

Third-Party Vehicle Takaful Claim –Third-party claim and its legal and operational issues from client's perspective

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Abstract

This study gives an overview of the legal and operational aspects of an accidental takaful vehicle claim. It highlights the events that include the collision of two vehicles, fixing the responsibility, and managing the repair. It explains the glitches in third party claims and strategies advisable for reducing the financial impact for a client. It revolves around the benefits of taking motor takaful coverage which helps when something goes wrong on the road.

Keywords: Depreciation, Indemnity, Takaful, Third party

1. Introduction

On 28th November 2018, Mr. Ali was worried and confused about whether to settle his accidental motorcar claim with Takaful (Insurance) company through negotiation or to approach the court of law for complete compensation. Mr. Ali met a major road accident in which his vehicle collided with another vehicle when he was taking a U-turn on a busy road of Peshawar, Pakistan. He was not attentive in driving and was at fault in the accident. None was injured though but both the vehicles were greatly damaged. Mr. Ali teaches in a university and his bank balance at that time was almost zero. He was worried about the financial burden of repairing both the vehicles, although his vehicle had a comprehensive vehicle takaful (Islamic Insurance) coverage which was covering damages caused to his own vehicle and third party's vehicle in an accident. Ali's vehicle is covered under comprehensive vehicle takaful policy which provides compensation in case if the covered vehicle is damaged in an accident. Moreover, the policy also covers for the accidental damages caused to other person's property (normally called third party) due to a mistake of the client. In vehicle accident claims, companies conveniently provide compensation for the

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repair cost of a client's vehicle. While in case of damages to third party property loss, chapter VIII of Motor Act 1939 says, "Insurance of Motor vehicles against third party risks" requires that client of insurance/takaful company has to be proved at fault in the accident at the court of law (The Motor Vehicles Act , 1939). Only then the damage of 3rd party property has to be paid in full by the company. Proving Mr. Ali's fault in the accident in a court would take time and meanwhile 3rd party might be asking Mr. Ali for repairing his vehicle. In absence of a court decision, the company either refuses to pay for the third party loss or pays a part of the total repair through negotiations.

2. Coverage Details of Comprehensive Vehicle Takaful

In Pakistan, insurance and takaful companies provide comprehensive motor coverage which includes compensation against the following losses:

2.1 Accidental (Partial and Total Loss)

If the covered vehicle meets an accident resulting in partial loss, the insurance/takaful company will pay the repair cost to the client that normally includes the cost of labor and new parts.

Sometimes, due to a major accident, the mechanic /workshop considers the vehicle to be irreparable i.e. after repair, the mechanic believes that vehicle will not be in road worthy conditions, such loss is declared as total loss. Company either pays the sum covered or market value of the vehicle whichever is less. Sum covered is the maximum liability of the company for any loss and is decided by the client while taking coverage (Malik & Ullah, 2019).

2.2 Theft and Snatching Coverage

In case of theft and snatching of the vehicle, company pays the sum covered or market value of the vehicle whichever is less. Theft risk has been reduced considerably due to usage of satellite based tracking devices.

2.3 Third Party Coverage

This type of cover protects client against claims if, when using its vehicle, he:

- Injures or kills another person (known as the third party)
- Damages another person's (third party's) property

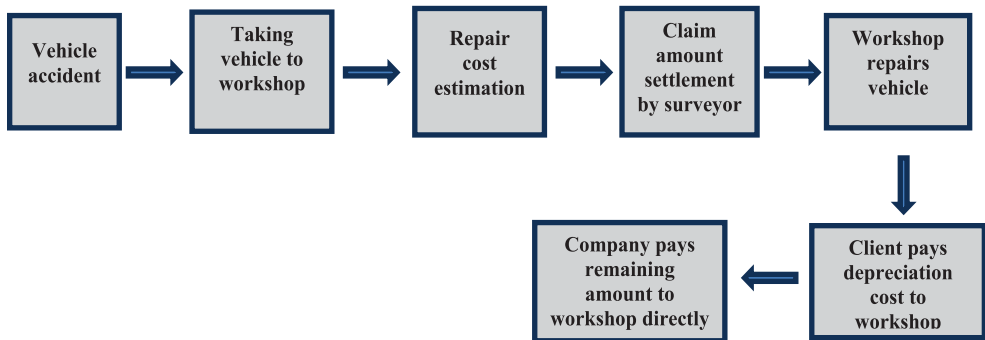
If the covered vehicle hits any person or property, the loss is considered to be a third party loss. In many countries, third party insurance is mandatory and it is unlawful if someone drives a vehicle without third party insurance. Likewise, in Pakistan, Motor Act 1939 makes third party insurance mandatory. There is a fine against those who don't have third party insurance in Khyber Pakhtunkhwa, Pakistan mentioned in the Traffic Chalaan at point No.32 displayed as Annexure 1.

