

THE OBLIGATION TO PAY LATE PAYMENT PENALTIES BY INSURERS VICTIMS OF TRAFFIC ACCIDENTS

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Abstract

This communication wants to bring attention to the possibility that they traffic accident victims to get late payment reported to the moral and material damages determined by court decisions. Detailed analysis aimed at concrete ways you can get to these penalties and to be trodden path to be able to claim from insurance companies such amounts. We stopped in this topic due to multiple legal actions on this issue that they have to use direct and indirect victims of road accidents especially after legal infringement of insurers in damages and penalties for late payment.

Keywords: *casualty, accident, penalties, terms, compensation*

This study starts from the observation that, in practice, direct or indirect victims of traffic accidents, most often than not requires the insurance companies liable for moral damages and/or material delay penalties due amounts as compensation for damage caused by its insured, meaning people who have an insurance contract concluded with the insurer. By insurer means, „Romanian legal person authorized under this Act to carry on insurance business, branch or subsidiary of an insurer from a third country and branch of an insurance company or a mutual company in a Member State, received a permit from the competent authority of the home Member State”¹. We consider only traffic accidents from vehicles in Romania, registered in Romania or not having completed an RCA insurance policy that by law, „any means of transport with or without propulsion, designed to travel on land including any trailer , whether coupled or not, except the self - moving bicycles and animal - drawn vehicles”². As stated, it does not matter in terms of matter whether or not the vehicle was the object of an insurance contract with a specialized company RCA type this. For, if the vehicle is insured RCA will be paying compensation to the insurer , and in the absence of valid vehicle insurance RCA that accident which resulted in damage to assets of individuals, provided that the vehicle unsafe have a usual place of residence in Romania, damages are the responsibility of road Traffic Victims Protection Fund (FPVS), established pursuant to art. 251 of Law 32/2000³. Given that the usual place

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¹ Article 2, paragraph 5 of Law 32/2000 on insurance undertakings and insurance supervision, published in the Official Gazette of Romania, Part I, no. 148 of 10 April 2000, as amended and supplemented.

² Article 11 paragraph 2 of Law 136/1995 on insurance and reinsurance in Romania, published in the Official Gazette of Romania, Part I, no. 303 of December 30, 1995 with subsequent amendments.

³ See also Order no. 1 of 2008 of the CSA to implement the Regulations on Road Traffic Victims Protection Fund, published in the Official Gazette of Romania, Part I, no. 287 of 14 April 2008.

of residence is within the state where the vehicle is registered it determines jurisdiction over compensation. Thus, if this place is Romania damages are the responsibility of Road Traffic Victims Protection Fund and if the usual place of residence is in another state, a member of the International Systemic Green Card task compensation Motor Insurers Bureau of Romania (BAAR)⁴. Direct or indirect victims of a traffic accident are entitled to compensation for moral and material damage caused by vehicles in condition shown above, handy two possibilities: a) constitutes civil party in criminal proceedings, if the harmful event is offense, or bring an action directly against the insurer in a lawsuit, in both cases without previously having filed a claim insurance company, b) makes a claim for compensation after trying the path of a judicial, civil or criminal, where appropriate, compensation.

Whatever the situation envisaged above, the insurer is obligated to pay late penalties if not fulfilling the obligations laid down by law. These obligations are stated in successive orders of the Insurance Supervisory Commission (CSA) for the implementation of the rules on enforcement in the field of compulsory civil liability motor insurance third party . A quick look on this Order reveals that, except Order no. 8/2001, all other expressly provide that if the insurer does not respond to the claim, which constitute endorsement of damage in a particular period, is liable to pay penalty of 0.1 % per day late reported the amount of material and moral damages. CSA orders no. 9/2002, no. 3113/2003, no. 3108/2004 stipulates that the penalties of 0.1 % is made if the insurer does not respond within 20 days, in any way aggrieved party requests , either by its own offer of compensation or refusing motivated, in whole or in part, request. By CSA Order no. 3116/2005, during which the insurer was obliged to answer applicant was 15 days, because ultimately Orders no . 113133/2006, no. 11/2007, no. 20/2008, no. 21/2009, no. 5/2010 and no. 14/2011 to establish the requirement to respond to three months from the date of endorsement damage . Therefore, penalties for late payment is double conditional: a) the approval of the claim to the insurer prior to any legal action, and b) if the insurer does not îndeplinește obligation response within legal, at the request of the injured person. However, as we shall see, the insurer may be liable to pay late payment penalties even if the injured party has not endorsed an insurance claim, considering the request for summons as the date on which penalties flowing.

