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Capturing the Reality -
Accident Insurance

बीमा विनियामक और विकास प्राधिकरण



From the Publisher

As the name indicates, accidents are unforeseen happenings that could have disastrous results – for an individual, a group of people or a large section of the society. Considering the technological development as also the maturity of learning from past experiences, the human society has put in check several areas that are prone for accidental calamities. Nevertheless, accidents being what they are still occur at an alarming rate; and some of them lead to colossal losses for the entire economy. Although nothing can be done about the loss of assets that arises from accidents, the resultant financial losses can be protected by insuring the assets. Accident insurance provides the right platform for this.

Accident insurance presupposes that the losses should directly result from an accidental happening, which is very subjective and hence debatable. There have been several attempts historically and universally to take an undue advantage of this ambiguity and enforce claims on insurers. On the other hand, several deserving claims may have been rejected by insurers based on a very strict interpretation of the clauses. It would be desirable for all stakeholders as well as the various sections of the society to ensure that the spirit of the contract is upheld in order that the essence of insurance as a risk transfer tool is the eventual winner.

In the domain of life insurance, accident benefit is offered by insurers as a rider to the basic contract; and it promises to pay an additional amount equal to the basic sum assured against the payment of a small additional premium. It is very important as such to ensure that there is a proper wholesome underwriting for the rider alone that would put emphasis on the insured person being physically fit. Even in the case of Personal Accident policies in the general insurance domain, sufficient care should be taken to ensure that adverse selection against the insurers is totally obliterated. There should be sufficient checks in place to avoid any possible impersonation; and also to ensure that ‘accident’ is the proximate cause of an eventual claim. It thus calls for a high level of efficiency in the twin areas of underwriting and claims management.

‘Accident Insurance’ is the focus of this issue of the **Journal**. Insurance being a capital-intensive industry should aim at optimum use of capital; and one management tool to work in this direction would be Risk Based Capital. The focus of the next issue of the **Journal** will be on ‘Risk Based Capital’ for insurers.

J. Hari Narayan

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P.C. James and Reshmy Nair



Dealing with Accidental Losses – Dynamics of Accident Insurance

Considering the universal occurrence of accidents of various types and intensity, a mechanism that would provide for compensating the losses that arise on account of such accidents should be a great boon for humanity. Accident Insurance fulfills this role; and as such, should be highly sought after. In the Indian domain especially, like the other classes of insurance; the average individual does not appreciate the need for such insurance which is available for a very affordable premium. Personal Accident policies have thus not made a great foray despite the ease with which they can be obtained. For the insurers, it does not appeal greatly in view of the fact that it does not add a great deal to their top-line growth. However, by adopting better underwriting standards and also streamlining the claims management portfolio; this class can certainly prove profitable for the insurers. Looking at its utility value and the advantages of spreading it among the various sections of the society, there is need for a greater effort in marketing this product.

For a claim to be payable under this class of insurance, it is essential that 'accident' is the proximate cause in a chain of events leading to the happening of the event. In basic life insurance contracts, there is no place for proximate cause. However, in the case of the applicability of the accidental death benefit rider, it comes into play. Being such, there have been several incidents wherein claims have been deliberately forced upon insurers by fraudulently showing that death did occur accidentally. While life insurers take all the precautions in smothering such attempts by fraudsters, it is important to understand that such acts are against the spirit of the contracts; and detrimental to the long-term interests of the industry and society, at large.

As mentioned earlier, there is need for spreading this class of insurance – particularly in the form of Group Personal Accident policies. Several eligible and yet uncovered groups can be brought under the umbrella, that would not only bring a larger number of uninsured people to the insurance fold but also add to the business interests of general insurers. Bundling of Personal Accident covers with other policies could also prove to be a good idea for providing economically viable covers and also at the same time widen the coverage. Insurers would however do well to exercise greater care in underwriting and in claims management. Further, it would also be in their interest to be explicit about the exclusions applicable in this class of policies.

'Accident Insurance' is the focus of this issue of the *Journal*. To begin the debate, we have an article by Mr. G.V. Rao in which he exhorts that the insurers are not evincing a great deal of interest in spreading PA insurance; and questions their wisdom in doing so. Ms. Meena Nair in her article dwells at length upon the nitty-gritty of PA insurance claims; and the need for better clarity in the clauses. Coming next is an article that talks about the application of the Accident Benefit rider in life insurance contracts, in which Prof. Geeta Sarin explains the exclusions in the rider and how they can be tackled. Accident claims in Motor Insurance have remained highly controversial for ages. The issue is discussed in detail by Mr. B.G. Patki. In the end, we have an article by Ms. Yegnapriya Bharath in which she enumerates the subjectivity of the risks in PA insurance; and how they have to be evaluated.