When someone hits a person (called as third party) or his property with a vehicle and the driver is at fault, then the wrongdoer is bound to compensate the person for the losses. If the vehicle is covered, then liability of the driver or vehicle owner of compensating the other person transfers to the Takaful / Insurance Company. In this regard, Motor Act 1939 says that the company is required to compensate its client for the losses to third party only if the fault of driver (company’s client) is proved in the court of law and a decree is passed for compensating the third party. Maximum liability of the company is up to the extent of sum covered.

Involvement of courts in third party claims makes it very tricky for the client while claiming compensations. It becomes discretion of the company whether to wait for the court decision for compensating the client or to believe in its client’s statement of being at fault in the accident.

Following diagram explains the motor claim process:

Figure 2.1: Vehicle Claim process flow diagram



Source: Author

3. Overview of Insurance and Takaful Industry

History shows that modern insurance started in 17th century through coverage of goods transported by ships from one place to another for trading (Westall, 2006). Motor insurance started in late 19th century when use of mechanical vehicles started (Malik & Ullah, 2019) .

Takaful is Islamic alternative of conventional insurance. Islamic scholars object conventional insurance due to presence of interest, uncertainty and gambling (Nu et al., 2012). Insurance companies collect premium in advance from the clients and invest a portion of it for return. The aim of investment is safe return which can be in Shariah compliant and/or non-compliant businesses. They make fixed deposits with conventional banks and also purchase stocks of companies having non Shariah compliant nature of business like tobacco, wine, etc. Return

coming from such investments is non - permissible and is used to pay claims of the covered clients. Takaful companies make investments in permissible businesses and thus return on such investments is also permissible. Insurance is a sale and purchase transaction and uncertainty is not allowed in such transactions in Islam. When a client takes vehicle insurance, nobody knows if there will be an accident or theft of vehicle in the whole year. If there is any accident, what will be the amount of damages? Such uncertainties make insurance transaction non-permissible. In takaful, nature of agreement is not sale and purchase but is donation into a common fund which is responsible for making payments to the covered clients if accident or theft of vehicle occurs (Malik & Ullah, 2019; Zein & Zein, 2021)

Globally, Takaful companies started establishing after commencement of Islamic banking in 1970s. In 1979, 1st takaful company started operating in Sudan (Alhabshi et al., 2009). In 2019, globally, more than 300 takaful companies were operating (Statista, 2019). Globally in 2021, takaful market has reached around 27.6 Billion US\$ (Imarc, 2022).

Securities Exchange Commission of Pakistan (SECP) regulates insurance and takaful companies. It made takaful rules in 2005 and first takaful company in Pakistan was established in 2006. Takaful companies are required to follow insurance rules as well as Takaful rules. In case of contradiction, takaful rules will prevail. Presently, insurance/*Takaful* sector of the country is comprised of around 30 general (Non - Life) insurance and 03 general Takaful (Islamic insurance) companies while life insurance companies are 07 and family (Life) takaful companies are 02 (Insurance Association of Pakistan, 2020). Securities Exchange Commission of Pakistan regulates Insurance and takaful industry. In year 2018, insurance and takaful companies of Pakistan received Rs. 308 billion which is around 0.89% of GDP (IAP, 2019; Malik, Khan, & Samiullah, 2020).

