

Chapter 2

Motor Third Party claims

2.1 Introduction

The Motor Vehicles (MV) Act, 1988 mandates payment of compensation to the victims of accidents arising out of the use of a motor vehicle or motor vehicles, in public places by the owner or owners, as the case may.

The MV Act further provides that no person shall use a motor vehicle in public places without a policy of insurance complying with the requirements of the MV Act. In such a policy of insurance, the insurer agrees to indemnify the user of the vehicle against the legal liability to pay compensation payable to the victims (third parties) of accidents (death, injury, disability, property damages, etc.) arising out of the use of the motor vehicle.

Apart from the legal liabilities to third parties, the general insurers also cover pecuniary losses arising out of damages to the vehicle of the insured. This insurance cover is commonly known as Own Damage Cover. The motor insurance portfolio has, thus, two distinct sections - one relating to the cover for the vehicle and its physical damage (OD) and the other relating to injury or death of other parties (TP). The cover for OD is optional and the cover for TP is mandatory. The Motor Third Party policies have to comply with the requirements of the MV Act. The compensation payable to the claimants is determined by the Motor Accident Claims Tribunals (MACT) established under the MV Act.

The motor portfolio constitutes around 40 *per cent* of the non-life insurance premium underwritten in India. The motor policies were governed by the tariff prescribed by Tariff Advisory Committee. The tariffs were withdrawn with effect from January 2007. The IRDA prescribed the Motor Third Party Premium with effect from January 2007.

Box 2.1

The MV Act, 1988: Salient features

- No person shall use, except as a passenger, a motor vehicle in public places, unless there is a policy of insurance complying with the requirements of the MV Act. (Sec. 146)
- The policy must be against any liability incurred by the insured in respect of death or bodily injury to any person or damage to any property of a third party. (Sec. 147)
- The insurer can be made a party to the proceedings of the Motor Accident Claims Tribunal. (Sec. 149)
- When a cover note issued by an insurer is not followed by a policy within the prescribed time, the insurer is bound to notify the fact to the concerned Registering Authority. (Sec. 147)
- A claimant is entitled to compensation of Rs.50,000 in cases of death or Rs.25,000 in the cases of injury without burden of proof of fault on the part of the vehicle owner. (Sec. 140-No fault liability).
- A claimant may also seek compensation on the basis of the structured formula prescribed in the Act. (Sec. 163 A)
- A claimant may at his option, approach the Tribunal having jurisdiction over the area i) in which the accident occurred, ii) where he resides, iii) carries on business or iv) where the defendant resides. (Sec. 166)
- For victims of hit and run cases i.e. where the identity of the vehicle cannot be ascertained the insurers are liable to pay the stipulated compensation. (Sec. 161)
- The Tribunal may direct payment of interest on the award at the rates and from the date specified by it. (Sec. 171)
- The Tribunal shall arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of award. (Sec. 168)
- The person liable to satisfy the award shall do so within thirty days of announcement of the award. (Sec. 168)

2.2 Key indicators

The motor portfolio has generally been viewed as a loss making segment by the insurance industry. The incurred claims on motor insurance business ranged between 87 and 132 *per cent* of the net premiums during the period 2002-03 to 2006-07 as detailed in Tables 2.1 and 2.2

Table 2.1: Net premium-Motor Business**(Rs. in crore)**

Company	2002-03	2003-04	2004-05	2005-06	2006-07
NIA	1342	1547	1661	1874	1985
NIC	904	1209	1482	1545	1534
UIIC	864	945	932	904	944
OIC	818	916	1034	1167	1328

*(Details compiled from Annual Reports)***Table 2.2: Incurred Claims - Motor Business***(Figures in bracket represent Incurred Claims Ratio)***(Rs. in crore)**

Company	2002-03	2003-04	2004-05	2005-06	2006-07
NIA	1271 (95)	1522 (98)	1577 (95)	1881 (100)	1806 (91)
NIC	998 (110)	1245 (103)	1449 (98)	1823 (118)	1333 (87)
UIIC	1144 (132)	1166 (123)	1196 (128)	1160 (128)	900 (95)
OIC	928 (113)	981 (107)	1237 (120)	1143 (98)	1304 (98)

