

CONCEPT OF ASSIGNMENT, INSURANCE LAW AND THE ISSUES MIXED UP

Author: Tanish Arora

NORTH CAP UNIVERSITY, GURUGRAM

ABSTRACT

The main objective of my research seeks to appraise the concept of Assignment of insurance policies and the issues involved, what are the necessary steps involved in performing the process of assignment and why assignment takes place and why is it necessary for society to understand the concept of assignment under Insurance law. The transfer of insurance policy by an insured person to another person whom he/she wishes to transfer his insurance policy by his/her willingness is known as an assignment, the insurance policy may also be transferred as a gift by the process of assignment, such as a Grandfather may transfer his policy by assignment to his Grandson as a gift. Insurance policy can be defined as the contract between the insurer and the insured, which determines the claims which the insurer is liable to pay in exchange for the payment, known as premium which is paid by the insured person to the insurer. Herein my research seeks to explain the concept of assignment in various insurance policies such as life, Marine and fire insurance policies and different types of assignments as well as the future scope of the concept and also the tax benefits which the citizens shall get if they undergo the concept of assignment all of the procedure has been briefly discussed with the help of various Judicial Principles and Case Laws. The process of assignment is a unique concept and the majority of the society is not aware of this process. This research paper clarifies all the details of the process of Assignment which is necessary for the majority of the society.

INTRODUCTION

The concept of Assignment is the process in which the policyholder transfers his insurance policy including all the rights of the policy to the other person or entity. The person who transfers the policy (Policy Holder) is known as Assignor and to whom the policy is transferred with all the rights is known as Assignee. There are 2 methods of assignment: absolute assignment and conditional assignment. The process of assignment once completed may not be revoked; it may only be reversed by the process of Re-assignment.

Various issues arise such as whether the consent of the insurer is required or not. It is being mentioned that the consent of the insurer is required for the process of assignment but in various insurance policies the consent is not required, a marine insurance policy is made assignable unless there is an express prohibition. In cases where the consent is necessary, any assignment made without such concern will not render the policy altogether void but merely voidable at the instance of insurers. This consent may be expressed or implied unless otherwise stated. An insurance company can decay your assignment demand. With the expansion in Insurance Act 2015, the insurer has the privilege to acknowledge or decay the assignment of the policy. This expansion in the insurance demonstration was made in light of the utilization of assignment of life insurance policy as a benefit making business. Exchanging life insurance policy is carefully restricted and is viewed as illicit. On the off chance that the insurer finds that your explanation of the assignment isn't authentic or is strong then they will decay your assignment demand.

In a gist the concept of assignment is governed by Insurance Act 1938, Marine Insurance Act 1963, Transfer of property act, Indian contract act, it is the process in which the policyholder transfers his insurance policy including all the rights of the policy to the other person or entity.

ISSUES OF ASSIGNMENT AND POLICIES

Research Question –

WHAT ARE THE ISSUES THAT ARISE DURING THE PROCESS OF ASSIGNMENT OF INSURANCE POLICIES?

Assignment of insurance policy could take place if the policyholder wants to take a loan from the bank he may submit the insurance policy to the bank as the security against the loan, In this case,

the assortment of times it has been observed that the main issue arises is that who shall pay the premium of the policy assignor (Policyholder) or the assignee (Bank) in the light of the fact that the documents are silent about the question of assignment of obligations. Where there is an encumbrance of a life insurance policy, with a specification that the mortgagor (assignor) should pay the premiums, and that the mortgagee (assignee) will undoubtedly pay the equivalent, Sections 130 and 132 of the transfer of property act don't have any significant bearing to such cases. There are a few organizations whose notice of assignment structures contains a restrictive provision managing the assignment of commitments. By not settling the issue of commitments of assignment banks could be held to be committed to the insurance organization, from whom the assignor took the policy, regarding insurance premiums that were needed to be paid by the assignor. Various suits might be founded against the Bank asserting an infringement of the Indian Contract Act. A few models incorporate charges of covering of fact, extortion, fraud, concealment etc. The assignment can also be done as a gift in love and affection of the assignor and assignee.

For instance, Anand has a life insurance policy of Rs 8 lakh and he needs to get a credit of Rs 8 lakh from the bank. Thus, Anand (assignor) can do the assignment of the insurance policy under which he will allow the insurance policy to the bank premise the condition that all the rights, advantages of the policy will remain with the bank (assignee) till the time Anand has an exceptional credit sum. On the off chance that Anand neglects to pay the credit, the bank can recoup the extraordinary sum by giving up the life insurance policy. If Anand can repay the advance, add up to the bank then the bank will reassign the life insurance strategy back to Anand. If Anand bites the dust before paying the advance to the bank, at that point the bank will get the passing advantage and no relative of Anand will have any direct rights over the policy. If the advantage got under the approach is Rs 8 lakh and exceptional advance is for Rs 4 lakh, the insurance company will give Rs 4 lakh to the Bank and the excess will add up to the legitimate beneficiaries of Anand in the event of his death.

