THE OBLIGATIONS OF INSURANCE COMPANIES CONFRONTED WITH COMPENSATION REQUESTS BY THE VICTIMS OF DAMAGES TO PROPERTY OR WELLBEING

Tudor ONIGA*

Abstract

Many times, insurance companies and agents, during the administrative procedure opened by the individuals who have suffered damages after car accidents, do not fulfill their legal obligations towards the compensation requests filed or do so in a poor fashion. As a result, car accident victims are forced to sue the insurers to receive their damages, also having to add the expenses inherent to court trials to their losses. This text aims to analyze the stages and the content of the administrative procedure, respectively what the obligations of the insurance companies and agents are in regard to the victims' rights to claim compensation and the legal consequences of not fulfilling their legal requirements.

Key Words: *Insurance / victims / compensation / notification / procedure*

JEL Classification:*[K40]*

Many times, insurance companies and agents, during the administrative procedure opened by the individuals who have suffered damages after car accidents, do not fulfill their legal obligations towards the compensation requests filed or do so in a poor fashion. As a result, car accident victims are forced to sue the insurers to receive their damages, also having to add the expenses inherent to court trials to their losses. This text aims to analyze the stages and the content of the administrative procedure, respectively what the obligations of the insurance companies and agents are in regard to the victims' rights to claim compensation and the legal consequences of not fulfilling their legal requirements.

Thus, direct or indirect victims of car accidents are to be compensated morally and / or materially by the insurers, in direct proportion to the amplitude of and multiple losses subsequent to the car crashes in which they were innocent victims.[1] The legal text in the matter, art. 49 of Law no. 136/1995 concerning insurance and reinsurance in Romania[2], with its further alterations and additions,

* Assistant Professor, PhD., "Dimitrie Cantemir" Christian University Bucharest, Faculty of Law, Cluj-Napoca.

[1] The definition for damages can be found in the majority of the specialized literature, as they are considered the substance of tort liability, „which consists in the act with a negative effect experienced by a certain person as a consequence of the illicit act committed by another person, or as a consequence of the act of an animal or object." (C. Stătescu, C. Bîrsan, *Teoria general a obligaţiilor*, All Publishing House, Bucharest, 1998, p. 146).

[2] Published in the Official Gazette of Romania, Part I, no. 303, December 30th, 1995, including all further alterations and additions.

is relevant in this sense, establishing that agents who operate in the field of mandatory civil liability insurance for car owners on Romanian territory will grant compensation for damages resulting from car accidents, for which the insured parties carry tort liability towards third parties.

Through the insurance agent, as far as national law describes his or her role, we understand ,,the Romanian juridical person authorized under the conditions of the present law to exercise insurance activities, the subsidiary or branch office of an insurance agency from another state, as well as the subsidiary of an insurance company or of a mutual company from a member state, who has received an authorization from the competent authorities of its state of origin."[3].

Sadly, most of the time, in practice, the person who has suffered damages from a car accident does not solicit moral and / or material compensation from insurance agents or companies, as well as penalties for any overdue payment of this compensation for the losses caused by the insured party.

We will exclusively consider car accidents caused by vehicles on Romanian territory, registered in Romania and which have or do not have a civil liability insurance for car owners (CLICO), which are, according to the law, ,,any means of transport with or without autonomous propulsion, designed for travel on land, including any sort of towed attachment, whether connected to the vehicle or not, with the exception of vehicles that are not motorized, such as bicycles or vehicles which are pulled by animals."[4] As we have stated, it does not matter whether the vehicle was or was not covered by a CLICO contract with a firm specializing in this kind of insurance, because, in the case that the vehicle was insured, the payment of the compensation will be made directly by the insurance company, while without the insurance of the vehicle that caused the accident which resulted in losses to the patrimony of the physical person, on the condition that the non-insured vehicle has its quarters in Romania, the compensation will be paid by the Street Victims Protection Fund (SVPF), created according to art. 25^1 of Law 32/2000[5]. Considering that the usual quarters is the state where the vehicle is registered, this will determine who is the competent authority to administer the compensation. Thus, if this is Romanian territory, the compensation is granted by the SPVF, while if the usual quarters are on the territory of another state, a

[3] Art. 2, point 5 of Law 32/2000 concerning insurance activity and tracking insurance, published in the Official Gazette of Romania, Part I, no. 148, April 10th, 2000, including all further alterations and additions.

[4] Art. 1^1 point 2 of Law 136/1995 concerning insurance and reinsurance in Romania, published in the Official Gazette of Romania, Part I, n. 303, December 30th, 1995, with all further alterations and additions.

