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**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

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

End Semester Examination: April-May 2016

Date: 30th April, 2016

Duration: 3 hours

Max. Marks: 50

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.**

Answer all questions

Marks

- Q.1 Venkatesh and Pawan Sardar were school teachers at Bishop Cotton School, Gandhinagar. Pawan Sardar everyday used to go to school in venkatesh's motor cycle as a pillion rider. On 01-03-2016 when both were travelling in the motor cycle, a Maruthi Van had hit to the motor cycle in opposite direction resulting death of venkatesh on the spot. Though, immediately pawan sardar was admitted to Apollo Hospital but he also died after three days due to severe head injury caused to him. On the other hand Maruthi van, after hitting the motor cycle had fallen into the Sabarmati river, resulting death of all the passengers. Maruthi Van was carrying fifteen (15) passengers as against the RTO permitted capacity of (8) eight passengers at the time of accident. Ms. Mahishmati, wife of deceased Pawan Sardar filed a claim application under section-166 of the Motor vehicles Act, 1988 before the Motor Accident Claims Tribunal (MACT), Gandhinagar against the Oriental Insurance company, which insured the said van. Ms. Janaki, wife of deceased Venkatesh also filed a claim application under section-163A of the Motor Vehicles Act, 1988 before MACT at Gandhinagar against the same Insurance Company. Venkatesh was aged about 47 years, earning monthly salary of Rs.16000/- per month and has two unmarried daughters. Legal heirs of the 15 passengers, who were travelling in the Maruthi van at the time of accident also filed claim applications against Orientation Insurance Company before MACT at Gandhinagar. The Insurance Company objected to all the above claim applications on several grounds. Some of the important grounds were, venkatesh was contributed for the accident by carrying learner's license, Maruthi van driver was holding a fake driving license at the time of accident, Maruthi Van was carrying more passengers than permitted and hence, owner has breached the permit and policy. After considering the objections filed by the insurance Company, merged all the claim applications and had framed the following issues:-
- (a) What is the nature and remedy available under the claim applications filed as per sections 163A and 166 of the Motor Vehicles Act, 1988?
 - (b) What are the defences available to the Insurance Company as per the provisions of the Motor Vehicles Act? Whether the Insurance Company is liable to pay compensation in cases of driving license issues raised in the above case?
 - (c) Whether the owner of the Maruthi Van has committed breach of permit or policy? What is the method of computation of compensation in case of

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overloading of passengers?

- (d) What are the guidelines for computation of compensation for Venkatesh as per the judgment of *Sarla verma*?

Discuss the above issues with the help of the provisions of the Motor Vehicles Act, 1988 and decided case laws?

- Q.2 Discuss the different kinds of warranty and the concept of excuse of warranty as per the provisions of the Marine Insurance Act, 1963? Is there any nexus between the Insurable Interest and the nature of international sale contract for the settlement of claims in Marine Insurance? When the marine policy is covered for constructive total loss, whether the partial loss is maintainable? (10)
- Q.3 Sai Ram, son of Budha Ram, resident of village Raisan, Gandhingar died on 2nd March, 2016 due to stomach cancer at the HCG Hospital, Ahmedabad. Sai Ram had taken the Life Insurance Policy on his life from the Life Insurance Corporation of India for sum assured Rs. 200000/-. The policy was issued on 01-01-2015 and the same was commencing from 02-02-2015. On 02-01-2016, Sai Ram partially assigned the policy for Rs.50000/- in favour of Life Insure Pvt Ltd, the Company which was involved in trading of life policies. Before refusing to act upon the endorsement of Assignment by the Life Insurance Corporation of India, Sai Ram died on 2nd March, 2016. Kumuda, wife of the deceased has approached LIC for the claim. Budha Ram, father of the deceased and the Life Insure Pvt Ltd Company also approached the LIC for the claim as nominee and Assignee respectively under the policy. LIC refused to pay the policy money to either of them on the ground that, insured has not disclosed his ailment at the time of formation of contract. Ms. Kumuda, wife of the deceased filed a complaint under Section 12 of the Consumer Protection Act, 1986 before the District Consumer Forum, Gandhingar. Budha Ram, father of the deceased had also approached the District Consumer Forum as a nominee under the Policy. The Life Insure Pvt Ltd Company also filed a complaint stating that, the assignment was valid and insured died after submitting the assignment form to the Life Insurance Corporation of India. The District Consumer Forum has merged all the above complaints and framed the following issues for consideration: (08)
- What is the law on the concept of the non-disclosure and misrepresentation as per the Insurance Laws (Amendment) Act, 2015? On whom the burden of proof lies in the above case?
 - What is the status of Nominee and Legal heir as per the Insurance Laws (Amendment) Act, 2015 and who is entitled to receive the policy money in the first place? Whether the LIC is right in refusing to act upon endorsement of assignment?
- Q.4 Whether the cause of fire is essential to prove for the settlement of claim in fire insurance contracts? Whether the Insurance Company is liable to pay compensation if the damage is caused by spontaneous combustion/fermentation/natural heating without actual ignition? (10)
- Q.5 Answer **any two** of the following: (2x5=10)
- Aviation Insurance
 - Agricultural Insurance
 - Nuclear Liability Insurance
 - FDI in Insurance Sector

