# Latest Developments in Law on Marine Insurance Regulations in India

Marine Insurance is one of the oldest law and its existence can be found even a few centuries ago. The Marine Insurance Act of 1906 which came into force on ISt January 1907, is the codified law in respect of marine insurance in England. The codified law can be perceived as an effort to elucidate and attribute the regulations with concomitant marine insurance agreements. Only those principles of law were codified by the legislation which associated solely with marine insurance and expressly provided that the guidelines of the common law were to apply to marine insurance agreements.

Since the independence of India, there had been a significant expansion of the shipping industry, and there was an immediate requirement for legislation in lines with the local conditions, for the development of the marine insurance industry in India, and hence the Marine Insurance Act 1963 was enacted. The preamble to the Indian Act enunciates that it is "An Act to codify the law relating to marine insurance." All the questions related to Marine nsurance before the enactment of the Marine Insurance Act, 1963, were decided by the law of contract and the precedents founded on common law principles of contract. The English legislation has been a substantial inspiration for the Indian enactment which replicates it significantly and differs at only certain principles. A major part of the legislation on marine insurance is nothing but a systematic interpretation of the document of marine policy.

The basic fundamental of any contract of insurance is to indemnify the assured against any damages or losses suffered by him which can be recovered from the insurer under the insurance policy. A contract of marine insurance can also be stretched to cover the losses on inland waters as well as any land risk that may be related to any sea voyage either by expressly mentioning it or by the usage of trade. The official document of the contract of marine insurance is called the policy or the cover note which enumerates the terms of the contract which is entered into by the parties and is also occasionally referred to as the slip. The consideration paid for the insurance is known as the premium. The party to the contract which is indemnified against any loss is called the assured and the party to the contract who indemnifies is called the insurer. The word "loss" can be referred to consist of any damage as well as the actual loss of goods arising from the marine adventure.

### Section 2(d) of the Marine Insurance Act, 1963 defines marine adventure as-

A "marine adventure" which includes any adventure where-

a) Any insurable property (that is to say, any ship, goods or other movables) is exposed to maritime perils;
b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary

benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

In India, there are no exclusive processes or places in which insurance disputes can be resolved. Insurance disputes can be brought before the civil court or consumer forums in the lack of an arbitration clause under the insurance contract. However, in the case of a conflict, the choice to approach the consumer forums lies only with the assured. The civil courts or customer forums before which the dispute is decided rely on the value of the dispute and on the defendant insurance company's geographical boundaries within which the cause of the dispute occurs.

In India, in order to allow a claimant to approach the Admiralty Court for the detention of the defendant ship in regard of a maritime claim, all he can do is lodge a substantive suit with the Admiralty Court involved when the defendant ship is in India's coastal waters, and determine a prima facie case and the vessel's arrest would arise. Once the ship is detained, the holder or any party concerned in the ship may approach the Court and provide safety for the vessel's discharge under the Court's Arrest Warrant and discharge the vessel. The suit would then be considered and decided by the Court in due time.

The Supreme Court of India, in the landmark ruling of MV. Elisabeth v. Harwan Investment and Trading Pvt. Ltd. (AIR 1993 SC 1014), ruled that the ongoing presence of colonial laws could not be read as stultifying the development of law. Admiralty jurisdiction was also extended by the Hon'ble Court to claims resulting from outbound carriage of cargo by ocean. In reaching its findings, the Court took into consideration the worldwide Admiralty jurisdiction's advancement in both laws and international conventions. The judgment led in Indian courts applying the principles of multiple international conventions in the maritime arena in the exercise of maritime claims admiralty jurisdiction.

There has been a lot of development in the field of marine insurance since the enactment of the above-

