

PARTICULARITIES AND PRACTICAL ISSUES OF THE COMPULSORY INSURANCE CONTRACT FOR MOTOR THIRD PARTY LIABILITY

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Abstract

This paper aims at identifying and clarifying the legal regulations in the field of insurance. Starting from everything that means in practice as a whole, we need to mention from the outset that best practices are not mandatory or binding rules of law, they can not and will not be placed over the legal provisions in force but only can complete the law. Furthermore, we intend to analyze the implementation of Law no. 132/2017 on compulsory insurance against civil liability in respect of third party damage caused by vehicle and tramway accidents (published in OJ 431/2017) in the light of best practice in the field of insurance.

In this research, the main method of study was the theoretical qualitative research (especially the analysis of legal regulations) in order to identify and develop theoretically information on best practices in the field covered by the aforementioned normative acts.

The main research results are to identify the general issues that have been briefly presented and which could be the subject of practical situations in the field of compulsory motor third party liability insurance for third-party damage caused by vehicle and tramway accidents.

Keywords: insurance, insured, beneficiary, indemnity, non-use

1. Introduction

Law no. 132/2017 on compulsory insurance against civil liability in respect of damage to third parties by means of vehicle and tramway accidents (published in OJ No 431/2017) establishes the persons required to conclude MTPL contracts and the exceptions to this obligation, the territorial application limits, the liability limits, the obligations of the insured, the obligations of the MTPL insurer, the risks covered and the exclusions, the elements regarding the establishment and payment of the indemnities, the verification of the MTPL insurance, the facilities and penalties applicable to the insurers and the insureds as well as the organization and functioning of the Romanian Motor Insurers' Bureau (hereinafter referred to as BAAR).

In addition, the provisions of the A.S.F. no. 20/2017 on motor insurance in Romania (published in Government Gazette No. 624/2017) and RCA / 2017 Guide.

From the broad field of Law no. 132/2017 and the related regulations, we intend to present some features of the compulsory motor third party liability insurance contract (hereinafter referred to as RCA).

1.1. Common insurance law.

According to the Civil Code, under the insurance contract, the insurance contractor or the insured undertakes to pay a premium to the insurer, and the latter undertakes to pay an indemnity, if the insured person, the beneficiary of the insurance or the third party (Article 2129 paragraph 1 of the Civil Code).

The insurance contract is based on three important principles: the principle of compensation (within the limits of the damage suffered by the insured); the principle of insured interest (determined by the relationship between the person and the good or the damaging event); the principle of subrogation (the insurer substitutes in all the rights of the insured against those responsible for causing the damage)¹.

The insurance contract is subject to the law in force at the date of the conclusion of the insurance policy, the insurance certificate or the cover note, as the case may be (Article 146 of Law No. 71/2011).

According to its subject matter, insurances are divided into: goods insurance, personal insurance and civil liability insurance. Property and liability insurance are insurances (damages) and consequently are indemnifying.

Liability insurance concerns the amount of compensation to be paid by the insured in consequence of the damage caused to a third party (eg compensation due to third parties injured by motor vehicle accidents)². Thus, the insurer undertakes to pay compensation for the damage that the insured person is liable to according to the law against the third persons injured and for the costs incurred by the insured in the civil process (Article 2223 paragraph 1 C. civ.).

In the insurance contract, the parties may agree to include in the insurance and civil liability of persons other than the insurance contractor (Article 2223 paragraph 2 C. civ.).

The rights of injured third parties are exercised against those responsible for causing the damage.

¹ See V. Nemeş, Insurance Law, Hamangiu Publishing House, Bucharest, 2012, p. 15

² See V. Ciurel, Insurance and Reinsurance: International Theoretical and Practical Approaches, Ed. All Beck, Bucharest, 2000, p. 47

The insurer may be sued by the injured party within the limits of his obligations under the insurance contract.

Unless otherwise provided by law, compensation shall be determined by a convention concluded between the insured person, the injured third party and the insured person or, in case of misunderstanding, by a court order (Article 2225 C. civ.).