(Details compiled from Annual Reports)

The Third Party claim segment had a significantly higher claims ratio when compared to the Own Damages segment as indicated below:

Table 2.3: Incurred claim ratio of motor OD and TP portfolio**(figures in percentage)**

Company	Motor OD		Motor TP	
	2005-06	2006-07	2005-06	2006-07
NIA	53	49	209	181
NIC	60	60	252	155
UIIC	153	45	87	170
OIC	51	48	192	190

(Details compiled from Annual Reports)

The reduction in the ICR in NIC and UIIC during 2006-07 was due to growth in motor TP premium and increased settlement of claims through Tribunals and other fora. TP claims already settled were removed from the list of outstanding claims.

The process of settling claims is also long drawn-out, as will be seen from Table 2.4. The figures in brackets represent claims outstanding for more than three years.

Table 2.4: Claims Outstanding at the close of the financial year

Company	2002-03	2003-04	2004-05	2005-06	2006-07
NIA	209471 (Not available)*	236213 (Not available)*	244915 (114133)	248850 (120575)	266604 (127714)
NIC	195193 (65004)	233772 (91098)	271444 (108277)	299481 (122111)	277104 (115731)
UIIC	89618 (39235)	264001 (122610)	274198 (139172)	260609 (144873)	233241 (136612)
OIC	234950 (96086)	248476 (107123)	243027 (104616)	231370 (96135)	238174 (99161)

2.3 *Audit objectives*

The performance audit of the four companies was conducted to assess:

- appropriateness and adequacy of the systems for generating and monitoring claims related information for improving overall control on motor claim;
- compliance with underwriting principles while accepting risk;
- promptness, economy and efficiency in settling claims; and
- adequacy of measures taken by the companies to control the losses arising out of Motor Accident Claims Tribunal cases.

2.4 *Absence of centralised database*

There is no centralised data base, either at the company level or at the industry level in respect of claims handled. Claims are handled and controlled by the concerned divisional offices. A centralised database would assist the companies in the following:

- (a) searching for patterns in awards, interest allowed, delays, vehicle make-wise claims, age-wise claims, etc.;
- (b) categorising data for projections;
- (c) compiling and tracking geographic location of accidents;
- (d) speedy identification of possible fraudulent claims;
- (e) compiling Tribunal wise awards and interest rates decreed to enable better presentation of defence against claims, awards and interest rates; and
- (f) taking specific management decisions.

*NIA did not furnish the break up.

IRDA in its Annual Report of 2004-05, specifically mentioned that public sector insurers failed to maintain data relating to underwriting, claims paid and claims outstanding on motor insurance, policy-wise and vehicle-wise. Consequently, the data collected for revision of tariff lacked credibility, leading to revisions on ad-hoc basis. The lack of a detailed database is, therefore, a key reason underlying the computation of inadequate premium rates.

All the companies stated that they were in the process of implementing various IT enabled solutions like CORE Insurance Solutions and business process re-engineering which would enable them to address the issues mentioned above.

2.5 Absence of data for loading of premium

Motor Tariff was revised by the TAC with effect from July, 2002. The Tariff permitted loading of the Tariff Rates by 100 *per cent* for adverse claims experience of the insured vehicles and individual risk perception of the insurer. A further loading of 100 *per cent* was also permitted if the experience continued to be adverse. The IRDA clarified (October 2002) that no loading should be made in cases where no claims had been lodged in the previous year or where the owners enjoyed no claims bonus. The TAC also clarified (August 2003) that loading for adverse claims experience prescribed in the tariff was not compulsory, though it had prescribed (June 2003) a check list for loading, indicating weights for claims experience of the expiring policy period and also earlier policy periods.

The overall effect of these clarifications was that insurers could not resort to loading of premium unless there were claims in the policy period that had just expired.

In the review of the selected files, audit noticed that the operating offices did not have adequate data on the claims experience of the vehicles insured by them. It was, therefore, not possible for audit to ascertain whether the underwriting was accurate nor was it possible to quantify the premium foregone.