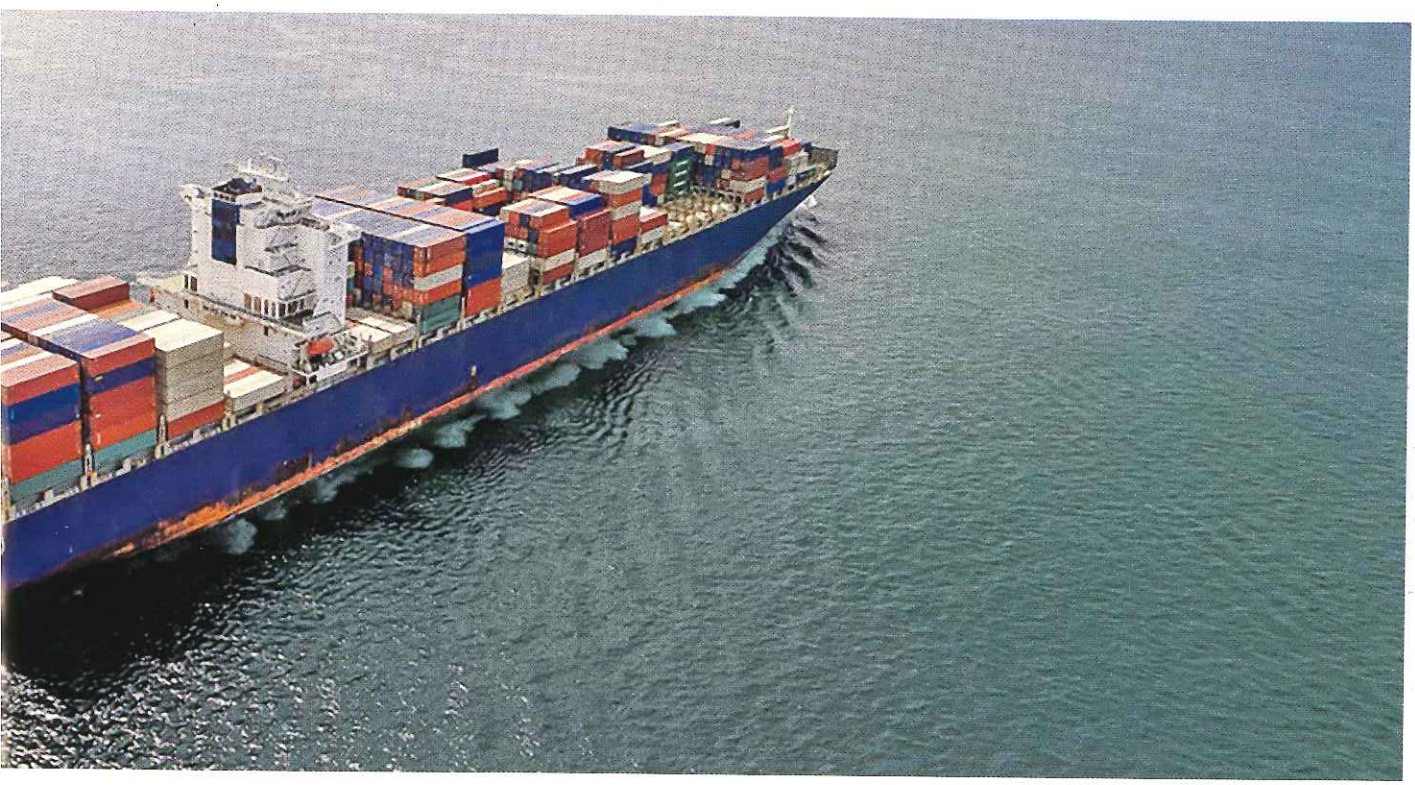
mentioned legislation as well as precedents. The Judicature in India has been very much instrumental in the interpretation as well as the evolvement of the Marine Insurance Act. A recent order by the National Consumer Disputes Redressal Commission can be looked at to understand the intent of the judiciary in respect of marine insurance and to comprehend the practical implications of marine insurance which has given birth to such complex and taxing issues which requires immense understanding as well as expertise of the domain.

The said dispute relates to the repudiation of the complainant's insurance claim. The case involves a certain private limited company who suffered a loss of goods at the Mumbai port which was transported from Myanmar to Mumbai and the insurance claim was repudiated by New India Assurance (Insurance Co.) The complainant had taken a marine insurance policy on 15th January 1997 from Myanmar to India for a consignment of 3000 Bags of Moong dal weighing 150 Tons. Sum insured was INR 21,97,000/-. The policy was valid for a period of six months and was effected on 16th January 1997. The goods were to be transported to Jalgaon via Mumbai. On 21st January 1997, while unloading the goods at the Mumbai port, out of the 3000 bags, 1400 bags were damaged and the Moong dal was mixed with dirt and other impurities. The complainant had immediately informed the Insurance Company about the misadventure. The Insurance Company appointed M/s PM Patel and Co. to investigate the claim and gauge the loss. The surveyor assessed the loss to be of INR 4,01,881/-. But the claim was repudiated by the Insurance Company on 22nd January 1997. The Insurance Company's contention was that the goods were dispatched before the issuance of cover note of the marine policy. The district forum had partly allowed the petition and directed the insurance company to pay a sum of INR 3,01,410/- towards the losses suffered and also a certain sum of money towards the interest.

The insurance company filed an appeal in the State Commission and the appeal was allowed and the complaint was subsequently dismissed. The matter

was eventually decided by the National Commission. The National Commission referred to the Section 18 of the Marine Insurance Act, 1906 which places a limit upon the obligation of disclosure by the assured. Under section 18, the assured is required to disclose only 'material' facts. Section 18 (4) of the Marine Insurance Act further provides that whether any particular circumstance is material or not, in each case, is a question of fact. The Hon'ble Judge was of the opinion that the fact that the ship was in transit while the policy was effectuated is not a 'material fact' and also opined that wherever there is a breach of policy conditions, a claim can be settled as a non-standard claim. The National Commission upheld the District Forum's order.

A very important fact that can be observed from the above-mentioned matter is the duration of the entire litigation process. The complaint was first filed with the District Forum in 1997 and after going through



the process of appeal in the State Commission and eventually, in National Commission, justice was ultimately provided twenty-two years later in 2019. This gives rise to a number of concerns and the most worrisome question of whether the enactment of the legislation, in absence of a speedy and efficient mechanism to deliver justice in respect of that legislation, be valuable and adequate for the progress of a particular sector or industry.

The reason for the requirement of insurance is to support the ship owners, the buyers as well as the seller of goods in the smooth functioning of their businesses without worrying about the contingencies of their goods being damaged as a consequence of the risk associated with the transport in the high seas. In other words, marine insurance provides the required economic safety component so that the danger of an accident happening during the transportation is not an inhibiting factor in international trade. The importance of marine insurance, in terms of both the security it provides and its cost element in the overall economy of operating a ship or transporting goods, and in terms of its impact on their balance of payments position on countries, particularly developing countries, cannot be overstressed.

However, the fact that there are varying domestic legal regimes in the operation of the marine insurance industry which has some implications for contracting parties, especially the insured, who will have trouble understanding international insurance market coverage. Without the uniformity in the legal systems of domestic marine insurance, the global behavior of marine insurance would be significantly impeded, especially from the view of the assured. Therefore, considering the global nature of marine insurance, there is a need to harmonize the legal systems regulating the rights and obligations of the parties to the global transport and trade insurance contract.■

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The views expressed are his own.