

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Insurance
Semester-VIII (Batch: 2012-17)

Mid Semester Test: Feb-Mar. 2016



Date: 29th February, 2016

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

Marks
(10)

- Q.1 Chandan is working as a driver in L&T India Pvt. Ltd, which is situated at sector-30 of Gandhinagar and drawing monthly salary of Rs.30000/- per month. Chandan's duty is to pick up all employees in and around Gandhinagar to the company and dropping them back to their respective places. On 15-10-2015 around 2pm, he started bus from his office to reach workshop for general service. When he was driving at a speed of 80kms/hour negligently hit a pedestrian and as a result of which, pedestrian died on the spot and chandan got injured. Kamala, wife of pedestrian filed a claim application before MACT, Gandhinagar under section -166 of the Motor Vehicles Act, 1988 and she has also filed claim application under section-140 of the Act. Chandan filed a claim application before commissioner of workmen compensation constituted under the workmen compensation Act, 1923 (renamed as the Employee's Compensation Act) and prayed to pass an award under section-140 of the Motor Vehicles Act, 1988. The L&T Company objected the claim application on the ground that the bus was insured with valid insurance policy at the time of an accident covering driver and third party and hence they are not liable. Before MACT, though the Insurance Company raised an objection on the basis of defences available under section-149(2) of the Act and also on the ground that chandan was found driving the vehicle under the influence of Alcohol, the tribunal directed the Insurance Company to pay under the principle of no fault liability and awarded compensation of Rs.50000/- in favour of Kamala. The commissioner of workmen compensation also directed the Insurance company to pay Rs.25000/- to Chandan by invoking section-140 of the Motor Vehicles Act under the principle of no fault liability. The Insurance Company filed an appeal before High Court of Gujarat against the awards passed by the MACT and commissioner of Workmen compensation. The Insurance Company raised an objection that commissioner of workmen Compensation has no power to grant compensation under section-140 of the Motor Vehicles Act. Against the order of the MACT, Insurance Company raised an objection on the ground that MACT was committed serious error in not entertaining the defences available under section-149(2) of the Act and also not considering the fact that Chandan was driving the vehicle under the influence of alcohol and it amounts to breach of the terms and conditions of the policy by L&T Company. The Hon'ble High Court of Gujarat merged both the appeals and framed following issues for consideration:

- (a) Whether the Commissioner of workmen compensation can pass an award by invoking section-140 of the Motor Vehicles Act, 1988?

- (b) Whether the claimant is required to plead negligence or wrongful act to claim remedy under Section-140 of the Act and is it an independent remedy available under the Motor Vehicles Act, 1988 and is appealable?
- (c) Whether the remedy under section-140 is subject to defences available to the Insurance Company as per the provisions of the Act and terms and conditions of the policy?
- (d) If no plea is taken either by the insurance company on valid defences available as per the law or on breach of the contract while deciding the application under Section-140, or if plea was taken but rejected and make Insurance company liable, whether in the subsequent proceeding under Section-166 of the Act, the tribunal will be precluded from deciding such issue by operation of the doctrine of *res judicata* or constructive *res judicata*?
- (e) Whether the interest can be granted while awarding compensation under section-140?

With the help of decided case laws and provisions of the law, Advance your arguments for all the above issues.

Q.2 What is meant by the principle of Insurable Interest? Discuss its necessity and consequences of its absence in Insurance contract with the help of decided case laws and provisions of law? (07)

Q.3 On 12-12-2012 Rajanikanth had submitted proposal form to Aviva Life Insurance Company for obtaining life insurance policy for sum assured of Rs.500000/- along with the cheque of Rs.9000/- towards first premium. The cheque was encashed on 17-12-2012 and submitted his medical reports on 28-12-2012. The Insurance Company accepted the proposal and issued the policy commencing from 02-01-2013. In the proposal form, he made a statements and declaration in answer to the questions which are to be answered by him and filled up with the subscribing declaration that the foregoing answers were true in every particular and that he had not withheld any material information and that he thereby agreed that the declaration together with the proposal for assurance shall be basis of the contract to be made between him and the Aviva Life Insurance Co. Ltd. (07)

On 03-01-2015, insured suffered with chest pain and admitted in Apollo Hospital for unstable angina. On the advice of the doctor he underwent Coronary Bypass Graft Surgery and died on 10-01-2015 surviving his wife Maheswari and two minor children. Maheswari preferred a claim and the Insurance Company repudiated a claim on the ground that, as per the medical reports obtained from the Hospital it was found that he had a past history of Hypercholesteremia, Ischaemic Heart Disease, as well as Hypertension and had concealed this material facts at the time of entering the contract.

With the help of decided case laws and provisions of law, explain the concept of non-disclosure and misrepresentation before passing the Insurance (Amendment) Act, 2015 and based on the above facts discuss the liability of the Insurance Company.

Q.4 Ramanagokula sent a proposal for insurance of Rs.500000/- on his life on 27-12-2012 along with report of his medical examiner and cheque towards first premium to Kotak Mahindra Life Insurance Co. Ltd. Though the cheque was encashed on 30-12-2012 but the policy was issued on 10-01-2013 and it was backdated from 27-09-2012. (06)

There was a clause in the policy, namely clause (2) which states as follows:

"Notwithstanding and agree that in the event of the death of life assured occurring as a result of intentional self-injury, suicide or attempting to suicide....on or after the date on which the risk under the policy has commenced, but before the expiry of the three years from the date of this policy, the corporation's liability shall be limited to the sum equal to the total amount of premiums paid under the policy without interest"

Ramanagokula committed suicide on 27-11-2015 and Lakshmi, wife of the deceased claimed the amount. The Insurance Company repudiated the claim on the ground that the suicide had taken place within three years from the date of issue of policy i.e, on 10-01-

2013. Lakshmi approached the District Consumer Redressal Forum, Ahmedabad for Insurance claim. The District forum framed the following issues for consideration.

(a) What is the nature of life insurance contract and when the contract is deemed to be concluded?

(b) What is the liability of the Insurance Company in the above case?

With the help of decided cases and basic essential tenets for the formation of the life insurance contract, advance your arguments for the above issues.

OR

With the help of decided case laws, discuss the right of the Insured to assign and transfer of life Insurance Policies before and after passing the Insurance Laws (Amendment) Act, 2015? (06)

