for human being there are risk of death and disability and so on. Hence, insurance protects men as well as things. In this paper, I have tried to analyse and research the concept of fire insurance, its kinds, and claim of fire insurance along with case laws.

Keywords: *Insurer, Insured, Contract, Consideration, Premium, Uncertain event*

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INTRODUCTION
Marine insurance is the oldest form of insurance, after that the concept of fire insurance was first evolved when there was a huge fire in 1660 in London. This fire burnt over 436 acres of ground and destroyed over 13,000 houses. This was the huge fire disaster in the world during that period. Keeping this in view, a firm called Sun Fire House was established in 1710 to cover losses arising out of fire.

Fire insurance is a recent concept in insurance sector in India. It is covered under the Insurance Act, 1938. It covers against the risk of loss arising due to fire. “Fire is a good servant but a bad master” which means when fire is under control, its obedience is beyond doubt but when it is uncontrollable, it leads to huge loss. Risk of fire loss is huge in modern days but in modern age with the invention of fire proof and fire extinguisher appliances, other materials are favourable to the elimination of fire. Besides, government has also taken many precautionary steps to avoid the risk of fire by passing legislation regarding conditions of construction of buildings, storage of hazardous materials, etc. Many properties are getting damaged and losses due to the fire to get rid of the losses the concept of fire insurance is exist. Therefore, insurance protects people from the loss. It is a cooperative device. The insured pays premium regularly for their property to the insurer when the contingent event happens then the insurer indemnifies the losses accused by fire. To claim the fire insurance there should be actual fore, or ignition and the fire must be fortuitous in its nature. And it should be proved that the event is caused by fire. Fraud and wilful misconduct, resembling of fire may not be consider as a fire.

CONTRACT OF FIRE INSURANCE AND ITS CONDITIONS
A fire insurance contract means an agreement whereby one party in return for the consideration indemnifies the loss occurred by the fire, where it is a contingent because the event is uncertain and unpredictable. Here, the consideration is the premium paid by the insured for the insurer for the sun assured (actual amount of the fire insurance policy). Fire insurance does not protect only direct losses but also the consequential losses also.

Definition of fire insurance according to the

Insurance Act, 1938, fire insurance business means the business, contracts of insurance against loss by or incidental to fire or other occurrence customarily include among the risks insured against in fire insurance policies.

The fire insurance contract is valid only if it fulfils all the requirements of a valid contract as in accordance with the Indian Contract Act, 1872.

Period of Fire Insurance Policy

Usually fire policies issued for one year are called 'Annual Insurance' for period of short time than one year are known as 'short term-policy', more than one year are known as 'long-term policy'. Generally, annual insurance is common, short-term and long-term policies are rare in practice.

More Than One Fire Occurred

When more than one fire is caused to the same subject matter, then the insurer is not bound to pay more than the sum assured.

More Than One Policy

When the one property is insured by more than one policy if the loss is occurred by the fire then the insured cannot claim each insurance company for the loss, he shall claim only for the actual loss by the fire not more than the rateable amount, i.e., he cannot realize more than the actual loss from the entire insurer. This is also means as principle of consideration.

Insurable Interest

Insurance contract is valid only if the insured possess interest in the subject matter of insurance. There should be a pecuniary interest in the subject matter. The relationship between the policy holder and subject matter should be recognized by law. Fraud, misrepresentation, etc., shall not be considered as a valid interest. Insurance interest is the general principle of the contract of insurance, without that insurance cannot be lawfully enforced. There should be a monetary interest between the policy holder and the subject matter.

Principle of Good Faith

All the material should be disclosed to the insurer by the insured about the subject matter and it is vice versa for the insurer about the policy. It is the important principle in the contract of insurance. There should not be any fraud, misrepresentation and non-disclosure about the concerning material. In the case of insurance, the legal maxim *caveat emptor* is not applicable. Insurance contract is the contract of *uberrimae Fidei*, i.e., of absolute good faith both the parties should disclose the true facts and materials fully. It is the duty of both the parties to disclose the facts in absolute good faith.

Principal of Indemnity

Fire insurance contract is strictly an indemnity contract. The insurance company compensates the losses to the Insurer in return for the consideration paid by the insurer. The indemnity is subject to the actual sum assured if the insurer paid more than the sum assured then they shall claim back the amount. Previously the word indemnity was misunderstood only for the tangible and material property but now it also covers the consequential loss. The main and important feature of insurance is indemnity, without that it would lose its objective and motive. To apply the principle of indemnity, the insured must prove that he will suffer the monetary loss on the happening event of the insured matter and the amount of compensation will be the amount of insurance. He may claim only the amount of the loss sustained. If the insured has affected more than one policy, he is precluded from obtaining more than one complete indemnity. The indemnity faired according to the type of property and the indemnification may be in the form of cash, repair, replacement and reinstatement.

