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L.L.B Part- 2nd

Subject- Insurance Act

Paper- 8th

Date- 17/09/2020

Topic- Define Warranty? What are the implied warranties in marine insurance? Explain.

Warranty-

A warranty is something by which the policyholder undertakes that some things shall or shall not be done during the tenure of the policy. It means, he affirms or negates the existence of particular facts.

Warranties are like statements according to which an insured promises to do or not to do some particular things. Remember, it is a statement of fact and not merely a condition. Moreover, warranties strongly insist upon and, therefore, the contract becomes null and void in case warranties are broken, irrespective of the fact that the warranty was important or not.

In case of marine insurance, implied warranties are more crucial and it includes-

1. **Seaworthiness of ship**–

   It says, that ships which will be used for transportation should be suitably constructed and equipped and capable of withstanding ordinary stress at the voyage. It can be further understood with the help of the following points=

- To decide whether the ship is seaworthy or not is subjective and may vary with any particular vessel at different periods of time and destination, like, a ship may be seaworthy for summer but may not be apt for winter.
- Apart from the physical condition of the ship, seaworthiness also includes adequacy of equipments, expertise of crew members and the condition of the consignment
- It says that the ship must be cargo-worthiness i.e., must be reasonably fit to carry the insured cargo. Note, warranty of seaworthiness doesn't apply to cargo. It means, there is no

warranty that the cargo should be seaworthy and we can't expect from the cargo owner to be well acquainted with the shipping business.

- A ship should be seaworthy at the port of commencement of the voyage and different stages if the voyage is to be completed in different stages

2. **No change in the destination of the voyage**– If the destination of the voyage is changed intentionally after the inception of the risk, it is known as the change in the voyage. If this happens, the marine insurance company is no more responsible for covering the new voyage.

3. **No delay in the voyage**– It says that there should be no delay in starting the voyage without a valid reason. It is necessary that the insured venture must be dispatched within the reasonable time duration. In case there is a delay, the insurer has all rights to refuse to give the coverage in the absence of any legal reason.

4. **No deviation**-The liability of the marine insurer ends if there is a deviation in the journey i.e., deviation from the common route. In case a ship deviates from its fixed passage, the insurer's liability ends. This will be immaterial if the ship returns to its original path before the loss However, the insurer can quit responsibility only if there is an actual deviation and not mere the intention to the deviation.

Termination of Contracts-

There is some difference between various domestic laws as to the legal provisions with regard to the date of termination of the contract. Under the Provision, the insurer has the right to terminate the contract upon a breach of warranty, and such a right shall not be affected by whether or not the insured notifies the insurer of such breach, or whether or not any agreement as to new terms and conditions is reached after negotiation. According to the general rules of contract law an insurance warranty should be treated as a condition in a contract. A condition according to the contract law, is an event agreed on by parties to the contract, upon the achievement of which the contract is deemed to be either effected or terminated.

Once a warranty is breached, the insurer demanding termination of the contract shall notify the insured of such breach, and the insurance contract shall be terminated upon the receipt of such notice by the insured. That may also mean that the insurance liability for any loss will continue until "the receipt of notice by the insured"; in other words, the time of the receipt of notice by the insurance is the point at which the insurance contract is legally terminated. In other words, it is the time of receipt of notice which is the point at which insurance projects are generally terminated. As a consequence, one may conclude that the insurer shall still be responsible for any losses occurring before the insurance contract is "legally" terminated

Section 41 of MIA 1906, under the heading "Warranty of legality", states that "there is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner". The question is, therefore, whether this implied warranty may be regarded as a matter relating to liability.

In a marine insurance policy insuring against capture, a statement in the policy as to the nationality of the vessel insured was obviously material to the risk, and was held to be a warranty. In a fire insurance policy, a statement describing the insured building (or the building in which insured goods are located) in respect to any of the four types of physical hazards, construction, occupancy, protection, or exposure, is a descriptive warranty. It is important to distinguish a descriptive warranty from words identifying the property covered, since an error in the latter may be disregarded, even in an action at law, if other words of identification are sufficient.

The Insurance Act, 2015

A new milestone for insurance law and practice was marked after the Insurance Act of 2015 received Royal Assent in February 2015. As a result of enacting Secs.9, 10 and 11, significant changes have been made in response to longstanding criticisms over warranty. These three sections apply to both express and implied warranties.
First, following Sec. 10(2), the harsh consequence of an automatic discharge has been abolished, and this has been replaced by the suspension approach. The insurer is not liable for any losses occurring, or attributable to something happening, after a breach of warranty, unless and until the breach has been remedied; this means that "the risk is simply suspended during any period of breach".

This position, as is observed by some scholars, is defensible when taking into account both the rationale for incorporating warranties into insurance contracts, and their function in risk assessment and management.

The insurer will not be liable where the agreed cover is altered owing to the insuredâ€™s breach; and when the risk returns to what was originally agreed, his liability resumes. The effect of the suspension approach still requires that the warranty must be strictly complied with, and that any breach of warranty will result in an automatic suspension of the insurerâ€™s liability.
It may thus be concluded that the Insurance Act 2015 offers the solution for only one scenario, i.e. where the breach of warranty can be remedied, since there is no mention of possible remedies where the breach is permanent; for example, where the insured warrants that the lorry will be used for carrying metal materials, but it is later permanently changed to be used for carrying gas cylinders, thus permanently breaching the warranty, for which the ultimate consequence is exactly the same as that under MIA 1906.

Therefore, there exists three possible different situations: (1) Sec.10 applies to all warranties; (2) some warranties will be covered by Sec.11-if they are aimed at reducing particular risks; and (3) Sec.10 and Sec.11 may apply together-in which case Sec.10 becomes subject to Sec.11. As a result, if a warranty is relevant to a particular kind of loss, or at a particular time or location, Sec.11 will possibly apply. Therefore, as noted by the LMC, if the scope of the policy cover is narrow, such as for only a specific type of risk, such as fire risk, then Sec.11 would apply.

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