4. Road Accident

Mr. Ali was on his way to hospital to inquire after a friend having a sudden brain hemorrhage. He was lost in the memories of the good old days spent with his friend and did not have a complete focus on driving. While taking a U-turn, he couldn't notice a vehicle coming from the other side at a speed around 80 – 90 Km per hour. When he noticed his mistake, he tried to turn his vehicle away but was too late then. The other vehicle, Toyota Corolla Altis car black in color, badly hit his vehicle and Ali was shocked for a while due to strident sounds and jerks he confronted. Both the vehicles stopped, Ali and the other vehicle driver came out of vehicles and were stunned and upset. It was noticed that nobody received any physical injuries but the accident left both the vehicles in a very bad shape.

The driver of the black vehicle started shouting at Mr. Ali for his careless driving and tried to hit him. Mr. Ali was in a fix whether to accept his mistake or to blame the innocent driver of the black car for the incident. Since black vehicle front was damaged so he could shift the blame to the driver plausibly. A low balance in his bank account also compelled him to think over blaming the driver for over speeding. But he also knew that if he put the blame on driver, there was a good possibility that owner of the vehicle would fire the driver as the damage to the black vehicle seemed to be around Rs. 200, 000 (2000 US\$). Resultantly, an innocent driver might lose his job. All of such thoughts came into Ali's mind in less than a minute. People also started gathering there.

Mr. Ali, being a university teacher, always lectures his students not to lie and hurt innocent people. He strongly believed in righteousness and high moral grounds. Therefore, he stepped ahead and told the driver that it was entirely his mistake and that he was not careful in taking the U –turn. He also added that he would get the car repaired and that the driver shouldn't be worried at all. Driver called his owner Mr. Fazal who reached in a while. Not knowing about the situation, he showed aggression and tried to take vehicle keys and CNIC from Mr. Ali.

However, Ali being resolved enough tried to console him and also informed that he was at fault though his driver had a role in the accident as he was a bit speedy.

Mr. Ali called a workshop owner for sending a towing vehicle as the black vehicle was not able to move at its own. Both the vehicles were towed and shifted to the workshop. Ali asked the workshop mechanic to assess the loss and prepare estimates. Mr. Ali also informed the company with whom his vehicle was insured to reach at the site and see the evidence of the accident. He also conveyed that he was at fault and would be getting both both the vehicles repaired. Company also engaged ABC Survey firm for conducting the claim survey. In Pakistan, SECP has allowed insurance companies offering takaful services by establishing separate departments for taking premiums, paying claims, investments etc. Such operations are called window operation of a conventional insurance company.

4.1 Burden of Proof Lies on Client's Shoulder

It's a basic principle of insurance and takaful that the companies provide coverage and compensation when a client makes a claim. The client has to provide documentary evidence to prove his claim. Regarding law, it is always said that it is important what you know but more important is what you can prove.

Mr. Ali, being aware of the above principle, went to the police station for reporting the incident. In motor accidental claims, companies require police report when claim amount is above Rs. 50,000. Some companies require it in claims above Rs. 100,000. Police recorded the incident in their books noting date, time, place and parties involved in the accident. They stamped the report and gave it to Ali.

Company engaged a licensed surveyor in the claim. In Pakistan, General (Non - life) companies can process claims in house only up to Rs. 20,000; while above that amount, it has to be processed through a survey form duly licensed by SECP under section 16 of insurance rules 2002. The surveyor uses technical skills to establish the cause of loss or damage, assess the degree of damage and to provide a complete picture of the situation in a report. The surveyor provides assistance giving impartial advice and guidance (Malik, Khan and Abdullah, 2018).

Ali was relaxed after admitting his mistake but was worried at the same time for the upcoming financial burden. He was also doubtful of the extent of financial support to be extended by the takaful company which is a large insurance company. Therefore, the next day, Ali consulted one of his friends working at another insurance company regarding partial loss claim of his vehicle and third party claim. He briefed him in detail and advised him to negotiate the repair cost of third party vehicle for reducing it to a minimum possible level. He told him that he could get complete compensation from the company in third party claim only if the court declares you at fault which would take months to decide. Moreover, he had to bear the fee of his lawyers as well. Therefore, it would be wise to conduct an out of court settlement in third party claim with the company.

