



# LIABILITY CLAIMS *TAKEAWAYS*

## CONTENT

- Commercial General Liability Insurance
- Employee Compensation Insurance
- Commercial Crime Insurance

MAY 2022

Welcome to the May edition of 'Liability Claims Takeaways' - our monthly insights from industry stalwarts.

# A Commercial General Liability Insurance:

## WHAT WAS THE CLAIM?

*The Insured was in the business of providing stack parking facilities to its clients, thereby enabling vehicle owners to stack more than one vehicle above the ground in a limited parking space. This facility allowed the building owners to utilise vertical space in parking areas that would normally go unused. While parking a vehicle, using the Insured's facility, a couple of screws of one of the parking palettes unwinded, which resulted in the car partially falling off its slot and getting damaged, resulting in a claim against the Insured for repairs of the damaged vehicle. The Insured intimated the claim under its Commercial General Liability Policy ('CGL Policy').*

## KEY ASPECTS TO CONSIDER:

### 1. Cover under a CGL Policy:

A CGL Policy aims to cover all damages that the Insured is legally liable to pay on account of bodily injury or property damage caused at their premise or due to the Insured's product. It is important that legal liability is established and a claim is preferred against the Insured, for coverage under the CGL Policy to trigger. It is also relevant to note that typically CGL policies in India are reimbursement-based policies and therefore require a claim to be made against the Insured resulting in a payout, which will then be assessed for coverage under the policy and reimbursed by the Insurer.

### 2. The interplay of other insurance clauses:

- Most liability insurance policies have an 'other insurance' clause, which requires, that in the event of any loss that is covered by more than one insurance policies, the relevant clause will determine which liability carrier has the full burden (primary insurance), and which liability insurance has to cover the excess loss, i.e., the portion of the loss that remains uncovered under the primary insurance policy. Insurance companies implement this practice to limit their respective exposure and avoid duplication of settlement of claims arising out of the same incident.
- In the instant claim, given that the damage suffered by the car would first be picked up under the motor vehicle insurance policy of the car owner (MV Policy), the CGL Policy would only act in excess of the MV Policy.
- The vehicle owner suffered a loss of approximately INR 10,00,000, which was directly claimed from the Insured, however, our team of experienced brokers and lawyers were able to explain to the claimant the requirement to first claim under their MV Policy and supported them in making the relevant notification under their MV Policy. After the MV Insurer completed the assessment and ascertained its liability as INR 3,00,000, we informed the CGL Insurer and the balance damages, to the tune of INR 7,00,000 claimed by the vehicle owner, were accordingly claimed from the CGL Insurer.



### 3. **Damage to own product not covered under the CGL Policy:**

On account of the incident, while one of the parking slots toppled and damaged the third party vehicle, significant damage was caused to the Insured's parking machine as well, as a result of which the Insured had to carry out repairs and incur expenses. The CGL policy is designed to cover damages that the Insured becomes legally liable to pay to a third party. First party loss to Insured's own product is not reimbursed under a CGL Policy.





# B Employee Compensation Insurance:

## WHAT WAS THE CLAIM?

*The Insured carried on the business of processing and packaging of sugar and had a large plant where heavy machinery and equipment were used by the employees. While handling one such machine, one of the Insured's employees suffered head injuries and was rushed to a hospital immediately, however, the employee unfortunately succumbed to his injuries before reaching the hospital. The family of the deceased employee sought compensation from the Insured and the Insured made a claim under their Employee Compensation Policy (EC Policy).*

## KEY ASPECTS TO CONSIDER:

### 1. What is covered under the EC Policy?

- An EC Policy covers the statutory liability of an employer for the death, disability, and bodily injuries of their employees caused by accidents arising out of and during the course of their employment
- The compensation payable by the employer to the employee's family under the Employee's Compensation Act, 1923 (EC Act) depends on the nature of the employee's injury and the average monthly salary or wages paid to the employee at the time of the incident. However, the minimum and the maximum values for the compensation are subject to timely revisions by the Ministry of Labour & Employment.
- The EC Policy mirrors the liability under the EC Act. Therefore, the coverage under the policy and the claim amount payable by the Insurer to the employer will be equivalent to the amount that the employer is held liable for thereunder.
- The EC Policy also covers the employer's liability under common law, and the Insurer is duty-bound to indemnify the employer to the extent of liability imposed upon the employer thereunder.

