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L.L.B Part- 2nd

Subject- Insurance Act

Paper- 8th

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Topic- Classify marine loss and explain the distinctive feature of each of them.

Marine Loss-

A **marine loss** is a loss in quantity or quality of commodities that occurs between the time the B/L is issued to the shipping company and the time the shipping company turns over custody and control of the commodities to the Awardee (or the Awardee's designated C&F agent), usually at the port.

Types of Marine Losses-

If the loss takes place on account of any of the perils insured against with the insurer, the insurer will be liable for it and shall have to make good the losses to the assured.

If the peril is insured, the insurer will indemnify the assured, otherwise not.

The doctrine of causa-proxima is to be applied while calculating the amount of loss.

It means for payment of losses, the real or proximate cause is to be taken into account. If the proximate cause is insured, the insurer will pay, otherwise not.

Marine losses can be divided into two main parts containing several subparts-

A. Total loss;

1. Actual total loss
2. Contractive total loss

B. Partial loss;

1. Particular average losses
2. General average losses
3. Particular charges
4. Salvage charges

These classifications are described in details below;

A. Total loss-

There is an actual total loss where the subject matter insured is destroyed or so damaged as to cease to be a thing of the kind insured or where the assured is irretrievably deprived thereof.

Losses are deemed to be total or complete when the subject- matter is fully destroyed or lost or ceases to be a thing of its kind.

It should be distinguished from a partial loss where only part of the property insured is lost or destroyed.

In case of total loss, the insured stands to lose to the extent of the value of the property provided the policy amount was to that limit.

Actual total loss-

The actual total loss is a material and physical loss of the subject-matter insured.

Where the subject- matter insured is destroyed or so damaged as to cease to be a thing of the kind insured, or where the insured is irretrievably deprived thereof, there is an actual total loss.

When a vessel is foundered or when merchandise is so damaged as to be valueless or when the ship is missing it will be an actual total loss.

The actual total loss occurs in the following cases:

1. The subject-matter is destroyed, e.g., a ship is entirely destroyed by fire.
2. The subject-matter is so damaged as to cease to be a thing of the kind insured. Here, the subject-matter is not totally destroyed but damaged to such an extent as the result of the mishap; it is no longer of the same species as originally insured. The examples of such losses are—foodstuff badly damaged by sea water became unfit for human consumption, hides became valueless as hides due to the admission of water. These damaged foodstuffs or hides may be used as manure. Since the characters of the subject-matters are changed and have lost their shapes, they are all actual total loss.
3. The insured is irretrievably deprived of the ownership of goods even they are in physical existence as in the case of capture by the enemy, stealth by a thief or fraudulent disposal by the captain or crew.

4. The subject-matter is lost. For example, where a ship is missing for a very long time and no news of her is received after the lapse of a reasonable time. An actual total loss is presumed unless there is some other proof to show against it.

In case of actual total loss, notice of abandonment of property need not be given. In such total losses, the insurer is entitled to all rights and remedies in respect of damaged properties. In no case, amount over the insured value or insurable value is recoverable in a total loss form the insurers.

If the property is under-insured, the insured can recover only up to the amount of insurance. If it is over insured he is not over-benefited but only the actual loss will be indemnified.

Where the subject-matter had ceased to be of the kind insured, the assured will be given the full amount of total loss provided there was insurance up to that amount, and the insurer will subrogate all rights and remedies in respect of the property.

Any amount realized by the sale of the material will go to the insurer.

Contractive total loss-

Where the subject-matter is not actually lost in the above manner but is reasonably abandoned when its actual total loss is unavoidable or when it cannot be preserved from total loss without involving expenditure which would exceed the value of the subject-matter.

For example,

The cost of repair and replacement was estimated to be \$50,000, whereas the ship was estimated to be \$40,000, the ship may be abandoned and will be taken as a constructive total loss.

But if the value of the ship was more than \$50,000 it would not be a constructive total loss. Here it is assumed that retention of the subject-matter would involve financial loss to the insured.

The constructive total loss will be where;

1. The subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable;
2. The subject-matter could not be preserved from actual total loss without an expenditure which would exceed its repaired and recovered value.

The insured is not compelled to abandon his interest, where the goods are abandoned, the insurer will have to pay the full insured value.

Where there is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it was an actual total loss.

B.Partial loss-

Any loss other than a total loss is a partial loss. The partial loss is there where only part of the property insured is lost or destroyed or damaged partial losses, in contradiction from total losses, include;

1. Particular average losses, i.e., damage, or total loss of a part,
2. General average losses (general average) le., the sacrifice expenditure, etc., done for the common safety of subject-matter insured,
3. Particular or special charges, i.e., expenses incurred in special circumstances, and
4. Salvage charges.

Particular average loss-

The particular average loss is 'a partial loss' of the subject-matter insured caused by a peril insured and is not a general average loss.

The general average loss or expense is voluntarily done for the common safety of all the parties insured.

But, the particular average loss is fortuitous or accidental. It cannot be partially shifted to others but will be borne by die persons directly affected.

General average Loss-

General average is a loss caused by or directly consequential on a general average act which includes a general average expenditure as well as general average sacrifices.

The general average loss will be there where the loss is caused by an extraordinary sacrifice or expenditure voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in common adventure.

Particular charges-

Where the policy contains a "sue and labor" clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance and the assured may recover from the insurer any expenses properly incurred pursuant to the clause.

The clause requires the insurers to pay any expenses properly incurred by the assured or his agents in preventing or minimizing loss or damage to the subject-matter by an insured peril.

Salvage loss-

Where actual total loss occurred, and die subject-matter is so damaged as to cease to be a thing of the kind insured or when they have been sold before reaching the destination, there is a

constructive total loss. The usual form of settlement is that the net sale proceeds will be paid to the assured.

The net sale proceeds are calculated by deducting expenses of the sale from the amount realized by the sale.

The insured will recover from the insurer the total loss less the net amount of sale. This amount received from the insurer is called a 'salvage loss'.

The End