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India

Insurance Disputes

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This country-specific Q&A provides an overview of insurance disputes laws and regulations applicable in India.

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India: Insurance Disputes

1. What mechanism do insurance policies usually provide for resolution of disputes between the insurer and policyholder?

Insurance policies are structured to incorporate comprehensive mechanisms for dispute resolution in respect of coverage and quantum disputes. Insurance policies typically include details of the Insurance Ombudsman, who is appointed to address complaints by the insured. The insured first needs to approach the insurer with its grievance. If dissatisfied with the insurer's resolution, they have the option to escalate the complaint to the Insurance Ombudsman, provided the claim amount is up to INR 5,000,000.

The Insurance Regulatory and Development Authority of India ("**IRDAI**") requires insurers to formulate a grievance redressal policy and file it with the IRDAI. An insurer is also required to provide the details of the grievance redressal mechanism within the policy. Policyholders or insureds who have complaints against insurers are first required to approach the grievance or customer complaints department of the insurer. Insurers are required to form a part of the Integrated Grievance Management System ("**IGMS**") put in place by the IRDAI to facilitate the registering/tracking of complaints online by insureds. In cases of delay or absence of a response in relation to policies and claims, the IRDAI can take up matters with the insurers to ensure speedy resolution. Policyholders, claimants, or insureds may approach the IRDAI for assistance; however, advocates, agents, and other third parties are not permitted to do so.

Additionally, insureds can approach commercial courts or civil courts, depending upon the value of the claim, or invoke arbitration for recovering monies under an insurance policy, provided that the insurance policy contains an arbitration clause. Insureds are treated in law as consumers of insurance services and can therefore approach the consumer courts for relief under the Consumer Protection Act 2019 ("**CPA**"). The Supreme Court in the case of *National Insurance Co Ltd v Harsolia Motors and Ors* (2023) 8 SCC 362 has clarified that an insured comes within the scope of a "consumer" for the purposes of the CPA. The Supreme Court further held that the relevant consideration to determine if an insured is a "consumer" is to assess whether the items sold, or services offered, are directly related to the activity that generates profit. It was observed that availing an insurance policy is an act of indemnifying a risk of loss/damages and there is, therefore, no element of profit generation, generally. However, this definition must not be construed as absolute protection or a blanket rule for all insurance transactions. If the insurer establishes a direct link between the insurance policy and profit-generating activity, it may succeed in arguing that the complainant is not entitled to protection under CPA. The right to approach a consumer forum exists even when there is an arbitration clause.

2. Is there a protocol governing pre-action conduct for insurance disputes?

The IRDAI (Protection of Policyholders' Interests and Allied Matters of Insurers) Regulations 2024 ("**PPHI Regulations**") requires every insurer to have a proper grievance redressal mechanism to resolve complaints and grievances of the policyholders and claimants and specify the procedure to be followed by all insurers. In addition, the PPHI Regulations require every insurance policy to 'clearly' state the details of insurer's internal grievance redressal mechanism as well as the contact details of the insurance ombudsman within whose jurisdiction the branch/office of the insurer or residential address/place of residence of the policyholder is located.

The IRDAI has issued a Master Circular on "Protection of Policyholders' Interests" on 5 September 2024 ("**PPHI Master Circular**"), to supplement the PPHI Regulations which provides additional guidance and specific timelines for insurance services including grievance redressal. An insurer is required to resolve the complaint and issue a final letter of resolution within 14 days of acknowledgment of the complaint brought by the insured. It also stipulates a penalty of INR 5,000 per day, payable to the complainant, for each day of delay in the execution of the Ombudsman award.

In addition, the Commercial Courts Act 2015 ("**CCA**") provides for compulsory mediation for parties before filing a commercial suit, except when a party seeks urgent interim relief.

3. Are local courts adept at handling complex insurance disputes?

Indian courts are equipped to handle commercial claims.