ASSIGNMENT OF LIFE INSURANCE POLICY

Assignment of life insurance policy is the cycle where the policyholder legitimately moves the privileges of life insurance policy to someone else for different reasons. The cycle of transfer is

known as an Assignment. Assignment Clause is communicated in section 38¹. The policyholder who doles out the policy (moves the rights) is known as "Assignor" and the individual to whom the policy is allotted is known as "Assignee". After the assignment of the life insurance policy, the assignor loses his privileges over the policy and the assignee turns into the proprietor of the policy. You can dole out a policy for taking a credit against your life insurance policy or regardless of whether you wish to bless it to somebody. While taking an advance, you dole out the policy to the bank and the bank turns into the proprietor of the policy, yet the life guaranteed in the policy is the policyholder so that regardless of whether the first policyholder (assignor) passes on, the bank can get the demise advantage to recuperate the advance. In this way, the life insurance policy will fill in as a guarantee for taking up the advance from the bank. There are two ways of assigning a life insurance policy. The assignment request has to be made in writing. The first way is through an endorsement on the policy document and the second one is by a separate assignment deed (stamp duty has to be paid). In any of the conditions, you will have to give notice to the insurer about your assignment of the policy in writing and send requisite documents for the same. The assignment should be attested by at least one witness and the signature of the assignor is also compulsory. The conditions may differ from insurer to insurer. The claim under a policy linked to an actionable claim cannot be assigned in part and the policy is not divisible for legal assignment. If it is partly assigned it may be a good assignment under English equitable principles. In **still wing company**², it was held that a partial assignment was not within the statute but the signing would be a creditor of the debtor in equity. The principle in this case has been followed by **Rajamier Vs Subramaniam**³.

In (**Moore vs Woosley**), Lord Campbell CJ observed that when we are called to nullify a contract on the grounds of public policy we must take care that we do not lay down a rule which may interfere with the innocent and useful transaction of mankind that the condition (in favour of a bona fide assignee for vulnerable consideration bracket) may promote evil by leading the society as a very remote and improbable well contingency, and it may frequently be very beneficial by lending a life policy safe security in the hands of the assignee⁴.

¹ Insurance act 1938

² (1921) 1 Ch 349

³ AIR 1928 Mad 121

⁴ (1854) 4E1 and B1 203

Further, it may be noted that section 38 makes a conditional or contingent assignment valid and it also expressly provides that its operation is only prospective and not retrospective

ASSIGNMENT OF FIRE INSURANCE POLICY

The assignment of fire and marine policies was first given statutory recognition under the policies of insurance (Marine and Fire) act And this was repealed and replaced with certain alterations in the transfer of property act and again this was amended by section 3 After transfer of property act. section 135 of the transfer of property act this section states that so that an assignee of a fire insurance policy may claim under the policy has to prove the two conditions, (a) that there is a valid assignment of a transfer of the policy in his favour and (b) that the property is subject insured has been vested in him at the date of assignment. Both conditions must be proved. If he merely got the assignment of the policy without any interest in the subject matter or merely got the subject matter in the policy transferred to him, he would not get any claims under the policy. In such cases curiously before the loss of an assignment of the policy without a transfer of subject matter or transfer of subject matter without the assignment of the policy common contracts of insurance being contracts of indemnity, even though there is a damaged by for neither the assigner nor the assignee can claim from the insurance company.

Where, properties transferred to a person and along with the policy is also signed to the transferee by assignment or endorsement such a transferee shall have a vested interest in him all rights of the suit as if the contract contained in the policy had been entered into with him, in other words, he will be clothed with all the claims which the assignor had at the date of assignment. This is an adaptation of the rule in English law that the benefit of a fire insurance policy does not run with the land unless there is an express contract. The purchaser by the mere fact of purchase does not require any right in the insurance policy. If the property has been transferred the buyer cannot get the benefit of the policy because he has not paid for it.

