



## Third party claims – know your duties and rights

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This article has been inspired by the Consumer Watch Column, published in The Star on the 23rd of November 2011, which focused on the rights of a third party following a motor collision. The content of the column was based on information obtained by the O

1. The Ombudsman is appointed to adjudicate on disputes arising between the policyholder and its insurance company,
2. The rights of the third party are limited to its claim against the person who caused the damage and do not extend to the insurer of the latter party,
3. In light of the above, the Ombudsman has no jurisdiction to hear matters raised by the aggrieved claimant against the other party's insurer.

In this article, I shall attempt to unravel the issues and to improve an understanding of the relationships between the various players. The parties include the policyholder or insured, his insurer and the third party whose property has been damaged by the policyholder. Although the principles will apply equally to any manner of liability insurance, all comments will be confined to motor collisions.



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The insured enters into a contract of motor insurance. For the purpose of illustration, we shall assume that his vehicle has been comprehensively covered. It is arising out of this transaction that a framework of duties and rights are created. For the price of his premium he receives a promise that the insurer will compensate him for any damage to the insured vehicle. Furthermore, the insurer undertakes to indemnify the policyholder for any damages for which he will be deemed to be legally liable arising out of the operation of the vehicle.

A collision occurs and a third party sustains damages to his vehicle. In his view, the sole cause of the motor accident is due to the fault of the insured. He then seeks to recover monetary compensation for his total loss. He establishes that the driver is insured and so he immediately demands compensation (as indicated by the repairer's quote or invoice) from the company with the deepest pockets. This is inevitably the insurer. However, there is no relationship between the third party and insurer, and therefore no rights can be enforced. As a result, the third party has no claim against the third party insurer. The only general exception to this rule applies where the insured is insolvent as stipulated in the applicable statute.

Immediately after the motor accident, the insured reports the claim to the insurer and provides sufficient details for the latter to conduct a full assessment.

Normal legal process then follows. The third party now seeks recourse through the only available legal channel and institutes a claim against the responsible party. The insured, must then submit notification of this claim, together with all correspondence and legal documents to the insurer. He is also obliged to conduct himself in a manner that does not in any way whatsoever prejudice the rights of the insurer, for example, he should not admit fault. If he fails in this respect, he may sacrifice his right to claim under his policy.

The duty of the insurer is then triggered together with his assumption of rights. The overarching duty is to ensure that the legal liability of his client is discharged. This duty must not be confused with a moral or commercial decision. The insurer is only to respond to a claim that would, theoretically or practically, succeed in a court of law. The insurer's rights, as stipulated in the policy, are to take over the claim by exercising any defense that the insured may have.

The insurer then responds to the claim. He assesses the circumstances to evaluate the cause and fault. In many, if not most instances, blame may be apportioned. In other instances, an absolute defense may apply, such as in the case of "sudden emergency". This calculation is determined generally by reconstructing the accident in accordance with the general rules of the road. Where applicable, case law is referenced for guidance. Having regarded the circumstances, a decision is reached on merits.

However, it still remains that the third party claimant must prove the full extent of his loss. Although the repairer's invoice may have been presented, it remains the responsibility of the claimant to prove that, firstly, all repairs arose directly as a cause of the collision. And secondly, that these repairs were necessary to place the owner of the vehicle in a similar position post accident as he was immediately prior to the incident. In this regard, reason prevails. A 20-year-old standard sedan does not warrant brand new cosmetic changes merely to compensate the owner or punish the other party for the inconvenience of a damaged car.

Settlements are negotiated and implemented. The insurer's contractual duties are then fulfilled. Simultaneously, and provided that the claim is settled in full and final, the rights of the third party against the policyholder are also ended.

In summary,

1. The third party may only claim **against the responsible party and not directly against the insurer,**
2. It is only when the **insurer agrees to indemnify the insured and takes over the defense** that engagement between the insurer and the third party takes place,
3. The insured may not do or say anything at any time that may prejudice the rights of the insurer as this may allow the insurer to reject the claim,
4. Throughout the process the insurer requires the full co-operation of the policyholder,
5. The insurer is only obligated to **settle the claim to the extent that the policyholder is legally responsible.**

### Highlights by Claim Assist

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