

Dealing with Motor Total Loss Claims; Are the Consumers' Getting a Fair Deal? A Critical View

The motor insurance portfolio remains the largest chunk of business in terms of gross premium income for the general insurance companies and also the largest client base, both for public and private sector insurance companies. Not surprisingly the motor claims also are recorded highest in numbers and in value. And naturally the out go of money in terms of servicing & paying for the motor claims is also on the higher side.

Most motor claims fall in the repair loss category. But there are also some grave accidents reported leading to extensive damage to the insured vehicles and such vehicles are either destroyed or rendered permanently incapable of use. Such claims are treated as case for Total Loss (TL) or Constructive Total Loss (CTL).

But who decides at what stage a damaged vehicle qualifies to be declared as a case for 'Total Loss' or 'Constructive Total Loss'? Are there any specific guidelines prescribed in the insurance policy as part of the contract? Are the insured's always getting a fair deal from the insurers in terms of the claim settlement in the event of loss reported and suffered by him/her? While disposing off the wreck in 'Total Loss Claims' are the insurers abiding by the provisions of the Motor Vehicle Act? These are some of the questions that need to be asked and answered.

Insurance Surveyors & Loss Assessors (SLAs) are technically qualified personnel who conduct the survey and issue loss assessment report, also called as survey report, and they decide if the damaged vehicle qualifies to be a case of Total Loss or Constructive Total Loss or Repair Loss based on the policy guidelines. It is the insurer's who have to settle the claim based on the report issued by the Surveyor. But the survey report is not binding on the insurer's.

I would first start with basic fundamentals of the role of an insurance surveyor, an insurance policy & principles of indemnity:

A '**Surveyor and Loss Assessor**' is required to be **neutral, objective and an independent professional** who delivers his/her services to either the insured or the insurers.

An '**Insurance Policy**' is a contract between the insurer and the insured, known as the policyholder, which determines the claims which the insurer is legally required to pay. In exchange for an initial payment, known as the premium, the insurer promises to pay for loss caused by perils covered under the policy issued.

'**Indemnity**' means the object of insurance contracts is to place the insured, as nearly as possible, in the same financial position after a loss as that prevailed immediately before the happening of the insured event.

Now let us also understand what the standard motor policy defines about the Insured's Declared Value (IDV), Total Loss (TL) & Constructive Total Loss (CTL) Claims and also the definitions of TL & CTL.

IDV is the value that is declared and accepted as at the time of purchase of the policy and the insurance premium is collected based on the IDV. Thus IDV forms part of the contract.

IDV shall be treated as the 'Market Value' throughout the policy period without any further depreciation for the purpose of Total Loss (TL) / Constructive Total Loss (CTL) claims.

It is to be noted here that the IDV is to be considered as the market value of the vehicle throughout the policy period. There is no scope for negotiation, bargaining and reducing the IDV either by the surveyor or by the insurers.

Now is there a difference between words between Total Loss (TL) & Constructive Total Loss (CTL) claims while both appear to mean the same and also are sounding similar. Yes – there is.

- **Total Loss (TL)** - All the vehicles which are destroyed and cannot be restored back to its original form can be termed as case for Total Loss. The best example is fire burnt and destroyed vehicles or the vehicles that are severely damaged and cannot be repaired or restored back.
- **Constructive Total Loss (CTL)** – All the vehicles which are damaged extensively and are beyond economical scope of repairs are to be termed as a case for Constructive Total Loss. Here the cost of retrieval, repairs and restoration of the vehicle to its pre-accident form is not economical, prohibitive and not justified. Here we compare the cost of repairs to that of IDV on the vehicle to arrive at the fair decision.

To elaborate the case in point, it does not make economical sense in trying to repair an accident damaged vehicle whose market value or IDV is Rs. 2.00 lakhs and the cost of repairs or restoration is working out close to the IDV or more than the IDV. Yet another case would be the vehicle falling from a ghat section down below in the valley or the wild bushes and which just cannot be retrieved.

Let us now move ahead and understand what the motor policy, the contract between two parties, states as to which vehicles can be treated as a case of Constructive Total Loss (CTL) in the event of a claim:

- The insured vehicle shall be treated as a CTL if the **aggregate cost of retrieval and / or repair** of the vehicle, **subject to terms and conditions of the policy**, exceeds 75% of the IDV of the vehicle.

In simple terms and also application of logic any vehicle which is damaged extensively and the total cost of retrieval and/or repair of the vehicle exceeds 75 % should be deemed as a case for Constructive Total Loss. That is if the IDV is declared and accepted at Rs. 4.00 lakhs and the total cost of repairs is exceeding Rs. 3.00 lakhs, it should be considered that it is not economical & justified to repair or restore the vehicle at such a huge cost where the majority of the parts are replaced or repaired and the time involved in getting the vehicle repaired and restored to the insured who suffered the loss. This makes sense.