4.2 Repair Process at Workshop

On 21st November 2018, workshop prepared initial repair estimate for third party (black) vehicle and was found to be Rs. 232, 0000 which included labor charges around Rs. 80,000 and new spare parts of Rs. 152000. Decision regarding replacement or repair of some damaged parts was subjected to dismantling while repair estimate of the covered (Ali's) vehicle was found to be Rs. 87500/- Workshop informed the surveyor, Ali, and Mr. Fazal about the repair cost. Ali was confident that the company would pay for the repair of his vehicle but was worried about the repair cost of the third party vehicle. Therefore, he started efforts for reducing the repair bill of the third party vehicle.

There is a common practice in workshops that they exaggerate the initial estimate of covered vehicles as they know that surveyor would negotiate and reduce the price. Moreover, Ali took the list of new parts and shared it with other shops. Three shops quoted around Rs. 80,000 for new parts. Ali shared those quotations with surveyor and asked him to negotiate the repair estimate with the workshop. Otherwise, he would buy new parts from the shops offering parts on cheaper rates and would fix the vehicle at another workshop paying a reduced labor cost. Mr. Fazal, the owner of black vehicle was repeatedly asking Ali to arrange the repair of his vehicle at the earliest as it was his only car and he had difficulties in attending his office and arranging for the pick and drop of children from schools in absence of the vehicle. So, pressure was mounting on Mr. Ali for an early repair while he wanted to have some time for bringing down the repair bill.

Settlement with workshop

Third party vehicle

On 22nd November, 2018 Mr. Ali reached the workshop along with the surveyor. Luckily, a few parts of the vehicle after dismantling were found repairable that reduced the bill by Rs. 30,000 thus bringing down the initial estimate of new parts from Rs. 152,000/- to Rs. 122,000/-. The surveyor also showed them quotation of other shops and asked to reduce their estimate bill. He also told them that if they didn't reduce it, they would carry the vehicle at another workshop for repair work. After a lengthy negotiation, total repair bill of third party vehicle was reduced from Rs. 232,000/- to Rs. 132,000/-. Mr. Ali also agreed on paying the bill and asked workshop owner to repair the vehicle at their earliest. He also conveyed it to Mr. Fazal that repair work had started and would take 2 to 3 days to complete.

Ali own vehicle

Repair estimate of Mr. Ali's vehicle was Rs. 87500 (New parts cost Rs. 60,000 and Rs. 27500/- labor charges which was negotiated and settled at Rs. 51000 comprising Rs. 38,000 for new parts and Rs. 11000 for labor charges) with the workshop. Since the vehicle was 04 years old, Mr. Ali had to bear depreciation of 40% in value of new parts. 40% of Rs. 38000/- was Rs. 15200/-.

Total claim = Rs. 51000

Client payment to workshop = Rs. 15200

Company payment to workshop = Rs. 35800/=

4.3. Rationale of Depreciation

Depreciation is charged in partial loss on the value of new parts only. If there is a partial loss and if the vehicle is repaired without replacing any part, then there will be no deduction on account of depreciation. It is similar in case of a total loss if a vehicle gets destroyed completely in an accident and is not repairable.

Vehicle useful life is considered 10 years. So, each year vehicle depreciates @10%. Mr. Ali's vehicle is 4 years old which means its remaining life is 06 years. In the accident, some parts were damaged beyond repair. Six years life of the parts was remaining when the accident took place. The actual loss for Mr. Ali's vehicle was estimated on six years remaining life of the parts. Therefore, takaful company paid 60% (Rs. 38000) of the total price of new parts while 40% of the useful life of parts was already consumed by Mr. Ali; therefore, he had to bear Rs. 22000/- (40% of total price of new parts).

General takaful and insurance operates on indemnity principle which states that company would only compensate up to the actual loss. If company pays 100% price of the new parts, then it would be like benefiting the client more than the actual loss in an accident (Malik & Ullah, 2019).