In 2015, the CCA was introduced carving out special benches in all existing civil courts to speed up the adjudication of commercial matters exclusively. By providing for an exclusive forum, the CCA has expedited the litigation process for commercial disputes.

Commercial disputes are referred to commercial courts having the requisite territorial and pecuniary jurisdiction. The pecuniary jurisdiction of a commercial court is INR 300,000 and above. Insurance and reinsurance disputes are categorised as commercial disputes under the CCA and thus can be adjudicated by commercial courts. Commercial courts are governed by the Code of Civil Procedure 1908 ("**CPC**") and the CCA.

Civil courts in India have the following hierarchy: District Courts, High Courts, and the Supreme Court. There are approximately 688 District Courts, 25 High Courts and one Supreme Court, which is the highest court of law in India.

Out of the 25 High Courts in India, the High Courts at Calcutta, Bombay, Madras, Himachal Pradesh, and Delhi have original jurisdiction to adjudicate matters, including commercial matters, where the claim exceeds a specified pecuniary threshold. Disputes below this threshold are adjudicated by the commercial court with the appropriate territorial jurisdiction at the district level or an ordinary civil court, when the value of claim is lower than INR 300,000.

Insureds can also approach the consumer commissions under the CPA for adjudicating insurance disputes. The consumer commissions have a three-tier hierarchy with District Commissions at the lowest rung followed by a State Commission (for every State) and a National Commission at the apex level. District Commissions have the jurisdiction to deal with complaints arising out of a contract, for services or goods, where the consideration does not exceed INR 1,00,00,000. For the State Commissions the threshold is above INR 1,00,00,000 and up to INR 10,00,00,000, whereas the National Commission can take up original complaints where the consideration is above INR 10,00,00,000. In insurance matters, the pecuniary jurisdiction is determined by the amount of the premium paid by the insured and not the claim amount.

4. Is alternative dispute resolution mandatory?

In India, alternative dispute resolution is not mandatory, except for commercial suits filed under the CCA, which provides that it is mandatory for the parties to first undergo mediation proceedings prior to it being heard by the commercial court.

The IRDAI had issued a circular dated 27 October 2023 ("**Circular**") directing all insurance policies issued under the commercial lines of business to have a mandatory arbitration clause, stipulating that "*the parties to the contract may mutually agree and enter into a separate Arbitration Agreement to settle any and all disputes in relation to this policy*". In the event that parties mutually agree on an arbitration agreement, the arbitration proceedings will be conducted as per the provisions of the Arbitration and Conciliation Act 1996 ("**Arbitration Act**"). The Circular has further deleted arbitration clauses from all polices under the retail lines of business, prospectively. For existing retail policies, the existing arbitration clause shall remain valid till the term of the policy expires, unless an insured specifically requests the insurer to replace it with the clause as mandated by the IRDAI. This also applies to all existing policies issued under the commercial lines of business.

The Arbitration Act provides that a judicial authority shall refer parties to arbitration where there is an arbitration agreement in a contract. However, in *M/s Emaar MGF Land Ltd v Aftab Singh*, 2018 SCC OnLine SC 2945, the Supreme Court of India held that the mere presence of an arbitration agreement does not deprive consumers of remedies under the CPA, if they choose to pursue them.

5. Are successful policyholders entitled to recover costs of insurance disputes from insurers?

Courts or tribunals may award the successful party its costs, but the award of costs is at the adjudicating authority's discretion and is typically far from the actual costs incurred.

The CPC fixes the upper limit at INR 3,000 for granting costs in cases of vexatious litigation. The Supreme Court has suggested that the Parliament should consider raising this limit to INR 100,000.

The CCA has expanded the definition of costs provided under the CPC to include the fees and expenses of witnesses, legal fees and any other expenses incurred in relation to proceedings. However, it is still the court's discretion to award these costs. In cases of vexatious litigation under the CCA, the statutory upper limit as per CPC has been excluded. Nonetheless, even in relation to litigation under the CCA, costs, if awarded, typically would be reasonable costs as opposed to actual costs incurred.