1.2. Definition, competence and parts of the CAR.

The natural or legal persons - owners of vehicles subject to registration or registration in Romania (as well as trams), are obliged to insure for the cases of civil liability as a result of the damages caused by vehicle accidents.

Vehicle means means of transport with or without propulsion for landing, including any type of trailer, whether or not coupled, for which there is a legal obligation to register or register in Romania, except for those traveling on rails other than trams, bicycles or animal tractors (Article 2 (27) of the Act).

Vehicle accident means an event involving at least one vehicle resulting in material damage and / or injury to the health and bodily integrity or death of one or more persons (Article 2 (1) of the Act)

Ensuring the above persons is done through the RCA contract.

According to art. 4 of the Act, those who use vehicles exclusively for training, racing, competitions or rallies legally organized (but can be provided on a voluntary basis) are not required to conclude an RCA contract.

Territorial, RCA operates on:

- a) the territory of Romania;
- b) the territories of the Member States of the European Union, the States Parties to the ESAA and the territory of the Swiss Confederation;
- c) the territories of the States directly linking two Member States (where there is no national auto-office);
- d) the territories of the States where the national auto offices are competent.

The parties to the RCA contract are the insured and the insurer.

The RCA insurer is the owner or user of a vehicle or a tram whose tort or delict is contractually acquired for damages caused to third parties. The law distinguishes between the insured (in general) and the high-risk insured - the person who, based on the classification in the risk classes, for which at least 3 RCA insurers offer a premium rate N times higher than the reference price calculated by BAAR 2 (5) of the Act). The RCA insurer is the legal entity authorized to "practice" RCA insurance. BAAR is a professional association of all insurance companies that have the right to practice compulsory motor third party liability insurance in Romania. Other topics covered by the RCA contract are: - the contractor is the person who concludes the MTPL and who undertakes to pay the

insurance premium; - the correspondent is the person representing one or more foreign insurers, members of other national auto bureaux, for the settlement of damages claims by road accident victims produced on Romanian territory; - the trustee any natural or legal person empowered under the law to represent the interests of the injured party in its relations with the insurer and the auto repair unit; - the person injured is the person entitled to compensation for the damage suffered; - the user is a natural or legal person to whom the owner of the vehicle grants him the right to use it in accordance with the law.

1.3. Content, duration and RCA limits.

The RCA contract includes: the number and date of the conclusion of the contract, the parts of the MTPL contract, the validity period, the maximum liability limits of the MTPL insurer, the insurance premium, the number and maturity of the installments, the intermediary, the bonnet, the registration number and the vehicle identification number, as well as the countries in which the contract is valid.

In terms of form, the insurance contract has a consensual character and, therefore, no form of ad validity is required.

Ad probationem, the insurance must be written in writing (regardless of the amount of the insurance premium or indemnity).

In principle, witness evidence is not admitted "even when there is a beginning of written proof" (Article 2200 paragraph 1 C. civ.). As an exception, if the insurance documents have disappeared through force majeure or fortuitous circumstances and there is no possibility of obtaining a duplicate, their existence and content can be proven by any means of proof.

The insurance sample is made with the insurance contract (in the sense of the instrument) or with the insurance policy.

According to art. 2 point 21 of the law, the RCA insurance policy is the document by which "the MTPL insurance contract is concluded" and "certifies the existence of civil liability insurance for third party injuries caused by vehicle and tramway accidents".

The insurance policy must include at least: the name or the name, domicile or headquarters of the contracting parties (as well as the name of the beneficiary of the insurance, if he is not a party to the contract); subject of insurance; the risks to be assured; the moment of commencement and the end of liability of the insurer; insurance premiums; the amounts insured (Article 2201 paragraph 1 C. civ.). Other elements that the insurance policy must include may be established by rules adopted by the competent state bodies (Article 2201 paragraph 2 C. civ.).

The RCA contract ends for a period of one month to 12 months (multiple times a month).