Doctrine of Subrogation

Subrogation means right of one person to stand in the place of another and to avail himself of the latter's rights and remedies. The principle of subrogation is just a corollary to the principle of indemnity. It is the right of the insurance company to acquire all rights related to such loss possessed by the insured against third parties after paying the loss to the insured. If the insured has recovered from the insurance company the amount of his actual loss, he must transfer to the insurance company all the rights which he may possess against the property or against third party in respect of the loss. This principle is a sub-principle to the doctrine of indemnity.

Insurer Steps into the Shoe of the Insured

Subrogation is the legal right afforded to the insurance company. It transfers all the rights of the insurer to recover the amount paid by him for the insured by suing them for the loss caused by them. For example: X owns a commercial property it was destroyed due to the fire explosion from the Y neighbours building due the negligent use of blow torch. X got the compensation as he insured the property now the insurer has the right to sue Y for negligently use of blow torch to recover the indemnity amount. Here the right of sue of X is transferred to the Insurer, i.e., he steps into the shoe of X.

Proximate Cause

Proximate cause is the important feature in the fire insurance policy. Proximate cause means direct or nearest cause but not distant or remote cause. The maxim is '*sed causa proxima non-remota spectature*' which means see the proximate cause and not the distant cause. To claim the insurance there should be a direct or nearest cause, no remote or indirect cause shall be recovered from the insurance company. Therefore, it is very important to prove the cause is proximate, direct and nearest to claim the Insurance.

Warranties

Certain conditions and promises in the insurance contract are called as warranties. Warranty is the very important condition in the insurance contract which is to be fulfilled by the insured. On breach of warranty the insurer is free from his liability. When the warranty is mentioned in the policy is written warranty, when the warranty is not mentioned then it is called implied warranty. Warranties which are answers to the questions are called affirmative warranties. The warranties fulfilling certain conditions or promises are called promissory warranties.

Renewal of Policy

The fire insurance policy shall be renewed before the expired date, the insurer sends the notice before the expiry of the policy. The insured shall pay the premium 15 days before the expiry date and it is called as 'days of grace'; no extra days for the payment of premium shall be given by the insurer. If the insured fails to pay the premium, then the policy falls. The renewal contract is the fresh contract and the insurer and insured should disclose the facts and materials in actual good faith.

Cancellation of Policy

At any time, the insured may cancel the fire insurance policy and get back the paid premium. If some new changes have been introduced in the insured property, then the insurance company can cancel the policy and the pro-rata return the premium is allowed in respect of unexpired term of the policy.

Assignment or Transfer of Fire Policy

Assignment in fire insurance cannot be recognized without prior consent of the insurer, change of interest in fire policies is not valid unless or until the consent of insurer has been given. If the insured property is transferred to the other party then the policy is not automatically transferred and the transferee shall not claim the insurance if any loss caused by the fire because the transferee had no insurance interest during the policy so, they should get the consent from the insurer. Assignment in fire insurance constitutes new contract. It should be made through the operation of law with the consent of the insurer.

TYPES OF FIRE INSURANCE POLICIES

Valued Policy

In value policy the value of the property to be insured is determined at the inception of the policy. When the fire occurs, the insurer is not liable to indemnify the loss rather than pay him the fixed sum assured at the inception of the policy. The amount may be greater or less than the actual market value of the property destroyed by the fire at the time of loss. In the value policy the principle of indemnity is not applied. The value policy is beneficial to the insured because he is relieved of proving the value of the property at the time of loss by searching the invoices and receipts. The valued policies are generally issued on pictures, sculptures, works of arts, jewellery, specified articles, or furniture and the articles not in everyday use, because the value of damage of these articles cannot be easily determined at the time of loss, the value policy are commonly used.

Average Policy

A fire policy containing 'Average Clause' is an average policy the amount of indemnity is determined with reference to the value of the property insured. If the insurance is taken for an amount less than the value of the property then it is called as under-insurance, if the loss occurred then the insurer pays only the proportion of the actual loss as his insurance amount bears to the actual value of the property at the time of loss. For example: the property worth Rs. 30000 is insured for Rs. 20000 is damaged up to Rs. 12000, the insurer will pay only Rs. 8000 as is evident from the following:

Claim = insured amount/value of property multiply by actual loss

=20000/30000 (12000)

=8000/-

Specific Policy

Under this policy, a specific sum is insured upon a specific property and in case of any damage the insurance company indemnifies the actual loss but not exceed the sum assured. For example: if A insured Rs. 10000 for his property, if the loss occurred for Rs. 8000 the insurer pays Rs. 8000, if the loss is Rs. 10000 insurer pays Rs. 10,000, if the loss is Rs. 12,000 the insurer pays only Rs. 10,000 because the value of the insurance is Rs. 10,000. Here the value of property insured has no relevance in arriving at the measure of indemnity in a specific policy.