The costs framework in arbitration was refined through the 2015 amendment to the Arbitration Act, which introduced Section 31A. This provision gives the

arbitrator the discretion to award reasonable costs to the prevailing party, encompassing legal fees, administrative expenses, and other related costs incurred. The determination of such costs is contingent upon multiple factors, including but not limited to the conduct of the parties, the presence of frivolous or vexatious claims, and the ultimate success of the party in the dispute.

6. Is there an appeal process for court decisions and arbitral awards?

Appeal under the CCA

Appeals against the orders of the commercial courts of first instance lie before the Commercial Appellate Courts or the Commercial Appellate Division of the concerned High Court (as the case may be). The CCA does not allow for any further appeals from the orders of either the Commercial Appellate Court or the Commercial Appellate Division of a High Court.

A party has an option of filing a Special Leave Petition before the Supreme Court of India seeking recourse against any order of the lower courts. However, the leave is subject to the discretion of the Supreme Court.

Appeals under the CPA

In case of consumer fora, appeals against the decision of the District Commission are heard by the State Commission. An appeal against the decision of the State Commission lies before the National Commission. An appeal against the decision of the National Commission lies before the Supreme Court of India.

Appeals under the Arbitration Act

The Arbitration Act allows for challenge of arbitral awards, however, there is a narrow scope for interference in as much as an arbitral award cannot be set aside on grounds of erroneous appreciation of law, reappreciation of evidence and/or by entailing a review on merits of the dispute. Even where the arbitrator has taken a possible/plausible view, although a different view may be possible on the same evidence, the court does not have the jurisdiction to interfere.

A challenge against an arbitral award lies before a court which has the jurisdiction of the arbitration proceedings. “Court” in case of a domestic arbitration means the principle civil court of original jurisdiction in any district and includes the High Court in exercise of its original civil jurisdiction.

A challenge may be brought by a party if it was under some incapacity, or if it did not receive proper notice of the arbitration proceedings or was otherwise prevented from presenting its case effectively. A challenge may also be brought if the arbitration agreement is invalid under Indian law, if it deals with a dispute not falling within the terms of reference of the arbitration, or if the composition of the arbitral tribunal or procedure was not in accordance with the parties' agreement. Additionally, an award can be challenged if it was induced by fraud or corruption, or if it contravenes the fundamental policy of Indian law, or conflicts with basic notions of morality or justice. The ground of patent illegality is not available when challenging an award in an international commercial arbitration.

7. How much information is the policyholder required to disclose to the insurer? Does the duty of disclosure end at inception of the policy?

The statutory framework in this jurisdiction requires the policyholders or insureds to act with utmost good faith, and courts have held that this includes the duty to disclose material information. Any information which would be relevant to the risk being underwritten by an insurer is deemed to be material information. Whether a fact is material will depend on the circumstances, as proved by evidence, of the particular case. Therefore, any fact which would influence the judgement of a prudent insurer is a material fact which must be disclosed prior to the policy inception. Courts in the jurisdiction have held that the principle of utmost good faith includes the duty of disclosure, and this duty exists throughout the policy period and even thereafter.

8. What remedies are available for breach of the duty of disclosure, and is the policyholder's state of mind at the time of providing the information relevant?

Policyholders are required to disclose every material fact known to them. Further, there is a presumption of knowledge to the effect that policyholders are deemed to know every fact which, in the ordinary course of business, is ought to be known to them.

A policyholder's innocent failure to disclose material facts would entitle the insurer to avoid the contract ab initio but the premium paid would have to be returned if the risk has not attached. This is subject to the insurer being able to establish that the non-disclosure induced the insurer to undertake a risk which the insurer would not have taken, or would not have taken on the same

terms, had the material facts been disclosed. Where the non-disclosure is fraudulent, insurers have the right to avoid the policy ab initio and retain the premium.