As an exception, the RCA contract can be concluded for less than a month:

- a) for vehicles registered in other EEA and EC Member States for a maximum period of 30 days

- from the date of acquisition of the property;
- b) for vehicles intended for export, for a maximum period of 30 days;
 - c) for vehicles which are provisionally authorized for use for periods of 30 days.

The minimum liability limits covered by MTPL insurance are:

- a) for material damage caused in an accident, irrespective of the number of injured persons, the limit of compensation is set at EUR 1,220,000 (equivalent in lei at the NBR exchange rate);
- b) for injuries and deaths in an accident, irrespective of the number of injured persons, the limit of compensation is 6,070,000 euros (equivalent in lei at the NBR exchange rate).

The liability limits are revised from 5 to 5 years, depending on the evolution of the European Consumer Price Index (IEPC).

1.4. Obligations of the RCA insured

As a primary obligation, the insured must pay the insurance premium to the MTPL insurer under the terms of the law and the insurance contract.

The insured must notify the RCA insurer of the acidity production within 5 business days of the event (Article 15 (1) of the Act).

At the same time, the insured person provides the RCA insurer with information on the causes and circumstances of the accident and the documents necessary for the case.

The insured must notify the RCA insurer of the following:

- a) the injured party has requested indemnification from the insurer;
- b) informs the RCA insurer of the proceedings against him;
- c) exercise of the right to compensation at a court by the injured party;
- d) the changes made in the RCA contract during its execution.

According to art. 16 of the law, the insured is obliged to submit to the injured party (at his / her request) data on:

- a) the name, surname and address of the person who has driven the insured vehicle at the time of the accident;
- b) name, surname and address or name, headquarters of the contractor or insured person;
- c) the name, the seat of the RCA insurer, the serial number and the RCA contract number, and the registration number of the insured vehicle (or identification number).

In the case of material damage, insured persons may also inform the insurance, based on a standard form, called "amicable accident finding", in which the drivers of the vehicles concerned inform information about the circumstances of the accident (Article 17 paragraph 1 of the Act). The conditions for the use of the standard form are set by the regulations of A.S.F., in accordance with O.U.G. no. 195/2002 on the

circulation on public roads, republished, as subsequently amended and supplemented.

In the event of injury, the injured person may address (for the repair) to any self repairing unit "without any restriction or constraint on the part of the RCA insurer or the auto repair unit that could influence its option" (Art. 6 pt. 8 of the law).

During the course of the contract, the insured has the obligation to allow the RCA insurer access to the compulsory motor third party liability insurance database in Romania and to provide the information for the risk assessment and calculation of the insurance premium.

The insured has the obligation to inform the RCA insurer about the conclusion of other RCA contracts with other RCA insurers and may opt for the maintenance of a single contract. The right of option is exercised only once a year (Article 8 paragraph 3 of the Act).

In addition to the above obligations, the parties may also agree to include additional clauses. Exceptions are clauses that may restrict the rights of the injured party.

1.5. Obligations of the RCA insurer.

At the conclusion of the contract, the RCA insurers request the necessary data for the assessment and verify the correctness of the vehicle identification and technical data, the owner / user's data (Article 4 paragraph 2 of the Act).

As a primary obligation, the insurer must, as at the insured risk, pay the indemnity to the injured third party, under the terms of the law and the insurance contract.

Where, for the same vehicle, there were several valid RCA contracts, the compensation shall be paid in equal parts by all RCA insurers (Article 9 (1) of the Act).

According to art. 5 of the Law, the RCA insurer shall be liable for damages caused to third parties by vehicle and tram accident as well as for the expenses incurred by them in the civil process in relation to:

- a) the level required by the law of the State in which the accident occurred;
- b) the level imposed by the Romanian legislation, if the injured persons are citizens of some Member States (according to the law).

Compensation is equal to the extent of the damage, but up to the maximum liability limit of the MTPL insurer (which is equal to the highest of the liability limit provided by the applicable law).

The insurance premium is calculated by the insurer so as to cover all contractual obligations (Article 18 (1) of the Act). In the calculation of the premium rate, the RCA insurers may use risk criteria, load indices, increase and / or correction coefficients, or other tariff adjustment instruments established by A.S.F regulations (Article 18 (3) of the Act).