Floating Policy

Floating policy covers the risk of goods and stocks in different localities under one sum for one premium and in relation to the same owner. The aim of this policy is to cover different kinds of stocks at one time for a single sum assured. The premium payable is calculated based on average premium of each stock. This type of policy is suitable for manufacturer, exporters and importers and other businessman who deals in different business centres. The floating policy contains the 'average clause.'

Excess Policy

Sometimes the stock of the businessman may fluctuate from time to time and he may be unable to take one policy or specific policy. In such cases excess policy is suitable one. Such businessman takes two policies, one 'first loss policy' and second 'excess policy'. When a businessman knows that his stock never goes below Rs. 20,000 but at times it may go up to Rs. 30,000, at that time he may take policy for Rs. 20,000 and another policy for Rs. 10,000. The former policy is called first loss policy and the latter is excess policy. The actual value of the excess stock is declared every month the monthly declaration is taken out to determine the average amount at risk and the amount of premium is regulated from this declaration.

Comprehensive Policy

This policy not only gives full protection against the risk of fire but risk against burglary, riot, civil common, theft, damage from pest and lightening. This policy is also popularly known as 'All in Policies'. This policy is beneficial to the insured and the insurance company also. The company can get higher premium and the insured is protected against the losses due to several specific perils.

Reinstatement Policy

Reinstatement means the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same but not better or more extensive than its condition when new. Under this policy the insurance company under takes to reinstate the insured property lost by to new condition irrespective of its value at the time of loss. These types of policies are issued only for buildings and plant and machinery. This policy is not issued on stock, merchandize or materials. This policy is also called as 'New for Old' policy because the old property is replaced by new properties.

Consequential Policy

The fire insurance policy under indemnify only material loss but under this policy the intangible properties also indemnified by the insurer. Thus, this policy provides indemnity to the insured for loss of net profit, payment of standing charges and expenditure on respect of increased cost of working.

PROCEDURE FOR PREMIUM FIXATION

The risk relating to the insured property differs from its nature. Thus, the property is classified into three:

Tariff Rates

Fire insurance business is regulating by the tariffs formulated by the Tariff Advisory Committee, which is the statutory body established under the provision of the Insurance (Amendment) Act, 1968. The committee has constituted four regional committees in India to advise about rate fixation, terms and conditions for risks in each region. Mainly three principles are considered by the tariff are as under:

a) Occupancy
b) Construction
c) Situation

CLAIM OF FIRE INSURANCE

Following procedure must be adopted for filing the claim under fire insurance:

1) **Intimation of Fire:** When the fire occurs, the insured is bound to take necessary steps and inform about the fire to the insurance company as soon as possible to claim the insurance.
2) **Filing of Claim:** After receiving the information of the fire from the insured the fire insurance company issues a claim form to the policy holder. The insured must fill the claim form and send to the insurance company within 15 days from the date of fire with the required document and information.
3) **Survey Report:** On receiving the notice, the fire insurance company appoints the assessor to examine the facts of the case and to determine the amount of indemnity. The assessor is an expert person having ability and experience in handling claims and he submits the survey report to the insurance company.
4) **Settlement of Claim:** After receiving the claim form duly completed and the survey report, the claim is processed and if it is in order, a discharge voucher is to be signed by the insured. The amount of loss payable by the insurance company us usually settled by agreement between the insured and the insurer otherwise the matter has to be referred to arbitration.

CASE LAW

Ms. Luxy Marketing v. The Divisional Manager, United Insurance Company Ltd. and Others. In this case, it was held by the Kerala High Court that in case of fire claim intimation to the insurer has to be given immediately with regard to the breakage of fire in the property, which is insured with the fire insurance contract and any delay may vitiate the amount of compensation. *Playwell Imlex Pvt. Ltd. v. United Insurance company.* In this case, it was held by the Delhi High Court that petitioner's claim for compensation is maintainable even though the fire that destroyed the property did not take place in the insured premises but the property got destroyed by fire in the neighboring premises.

M/s. Microtex India Ltd. v. Insurance Regulation Developing Authority. In this case, the Karnataka High Court held that where in a fire claim petition has prayed for appointment of second surveyor and the IRDA was not able to appoint the second surveyor in for a long period of time in such case the report of the first of surveyor will be taken into consideration for deciding of fire claim of the petitioner.

CONCLUSION

Insurance is meant to protect the men against uncertain events which may otherwise be of some disadvantage to them. Fire insurance is the property insurance covering damage and losses caused by fire. Fire insurance protects the building, machinery plant, goods, go downs, shops, hotels, etc. But loss due to fire caused by earthquake, attack of foreign enemy, civil strife, mutiny, military rising, order of any public authority and lightening (if fire not occurred) are not covered. Fire insurance and other type of insurance except life insurance is based on the principle of indemnity. This contract does not help in controlling fire, but it is a promise to compensate the loss.

Preventing fire losses has always been more important to the insured than to the insurer therefore, fire insurance acing as the social security tool and in modern days it is necessary to insure the property for protection from fire and financial loss, as development of innovation and equipment is increasing.

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