

Insurable Interest: An Elixir for the Enforcement of an Insurance Contract

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ABSTRACT

Insurable interest is in an inchoate right which is present for perfection in those who possess the right, however never perfected until all the legal requirements have necessarily been performed¹. Insurable interest is *sui juris* and it is also peculiar in its operation as well as in its texture. Through this paper, the author has tried to examine the insurable interest in the various kinds of insurance contracts with the help of judicial pronouncements. This paper also provides analysis of the nature and scope of insurable interest.

KEYWORDS: *Insurable interest, sui juris, insurance contracts*

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INTRODUCTION

It is indeed a well settled principle of public policy that whoever enters into a contractual relationship, is imposed with a duty to fulfill the contractual obligations arising out of it². Contracts of insurance aren't any exception to this principle of public policy.

Every contract of insurance satisfies the essentials of a general contract i.e. competency of parties, lawful object, consideration, free consent. However one of the most distinct features which exist in the case of an insurance contract is the existence of insurable interest in the subject matter of the insurance by the insured. The non-existence of insurable interest in the subject matter of insurance can lead to the insurance being amounted to a mere wager and not an insurance contract. Therefore insurable interest is an inherent essential feature for the legality of the insurable interest. In general terms, the insured must be having a relationship with the subject matter of the insurance be it the property of life of the insured.

For the validity of an insurance contract, Insurable interest is *sine qua non*. Insurable interest is an interest which gets protection by the virtue of contract of insurance.

Patterson, defines insurable interest as:-

A relation between the insured and the event insured against, such that the occurrence of the event will cause substantial injuries or substantial losses of some kind to the insured³.

According to Rodda, insurable interest is:-

Insurable interest may be defined as interest which is of such a nature that the occurrence of an event would lead to financial loss to the insured.⁴

Legal aspects:-

- In India, the Insurance Act, 1938 doesn't provide for any comprehensive definition for insurable interest. It is, however, the sections 48 and sections 68 of the Insurance Amendment Act, 1950 which merely provides a slight reference to the insurable interest.
- The nature of insurable interest has been explained in the case of *Lurena v. Craufurd*,⁵ In this case it was held that the most governing principle is that the insurable interest must be such which can be enforceable by the law.
- In the case of *Moran Golloway v. Uzbekistan*, it was held by Walton J. that the obiter dicta which have been laid down in the series of preceding landmark cases which

¹ Warnock v. Davis. 104 U.S. 775).

² Beresford v. Royal Insurance co. (1938) AC 586.

³ EW Patterson, *Elements of Insurance Law*, p.109.

⁴ WH Rodda, *Fire and Property Insurance*, pg. 22.

⁵ *Lurena v. Craufurd*, (1806) 2 B&P 269, 301 (NR).

tends to narrow the definition of the insurable interest must be accepted along with a caution.

The nature of the insurable interest is:-

- It must be lawful,
- It must be peculiarly,
- It must not be restricted merely to a sentiment right or interest,
- It must be right arising out of the contractual relationship between the parties or a right in property.

Time period for the insurable interest:-

The time duration of the insurance interest is contingent upon the nature of the insurance contract.

- **Life Insurance:** - In a life insurance, the insurable interest must be present at the existence of insurable interest is mandatory at the time of commencement of the insurance and it must continue to exist as long as the contract is not discharged.

Subject matter of life insurance regarding insurable interest:-

- Blood Relations:-
 - One's own life: - It is a presumption that every individual has an insurable interest in his own life and this interest is not subjected to any limitations. After the death of the individual, his nominee's legal heirs are capacitated to obtain the amount.
 - Husband and Wife: - With an expansion in life insurance apart from a person having a presumed insurable interest in his own life now it also exists that the wife or husband has an insurable interest in the life of each other. It was observed by SS Hubber, that life insurance is a privilege of a husband, claim of a child and the right of a wife⁶. According to section 2 of English married women's property act it is well settled that there exists a presumption of insurable interest at the husband's part in respect of his wife.⁷
 - Parent and Child: - In England there exist a presumption that a parent has no insurable interest in the life of the child as for the constitution of an insurable interest love and affection is not merely sufficient. On the other hand, a child (both natural and adopted) is presumed to have an insurable interest in the life of his parent as he is dependent on the life of his parent for support. In the case of DM, United India Insurance Company Ltd. v. Amarjeet Singh⁸. It was held that whenever a loss is incurred the father-insured would act as a trustee of the property and hence he was entitled to insure the property.
 - Debtor and Creditor: - Creditor holds sufficient insurable interest in the life of the debtor, however it is limited only to the extent of the amount which he is entitled to recover from the debtor⁹.
 - Mortgagee and Mortgagor: - The mortgagee has insurable interest in the life of the mortgagor subjected

to the extent of property mortgaged by the mortgagor. Similarly a co-surety life can be insured by the surety.

- Bailor and Bailee:- There exists insurable interest in the case of a bailment. A bailor has insurable interest in the property bailed only up to the extent of the possible loss.
- Employer and Employee: - An employee has an insurable interest in the life of his employer so as to the extent of the employee's salary.¹⁰
- Partner and Co-partner:- A partner has insurable interest in the life of the co-partner up to the extent of the capital's amount which is brought by the co-partner into the partnership business¹¹. In the case of Hebdon v. West¹². It was held that master and servant also have insurable interest.