[5] Also see Order no. 1 from 2008 of the ITC for the application of the Norms regarding the Street Victim Protection Fund, published in the Official Gazette of Romania, Part I, no. 287, April 14th, 2008.

member of the International Green Card System, the compensation will be given by the Romanian Motor Insurers' Bureau (RMIB)[6].

Direct or indirect victims of a car accident who have the right to moral and/or material compensation for damages caused by vehicles, in the aforementioned conditions, have two possibilities:

a) to become civil parties in the penal lawsuit, if the act that brought them damages is a misdemeanor or they commence a direct action against the insurance company in a civil lawsuit, both situations without a prior compensation request from the insurance company,

b) to formulate a compensation request, after which, depending on the insurers response, can then attempt through a court order, civil or penal by case, to repair their losses.

As shown in the Decision of the Constitutional Court no. 77 of February 11th, 2014[7], in accordance to the dispositions of Law 136/1995 regarding insurance and reinsurance in Romania, the CLICO is a contract drivers are required to sign and whose content is established by the law through which the insuring party, depending on the insurance premiums, grants compensation for the damages for which they are responsible towards third parties who have suffered losses through car accidents. Thus, the insurer's responsibility to persons who have suffered losses covered by the CLICO is a contractual responsibility, undertaken through the insurance contract and, at the same time, a direct responsibility, as the insurer must assume the insured persons conduct and position.

The Constitutional Court also states, through the aforementioned decision, the fact that calculating and granting compensation is done through the insurance contract, either through the administrative procedure established through the norms of the Insurance Supervisory Commission (ISC), now called the Financial Supervisory Authority (FSA)[8], concerning the mandatory CLICO, or by court decision.

Being aware of our current legislation as well as the Constitutional Court decision in the matter, presented above, any person who has suffered losses as a result of a car accident has the right to commence an administrative procedure that seeks the obtainment of compensation from the insurers before any legal action. We will consider, in this analysis, the administrative procedure established by the latest Norm in the matter passed by the FSA, FSA Norm no. 23/2014, in effect

---

[6] See: http://www.baar.ro/index.html.

[7] Published in the Official Gazette of Romania, no. 268, April 11th, 2014.

[8] The Financial Supervisory Authority (FSA) was founded in 2013 as a specialized autonomous administrative authority, with a juridical personality, independence, which is self-financed and exercises its attributions by taking and reorganizing all of the attributions and prerogatives of the National Commission of Personal Valuables (NCPV), the Insurance Supervisory Commission (ISC) and the Supervisory Commission for the Private Pension System (SCPPS).

since January 1st, 2015, concerning the CLICO contract.[9] We should underline that the previous regulations, instated by the successive Orders of the ISC to set in motion the norms concerning legal application of civil liability insurance for damages caused to third parties by car accidents, also established the same administrative procedure.

Thus being the situation, the dispositions of art. 26, 36, 37, 38 and 39 of the FSA Norm no. 23/2014 present the necessary steps to take in order to undergo the administrative procedure of calculating and granting compensation.

In accordance to art. 36 of the FSA Norm no. 23/2014, the person who has suffered damages „has the right to forward an damage notification form to the CLICO insurance company, in case of a risk covered by the mandatory CLICO contract, according to the present norm, or to the SVPF Association, in case of the occurrence of a risk covered by this fund, according to art. 25 of Law 32/2000, with all further alterations and additions, or to the RMIB, which acts as a management bureau."

Through the damage notification form, the insurance company is handed information over how much the client is expecting to be compensated, this being, in light of art. 2 point 1 of the FSA Norm no. 23/2014 „a procedure through which the person who has suffered damages registers with the insurance company a compensation claim based on documents that show the occurrence of an event covered by the insurance policy."

Art. 39 of FSA Norm no. 23/2014 in which the damage notification form is described reads as follows:

„(1) For the compensation of suffered losses stemming from a car accident, the victims will address, in order to report the damages to the car insurance company with which the owner or user of the vehicle responsible for the accident is affiliated with, to the compensation agency, to the - Street Victim Protection Fund -, or the RMIB, which acts as a management bureau.

(2) The damage notification form concerning an event covered by the CLICO policy obligates the CLICO insurance company to commence an investigation regarding the damages and open a case file to contain all the gathered information on the case, to assess it, to notify the victim in writing in what concerns the documents that need to be filed in order to satisfy their compensation claim and to settle the request before the legal term has expired."