Agriculture Insurance has remained enigmatic, particularly in the Indian domain. We have the first part of a detailed Research Paper that would put several issues in the right perspective, by Mr. P.C. James and Ms. Reshmy Nair. Apart from the regular monthly business figures, this issue also has the quarterly segment-wise classification of life and non-life insurers' performance.

Several global insurance markets have moved towards adopting Risk Based Capital norms, which is deemed to be more efficient. The focus of the next issue of the *Journal* will be on 'Risk Based Capital for Insurers'.

U. Jawaharlal



Claims in Personal Accident Insurance

APPRECIATING THE NUANCES

MEENA NAIR OBSERVES THAT THERE IS A VERY SUBTLE DIFFERENCE BETWEEN SYMPATHIZING WITH A CLAIMANT AND ADMITTING A CLAIM, ESPECIALLY IN PERSONAL ACCIDENT INSURANCE, WHICH THE INSURED SHOULD APPRECIATE.

Claims – The great debate

Accidents, whether in the workplace, at home or in the street are unfortunately a fact of life and they do happen and that is why we have Personal Accident (PA) insurance to deal with such vagaries of life. The policy covers a number of eventualities including plane crashes, train accidents, murder, hit-and-run and even death due to snakebite. However, unlike life cover, Personal Accident insurance won't pay out if one dies from an illness or natural cause. Most policies also won't pay out if the injury was self-inflicted or if there was an element of "willful exposure to danger" - like swimmers who go swimming ignoring warning signs of a red flag and then drown. Most personal accident policies pay out only if the policyholder suffers '*accidental bodily injury or death solely and directly as a result of an external, violent and visible cause*'.

Usually, most of the claim cases are relatively straightforward: if one is involved in an accident which results in 'bodily injury' as defined in the policy, one needs to intimate the insurance company and submit the required documents. Once all the documents are in place, the insurers do the required

investigation and settle the claim in around a month's time. Even though the claims process looks very simple on the surface, if you scratch a little underneath, some obstacles may arise especially on issues of what actually caused the injury. While on its face, it seems to be a simple question – Peril A causes Loss X: an accident causes an injury; but real life is rarely that uncomplicated. In most cases, many events and circumstances combine to produce a particular result. Sometimes events occur independently of each other or as a result of one another. It is in such cases when there are multiple dependant events in play that confusion arises as to which event actually caused the injury.

The main obstacle that can really hold up a personal accident claim is – Apprehension as to whether the accident solely and directly caused the injury? Cases viewed in the light of suspicion include situations where the risky behavior of an insured resulted in an accident / when there is some doubt as to whether a preexisting condition along with the accident contributed to the injury. So, finally it all boils down to the "doctrine of proximate cause"!

Even though the claims process looks very simple on the surface, if you scratch a little underneath, some obstacles may arise especially on issues of what actually caused the injury.

In this article, we outline a few Personal Accident claims to highlight the importance of distinguishing between cases where the injury was an unfortunate result of an accident alone – and those where some other event actively co-operated with the accident

in causing the injury. Understanding the finer nuances will help us better understand and gain clarity on when a claim will fall within the purview of the policy.

- **Temporary sickness – fall from train**

The Insured while riding as a passenger on a train became sick with the desire to vomit. To relieve himself, he attempted to get into the closet inside the compartment and it being locked went near the door to vomit. The force with which he vomited caused him to slip from the train and was killed. The Insurer argued that the PA policy would not cover death “resulting wholly or partly, directly or indirectly from disease in any form, either as a cause or effect”. The Court here held that injuries / death caused by force due to a temporary and unexpected physical disorder does not prove that the fall was caused by a disease so as to avoid the policy. Disease includes an ailment of a somewhat established or settled character and not merely a temporary disorder arising from a sudden and unexpected derangement of the system.

- **Accidental injury – Disc Prolapse - Co-operating causes**

The policy insured a club against the risk of illness or injury to its players, disabling them from continuing to play football. In the course of a practice game, Mr. X suffered a back injury when he stretched for a ball, collided with another player and fell to the ground. Soon after that Mr. X began to receive medical attention as a result of back pain which was diagnosed as a prolapsed disc. The composition of the disc in question had also experienced a degree of degeneration.