Insurable interest however doesn't exist in the following cases except when there is a proof for financial dependence:-

- Uncle and Aunt,
- Cousins,
- Nieces and Nephews,
- Stepchildren and Stepparents,
- A foster child,¹³
- An illegitimate child,¹⁴
- **Fire Insurance:** - A fire Insurance is a personal contract as well as a contract of indemnity. A person is said to have an insurable interest in a property if he holds an interest in the continued existence of a property. In a fire Insurance contract, the insurable interest exists even at the time when a fire insurance policy is commenced and at the same time of occurrence of risk. In case of fire insurance, the insurable interest is instituted twice. Insurable interest in the case of a property is not limited to legal ownership and even a limited or special interest in the subject matter is enough for a person to take fire insurance.
 - Interest of Bailee: - A bailee is accountable for the goods bailed to him and therefore he has an authority to insure these goods for the full value as he will be liable to the owner of the goods for any damage or loss caused to the goods and moreover a bailee also has a lien over the goods bailed to him.¹⁵
 - Interest of an Agent: - An agent has an insurable interest in the goods possessed by him. So he can insure those goods for the full value and he can take such fire insurance in his own name.
 - In the case of Purchaser and Seller: - In the case of Gnaa Sundaram v. Vulcan Insurance Co. Ltd¹⁶. It was held that under a purchase agreement, an interest was held to be an insurable interest.

¹⁰ Hebdon v. West (1863), 3 B. & s. 579.

¹¹ Connecticut Mutual Life Insurance Co. v. Luchs (1883) 108 us 408.

¹² Hebdon v. West (1863) 3 B&S 579

¹³ Carpentor v. United States of Life Insurance Co (1894) 161 Pa St 9

¹⁴ Overton v. Coloured Knights of Pythias (1915) 173 SW 472.

¹⁵ Vijaya Kumar v. New Zealand Insurance Co. AIR 1954 Bom 347.

¹⁶ Gnaa Sundaram v. Vulcan Insurance Co. Ltd AIR 1931 Rang 347.

⁶ SS Hubner, Life Insurance, p.17

⁷ Reed v. Royal Exchange Assurance Co. (1795) Peake 70

⁸ DM, United India Insurance Company Ltd. v. Amarjeet Singh AIR 2011 J&K 148: 2011 (2) JKL 1

⁹ Godsall v. Baldero (1807) 9 East 72.

- In case of Mortgagor and Mortgagee:- In the case of North British and Mercantile Insurance Company v London Liverpool and Globe Insurance Company¹⁷, it was held that a mortgagor can insure the property for its full value as an owner of the goods mortgaged to him. Even a mortgagee can insure the property for its full value, if such insurance is intended to be for the benefit of the mortgagor as well.¹⁸
- In case of Lessor and Lessee: - A lessor as well as a lessee both has insurable interest in the property leased. In the case of *Castellain vs. Preston*¹⁹ it was held that a tenant of premises has an insurable interest for the enjoyment of the premises, which the tenant loses in the event of its destruction. Similarly a tenant who has taken furnished premises on rent, he not only has an insurance interest in the premises but also he holds insurable interest in the furniture.²⁰
- A Lien Holder: - A lien holder is a person having a charge or lien on the property has an insurable interest and this insurance interest is limited to the extent of the value of his lien or charge.

➤ Marine Insurance :-

In the case of *Godsall v. Baldero*²¹, Marine insurance was extended to the life insurance and it was held that the insurable interest must be or proved to exist at the time of commencement of the loss. However it was overruled in the case of *Dolby v. India and London Life Assurance Co*²² and in this case it was held that the insurable interest should be proved to have existed at the time when the policy was taken and at that date only and not at the time of the occurrence of loss.

Sections 7-17 of the Marine Insurance Act, 1963 deals with insurable interest in India. The English Marine Insurance Act, 1906 defines insurable interest.

In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.²³

In the case of *Contship Container Lines Ltd. & Co. Ltd. vs. D.K. Lall*²⁴, it was held that the insurer was not liable to indemnify the unpaid seller for the resultant loss in case of non-delivery of goods to the foreign purchaser.

- In a Marine Insurance, the masters of the ship have insurable interest in respect of their salary and wages.
- In a Marine Insurance contract, the insurer has insurable interest in his risk.

CONCLUSION

Insurable interest is peculiar for the enforcement of an insurance contract. Insurable interest is necessary to prevent gambling as gambling opposes public policy. Insurable interest is instrumental for curbing the malpractices. Insurable interest is a tool which puts a bar at dishonest or fraudulent practices which tends to dilute the spirit of an insurance contract. Hence, in a nutshell, insurable interest plays a vital role in the smooth functioning of insurance contact.

¹⁷ North British and Mercantile Insurance Company v London Liverpool and Globe Insurance Company, (1877) 5 Ch D 569

¹⁸ Westminster Fire Office v. Glasgow Provident Investment Society (1888) 13 AC 699.

¹⁹ Castellain vs. Preston (1883) 11 QBD 380

²⁰ Trotter v. Watson (1869) LR 4 CP 433,434

²¹ Godsall v. Baldero (1807) 9 East 72

²² Dolby v. India and London Life Assurance Co (1854) 15 CB 365.

²³ The Marine Insurance Act, 1963, s 7(2).

²⁴ Contship Container Lines Ltd. & Co. Ltd. vs. D.K. Lall AIR 2010 SC 1704.