9. Are certain types of provisions prohibited in insurance contracts?

At present, Indian insurance companies are required by the PPHI Master Circular to insert certain terms and conditions in their insurance contracts. In addition, there are also restrictions in terms of some provisions in insurance contracts. For instance:

- Surety and trade credit insurance contracts must not cover financial guarantees in any form and no insurance company can enter into alternate risk transfer mechanisms.
- Per Section 46 of the Insurance Act 1938, insurance contracts cannot contain any provisions which exclude the jurisdiction of the Indian Courts.
- Retail general insurance policies cannot include any grounds for policy cancellation other than misrepresentation, non-disclosure of material facts, fraud, and insured's non-cooperation.
- Insurance companies are not permitted to use ambiguous, technical, coercive, unfair or one-sided terms and/or conditions in their insurance contracts.
- The terms and conditions of insurance contracts are standardised for certain categories of life and health insurance contracts and insurance companies are permitted to issue these contracts only in this form.

10. To what extent is a duty of utmost good faith implied in insurance contracts?

It is a fundamental principle of insurance law that utmost good faith (*uberrimae fides*) must be observed by the contracting parties. The duty of utmost good faith places an obligation on the insured to voluntarily disclose all material facts which are relevant to the risk being insured. If there has been a misrepresentation or non-disclosure of a material fact, an insurer can avoid the policy from the beginning.

Further, the Indian Marine Insurance Act 1963 and the PPHI Regulations mandate that an insured is under an obligation to disclose all material information sought by the insurer in the proposal before the inception of the policy. Insurer is therefore entitled to receive full and fair disclosure of the material information that would influence the judgement of the insurer in determining whether to accept or reject the risk.

The PPHI Regulations also impose an obligation on the insured to disclose all material information. This forbids the insured from concealing what they privately know, with a view to drawing the insurer into a bargain. The insured's duty to disclose is not confined to the facts which are within his knowledge but extends to all material information which the insured ought to have known. The duty of good faith is of a continuing nature and applies to both, the insured and the insurer. Accordingly, the duty of utmost good faith is implied in all insurance contracts.

11. Do other implied terms arise in consumer insurance contracts?

When interpreting insurance contracts, Indian courts have held that while construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not permitted for the court to add, delete, or substitute any words. It has also been observed that, because upon issuance of an insurance policy the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of the liability of the insurer.

The general rule is that, where the contract is expressed in writing, oral evidence is inadmissible to explain or vary the terms of a written contract. Although a contract must always be construed according to the intention of the parties, that intention can only be ascertained from the instrument itself. All other evidence of intention is excluded because, when an agreement is reduced to writing, the parties thereto are bound by the terms and conditions of that agreement.

However, there are certain exceptions to the rule and, there are certain terms that are implied into a contract of insurance. For instance, even though a policy may not expressly say so, all contracts of insurance are of utmost good faith and insurers are entitled to a fair presentation of the risk before its inception. The duty of utmost good faith places an obligation on the insured to voluntarily disclose all material facts relevant to the risk being insured. If there has been a misrepresentation or non-disclosure of a material fact, then an insurer can avoid the policy from its inception.

Another implied term is the right of subrogation, for which there is also statutory and judicial recognition. While there may not be a need for a separate contractual clause to trigger it, in practice, policies do contain subrogation clauses.

12. Are there limitations on insurers' right to rely on defences in certain types of compulsory insurance, where the policy is designed to respond to claims by third parties?

When there is compulsory insurance, for instance in motor accident-related proceedings, there are limited grounds on which an insurer can deny payment for a third-party claim in this jurisdiction. Even if the insurer succeeds in establishing a defence, it is usually nevertheless obliged to pay the third-party claimant, but courts can direct the insured to reimburse the insurer.

13. What is the usual trigger for cover under insurance policies covering first party losses, or liability claims? Are there limitation periods for the commencement of an action against the insurer?

The trigger for cover would depend on the specific policy wordings, including the insuring clause.