Their insurers refused to pay, arguing that the disablement had not been caused by the injury alone and relied

on a clause which excluded liability for disablement attributable ‘directly or indirectly’ to degenerative conditions. The insurers argued that Mr. X was suffering from a pre-existing problem of the lower lumbar spine. The club’s argument was that any degenerative condition that Mr. X did have was normal for a person of his age. The court held that since the accident was not the predominating and efficient cause of the injury and since degeneration, normal or otherwise, was a cause of Mr. X’s disablement as opposed to the injury alone; the exclusion clause

The court held that since the accident was not the predominating and efficient cause of the injury and since degeneration, normal or otherwise, was a cause of Mr. X’s disablement as opposed to the injury alone; the exclusion clause applied.

applied. The court called attention to the fact that if the insured was suffering from a degenerative condition and that condition caused or actively co-operated with the accident in causing permanent injury to the spine, then it falls outside the coverage of the policy.

- **Insured struck another in mouth – Blood poisoning – Death**

The insured engaged in an altercation with another person, struck him in the mouth, cutting his hand by coming in contact with the teeth of that person. In a few days, blood poisoning set in, the arm was amputated and death of insured followed. The insurers declined to pay saying that the insured died from doing what he intended to do and hence his death was not the result of accidental means.

The plaintiffs argued that the death of the insured was due to external, violent and accidental means within the terms of the policy. The court held that the insured committed an assault and in striking the person in the face injured his hand and a few days later died from the effects of blood poisoning. Such injury which was the direct cause of death was the natural result of a voluntary act committed by the insured when he was in full possession of his mental faculties. The result though unexpected is not an accident, because for an event to be called an “accident”, the means or cause must be accidental. Hence, insurer was not liable to pay.

- **Fright and excitement- Nervous Shock**

The plaintiff was a signal man working in the railways. One day, in the discharge of his duty, he endeavored to prevent an accident to a train by signaling to the engineer. The panic and fright which he underwent in preventing the accident produced a nervous shock which incapacitated him



from employment for around 50 weeks. According to the terms of the PA policy under which he was covered – he was entitled to a weekly benefit in case he was incapacitated by an accident. The insurer declined cover since the disablement was caused by a mental trauma but the Court refused to heed and held that the plaintiff had been incapacitated by an accident well within the meaning of the policy.

There are also various problematic cases that involve surgical complications where the policyholder died or was injured following surgery. The insurer usually rejects the personal accident claim on the basis that the bodily injury or death was not caused accidentally and/or was not the sole and direct result of an external, violent and visible cause. All surgery carries some risk, but it is usually possible to isolate those cases where something accidental has caused the injury. Two similar cases with differing results are illustrated below.

Similar loss, different outcomes

- Case I: Mr T underwent minor surgery to correct a prolapsed disc. The operation appeared to be uneventful. However, during recovery Mr T complained of tightness in his neck and eventually he was rushed to intensive care, where he died. The coroner concluded that the cause of death was hemorrhaging from a vertebral artery. But the insurer rejected the personal accident claim brought by Mr T’s widow. The matter went to court. The weight of the medical evidence indicated that the surgeon had negligently torn or cut the artery during the surgery. This was not a natural consequence of the risks inherent in surgery and something had

All surgery carries some risk, but it is usually possible to isolate those cases where something accidental has caused the injury.

gone wrong and this was not what any of the parties to the surgery had anticipated. The court determined that the injury therefore fell within the scope of the PA policy.

- Case II: Mrs G had an operation to remove a lump from her neck. During recovery, the wound started to bleed profusely, resulting in a massive hemorrhage. As a result of this, Mrs G died. The insurer rejected a claim made by Mrs G’s husband on their personal accident policy. It said that Mrs G’s death had resulted from the complications of planned surgery – rather than from an accident. The court

went through the medical reports and found nothing to suggest that this was an accident. The coroner’s inquest cleared the surgeons of any wrongdoing. No error had occurred during the operation. Mrs G was just one of the very few unfortunate patients who react badly to this type of surgical intervention.

The bodily injury here was a natural, though tragic, consequence of the surgery. It was an anticipated risk which Mrs G had consented to, insofar as the general risks of surgical complications had been explained to her. So despite sympathizing with Mr G’s situation, the court could not agree that the insurer had acted unfairly or unreasonably.

Conclusion

The facts of insurance claims are usually complicated - given the different potential causes of loss involved and exclusions in play. Some jurisdictions may view the exclusion ambiguous and in the insured’s favor; and other jurisdictions may view it as being crystal clear in the insurer’s favor. Like they say, there can be many a slip between the cup and the lip, in insurance there can be many a slip between what you understand and what the policy covers.

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