In (**Reyner vs Preston**⁵) In this leading case on the point a house was insured by the vendor. After the date of the contract of sale but before the completion of the sale the house was burned down. The vendor received the insurance amount. The purchaser filed a suit against the vendor to recover the insurance amount. It was held by the majority of the judges that are fire insurance

⁵ (1881) 18 Ch D 1

policy does not run with the land and therefore the purchaser cannot recover from the vendor, the insurance amount, and the vendor had received the full consideration from the purchaser, the insurance company can compel him to refund the amount on the principle of indemnity. James LJ dissenting from the majority of the judges held that a fire insurance policy runs with the land and is used to the benefit of the purchaser. He pointed out that the relationship between the vendor and purchaser is truly that of the trustee and a beneficiary and therefore the vendor has to keep the insurance amount as a trustee for the purchaser and this is a universal rule of equity. Section 47 of the transfer of property act 1925, gives statutory recognition to the above dissenting opinion of James LJ and according to that section, in English law, the vendor is liable to pay the insurance amount to the purchaser if the loss occurs after the contract of sale.

In cases where the assignee has no claims under the policy, in the absence of a contract to the contrary, section 49 of the transfer of property act comes into play. The insured had taken the insurance policies from the insurance company and subsequently assigned the same policies in favour of the Canara bank. On the happening of a peril insured, when the insurance company refused to pay the policy amount the insured approached the National Commission. The bank contended that once the order is given in favour of the insured the bank is entitled to claim the policy amount from the insurance company directly. When the National Commission rejected its claim on appeal, The Supreme Court held that the National Commission was not right in rejecting the banks claim and observed that again the bank need not file a Fresh suit against the insurance company to obtain a decree in its favour. In the light of the statutory provisions in the Insurance Act and the transfer of property act, the bank is entitled to the amount directly from the insurance company⁶.

ASSIGNMENT OF MARINE INSURANCE POLICY

The assignment of marine policies was first statutorily governed by section 15 of the policies of Insurance (marine and fire) assignment act 1866, and this was re-enacted certain modifications as, section 135 under transfer of property act 1882, amended by its amendment act 2 of 1900, this section was given repealed and replaced by Section 3 of transfer of property act 1944 omitting the portion relating to the assignment of marine policies and inserting separate sections section 130A and 135 A, dealing with the assignments of marine policies while making this

⁶ Krishna food and baking industry (P) Ltd vs New India Assurance Co Ltd,(2008) 15 SCC 631: 2009 SC 1000

amendment, the reasons are stated, rules which are governing marine insurance policies are materially distinct from those of the fire insurance policy it is very dissatisfying to provide the same treatment in the subject matter of assignment to both the categories of policy, thus these two sections of the transfer of property act, section 130A and section 135A at which are largely based on section 50 of the Marine Insurance Act of England, have now been repealed and have been replaced by section 52 and 53 of the Marine Insurance Act 1963.

Thus Section 52 and 53 of the Marine Insurance Act, 1963 now present the complete law, both substantive and procedural, of assignment of transfer of marine insurance policies. Thus, unless by express terms in the policy, an assignment is prohibited, a marine policy can always be assigned in the law and such assignment can be made either by endorsement on the policy or in any other customary manner. Such an assignment may be made before or after the loss. When it is made after the loss, it would amount to word transfer of a mere right to Sue which is prohibited by section 6(e) of the transfer of property act, 1882. In England, the ability of marine policies is placed beyond doubt by section 50 of the Marine Insurance Act, 1906. Here also, for such transfers statutory Recognition is given by section 90 of the Marine Insurance Act, 1963 and section 52 and 53 are placed beyond the scope of section 6(e) of the transfer of property act. The Marine Insurance Act, states that nothing in (e) of section 6 of the transfer of property act 1882 shall affect the provisions of section 17, 52, 53 and 79⁷.

An assignment of marine policies is inoperative in law where such assignment is made after the Insured has parted with or lost his interest in the subject matter insured and there was neither any express or implied agreement to assign the policy either before or at the time when the insured so parted with or lost his interest in the said subject matter. Where a marine policy is validly assigned under aforesaid provisions, the assignee is subrogated to the position of the assured and he would be entitled to sue in his name as if the contract in the policy has been entered into with him. But he would take the claims under the policy subject to the same equities to which his assignor was subject at the date of the assignment and the insurer is entitled to defend the suit and can take the same plea or plead which he could have taken had the suit been brought by the assured or by any person on whose behalf the policy was affected. Numerous differences and issues arise between the policies, for example, the fire policy and the marine insurance policy. Fire policy can only be assigned before the loss of the property, while an assignment of marine

⁷ Ibid section 90

policy may be made before or after the loss but in this respect, it may be noted that where the assured parts with the whole of his interest in the insured property, before the loss without assigning the policy of insurance and the policy becomes inoperative in both; but in the case of marine policy, even if there is an agreement to assign it or hold it for the benefit of the assignee, at the time of transfer of property, the assignee can maintain an action in the name of the assured; and this could be done even if the assured had become bankrupt after the assignment. When once the property is lost, the fire policy becomes un-assignable while the marine policy can be assigned as it is expressly recognized by section 52(1)⁸. In cases where the consent is necessary, for example in fire policies or other policies by express terms, any assignment made without such consent will not render the policy altogether void but merely voidable at the instance of insurers. This consent may be expressed or implied unless otherwise stated.