The limitation period for commencing action in insurance claims is provided under Article 44(b) of the Limitation Act 1963, which states that limitation is to be calculated from "*The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial*". While the statutory limitation period for filing a case in the civil court, or invoking arbitration is three years, the time frame for filing a case in the consumer court is two years.

14. Which types of loss are typically excluded in insurance contracts?

The nature of losses excluded would generally differ from each policy type and would largely depend on specific policy wordings. In our experience, property policies generally exclude losses caused by wear and tear, mechanical or electrical breakdown or design defects. We have also seen liability policies generally exclude losses or claims arising from criminal acts where such liability has been adjudicated by a court of law, and any contractually arising liability.

15. Do the courts typically construe ambiguity in policy wordings in favour of the insured?

Courts generally construe ambiguity in insurance policy wordings in favour of the insured. The Supreme Court, in *Haris Marine Products v Export Credit Guarantee Corporation Ltd* (2022) SCC Online SC 509, held that an ambiguous term in an insurance contract should first be construed harmoniously by reading the policy in its entirety. If the contractual term still remains unclear, then the rule of *contra proferentem* must be applied. This principle dictates that any ambiguity in the terms of a contract should be interpreted against the drafter of the policy which in cases of insurance would be the insurer.

16. Does a 'but for' or 'proximate' test of causation apply, and how is this applied in wide-area damage scenarios?

Courts in this jurisdiction have applied the test of proximate cause and have generally implied the requirement for the loss to be caused by a covered peril which was also the proximate cause. However, the impact of the insured peril on the wider area cannot be taken into account in assessing business interruption.

17. What is the legal position if loss results from multiple causes?

We have not seen the rule of concurrent causation be put to test before courts in this jurisdiction. However, we believe that the courts are likely to adopt the position under English law. The position is that there is cover for a loss which arises from two equally effective causes, and one is expressly covered but the second is not. However, the loss is excluded where it arises from two equally effective causes, and one is covered, and the other is expressly excluded.

18. What remedies are available to insurers for breach of policy terms, including minor or unintentional breaches?

The effect of breach of conditions in an insurance policy depends on whether the 'condition' is a condition precedent to insurer's liability or not. Usually, an insurance policy will expressly state the provisions which are conditions precedent to liability. If any condition precedent has been breached, the insurer has the right to repudiate the claim. However, where it is not expressly stated, the Indian courts will make efforts to decide whether a particular clause is merely a condition or a condition precedent to the insurer's liability. To action the breach of a condition, an insurer will have to show that the breach has caused it to suffer prejudice.

The courts in this jurisdiction are likely to consider a minor or unintentional breach of policy conditions to be

inconsequential to the insured's right to cover. This position is slightly different for those terms which are specified as being conditions precedent to the insurer's liability, as an insurer can generally repudiate claims for a breach of condition precedent. However, this is an evolving sphere, and we have seen courts take a lenient view on such breaches in recent times.

The position is much clearer when it comes to breach of warranties. Warranties are the clauses which form the basis of the contract of insurance. Usually, clauses which are meant to operate as warranties are expressly stated to be as such in the insurance policies. All warranties under an insurance policy must be strictly complied with, whether material to the risk or not. If a warranty is breached, an insurer is discharged from all liability under the policy. The Supreme Court of India has recently held that mere knowledge on the part of the insurer that there was breach of warranty by an insured would not amount to a waiver in the absence of an express representation by the insurer.

19. Where a policy provides cover for more than one insured party, does a breach of policy terms by one party invalidate cover for all the policyholders?

Cover to multiple insureds is generally provided under composite policies, and in our experience, these may at times include terms which specifically state that the policy applies separately to each insured. Although this is subject to the specific wording of the policy, where cover is extended to multiple insureds, the policy is considered as a separate contract between each insured and the insurer. The cover provided to each assured mostly remains unaffected by the default of other co-insureds.