On 25th November 2018, the surveyor submitted preliminary survey report along with vehicle pictures in damaged conditions to takaful company. In the report, he communicated the settled repair cost of Rs. 132,000/- for third party vehicle and Rs. 51000/- for client's own vehicle. After reviewing the report, company confirmed the payment of Rs. 35800/- to the workshop for Mr. Ali's vehicle.

4.4 Claim Settlement with the Company

On 26rd and 28th November 2018, Mr. Ali's vehicle and the third party vehicle were repaired respectively. Mr. Ali paid Rs. 132,000 and 15200/- being repair charges of third party vehicle and depreciation of his own vehicle respectively. Mr. Ali borrowed Rs. 150,000/- from a friend to pay the above charges. He provided cash receipts to the surveyor for onward submission to the company. The surveyor took pictures of both the vehicles and sent his final survey report to the company. He also advised Mr. Ali to contact the company and try to settle third party claim out of court.

Here Mr. Ali is confused whether to negotiate the third party claim with takaful company or to lodge a case in the court to seek complete compensation to pay for the third party claim.

i) Teaching Notes

Learning objectives

The case is aimed to achieve the following in-class objectives:

- a. Understanding motor takaful coverage with more emphasis on third party claim
- b. Understanding the procedures involved in claiming compensation against third party claim
- c. Understanding the application of Motor Act 1939 in third party claims
- d. Developing skills of negotiating vehicle repair cost with workshop
- e. Developing skills of negotiating third party claim with insurance/takaful company
- f. Understanding the role of surveyor in general insurance/takaful claims

ii) Suitability of the Case

The case is suitable for

- a. Undergraduate and graduate students taking courses in insurance and takaful
- b. Using in insurance and takaful related trainings
- c. Students desiring to build their careers in insurance/takaful sector

The case is suitable for 70 to 90 minutes class.

25 to 30 minutes for reading.

20 to 25 minutes for discussion

15 to 20 minutes for concluding and addressing any questions raised by the students.

iii) Assignment Questions

- a. Explain the differences between insurance and takaful.
- b. What is the rationale of depreciation charged in partial loss claims?
- c. Why depreciation is not charged in total loss or theft claims?
- d. In case of total loss, if market value of vehicle is Rs. 2 million and with a takaful company, it is covered in Rs. 1.5 Million, then what will be the payable amount to the client? Identify the need for third part liability takaful coverage.

- e. What does the Motor Act 1939 say about third party liability insurance claims?
- f. Please explain the laws which Takaful companies operating in Pakistan have to comply with.
- g. How a client should pursue a claim of compensation under third party liability coverage?
- h. Who is insurance surveyor? What is the role of surveyor in general takaful claims?
- i. Why workshops normally exaggerate the initial estimate of a vehicle's repair?



CITY TRAFFIC POLICE PESHAWAR
EDUCATE - FACILITATE - REGULATE

Annexure 1

TRAFFIC VIOLATION FINES AMENDED VIDE PROVINCIAL MOTOR VEHICLES KHYBER PAKHTUNKHWA AMENDMENT ACT XVII OF 2010 & ACT NO. XXXIV OF 2014.					
PART I MOVING VIOLATIONS					I
Serial No.	Nature of violations	Penalty			
		Motorcycle @Rs.	Motorcar/Jeep @Rs.	LTV @Rs.	HTV/PSV @Rs.
1	Exceeding prescribed speed limit.	200	1000	500	700
2	Carrying passengers in public service vehicles	-	200	500	700

	exceeding permissible limit.				
3	Violation of traffic signals (manual/electrical)	200	1000	500	1000
4	Overloading by public transport vehicles (Goods Carriers).	-	-	1000 for 1% to 5% of overloading 2500 for 5.1% to 10% of overloading 5000 for 10.1 % to 15% and above of overloading.	1000 for 1% to 5% of overloading 2500 for 5.1% to 10% of overloading 5000 for 10.1 % to 15% and above of overloading shall not be allowed to ply on road.
5	Overtaking where prohibited.	100	200	200	500
6	Failure to yield right of way to	100	100	100	100