TYPES OF ASSIGNMENT AND DISTINCTION

FORMS OF ASSIGNMENT

There are 2 forms of assignment:-

1) Absolute Assignment- Absolute assignment implies the total assignment of the proprietorship, benefits, liabilities under the life insurance strategy from assignor to trustee with no terms and conditions. No conditions are appropriate in the absolute assignment. When the arrangement which is relegated can't be possessed again by the assignor.

Example- Ajay claims a life insurance policy of Rs. 20 lakhs and he needs to bless his life insurance policy to his father. So he should go for an absolute assignment of the approach. After the assignment of the approach, the demise advantage or development advantage of the life insurance policy will be paid to Ajay's father. Ajay won't have any direction over the strategy and its advantages. After the assignment of the approach, on the off chance that his father wishes to bless this insurance policy to another person, at that point he can without much of a stretch do so to expose the provisions and acknowledgement of assignment demand by the insurance company.

⁸ Marine Insurance Act, 1963

2) Conditional Assignment - Conditional assignment implies the exchange of rights will occur from assignor to assignee subject to the predetermined terms and conditions. When the conditions are satisfied, at that point the life insurance strategy is appointed back to the first assignor from the assignee.

For instance, Raj has a life insurance policy of Rs 20 lakh and he needs to get a credit of Rs 20 lakh from the bank. Thus, Raj (assignor) can do the conditional assignment of the strategy under which he will allow the insurance policy to the bank on the condition that all the rights, advantages of the policy will remain with the bank (assignee) till the time Raj has an exceptional credit sum. On the off chance that Raj neglects to pay the credit, the bank can recoup the extraordinary sum by giving up the life insurance policy. If Raj can repay the advance and add up to the bank then the bank will reassign the life insurance strategy back to Raj. If Raj bites the dust before paying the advance to the bank, at that point the bank will get the passing advantage and no relative of Raj will have any direct control over the policy. If the advantage got under the approach is Rs 20 lakh and exceptional advance is for Rs 10 lakh, the insurance company will give Rs 10 lakh to the Bank and the excess will add up to the legitimate beneficiaries of Raj if there should arise an occurrence of his demise.

What is the Distinction between Assignment and Nomination?

The nomination is the best possible given to the policyholder to choose a genuine character, who is qualified to get the policy benefits of the presence inclusion in the event of the death of the policyholder. The character delegated by methods for the policyholder is alluded to as the nominee. The fundamental qualification among a nomination and undertaking is that simultaneously as in nomination, the nominee will have no privilege on the benefits of extra security strategy if the policyholder is alive and is the beneficiary of the inclusion favours if there should arise an occurrence of the death toll. The nominee is in danger of changing the equivalent to the legitimate beneficiaries. On the elective hand, inside the endeavour condition, the assignee has the full right to the benefits of the existence of inclusion, in any event, assuming the policyholder is alive. This happens because of the reality in the task, all the rights, along with the liabilities of the inclusion is moved to the assignee by the assignor and the true policyholder's privilege is ended (premise the type of adventure) while in nomination, the policyholder handiest

selects the character for getting policy money after the end of the policyholder and all the rights stay with the policyholder and his beneficiaries.

PROCESS OF ASSIGNMENT AND TAX BENEFITS

Even after the assignment of the policy, the tax benefit remains with the assignor (if he is paying the premium) since his life is protected under the policy. Regardless of whether the assignee is paying the premium, he won't be qualified for any tax benefit. On account of the assignment of the policy to the bank for advance, the premiums paid by the assignor are tax-deductible. Ultimately, the assignment of the policy can be utilized to bless your protection policy to somebody or to take the loan against your policy. However, an official conclusion of assignment of your policy is in the possession of the insurer, which puts a limitation on any abuse of the assignment proviso under your life insurance policy.

SCOPE

In conclusion, it is important to understand the concept of the assignment it is really necessary for society as through the process of assignment the assignee, receives his or her rights of the policy and the assignor transfers the rights, as there are cases where assignor gets deceased in that case assignee gets the rights of insurance policy so if such case or event arises than the assignee shall be aware of the process of assignment. Through the process of assignment of policies, the assignor may also apply for the loan by making the bank the assignee and insurance policy can also be used to fulfil the purpose of the gift through the process of the assignment so it is necessary for the present era that every insurance policyholder or all the citizens shall be aware of the process of assignment.

BOOK REFERRED

MODERN LAW OF INSURANCE IN INDIA- KSN MURTHY & K.V.S SARMA