Insurance & Personal Injury

I Was Late in Notifying My Insurer About My Car Accident, Is the Insurer Entitled to Repudiate My Insurance Policy?

This article discusses the implications in late notification to the insurer in accordance with the policy conditions and aims to serve as a reminder to all motor vehicle insurance policy holders.

Introduction

Car owners almost invariably have insurance coverage over their motor vehicles, be it the mandatory insurance against claims for third party bodily injuries arising out of road traffic accidents under the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272), or additional insurance on the vehicle itself against fire, theft or loss and damage.

Like other insurance policies, motor vehicle insurance policies very often contain conditions to the effect that the insured should immediately inform the insurer of any circumstances or event which may give rise to a claim under the policy. One such instance is of course the occurrence of car accident involving the insured.

Classification of insurance policy terms

Terms in an insurance policy contain various terms and conditions, including the scope of cover, the obligations of the insurer and the insured, and claims procedure. These terms are classified in law into conditions and warranties. A breach of a condition or warranty will entail different consequences.

Generally speaking, conditions relate to the conduct of the insured during the currency of the policy, and usually include claims handling and procedure. Warranties, on the other hand, are promises which relate to the nature of the risk run by the insurer, such as a promise / warranty that the vehicle insured will only be used for a specific purpose. A breach of a condition constitutes a breach of the contract and allows the insurers either to bring the contract to an end or to claim damages, whereas a breach of warranty brings an automatic end to the risk.

Conditions precedent and consequence of breach

Condition precedent is a type of condition that the due observance and fulfilment of which precede the liability of the insurer under the insurance policy. In other words, if you have not observed and fulfilled the conditions precedent set out in the insurance policy, your recovery claim may be denied. Conditions requiring the insured to promptly notify the insurer of any
claims or circumstances which may give rise to a claim are generally considered and drafted as conditions precedent.

In *Chan Yiu Sun v Yip Kim Cheung & others (Euro-America Insurance Ltd, third party)* [1990] 2 HKC 524, the plaintiff was injured in a traffic accident and the third defendant, who was a taxi driver, was 80% to blame. The third defendant joined his insurer in the action as third party and sought an indemnity from the insurer in respect of the award of damages and costs.

Condition 2 of the insurance policy stipulated that due observance of any terms relating to anything to be done or not to be done by the insured shall be conditions precedent to any liability of the insurer to make any payment under the policy. Condition 5 provided that the insured should give notice to the insurer upon any occurrence of an event which might give rise to a claim under the policy.

It was more than two years after the accident that the insurer was first brought to the attention of the accident. The insurer subsequently repudiated liability under the policy on the ground that the third defendant was in breach of Condition 5 of the policy. At trial, the Court agreed with the insurer and found that the third defendant was in breach of condition 5 and the requirement to give such notice was a condition precedent (by virtue of Condition 2) to any liability of the insurer to make such payment under the policy. The Court held that it was not necessary for the insurer to show that it had been prejudiced before it could repudiate liability. The third defendant’s claim for indemnity was dismissed accordingly.

As illustrated in the case above, failure to notify the insurer of circumstances which may give rise to a claim may lead to liability of the insurer under the insurance cover being repudiated. In other words, the insurer does not need to pay for your claim and may even claim their costs and expenses from you.

It should be noted, however, that failure by the insured to comply with a condition precedent only prevents the insured from making a claim – the particular claim to which the breach relates is lost but other claims that have complied with the terms of the insurance policy are preserved. That, of course, is subject to the actual terms of a particular insurance policy and whether the insurer is given a right to repudiate the policy altogether upon occurrence of any breach of the policy conditions.

**Conclusion**

Breach of conditions precedent of an insurance policy, however trivial, may lead to the policy holder’s recovery claim being denied. In fact, the discussion above relates not only to motor insurance policies but to all insurance policies in general. Policy holders are thus advised to study the insurance policies carefully and note the various obligations imposed on them. If in
doubt, they should promptly inform the insurer of any potential claim or circumstances which may later give rise to a claim, so as to preserve their rights under the insurance policies.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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