

CMTPL Contracts Protection of Victims

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Motor Third Party Liability (MTPL)

- Liability imposed on the “operator” of the motor vehicle.
- “Operator” is the registered owner or in case of long term rental of the vehicle, the tenant or in case of leasing, the lessee.
- If it is demonstrated that the vehicle is used by another person on his own account and at his own risk and that person has effective control over the vehicle, such person shall be considered as operator.

Legal Nature of the MTPL

- “Strict” liability for the “created risk”
- Only way to escape from liability: Demonstration of the facts breaking the causal link (between the use of the vehicle and the harm)
- Force majeure, intentional or gross negligent act of the victim or intentional or gross negligent act of a third party (+ no fault should be attributable to the operator or to persons of whose acts he is liable + the accident should not be attributable to any defect of the vehicle).
- Example: In the Marmara earthquake 1999 (15.000 fatalities) a bridge collapsed on a bus passing under it = an event that could not be prevented and consequences thereof not possible to avoid = 20 persons died in the accident.

Legal Nature of the MTPL

- Liability attaches when the vehicle is in use (“is operated”).
- That means that the motor or the electric systems of the vehicle must be in operation.
- A car in parking position with its motor stopped during night time puts suddenly the (long) lights on and causes another car to lose control and divert into the ditch.

MTPL Insurance

- Compulsory (in order to protect the victims)
- The victims have the right to sue the insurer (direct action).
- In such a direct action defenses available to the insurers are restricted (again to ensure the better protection of the victims)
- The insurers cannot avail themselves of defenses that will relieve them in full or in part from liability
 - Defenses based on the legal provisions governing the insurance contract
 - Defenses based upon insurance contract provisions

MTPL Insurance

- Therefore the insurers would not be given the possibility to avoid liability towards victims by alleging (and demonstrating) for example that
 - the premium had not been not paid
 - the duties incumbent on the policyholders (pre-contractual information; refrain from aggravating the risk, notification of the events that may lead to a claim; notification of the victim's claim etc.) had been breached.
 - The accident had been caused by intent (debated)

MTPL Insurance

- Quid if the victim were able to obtain compensation from Social Security Institution or a private insurance company?
- In such cases, the victim is sufficiently and adequately protected and there is no need to deprive the insurer to oppose to the victim the legal or contractual defenses.

MTPL Insurance

- The early termination of the cover is not opposable to the victim until a certain (defined) period of time has elapsed after the competent authority had been notified of the termination.
- The same is valid also when the insurance contract terminates on the agreed day.

MTPL Insurance

- The insurer that was precluded from opposing legal or contractual defenses may have recourse against the policyholder and claim what it had to pay to the victim.
- The insurer will have a recourse action for example where the policyholder (or persons for whose acts the insurer is liable)
 - acted with intent (legal exclusion of cover)
 - or where the driver caused the accident because its ability to drive safely was lost due to alcohol or drugs (legal and contractual exclusion)
 - or acted gross negligently (contractual exclusion).

MTPL Insurance

- Effect of alcohol:
- According to the Turkish Supreme Court the right to benefit from cover shall be lost only if alcohol was the only cause of the accident
- The insurer must prove that alcohol solely caused the action
- No presumption (wrong approach)
- The good solution would be:
 - Alcohol percentage in the blood up to the legal level (0,50 per mil): all circumstances evaluated together
 - Alcohol percentage higher than the legal level: irrefutable presumption that the driver was under the effect of alcohol and lost its ability to drive safely
 - However: refutable presumption that the accident was caused by the effect of alcohol (drunk driver stopped at the red light; another driver hits the back because of speed excess)

MTPL Insurance – Guarantee account (or fund)

- Where the compulsory insurance has not been taken the “Guarantee Account” shall compensate losses generated by death or bodily injury.
- The “Guarantee Account” is a special fund established in order to remedy the gaps of the compulsory liability insurance system.
- The “Account” shall pay compensation for death and the bodily injury also where the accident happened as a result of the theft of the vehicle without any fault on the part of the policyholder (if the policyholder or the driver were faulty, then the compulsory MTPL insurance would respond).

Limits – exclusions

- MTPL insurers shall be liable up to the provided “limits”. This is detrimental to the victims.
- Exclusions of the cover: Exclusions are allowed to the extent expressly permitted by the legal provisions.
- If the insurance contract contains an exclusion not permitted by legal provisions, it may be challenged by both the victim and the policyholder:
 - The policyholder may allege that the insurer violated its obligation to grant adequate cover for a compulsory insurance
 - The victim may allege that the insurer cannot avail itself of the contractual provisions lifting or restricting its liability.