For the calculation of the insurance premium, the RCA insurer may take into account the history of

claims paid in the last 5 years for accidents caused by the insured vehicle.

The RCA insurer has the obligation to inform policyholders about the calculation of the insurance premium.

RCA insurers (and their intermediaries) are required to inform policyholders about termination of the MTPL and the possibility of renewal (30 days before the termination of the contract). According to art. 18 point 9 of the law, the RCA insurer has the obligation to communicate to ASF the following data:

- a) the method of determining the insurance premium;
- b) statistical data on the basis of which the insurance premium is established;
- c) the actuarial ratio underlying the determination of the premium rate;
- d) any other information concerning the method of calculation of the insurance premium.

According to the law, RCA insurers assume responsibility for all contracts (including those granted by BAAR).

The liability of the RCA insurer begins:

- a) the day following the previous CARR, for the insured who signs a new insurance, at the latest on the last day of the previous contract;
- b) the day following the day on which the MTPL contract was concluded for persons who did not have prior insurance;
- c) from the date of issue of the insurance contract, but not earlier than the date of entry into force of the provisional registration or registration of the vehicle.

In order to maintain the bonus class, the parties may agree to the redemption or the bearing by the policyholder of the compensation corresponding to the event.

1.6. Suspension, termination and termination of the RCA contract.

At the insured's request, the RCA contract may be suspended during the period of suspension of the vehicle's right to drive in accordance with the law or during the immobilisation of the vehicle (but with the obligation to submit the license plates to the authority that issued it)³. The suspension procedure and the immobilization cases are established by common regulations of MAI, M.T., A.S.F. and MDRAPFE (Article 4 paragraph 6 of the Act).

References

- V. Ciurel, Insurance and Reinsurance: International Theoretical and Practical Approaches, Ed. All Beck, Bucharest, 2000;
- V. Nemeş, Insurance Law, Hamangiu Publishing House, Bucharest, 2012;
- L. Stănculescu, Civil Contract Law, Ed Hamangiu, Bucharest, 2017;
- Civil Code (Law 289/2009);
- Law no. 132/2017 on compulsory insurance against civil liability in respect of damage to third parties by means of vehicle and tramway accidents (published in the Official Gazette No. 431/2017);

During the suspension of the RCA contract, the insured has the obligation to immobilize the vehicle in a private area outside the public domain.

The non-fulfillment of the above obligation is assimilated to the breach of the insurance obligation and the non-fulfillment of the obligation to submit the license plates and shall be sanctioned in contraventional terms.

According to art. 7 of the law, the RCA contract ceases:

- a) the date on which the owner of the vehicle notifies the RCA insurer of the transfer of ownership of the vehicle, together with supporting documents;
- b) the date on which the vehicle is out of circulation;
- c) at the time specified in the RCA contract.

According to art. 8 of the law, the RCA contract is abolished by law when:

- a) the insured risk occurred (or became impossible to produce) before the insurer's obligation arises;
- b) the production of the risk became impossible after the insurer's obligation was born.

When the policyholder has paid the insurance premium, he can recover it proportionally to the unexpired period of the MTPL contract if no compensation is due for events occurring during the insurance period.

When the RCA insurer is subsequently required to pay compensation for events covered by the RCA contract, the RCA insurer is entitled to recover from the insured the insurance premium returned to him on request.

3. Conclusions

Analyzing from the perspective of the insurance field, the compulsory insurance of civil liability for damages caused to third parties through vehicle and tram accident, we have come to the conclusion that the proper understanding and application of the legal regulations in force lead to stability of this sector, and how much the entities that develop such activities respect good practices that serve the interests of those who make such insurance. Understanding customer needs, managing properly, delivering the best services, constantly consulting and increasing transparency will clearly lead to higher professional standards and, implicitly, to avoiding legal issues.

³ See L. Stănculescu, Civil Contract Law, Ed Hamangiu, Bucharest, 2017, p. 492