Analyzing 1 and 2 of art. 39 unequivocally shows that the right of the victim to file a damage notification form comes with a series of imperative, correlated legal obligations on the part of the insurance agency, namely:

a) to commence an investigation and open a file to contain all information on the case

[9] Published in the Official Gazette of Romania, part I, no. 826, November 12th, 2014.

b) to assess the damages

c) to notify in writing the victim in what regards the papers to be filed in order to settle the compensation claim

d) to process the request until the legal term of 3 months, as stated in art. 37.

Art. 37, al. 1 of FSA Norm no. 23/2014 states that, starting with the date at which the notification form was registered with the insurance company, the latter is presented with a series of imperative legal obligations. Thus, as the dispositions in the matter attest, in no later than 3 months from the date that the notification is filed, the insurer must do the following:

a) either to respond to the claim, making a justified and informed compensation offer in writing, transmitted with confirmation of the letters reception by the victim, in the case in which the insurance companies responsibility is proven, as the risks are covered by the mandatory CLICO policy, and the damages are calculated;

b) or to notify the victim, with confirmation of the letters reception, of the reasons for which they have not approved, either wholly or partially, the compensation claim.

Sadly, in disregard for the aforementioned imperative legal norms, in practice, the insurance companies and agents, with few exceptions, do not make justified compensation offers, transmitted with reception confirmations, or written notifications, also transmitted with reception confirmations, to the victims in which they present ,,the reasons for which they have not approved, wholly or partially, the compensation claims" formulated in the damage notification form.

To resume, the insurers have the obligation to satisfy the compensation claims until the legal term of 3 months from the moment that the damage notification form is filed in one of the manners presented above, which means, that in 3 months, they have to respond to the compensation claims in the damage notification form with a written justified compensation offer or notify the victim, also in written form, with confirmation of reception, the reasons for which the compensation claims were wholly or partially denied.

It is easy to notice and realize that, in the situation in which the insurer does not consider compensation to be possible in the amounts solicited, no matter the reasons, they have to notify the victim of this fact, possibly instructing them on which documents must be filed to successfully process the damage notification form and to mandatorily address the compensation claims, favorably or not, in 3 months.

Essentially, in the context of the administrative procedure, art. 37 al. 2 of the FSA Norm no. 23/2014 is the one that specifies that lack of response from the insurer for 3 months since the filing of the damage notification form means there is a tacit agreement on the solicited sum. Thus, ,,if, in 3 months from the notification of the occurrence of the insured event by the victim or the insured

party, the CLICO insurance agency has not notified the victim of the denial of the compensation claims, as well as the reasons behind the denial, the CLICO insurance agency is obligated to pay the compensation."

Of course, when the above paragraph refers to the fact that „the CLICO insurance agency is obligated to pay the compensation," this is in reference to the moral and/or material compensation requested in the damage notification form in complete accordance to art. 26 al. 1 of the FSA Norm no. 23/2014, which states that „the CLICO insurance agency has the obligation to compensate the victim of damages stemming from an accident caused by the vehicle under their insurance, according to the amount requested in the compensation claim, which is justified through any form of evidence."

As a result, irrefutably, in the absence of notification from the insurance company of the rejection of the claims, the conclusion cannot be but one: through their - silence - meaning their acknowledgement, the insurance company considers the moral and/or material compensation solicited by the victim through the damage notification form to be just and reasonable, because, otherwise, they would have been rejected, either wholly or partially, in written form and with confirmation of the reception of this notification by the solicitor, as the aforementioned imperative legal norms impose this aspect, in 3 months since the registration of the damage notification form with the insurance company.

As a consequence, commencing the administrative procedure to award compensation and the ulterior silence of the insurance company determines the applicability of the dispositions of art. 36 al. 2, which reads as follows: „If, in 3 months from the notification of the occurrence of the insured event by the victim or the insured party, the CLICO insurer has not notified the victim of the denial of the compensation claims, as well as the reasons behind the denial, the CLICO insurance agency is obligated to pay the compensation."

Logically, the - silence - of the CLICO insurer for 3 months since the formulation of the compensation claims through the damage notification form does not exonerate them from fulfilling the imperative obligations they are tasked with, the legal consequences of its passivity being drastic and cumulative and are stated firmly in FSA Norm no. 23/2014, and they are:

a) the payment of the moral and material compensation, beginning the first day after the 3-month deadline from the damage notification form filing, as the lack of reaction (notification) from the insurance company for 3 months is considered to be tacit agreement on the amount of compensation requested, and

b) the payment of 0,2% penalties per day late applied to the moral and material compensation starting, also, on the first day after the 3 month deadline since the damage notification form was filed, in accordance with art. 38 of the FSA Norm, which shows that, in the conditions that the insurance company does not fulfill their obligations „as specified in art. 37 or fulfills them unsatisfactorily,

including the unjustified diminishment of the compensation, there will be a 0,2% penalty per day late applied to the compensation which must be paid by the insurance company." The situation that we are facing concerning the insurance company's conduct is that of non-fulfillment of the obligations stated in art. 37 of the aforementioned Norm.