### 2. Calculation of wages for the deceased workman:

As mentioned above, the EC Act lays down the provision for calculation of the compensation payable to an aggrieved employee/family members of the deceased employee. Given the EC Act was enacted in 1923, the wages were relatively lower, therefore, the Central Government, from time to time, has revised the minimum threshold of the wages, enabling a minimum wage earner/dependant an opportunity to receive sufficient compensation for the injury/loss suffered.

The EC Act lays down the manner of calculating the wages for a deceased employee based on the salary earned in the preceding 12 months multiplied by the relevant age factor. The wage-earner, in this case, received a monthly wage of approximately INR 10,000. The Insurer, while having admitted the claim, calculated the wages of the Insured at INR 10,000, instead of INR 15,000 (which was the currently notified wage under the EC Act). This resulted in the compensation being calculated at a much lower value.

To resolve the issue, our team met with the insurance company and explained to them the true interpretation of the notification based on the judicial precedents explaining the intent of the EC Act, which is a beneficial legislation. We informed the Insurer that the central government's notification of monthly wages under the EC Act of INR 15,000 is nothing but a minimum threshold set down to calculate compensation under the EC Act, intended to ensure a minimum compensation under the said legislation. In instances where the workman receives higher wages, the calculation as prescribed under the Act must be made based on actual wages received by the said workman. There are a plethora of case laws wherein the courts of India have concluded that the EC Act and compensation paid thereunder ought not to be considered narrowly, the intent to formulate legislation, such as this, is to ensure that aggrieved employees and their families are provided with adequate monetary relief.

The Insurer, recognising our interpretation, revised the reimbursement payable to the employee's family and paid a higher compensation pursuant to the EC Act.



# Commercial Crime Insurance:

## WHAT WAS THE CLAIM?

*The Insured was in the warehousing business. They stored goods that were in transit on behalf of its customers for further despatch. The Insured's employee, who was also the warehouse supervisor, stole goods worth INR 6 crore and absconded. The Insured only discovered the loss after one month while inspecting the stock for their monthly audit. Accordingly, the Insured filed a police complaint against the absconding employee and a first information report was also registered. The Insured notified a claim under its Commercial Crime Policy.*

## KEY ASPECTS TO CONSIDER:

### 1. Application of average clause:

An 'average clause' in an insurance policy restricts the amount payable pursuant to a claim, to such proportion of the loss value, as the sum insured bears to the actual value of goods stored at the said premise. This is a way to avoid under insurance by the Insured and helps the Insurer to limit their loss, should there be a case of under insurance.

Such clauses are typically seen in property policies and are usually not seen in liability policies, because the latter operates on the principle of liability and not on the value of loss.

While preparing the loss assessment report, the surveyor incorrectly applied the average clause to the loss assessed, even though the Insured's policy did not have the provision of an average clause, thereby reducing the value of reimbursement payable to the Insured, under the policy.

Our team of lawyers, in the liability claims team, carried out extensive research on the subject and were able to explain the position to the Insurer with supporting judicial precedents. We took the Insurer through the judicial precedent, clearly establishing that average clause must be applied only where an average clause is expressly included in the policy terms. Our team successfully explained that, in the absence of any such clause in the policy, the surveyor was not justified in applying a further reduction to the amount of claim payable to the Insured.

### 2. Importance of calculating taxes appropriately to arrive at the loss value:

Given the large number of goods involved in the instant matter, the surveyor was provided with a complete set of documentation, including invoices and purchase orders for every product that was stolen from the warehouse. To arrive at the loss value, the surveyor deducted GST from the cost price of each product and then added it as a percentage of the reduced cost price to the total of the entire value of the stolen goods. This resulted in an overall reduction in the value of claim by approximately 3 to 4%. Yet again, our team of experienced claim handlers were able to explain the





difference in approach and demonstrated that instead of removing GST and then re-adding the end, taking the invoiced value (which includes GST) would allow for an accurate calculation of the claim. This assisted the Insured and avoided an unnecessary reduction of the claim value by 3-4%.