20. Where insurers decline cover for claims, are policyholders still required to comply with policy conditions?

Policy conditions are generally drafted as requirements that must be fulfilled for an insured to become entitled to cover. We have not seen any precedents in this jurisdiction which specifically comment on the effect of a breach of policy conditions once a claim has been repudiated. However, based on our experience, the insured is unlikely to continue to abide by the policy terms and conditions after repudiation, and a court/tribunal may not take an adverse view of non-compliance occurring after repudiation. The position will however be different for breaches of warranties, as an insurer's right to action a breach of warranty cannot be implied to have been waived unless expressly stated otherwise.

21. How is quantum assessed, once entitlement to recover under the policy is established?

For most classes of first party losses, the statutory and regulatory framework requires an insurer to appoint a surveyor and seek a final survey report which includes an assessment on the quantum. The surveyor's report is not binding or sacrosanct, but an insurer will need substantive grounds to disagree with a surveyor's assessment. However, certain classes of claims are exempt from the statutory requirement of seeking a survey report. In such cases, the quantum would be assessed by the insurer who may also include terms in the policy which require the insured to provide evidence of the quantum of loss.

22. Where a policy provides for reinstatement of damaged property, are pre-existing plans for a change of use relevant to calculation of the recoverable loss?

In our experience, courts in this jurisdiction are likely to not consider pre-existing plans for a change of use while calculating the recoverable loss. This is because an insurer is obliged to reinstate the damaged property only to the condition in which it was before the loss, and to the extent reasonable and possible. Further, property insurance in this jurisdiction is also based on the principle of indemnity, and subject to specific policy wording, there is usually no cover for any betterment.

23. After paying claims, are insurers able to pursue subrogated recoveries against third parties responsible for the loss? How would any such recoveries be distributed as between the insurer and insured?

There is statutory and judicial recognition to the right of subrogation. For statutes, the Marine Insurance Act 1963, specifically Section 79, provides for the insurer's right to subrogation.

Equally, Indian courts have recognised subrogation as an equitable corollary of the principle of indemnity, under which rights and remedies of the insured against the wrongdoer are transferred to and vested in the insurer. The Supreme Court in its landmark decision of *Economic*

Transport Organization v Charan Spinning Mills Ltd (2010) 4 SCC 114 clarified that once the insurer settles the claim under the policy, it is entitled to recover the compensation paid, and the right of subrogation automatically triggers on payment of claim.

No separate contractual clause is required to trigger this; however, in practice, policies do also contain subrogation clauses and insurers will frequently obtain 'subrogation letters' and an 'assignment' of the third-party claim from the insured. The PPHI Regulations also obligate an insured to assist its insurer in recovery proceedings if the insurer so requires.

In practice, insurers do not initiate subrogated proceedings very often due to the cost and time it would take to pursue the action. The quantum of the claim should justify the expense of recovery proceedings. However, we are also seeing a change in the trend as more subrogated recoveries are being pursued.

The distribution of recoveries between the insurer and the insured depends on the nature of the agreement. If subrogation is not formalised though a written document, then the doctrine of equitable subrogation applies where, if the insurer settles the claim for a portion of the loss, the insurer is entitled to recover the amount it paid to the insured, typically up to the settlement amount, and any excess recovery from the wrongdoer goes to the insured. Similarly, if a 'Letter of Subrogation' is executed, the insurer may claim only the amount it paid to the insured, with any excess recovery going to the insured. However, in the case of subrogation-cum-assignment, the insurer acquires full rights to recover the entire loss amount from the wrongdoer and retains all recovered funds, regardless of the original settlement.

24. Is there a right to claim damages in the event of late payment by an insurer?

The insured's right to claim damages arises from the Indian Contract Act 1872 which requires the following to be proved: (i) there was a breach of the contract; (ii) actual loss has been suffered by the insured; and (iii) the loss suffered must be a proximate and direct result of such breach.

The same threshold would also apply to a claim for damages in case of late/delayed payments and therefore, an insured must show actual additional loss due to the delay in payment to claim such damages.

Therefore, there is no direct and automatic right to claim damages in the event of late payment by an insurer.

There is a regulatory provision for enhanced interest for any delays, but no additional damages may be payable.

