

Can fidelity and liability insurance policy serve the purpose?

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Now-a-days living in the 21st century of modern capitalistic society is not like as it used to be in the past, and the intrinsic beauty of such living lies in the fact that 'there are no limits', one get out as much as he wants to put in, be that in work, investment or efforts whatever may be. It provides one with the opportunity to go as far as he wants; literally speaking the sky is the limit! Thus, capitalism allows one to hit and miss, or hit and gets as many times as someone wants. Criticism lies against it that rich is likely to get even richer and poor may end up getting poorer. However, how can one deny that "it is what it is"; I mean to say that society and the social system is a process of natural selection or elimination, only the strong/abled would be able to make it to the surface, others will automatically be eliminated or perish- the survival of the fittest!

In fact, modern lifestyle is the human daily work and their uses on the material things that they eat or live with them and anything that make them feel comfortable by using them. It has an impact on one's way of life, attitude, values and knowledge on the world. Other persons can easily ascertain one's lifestyle by seeing his dressing, way of talking and so more. However, winning a modern lifestyle and enjoying all modern amenities cost quite a lot not in terms of money only, but they have to sustain liability for others around them who indirectly help them to be in the comfort zone that they prefer to remain. In this process, some peculiar tortious liability is always hanging on top of every man.

Usually, a man is liable for all consequences of his wrongful act, which he intended, as well as for the natural and probable consequences of his act(s), that is those, which, as a reasonable man,

he ought to have foreseen. Thus, if the wrong complained of, is a consequence as a reasonable man might foresee would follow from the defendant's act, the law infers that he either intended it, or recklessly put aside the risk of some such consequence ensuing. Moreover, there are intriguing cases where liability in tort is independent of mental condition of the wrongdoer, (either intention or negligence) commonly known as 'liability without fault' (that falls under three classes of strict liability). Peculiarity of such liability lies in the fact that a person becomes liable without there being any fault on his part and the wrong arises from the breach of an absolute duty – a duty which renders a man liable without any fault of his and irrespective of any consideration of intention or negligence. It is absolute, meaning thereby that it is not necessary for the injured party to prove any intention or negligence on the part of the injuring party, and no amount of care and caution expended by the latter to prevent the damage done to the former will excuse him.

The above tortious liability is the outcome of men's desire to enjoy modern living and enable to have the same, and in fact, the cost that a man will have to bear or sustain (for not being personally guilty or having intention to do the wrong or negligent). Not only under the legal regime of Bangladesh, but also it is a 'common standard' across different legal systems of the world. Therefore, these principles of law are there for a man to embrace or confront with his way of modern living.

Under such scenario, would it not be fair enough for man to expect support from the sovereign/State to stand by its subjects at least to mitigate some of their 'unusual responsibilities' (which obviously they have to encounter while living) to ensure respite and stable life? Since both administration of justice and legislation are left behind with the State to look after and maintain peace and tranquility in a given polity, it is expected of the sovereign/State not to enact law only, but also create a congenial atmosphere for their optimum use and enforcement.

Presently in Bangladesh there are 62 (approx.) insurance companies actively in operation, of which, 71 (approx.) percent does general insurance business and used to offer various policies to their consumers and provide indemnity accordingly. One of such product, Public Liability Insurance is designed to afford an indemnity for the insured in respect of their 'legal liability' to the public for accidental bodily injury or property damage occurring out of certain events, or as the case maybe. Public Liability Insurance policies could be used as an effective means to afford some respite to a person from such an intriguing situation where there is liability even without fault! But who will “Bell the Cat”?

Most of the insurance companies offer such policies as possibly they need to do so in order to be in the insurance business, since other companies does so, without having proper marketing strategies to make such product popular because of their inherent need for people's benefit or social good. Neither the legal regime of Bangladesh nor business policies addresses the above issue. Still today different professional bodies in Bangladesh, i.e. the Bangladesh Bar Council or Bangladesh Medical and Dental Council for lawyers and doctors respectively did not make it compulsory to have a Professional Negligence Insurance before they can obtain a license/Sanad to practice and offer their services to people and thereby, insure legal protection through indemnity devices, (which is so common in all developed/civilised societies).