These articles that describe the steps of the administrative procedure were introduced with the firm intention of obligating the insurance company to adopt an active, constructive conduct in order to resolve, one way or the other, the compensation claims made by car accident victims. At the same time, the cited legal dispositions also present the legal consequences from the passive conduct of insurance companies and agents which do not solve their damage notification forms (compensation claims) or do so in a poor manner, sometimes with utter lack of professionalism according to the imperative norms in the matter, formulated by the victims, by obligating them to pay the exact compensation claimed in the damage notification form, as well as the aforementioned penalties applied to the sums owed as compensation.

It cannot be overstated that breaking these legal norms, namely art. 37 al. 1 and 2 of the FSA Norm no. 23/2014, which instate imperative, unequivocal legal obligations for the insurance company, has to be punished. Otherwise, we would not be discussing legal norms, but other social norms, when it is precisely because we are speaking of imperative legal norms that the state must act punitively with cases of deviant conduct. If not, the insurers knowingly not respecting the aforementioned legal obligations, when their practice exhibits that, cannot be legally accountable, when the FSA intention is a completely different one, to penalize insurance companies and agents before any court decision when there is no adherence to the dispositions that exist in the matter.

In conclusion, we must notice that, in the case in which, applying our current legislation to the date of the occurrence of the car accident from which the victim has suffered losses, the insurance company does not notify the victim of the denial of the compensation claims, as well as the reasons behind the denial, which means they have acknowledged the civil claim, by their - silence - agreeing to it, and, consequently, as the aforementioned imperative legal norm requests it expressis verbis, the CLICO insurance company is obligated to pay the compensation from the first day after the 3 month deadline since the damage notification form was filed. This is also the moment in which the victim, without any response from the insurance company, can address the court to obligate the insurance company to offer the moral and / or material compensation tacitly accepted, as well as late payment penalties.

From this perspective, from our point of view, there is no obligation on the part of the court to investigate the true value of the losses, but to enforce the truth acknowledged by both parties, in this case tacitly by the insurance company,

which has to be accepted by the legal authorities. Thus, we believe that the court must only underline that the insurance company has tacitly acknowledged the compensation claimed in the damage notification form and obligate the insurance company, based on the insurance contract, to pay the moral and/or material compensation requested in the aforementioned damage notification form, along with late payment penalties.

The jurisprudence of the Specialized Court of Cluj also agrees with this, as Civil Sentence no. 2208/F/08.09.2015 from Civil Case File 634/1285/2015, a definitive settlement which, in a similar case, without leading any additional investigation aside from the documents attached to the subpoena, concluded that „although the defendant (insurance agent, s.n.) was made aware of the damage notification form and the compensation claim, she did not process said claim in the 3 month period allowed by art. 36 al. 2 of ISC Order no. 14/2011, not informing the plaintiff in this period neither of the compensation offer, nor of a possible denial of the claims formulated, which has rendered the compensation solicited by the plaintiff, consisting in 17.640,20 lei in material compensation and 50.000 euro in moral compensation, to become overdue, the CLICO insurance agent being obligated to pay the claimed sums, according to the dispositions of art. 36 al. 2 from ISC Order no. 14/2011, which are directly applicable." Also as a jurisprudential example, we have Civil Sentence no. 4206 from July 6th, 2016 from the Tribunal of Bucharest in Civil Case File no. 44829/3/2015.

Bibliography:

1. Civil Sentence no. 2208/F/08.09.2015 from Civil Case File 634/1285/2015.
2. Civil Sentence no. 4206 from July 6th, 2016 from the Tribunal of Bucharest in Civil Case File no. 44829/3/2015.
3. Decision of the Constitutional Court no. 77 of February 11th, 2014.
4. Law 32/2000 concerning insurance activity and tracking insurance, published in the Official Gazette of Romania, Part I, no. 148, April 10th, 2000.
5. Law 136/1995 concerning insurance and reinsurance in Romania, published in the Official Gazette of Romania, Part I, n. 303, December 30th, 1995.
6. Order no. 1 from 2008 of the ITC for the application of the Norms regarding the Street Victim Protection Fund, published in the Official Gazette of Romania, Part I, no. 287, April 14th, 2008.
7. Stătescu, C., Bîrsan, C., 1998 *Teoria generală a obligațiilor*, Bucharest: All Publishing House.