

Valuation of insurable interest

By G. N. Sainani

PAKISTAN since last three decades has made great strides in internal and foreign trade. Agricultural and Industrial production and the wealth of the country has increased substantially. It is therefore a matter of concern to protect this wealth from hazards to which everyone is exposed. More and more people are therefore becoming insurance minded and would like to protect their property from the unexpected events which may damage or destroy the property whilst it is lying and/or stored or is in transit.

This article elaborates the mode of estimating the value of the interest at risk under the Insurance Policy. It is also necessary to know as to who are those persons who have insurable interest in the property which may form the subject matter of insurance.

As per the Insurance Law, any person can take out an insurance policy either on his behalf or on behalf of any other person. However while realising a claim on the policy of Insurance of Insurance a person or persons must have an insurable interest in the subject matter of insurance without which the insurance policy is void or voidable.

To constitute an insurance interest capable of supporting a contract of

continuing interest, it is nonetheless insurable because it is defeasible, since it is a valid interest of the assured is precarious and that other persons are entitled at any moment to call upon him to hand over the object insured to them, does not therefore prevent his interest from being sufficient to support a contract of insurance; even the interest arising from bare possession is insurable. Where the assured has in fact an interest, is immaterial how such interest has been acquired. The Courts have decided in favour of an insurable interest.

Thus: (1) Owners of property – absolute or otherwise; trustees; vendors and purchasers; legal representatives and beneficiaries; mortgages; limited owners; husband and wife (on life of each other); bailees; carriers; factors; warehousemen; wharfingers; pledgees; pan brokers; hire's; in keepers; stable keepers; tenants; person liable; statutory bodies have the insurable interest in the objects belonging to them or under their possession and control.

Any tenant, including a leasee from year to year, although there he may have no covenant or agreement to insure the property let to him, may also insure the tenement by virtue of its beneficial enjoyment of the prop-

erty as there may be other factors that may be required to be taken under consideration each case must be taken on its merits. (Post Magazine & Insurance Monitor No. 50 dated 15th December, 1983).

Bailees, Carriers, Factors, Warehousemen are some of the examples who, by reason of some contract, express or implied relating to property are in danger of being prejudiced of such property, may insure it. They have the right to insure in this case and are competent that any insurance effected shall only cover property for which they are so liable (North British and Mercantile Insurance Co. v. Moffatt (1871) L.R. 7 C.P. 25).

It is, not necessary to insure the consignments or goods held by them on the basis of market value. Here the basis of valuation will be the amount of their liability. In case of total loss, the claim payable will be to the extent of their liability. In case of partial loss, the condition of average will apply to the extent of their total liability in relations to the percentage of loss.

It is also important to note here that although the assured has some interest in the subject matter to entitle him to effect an insurance in respect of it either for his own liability or for the full amount, it is not, as a general rule, necessary that he should specify in the insurance contract, or even disclose to insurers either the nature of the extent of his interest (Mackenzi v. Whitworth (1875) L.R. 10 Ex. 142 (marine insurance), per BRAMWELL, B., The rule is that you must specify the subject matter of insurance, not your interest in it". It is held that a mortgager insuring in the name of the mortgagee need not specify the amount of the mortgage. Held that a person insuring need not disclose the fact that he was not sole owner.

Conclusion

1. But any person is entitled to take out an insurance policy for any physical object capable of being destroyed or consequent financial loss who has an insurable interest at the time of loss. In consequence of which relation he may benefit by its safety or may be prejudiced by its loss. It is not necessary to have insurable interest at the time of taking out the policy.

2. An insurable interest is not confined to the ownership of the property – bare possession of the property being liable for its safety is sufficient to create an insurable interest in the object.

3. The subject matter can be insured to the extent of Assured's liability or to the extent of his interest only. It is not necessary to insure the property to its full value or the market value.

4. In case of a loss whether it total or partial, the application of this principle does not change and the adjustment of loss will be accordingly based on the measure of indemnity and not on the basis of market value of the property.

5. It is not necessary that the assured should specify his interest in the insurance contract or even disclose to the insurers the nature or the extent of its interest, though he must reveal the subject matter at risk.

MANY insurance executives and surveyors of the insurers often err in determining the value of insurable interest under the policy.

They often argue that market value is to be adopted as the correct measure of indemnity, this is a dangerous assumption as there may be other factors that require to be taken into consideration. Each case must be treated on its merit.

insurance, three conditions must be fulfilled, namely:

1. There must be physical object capable of being destroyed.

2. That such physical object must be the subject matter of insurance.

3. That the assured must stand in some relation thereto, recognised by law on consequence of which relation he may benefit by its safety, or may be prejudiced by its loss.

An insurable interest is not, however, confined to the interest arising from ownership; it includes every kind of interest that may subject in or be dependent upon an object exposed to danger, it need not be a legal interest or ownership. An equitable or beneficial interest of any kind is equally insurable. An insurable interest is not restricted to proprietary right. It may be founded on a mere right arising out of a contract under which the ensured is to benefit even at the latter stage, since by its destruction of the object he will be prejudiced. The assured need not have a direct benefit but may be subjected to a liability in case of its destruction, he has nevertheless an insurable interest. For example an insurer who has assumed the risk on certain physical object to indemnify the assured, has an insurable interest in such object and may protect by reinsurance against its loss and its consequent liability to the assured.

Where a person is by statute required to insure or empowered to do so, the existence of the statutory duty or power, as the case may be, constitutes in insurable interest and an insurance effected in pursuance thereof will be valid. An insurable interest need not be a permanent or

erty of which he will be deprived in the events of its being destroyed may claim the loss to the extent of his prejudice suffered by him.

Further consider as to what will be the insurable value of the interest at risk under the insurance policy – may it be Fire, Marine or Miscellaneous Accident policy.

The true principle upon which the interest is protected by a policy of insurance ought to be valued is that which in case of loss will give the assured, as nearly as possible a complete indemnity against the consequences of such a loss.

In a famous judgement *Castellain V. Preston Bowen* (Brett L.J.) said, "The very foundation in my opinion, of every rule which has been replied to insurance law is this namely, that the contract of indemnity and of indemnity only".

Thus, it is recognised in law, that insurers undertake to place an insured in the same position as he was before loss under terms of their policy, neither better nor worse.

He is entitled to a full indemnity within the limits of the sum insured but he must never be more than fully indemnified. If it were possible for an insured to derive a profit from a claim, abuses and malpractices might occur.

The object, therefore, of such valuation ought to be place the assured, in case of loss, in exactly the same situation as he would have been in if no loss has taken place and as such valuation of insurable interest is equal to measure of indemnity.

It is often argued that market value ought to be adopted as the correct valuation of insurable interest, that is dangerous assumption