25. Can claims be made against insurance policies taken out by companies which have since become insolvent?

The obligation to make payment, if any, to the insolvent insured will be under the general insolvency or bankruptcy laws. In the authors' view, the insolvency of the insured will not affect the liability of the insurer to pay the insured.

26. To what extent are class action or group litigation options available to facilitate bulk insurance claims in the local courts?

There is a provision to bring class action suits before the applicable courts in India under Order 1 Rule 8 of the CPC which allows one or more persons from a group with a common interest to sue or be sued on behalf of all individuals in that group with the permission of the court.

Additionally, Section 35(1)(c) of the CPA allows for complaints to be filed in a "representative capacity" with the permission of the relevant district consumer court, when one or more consumers have the same interest, enabling collective redress for similar grievances, including bulk insurance claims. The CPA has similar provisions for the State Commissions and the National Commission.

27. What are the biggest challenges facing the insurance disputes sector currently in your region?

Consumer courts in this jurisdiction adopt a consumer-friendly approach with consumer courts following a summary procedure for trial.

These are designed for less complex, smaller and less severe cases/disputes, with limited scope for recording evidence and conducting cross-examination. As a result, even the large insurance claims that have technical aspects and voluminous evidence with disputed questions of fact are often dealt with summarily.

28. How do you envisage technology affecting insurance disputes in your jurisdiction in the next 5 years?

India is experiencing a gradual shift towards electronic filings, online hearings, and increasing adoption of 'Online Dispute Resolution' ("**ODR**") platforms, though we have not seen these being as frequently deployed in insurance disputes as of now.

Key factors fuelling its development include the rise in e-commerce activity, and the increasing adoption of virtual hearings by courts and arbitrators, and government initiatives such as the NITI Aayog's recent report titled "*Designing the Future of Dispute Resolution: The ODR Policy Plan for India*" which outlines a strategic roadmap for integrating ODR into India's legal framework.

29. What are the significant trends and developments in insurance disputes within your jurisdiction in recent years?

The Supreme Court has recently clarified the application of the burden of proof in insurance cases, reaffirming that it rests on the party making the assertion. In *Mahakali Sujatha v Branch Manager, Future Generali India Life Insurance Co Ltd & Ors* (2024) 8 SCC 712, the Supreme Court emphasised that the principle of burden of proof in the law of evidence is that "he who asserts must prove", meaning the burden of establishing a fact lies with the party asserting it. This burden never shifts; however, the onus of proof shifts during the process of evaluation of evidence. In the context of insurance disputes, while the burden of proof remains with the insured, the onus of presenting evidence can shift depending on the phase of the dispute and the type of evidence being evaluated.

Additionally, the Supreme Court in the recent case of *SBI General Insurance v Krish Spinning* (2024) SCC Online SC 1754, while dealing with a discharge voucher executed between an insurer and insured, clarified that the scope of enquiry by the referral court under Section 11(6-A) is limited to a *prima facie* evaluation of the existence of an arbitration agreement and it need not include a surgical scrutiny of the specific facts of the case, including the merits of the insurance claim, leaving that to the discretion of the arbitrator.

30. Where in your opinion are the biggest growth areas within the insurance disputes sector?

Over the last few years, we have seen a steady increase in disputes arising out of agricultural insurance policies, which provide coverage to farmers in case of crop destruction due to natural calamities. There has also been an upward trend in disputes arising out of trade credit insurance policies since global trade has become more interconnected and risks associated with credit and insolvency have increased.

We have also witnessed a growing number of cyber-insurance covers being issued and claims being made under them, including a rise in disputes arising out of cyber policies largely due to the growing adoption of a digital infrastructure, increasing frequency and complexity of cyberattacks and stricter data protection laws requiring companies to protect sensitive data and report breaches within specific time frames. Failure to comply with these regulations can lead to heavy fines and legal liabilities driving the demand for cyber insurance as a means of compliance and risk mitigation.

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