For example, a test check of underwriting documents in three divisional offices of NIC (Kukatpally, Namakkal and Salem) revealed that there were instances of failure to collect proposal forms from the insured. Despite absence of data, loading of premium was resorted to on an ad-hoc basis, at rates ranging between 10 and 125 *per cent*.

NIC stated that it was not always possible to load Motor TP premium on the basis of the preceding policy period as the claims were lodged after the policy period. However, IRDA's circular requires loading with reference to the year in which the claim was reported.

2.6 Frauds in MACT claims

The need to build a centralised data base assumes importance in the context of the disturbing trend of fraudulent third party claims that have been detected. It was established by the insurance companies that in many such cases there had been active connivance between the persons involved i.e. the driver, doctors/hospitals, advocates and in some cases the concerned police stations. In some cases, the same car was involved.

A centralised database will assist in extracting information and identifying cases of repeated involvement of same parties. Some cases are described below, by way of illustration. These cases are already in the knowledge of the companies concerned.

NIC approached (2002) the High Court of Madras seeking investigation by the police in a third party claim suspected to be false. The investigation by the police authorities proved that the claim was fraudulent. The Court directed (October 2003) that a Central Agency be constituted for the purpose of looking into all complaints, relating to bogus claims within 60 days of reference by the Insurer. Accordingly, a central agency was constituted by the Crime Branch - Crime Investigation Department (CB-CID) of Tamil Nadu Police in Chennai.

NIC brought (2005) to the notice of the High Court that consequent to the formation of the CB-CID, 410 claims were withdrawn. However, it also pleaded that the central agency was showing "indifference" in the investigation and prayed for investigation by the Central Bureau of Investigation (CBI), in the cases closed by the CB-CID. During the course of the hearing, the three other insurers also furnished details of fraudulent claims requiring investigation. The Court ordered (March 2006) investigation of the complaints by CBI. The CBI, however, expressed its inability in handling such a volume of cases. The Court, therefore, agreed that the CBI undertake investigation in 13 specific cases (11 involving fraudulent claims and two involving use of fake First Investigation Reports).

In the wake of the constitution of the central agency and investigation being entrusted to CBI, 1647 claims relating to four PSUs (amount claimed Rs.60 crore) were withdrawn. Subsequent to the entrustment of cases to CBI, in respect of NIC, Coimbatore Region alone the claimants filed 'not pressed' petitions in 418 cases (Rs.17.56 crore). Of these, in 44 cases, the amounts already awarded by Motor Claims Tribunals were Rs.81.70 lakh which was not paid to the claimants in view of 'not pressed' petitions.

- (a) A review of the list of cases withdrawn, consequent to the Court orders mentioned above, in Coimbatore Regional Offices of NIC and UIIC revealed that:
 - The same advocate was representing 23 petitions, out of 111 cases withdrawn (NIC). Similarly, out of 263 cases withdrawn (UIIC – DO - Erode), 47 cases were represented by the same advocate.
 - Disability Certificates were issued by the same doctor in 7 out of 13 cases withdrawn (UIIC and NIC – DO - Namakkal).
 - One vehicle was involved in ten claims impleaded and another vehicle was involved in 5 claims (NIC, Coimbatore).
- (b) The Additional District and Sessions Judge, Udaipur (Rajasthan) in April 2006, brought to the attention of IRDA the existence of a large number of fraudulent claims. The IRDA instructed NIC in May 2006 to investigate the suspected claim. The Company referred (February 2007) certain claims for investigation by the Vigilance Department. Action was pending.
- (c) The Superintendent of Police, Ujjain (Madhya Pradesh) also brought to notice of IRDA a large number of fraudulent claims in NIC. Head Office of the Company sought a detailed report from Indore Regional Office in October 2006. The report was yet to be submitted (October 2007).

- (d) Kolkata Regional Office of OIC detected the involvement of a nursing home July–September 2006 in 85 fraud injury cases and filed (March 2007) a case with the police authorities.

The companies stated that information relating to fraudulent claims was being exchanged amongst them and that the General Insurance Council had taken certain initiatives in this regard. It was also felt that problems relating to identification of fraudulent claims would be addressed, to some extent, by the introduction of CORE Insurance Solutions.