We are sure you found the anecdotes interesting and got some key points to take away.

Stay tuned for the next edition!

## About Prudent Insurance Brokers

We, at Prudent Insurance Brokers, provide industry-leading expertise in designing and managing insurance programs to address unique requirements of your organisation. We have a client-centric service infrastructure that delivers proactively & passionately in a highly systematic manner. Our liability team comprises ex-underwriters and the largest number of qualified lawyers and legal professionals who can help you across different areas:

- Identifying and addressing gaps in your current insurance programs
- Arranging the most cost-effective cover from Indian and international markets
- Ensuring contract compliance for your insurable indemnities
- Offering 360° claims management by the largest claims team across any broker in India
- Providing global solutions through the strongest international alliances

## Our Claim-Handling Expertise

Our team members come from varied areas of expertise, thereby enabling us to ensure that our clients are assisted thoroughly, through every step of the claims-handling process. We take pride in our professional competency and diligence, and our team is always willing to walk the extra mile in client service.





[www.prudentbrokers.com](http://www.prudentbrokers.com)

## FOR MORE QUERIES, PLEASE REACH OUT TO:

Tanuj Gulani  
[tanuj.gulani@prudentbrokers.com](mailto:tanuj.gulani@prudentbrokers.com)

Richa Dhasmana  
[richa.dhasmana@prudentbrokers.com](mailto:richa.dhasmana@prudentbrokers.com)

Nishant Kashyap  
[nishant.kashyap@prudentbrokers.com](mailto:nishant.kashyap@prudentbrokers.com)

Arun Prasadh  
[arun.prasadh@prudentbrokers.com](mailto:arun.prasadh@prudentbrokers.com)

Neha Anand  
[neha.anand@prudentbrokers.com](mailto:neha.anand@prudentbrokers.com)

Jyoti Krishnan  
[jyoti.krishnan@prudentbrokers.com](mailto:jyoti.krishnan@prudentbrokers.com)

Mayank Sharma  
[mayank.sharma@prudentbrokers.com](mailto:mayank.sharma@prudentbrokers.com)

Hemangi Jhaveri  
[hemangi.jhaveri@prudentbrokers.com](mailto:hemangi.jhaveri@prudentbrokers.com)

PRUDENT INSURANCE BROKERS PVT. LTD.

Mumbai | Bengaluru | Chennai | Gurugram | Hyderabad | Ludhiana | Pune

CIN No.: U70100MH1982PTC027681 | License No. 291 (18th February 2020 to 17th February 2023)

### Insurance is a subject matter of solicitation

This report and any recommendations, analysis or advice provided herein, are based on our experience as insurance and reinsurance brokers or as consultants, as applicable, are not intended to be taken as advice or recommendations regarding any individual situation. The opinions expressed herein are valid only for the purpose stated herein and as of the date hereof. We are not responsible for the consequences of any unauthorized use of this report. We have used what we believe are reliable, up-to-date and comprehensive information and analysis, but all information is provided without warranty of any kind, express or implied, and we disclaim any responsibility for such information or analysis or to update the information or analysis in this report. We accept no liability for any loss arising from any action taken or refrained from, or any decision made, as a result of or reliance upon anything contained in this report or any reports or sources of information referred to herein, or for actual results or future events or any damages of any kind, including without limitation direct, indirect, consequential, exemplary, special, or other damages, even if advised of the possibility of such damages. Please know the associated risks and the applicable charges, from your policy document issued by the insurance company. For more details on benefits, exclusions, limitations, terms and conditions, please read sales brochure/policy wording carefully before concluding a sale. Commencement of risk cover under the Policy is subject to receipt of payable premium to desired Insurance Company only. Prudent Insurance Brokers Pvt. Ltd. is the registered Broker with IRDAI and does not underwrite the risk or act as an Insurer.