But the policy while mentioning the aggregate cost of retrieval and/or repairs, also adds the words – “**subject to terms and conditions of the policy**”. This inclusion of few words in the policy led to confusion which further led each one drawing his own legal interpretations & meanings.

Most insurers have devised a meaning that is convenient to them and that would reduce their out go of claim liability & loss, even if it means short changing the hapless insured or the consumer in distress. And most surveyors, either willingly or under pressure, have accepted the interpretation of the insurer’s and fell in line. A paradigm is formed and others will follow it blindly.

The end results are there for all of us to see. Most surveyors are now making reports with wrong interpretations to satisfy the insurer’s even if it means the insured is put to great financial loss and inconvenience not to forget the mental agony one has to undergo. The Surveyors are not acting as independent professionals taking a neutral stand thus defeating the words they use in their survey reports – ‘**Without Prejudice and Bias**’.

Here we need to understand the definition of words ‘**aggregate cost**’.

‘**Aggregate Cost**’ in simpler terms as gathered from any dictionary available is ‘sum total of all costs’. When we say the sum total of all costs, we mean here that the total cost of retrieval, repair and restoration of the vehicle to its earlier condition. That includes the cost of parts and labour charges and cost of retrieval and transportation of the disabled vehicle.

So what is the significance and purpose of the words, “**subject to terms and conditions of the policy**” that are added in the policy? This actually means:

1. The claim should be admissible and should fall within the named perils.
2. The liability of the insured is limited to IDV subject to applicability of excess
3. The cost of transportation or towing of accident damaged and disabled vehicle is limited to the extent as defined in the policy.

Here, let us all be very clear that the policy wordings used here are ‘**aggregate cost**’ and not the ‘**nett liability**’ subject to policy conditions. This word ‘**nett liability**’ is simple & clear to use if the intention is so. But it is not the case. This should sum up all and put to rest any

arguments to the contrary.

Now let me illustrate a simple motor claim where the cost of the new vehicle is Rs. 5.00 and the insured vehicle is of age 5 years + and the IDV is declared and accepted at Rs. 2.40 lakhs. The vehicle is involved in an accident, a covered peril, and the claim is technically admissible. The cost of restoration of the vehicle as per the mean estimate is working out to Rs. 2.61 lakhs. The break-up of cost is given in the below statement:

Sl. no.	Particulars	Assessed Value (Rupees)	Depreciation (% age)	Nett Liability (Rupees)
a.	Glass parts	8000.00	0	8000.00
b.	Metal parts	1,80,000.00	40	1,08,000.00
c.	Plastic/rubber parts	32,000.00	50	16,000.00
d.	Labour charges	12,000.00	0	12,000.00
e.	Painting charges	28,000.00	12.5%	24,500.00
f.	Add: Towing charges	1500.00		1500.00
g.	Less: Est. Salvage value	0.00		(-) 10,000.00
h.	Less: Comp. Excess	0.00		(-) 1000.00
i.	Total Cost/Liability	2,61,500.00		159,000.00

In terms of percentage, the nett liability is working out to 66.25 % of the IDV. Are we now to assume that the above damaged vehicle does not qualify to be a case of Constructive Total Loss? Should the insured be asked or rather be forced to carry out repairs on the damaged vehicle and seek reimbursement of cost by spending such a huge cost? That is even while the repair cost is working out more than the IDV or market value. Even in case of cashless settlement the insured still has to shell down a little more than Rs. 1.00 lakh towards his share of loss. The above claim is a clear case of Constructive Total Loss. Drawing any other meaning and forcing or thrusting such lopsided & meaningless arguments on the insured would be deemed as unfair activity on the part of the insurance surveyors handling the claim and also the insurers.

Compliance with the law in dealing with Total Loss Claims:

I now move on to the next stage of the topic. That is the law of the land in dealing with vehicles declared as case of Total Loss and/or Constructive Total Loss. All the motor vehicles plying on public roads within the Union of India, the drivers, the owners, etc. are governed by Motor Vehicle Act 1988 & Central Motor Vehicle Rules 1989 (both as amended from time to time).

Section 55 of MV Act deals with the cancellation of registration of the vehicle and the content of the section 55 is reproduced below to the extent that is relevant to us in support of the case.

55. Cancellation of registration.

(1) If a motor vehicle has been destroyed or has been rendered permanently incapable of use, the owner shall, within fourteen days or as soon as may be, report the fact to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward to the authority the certificate of registration of the vehicle.