2.7 Delay in settlement of awards

The MV Act provides that the MACT shall forward awards within 15 days. The Act stipulates that the award shall be satisfied within 30 days of announcement of the award. In the divisional offices audited, these time frames were not followed in 1845 cases out of 7571 cases reviewed. In these cases, on account of the delay, interest amounting to Rs.220.28 lakh* was paid during the period 2003-2004 to 2006-07.

2.8 Pay and Recover cases

The Tribunals had directed the insurers in some cases to satisfy the awards and then recover the amount from the insured. Examination in selected divisional offices/branches revealed that amounts yet to be collected on this account amounted to Rs.296.70 lakh in NIA, Rs.200.62 lakh in NIC, Rs.126.52 lakh in UIIC and Rs.262.98 lakh in OIC in 167,104,51 and 135 cases, respectively as at the end of March 2007.

In reply, the companies stated that the legal procedures involved were time-consuming and that they had appropriately instructed their operating offices.

2.9 Delay in investigation of MACT claims

A test check of the Own Damage (OD) claims, revealed that there were also motor Third Party (TP) claims pertaining to these accidents. Company-wise details are indicated in Table 2.5

Table 2.5: Details of Own Damages and Third Party claims

(Number of claims)			
Company	2004-05	2005-06	2006-07
NIA	520	428	386
NIC	281	187	66
UIIC	930	821	787
OIC	239	266	296

It was noticed that there was no system of gathering information relating to the TP claim, while settling the OD claims. As the related TP cases were reported subsequently and

* NIA Rs.45.87 lakh, NIC Rs.76.22 lakh, UIIC Rs.34.70 lakh and OIC Rs.63.49 lakh in 368, 686, 255 and 536 cases, respectively

investigated, these offices could not link the facts evidenced during the assessment of the OD claim. Additionally, where TP cases were handled by an office other than the policy issuing office, there was no system to ascertain the position of OD claims, if any. Chennai regional office of OIC, which handled the TP claims of all divisional offices in the region, stated that it had no data on the related OD claims. In fact, Hassan divisional office of OIC did not maintain such information, although the DO itself handled the TP claims. None of the units audited in the Eastern region, maintained adequate data linking such co-existing claims.

Under 158(6) of the MV Act 1988, the police officer who receives the intimation/report of the accident shall forward a copy of the report within 30 days to the Tribunal having jurisdiction with a copy to the insurer. In all the divisional offices visited, it was seen that such reports were not received. The companies appoint investigators after the receipt of summons from the Tribunal for getting copies of First Information Report or license details or permit details. Had the companies received the intimation report from the police in time, it would have assisted them in identifying possible TP claims.

The companies stated that as a result of their efforts, the Supreme Court had recently directed the State Governments to strictly adhere to the requirements of Section 158 (6) of the MV Act.

2.10 Settlement through alternative forum

The Legal Services Authorities Act, 1987 provides for organising of Lok Adalats by the Legal Services Committees at various levels, to determine and arrive at a compromise or settlement between parties to a dispute in respect of any case pending before any court for which the Lok Adalat is organised. Every Lok Adalat organised for an area shall consist of serving or retired Judicial Officers and other persons. The Act also treats insurance services as public utility services.

The insurance industry has also established Claims Conciliation Committees and Jald Rahat Yojana which are fora that enable negotiated settlements. The awards by these fora would not carry any interest. Thus, the settlements through the above fora would enable the companies to save interest and administrative charges.

In the units audited, it was noticed that the number of cases settled through these fora during the period 2003-2004 to 2006-07 was 12547*.

NIC and UIIC stated that they were constantly monitoring the cases for expeditious settlement through alternative fora.

2.11 Recent developments

The General Insurers' (Public Sector) Association of India (GIPSA), a body constituted by the PSU Insurers constituted a committee in October, 2002 to examine various issues relating to the motor insurance business. The Committee recommended certain

* NIA-4955, OIC-4063, NIC-2906, and UIIC-623.

amendments to the MV Act, for encouraging settlements through Lok Adalats and conciliatory fora, formation of Third Party cells, etc.

