**CLAIMING DAMAGES FOR LOSSES CAUSED BY THIRD PARTY**

**ACTIONS OR COMPANIES**

In order to claim damages for losses caused by actions of any third party or company, the person who has suffered the loss has to have entered into a contract of indemnity. The other party to such contract is the person who undertakes to indemnify the party against any losses occurred or against any damage done. The former is called claimant latter is called Indemnifier.

The original indemnity contract gives rise to the claim from indemnity. The indemnifier is under an obligation to pay for the future losses of the claimant.

The legal protection is under Section 124, Indian Contract Act. Under this section, one party of the contract of indemnity ***promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.***

## Nature of Contract of Indemnity

## In a case[[1]](#footnote-2), it was held that

1. It may be implied or expressed. The circumstances of each case decide this.
2. The indemnifier’s liability arises from the loss caused due to the actions of either himself or by actions of a company or by any third party.

If the loss is caused by events or accidents which do not depend upon the conduct of indemnifier or any other person, the claimant cannot claim damages from the indemnifier.[[2]](#footnote-3)

## When can claim become legal

There have been cases where the Courts have rejected the claimant’s plea to be granted damages.

Damages can be claimed only when the indemnified has actually suffered loss or when it visible that the losses will occur.[[3]](#footnote-4)

The plaintiff, in a case, had filed a suit to recover Rs. 5000/- along with interest from the defendant by selling a mortgaged property and, in case of deficit, for a decree against the estate of Defendant 2 which was in the hands of his sons, the defendant 2 died during the pendency of the suit. The Court held that plaintiff cannot sue the defendant in anticipation that the proceeds realized by the sale of the mortgaged property would be insufficient and there would be some deficit.[[4]](#footnote-5)

In following cases, court had a very different point of view:

The company of the plaintiff was ready to work as commission agent for the firm of the defendant for purchase and sale of “Hessian” and “Gunnies” and will charge commission on all such purchases and inrespect of such transactions the defendant’s firm agreed to indemnify the plaintiff against all losses. Certain Hessian has been purchased by the plaintiff’s company from one Maliram Ramjidas. The defendant firm failed to pay for or take delivery of the Hessian. Then Maliram Ramjidas provided new sole at lesser price and claimed the difference as damages from the plaintiff company. The liquidator filed a suit to recover the amount claimed by Maliram from the defendant firm under the indemnity asthe plaintiff company went into liquidation. The defendant argued that in as much as the plaintiff had not yet paid any amount to Maliram in respect of their liability they were not entitled to maintain the suit under indemnity. It was held negative and decided in plaintiff’s favour with a direction that the amount when recovered from the defendant firm should be paid to Maliram Ramjidas.[[5]](#footnote-6)

In the landmark case of Gajanan Moreshwar v Moreshwar Madan Mantri it was established that indemnifier’s liability initiates as soon as the loss of the indemnified becomes absolute, certain or imminent. It is not necessary that the promisee should pay for the loss.

**Claim Process**

The process of claiming damages varies slightly depending on the facts of the case For instance**, in accident cases the Claim Process is as follows:**

In case of an accidental injury, hospitalization expenses can be claimed by, permanent total or partial disability and loss of income i.e. if the person can’t earn anymore due to bodily injury. In case of demise of a policy holder, compensation can be claimed by eligible dependents, depending upon the income of the departed. If an injury leads to death one can claim for the medical costs of such injury also.

In case of property damage, one will need the inspection officer’s report, original bills and surveyor’s report to estimate the loss. However, the turnover time for third-party claims for injury or death is three years.

The main obstacle is to prove the mistake of other party in court. And to avail this compensation the claimant has to establish other party’s negligence. Only when you establish the mistake of the other party, the claim for the damages will be filed only then. Until the court announces its decision in your favor, you will be uncertain of being compensated.

If you are compensated less than your expectations, don’t expect that your insurance company to compensate the difference. One can’t claim compensation for the same damage more than once. Another problem is, owing to the huge number of pending cases, you might get a date from the court, say after three month or six months. So, their possibility of getting stuck is very high.

1. Punjab National Bank v Vikram Cotton Mills [↑](#footnote-ref-2)
2. Moreshwar v Moreshwar [↑](#footnote-ref-3)
3. Shankar Nimbaji v Laxman Sapdu [↑](#footnote-ref-4)
4. Chand Bibi v Santosh Kumar Pal [↑](#footnote-ref-5)
5. Osmal Jamal & Sons Ltd. v Gopal Purushotham [↑](#footnote-ref-6)