(2) The registering authority shall, if it is the original registering authority, cancel the registration and the certificate of registration, or, if it is not, shall forward the report and the certificate of registration to the original registering authority and that authority shall cancel the registration.

(3) Any registering authority may order the examination of a motor vehicle within its jurisdiction by such authority as the State Government may by order appoint and, if upon such examination and after giving the owner an opportunity to make any representation he may wish to make (by sending to the owner a notice by registered post acknowledgement due at his address entered in the certificate of registration), it is satisfied that the vehicle is in such a condition that it is incapable of being used or its use in a public place would constitute a danger to the public and that it is beyond reasonable repair, may cancel the registration.

(7) A registering authority making an order of cancellation under section 54 or under this section shall, if it is the original registering authority, cancel the certificate of registration and the entry relating to the vehicle in its records, and, if it is not the original registering authority, forward the certificate of registration to that authority, and that authority shall cancel the certificate of registration and the entry relating to the motor vehicle in its records.

It is very clear that the law of the land demands the vehicles that are destroyed (TL) or rendered incapable of use (CTL) the owner of the vehicle has the obligation under the law to inform the registering authority and also get the registration certificate cancelled.

When a licensed surveyor and loss assessor, considered as a technical expert in the field, recommends a claim by declaring a damaged vehicle as a case for TL or CTL then he is clearly declaring that the damaged vehicle has been destroyed or rendered incapable of use. And so are the insurers who are accepting and settling the claim on TL or CTL basis. As a licensed surveyor the surveyor should also recommend cancellation of RC and the insurers have the obligation to get the RC cancelled by the insured owner before they settle the claim.

Dealing with the wreck or salvage in case of Total Loss vehicles:

The role of the surveyor is that of loss assessor and he has the obligation to assess the loss and also indicate a fair realizable value on the wreck. The surveyor has no role to play and should not be involved in the disposal of salvage or wreck or the damaged vehicle. It is for the insurance companies selling the wreck in a manner that is determined by the company by calling for tenders and going online with some of the salvage dealing companies. **It should be noted that the surveyor is not paid any amount for the efforts he puts in to approach various salvage buyers, seeking and inviting their offers, forwarding such offers for the consideration of the insurers who are the ultimate deciding authority.**

The surveyor should indicate the likely realizable value on the wreck after cancellation of RC in the case of all TL and CTL vehicles abiding the law of the land. Or at least he would do well in his job if he mentions the realizable value on wreck with RC and also without RC to safeguard his own position and not be looked upon like a violator of law or a as a criminal by the law enforcing authorities.

Except for Oriental Insurance Company, all other companies are flouting the law & rules while dealing with the total loss claims and in dealing with the sale of the wreck. Oriental Insurance Company disposes off the salvage through MSTC Ltd. (Metals and Scrap Trading Corporation of India Limited), a Govt of India undertaking, who follow the tendering process and the deals are considered as open and transparent. Here the surveyor is clearly safe from any blame. My suggestion to the surveyors is "just to be careful" while dealing with total loss claims and in dealing with salvage disposal.

Surveyors are now facilitating the sale of the damaged wreck along with the vehicle documents to some salvage buyers as per the instructions from the insurer's and to the buyer as decided by them. The salvage buyers may try to repair the damaged vehicle by using some second hand parts or even repairing some of damaged parts, which are technically beyond repair. And after the repairs the vehicle would be sold to some innocent buyer. The performance and safety of such repaired vehicle on public roads should be a matter of great concern.

Where the vehicle is totally destroyed, the salvage buyers may sell the scrap by weight, but the RC is normally used to provide false identity to some other vehicle, whether repaired or reconstructed using second hand parts, or perhaps even to a stolen vehicle elsewhere. This can put the insured, insurer's and also the insurance surveyor in serious trouble with the law enforcing authorities and the surveyor would be seen as the facilitator of such sale and may be named as a criminal, arrested & prosecuted under different sections of the IPC, such as criminal

conspiracy, theft, cheating, etc. If such vehicle gets into the hands of any terrorist outfit, the draconian anti-terrorist laws or national security ordinance would be applied and all the people involved in handling the claim and in salvage disposal may be gone for good or fighting a legal battle for their life time to come out of the mess they got into.

CONCLUSIONS:

I would now conclude the topic with the following points:

- a) **A Surveyor and Loss Assessor should be clearly neutral, fair & objective in his approach.**
- b) **'Aggregate Cost of Repairs' means total sum of all costs and not nett liability of the insurers.**
- c) **The policy contract does not use the words 'Nett liability of the Insurers'.**
- d) **In the event a vehicle is destroyed or rendered incapable of use, the RC should be cancelled as per the law of the land.**

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