The Committee also stressed the need for:

- (a) Limit on the liability of the insurer;
- (b) Amending the Motor Vehicles Act to ensure furnishing of full details by Police authorities to the insurer;
- (c) Awarding of uniform interest rates;
- (d) Encouraging settlements through alternative fora;
- (e) Fixing responsibility on Advocate/Officials for delay in satisfaction of Awards; and
- (f) Sharing of liability in collision cases among GIPSA members.

Subsequently, the Government of India introduced a Bill (May 2007) to amend the MV Act. The salient features of the bill are indicated in Box 2.2:

Box 2.2

The Motor Vehicles Bill, May, 2007: Salient features

- The claimant may opt for determination of compensation under the structured formula or otherwise and the option, once exercised, shall be final.
- Insurers may also defend claims on the basis of non receipt of premium.
- The owner of the vehicle involved in the accident is bound to furnish particulars to the insurer.
- Claims can also be filed in Civil Courts in some cases.
- Transport vehicle owners shall keep attested copies of the drivers' license, Registration Certificates and Permit and deliver them to the insurer on demand.
- Person seeking awards other than on the structured formula, shall be required to prove neglect or default on part of the owner or driver.
- The Courts/Tribunals shall hear the cases expeditiously and endeavor to settle claims within a period of two years.
- The insurer shall endeavor to settle claims, out of the Tribunal or Court, within a period of three months.
- The awards shall be satisfied within sixty days (instead of thirty days at present)
- The Court/Tribunal may award interest at rates which may be two *per cent* higher than the bank rate.

IRDA, in a meeting held with the Ministry of Finance, pointed out (May 2006) that out of a total of 7.7 crore registered vehicles, only 3.25 crore vehicles were insured. If all

registered vehicles were insured; losses in the motor portfolio would be eliminated. It was decided that in each district, one of the insurers, in collaboration with the local authorities, would undertake a campaign to identify and bring under coverage such uninsured vehicles. This exercise was to be completed by March 2007. However, there is no evidence of such an exercise having been conducted by the four companies.

2.12 Motor Third Party Pool

In December 2006, IRDA issued directions that all the General Insurers or General Insurance business to collectively participate in a pooling arrangement to share in all motor third party insurance business. The GIC was nominated by the IRDA as the administrator of the pooling arrangement.

The Pool is operational from 1 April 2007. The salient features of the pool are as under:

- (a) All general insurers' underwriting motor business shall participate in the pool in respect of Commercial vehicles.
- (b) The GIC's share would be the statutory cession received by it.
- (c) All other members will cede to the pool in proportion to their market share of the Gross Direct Premium underwritten in India.
- (d) The General Insurance Council shall appoint a committee to lay down detailed underwriting polices and procedures as well as detailed claims processing procedures.

The pool will handle only commercial vehicles covered by policies issued by all general insurers.

GIC as Pool Administrator has since established IT systems to receive all data pertaining to policies, premiums and claims.

Recommendation No.1

(i) The companies should:

- ***create and maintain a centralised database of motor claims at Head Office level (categorising the claims into death, grievous injury, minor injury and property) for monitoring of the claims.***
- ***develop systems for review of the performance of advocates and investigators to ensure that only those rendering satisfactory services, are retained.***
- ***create dedicated cells at operating offices for expeditious satisfaction of the awards within the time stipulated in the MV Act, where appeals are not considered necessary.***
- ***take steps to identify and insure uninsured vehicles in collaboration with the concerned Regional Transport Authority and Police Departments in the States.***

(ii) Industry level efforts should be made to establish a Bureau of Investigation of TP claims, as directed by the High Court of Madras in November 2006.

(iii) A consolidated Industry-level database of all the insurers issuing motor policies may be created to enable identification of duplicate claims and possible fraudulent claims; and to enable identification of involvement of vehicles in accidents for proper loading of premium.

(iv) The General Insurance Council should engage with the State Governments to ensure compliance with the directions of the Supreme Court on adherence to the requirements of Section 158 (6) of the Motor Vehicles Act.