	other vehicles.				
7	Obstructing movement of emergency vehicles.	100	200	400	500
8	Loading in excess of the restrictions of dimension of goods.	-	-	300	500
9	Driving at night without proper lights.	500	1000	300	500
10	Driving on the wrong side of the road.	600	2000	2000	4000
11	Disobey traffic signals(Red Thinking).	200	1000	500	500
11	Disobey traffic signals(Red Light).	200	1500	500	500
12	Improper crossing of railway track.	100	200	200	300
13	Following too closely or cutting too sharply.	100	200	300	400
14	Driving with tinted/covered glasses obstructing visibility from within the	-	500	500	-

	vehicle.				
15	Jumping Traffic queue	100	200	200	300
16	Failing to dip head lights for other traffic.	-	200	300	500
17	Driving wrong way in one way street.	100	200	300	400
18	Using turn indicator for any purpose other than those prescribed.	100	200	200	200
19	Plying where prohibited.	100	200	300	500
20	Improper loading of goods/improper loaded goods.	-	-	300	400
21	Failing to observe lighting hours.	-	200	200	300
22	Obstructing traffic.	200	300	500	1000
23	Failure to observe low sign.	100	100	100	100
24	Riding motorcycle without safety helmet.	100	-	-	-
25	Failure to stop	-	200	200	300

	for a school bus.				
26	Turning where prohibited.	100	200	400	500
27	Failure to protect learner drivers.	100	200	200	300
28	Failure to yield right of way to pedestrians.	100	200	200	300
29	Reckless & negligent driving.	200	400	500	600
30	Driving without driving license.	600	1500	600	1000
31	Driving an unregistered vehicle.	100	200	500	600
32	Driving a motor vehicle without insurance coverage.	-	100	100	100
33	Driving a transport vehicle without, or with a defective speedometer.	-	200	200	300
34	Opening door dangerously.	-	200	200	300
35	Improper	100	200	300	500

	turning (turn from wrong lane).				
36	Improper lane usage.	100	200	300	500
37	Blowing horn in silence zone.	100	200	200	300
38	Improper u-turn.	100	200	200	300
39	Refusal to produce license.	100	200	200	300
40	Failing to stop when required by the traffic police.	200	200	300	500
41	Driving without fitness certificate.	-	-	300	500
42	Driving a vehicle exceeding prescribed weight limit.	-	-	300	500
43	Using vehicle in unsafe condition.	100	200	400	600
44	Using pressing/music al horns.	100	200	300	500
45	Driving vehicle in violation of law/rules not otherwise	100	200	300	500

	provided.				
46	Smoke emitting vehicle.	200	400	500	600
47	Juvenile driving.	200	5000	500	600
48	Using mobile phone while driving.	500	500	500	500
49	One wheeling by motorcyclist.	500	-	-	-
50	Repeating the same violations.	600	600	600	600
51	Abetment of the above violations.	100	200	300	500
52	Driving motor vehicle without route permit if any.	-	-	5000	5000
53	Repeating the violation at serial No. 52 above.	-	-	10000	10000
54	Repeating the violation at serial No. 4 above.	-	-	10000	10000
67	Driving without fastening seat belt.	-	1000	1000	1000

68	Taking part in unauthorized race.	–	2000	–	–
PART-II PARKING VIOLATIONS					
S. No.	Violations				Penalty
1	Parking more than 0.5 meter from the kerb.				Rs. 50.00
2	Parking on a side walk.				Rs. 50.00
3	Parking less than 0.5 meter from another car.				Rs. 50.00
4	Parking on a zebra crossing.				Rs. 50.00
5	Parking less than 3 meters from fire hydrant.				Rs. 50.00
6	Parking less than 10 meters from fire stop signs.				Rs. 50.00
7	Parking less than 10 meters from intersection.				Rs. 50.00
8	Parking in a No parking Zone.				Rs. 2000.00
9	Parking in front of an entrance to a premises.				Rs. 50.00
10	Unauthorised parking at a bus stop.				Rs. 100.00
11	Parking on bridge.				Rs. 100.00
12	Offences relating to parking meters exceeding time limit by each half an hour should not be violation of motor parking.				Rs. 50.00

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