I. Penalties for delay in trial

From our point of view, in criminal proceedings, the insurer may be required to pay interest on arrears, even if you previously filed a claim, because the civil action reflected by the establishment of a civil party in both the old and the new code criminal Procedure, shall be exercised by the injured party or his successors, only against the defendant and, where appropriate, civilly responsible, responsible for the accident . Therefore, in no case and under no circumstances can the insurer obligated to pay late penalties because the insurer's position in criminal proceedings is, according to Decision no. I HCCJ 28 March 2005, of „liability insurance”⁵ and not

⁴ See <http://www.baar.ro/index.html>

⁵ Published in the Official Gazette of Romania, Part I no. 503 of 14/06/2005.

responsabil person civilly or guarantor of payment. The only option if the insurer has not responded to the request for statutory damages made before, is a civil action directly against the insurer for the payment delay penalties imposed moral and material damages as determined by a final criminal judgment which was settled and the civil case. Penalties will flow in this case from the date of approval of the damage until actual payment of the claim. However, we view that, even in the absence of a claim to the insurer prior to the establishment of civil party is obliged to delay penalties in a civil penalties flowing from the date of the civil part because of the then the insurer was in possession of all training data samples both civil liability and the extent of the task accident claims the author.

II. Penalties for delay in civil trial

As noted above, the insurer is obliged to respond in a certain period, the claim for damages to a person entitled to compensation. This response time ranged from 15 days to 20 days, leading ultimately from Order no. 113133/2006 to the present by Order 14/2011 in force, the response time is three months.

In our analysis we take the example of one of the Order because, in substance, the issue cuts is confort. Thus, by Order 5/2010 issued by the CSA in force at the time of an accident, concerning rules on compulsory insurance of civil liability for damages caused by car accidents, and incidents in question are relevant art. 35, 36, 37 and 38 para. 1 and 2, which we reproduce:

Article 35. - The injured person is entitled to apply for compensation to the insurer RCA, in case of a risk covered by compulsory insurance RCA, according to these rule, or by the Association, „Road Traffic Victims Protection Fund” in the event of hedged risk in the fund, according to art . 25¹ of Law no. 32/2000, as amended and supplemented, or by BAAR, as office manager .

Article 36. - (1) Compensation shall be paid by the insurer RCA in 10 days after the last document necessary to establish liability and quantify damages, requested in writing by the insurer, or the date the insurer received a judgment final judgment on the amount of compensation that is required to pay.

(2) The insurer may conduct investigations RCA accident within 3 months from the date of approval of the insured event, provided the accident that is not subject to investigation by public authorities.

(3) RCA insurer is required to report in writing to the insured and the injured party 's intention to investigate the accident, not later than 10 days from the date of endorsement damage.

(4) Within 3 months of the approval of the event provided by the aggrieved party or by the insured, the insurer RCA must:

- a) to respond to the request of the requesting Party, issuing demand compensation according to their investigations of insured event, if it turns out that the conditions of insurance and production risks covered by compulsory insurance RCA;
- b) notify the aggrieved party reason not approved, in whole or in part, claims for compensation.

(5) The insurer is obliged to issue insured RCA / user within 15 days from filing its request, a certificate of damage recorded during the last five years of the contractual relationship, or lack of such damages.

Article 37. If the insurer does not fulfill its obligations RCA under the terms of art. 36 or fulfills them poor, including if unduly diminish the compensation, the amount of compensation due, payable by the insured, apply a penalty of 0.1 %, calculated for each day of delay.

Article 38. - (1) For damage incurred as a result of the occurrence of car accidents, victims applying for compensation from the insurer of the owner or user RCA vehicle responsible for the accident, ended RCA compulsory at representative compensation, the Association „Road Traffic Victims Protection Fund” or the AFB, as office manager. Filing a claim on the insured event under the policy endorsement RCA is RCA damage and obliges the insurer liable to open claim file, perform the finding of damages to the aggrieved party in writing of the documents to be submitted for resolution the claim and to settle legal claims in time. From our point of view, in practice according to the preceding and function of the injured person's conduct in relation to the relevant legal rules, three situations may arise.

A. Penalties for late run from the expiry of the 10 days provided for by art. 36 para. 1 in the following circumstances:

1. Injured person does not wear the right conferred by law, Art. 35 of CSA rules, ie not submit a claim to the insurer RCA or request delay penalties when making the request for summons for payment of compensation.

In this case the court called upon to pay compensation can not decide on penalties for late because it was not notified in this regard. The injured person may receive penalty payments if, and this is activated within the 10 days from the art. 36, within 10 days of receipt of a final judgment, the insurer does not pay compensation. Obviously pay damages flowing from the expiry of 10 days and may be required, possibly in enforcement proceedings.

The solution is confort and for resolving the civil side of criminal law with civil damages resulting object damage suffered by individuals, direct or indirect victims of traffic accidents. Is it because you can not apply penalties for late insurer because the obligation to pay compensation lies defendant insurer with only quality required by Decision no. I HCCJ 28 March 2005, of „liability insurance”. Thus, after a final judgment, the insurer shall communicate the decision of the accident victim, it having within 10 days of receiving it, according to art. 36 of the Rules, to pay compensation otherwise would flow penalties provided by law. With the entry into force of the new Code of Criminal procedură period of 10 days starting from the date of the decision of the court of appeal under Art. 424 para. 5, so that he is not compensated to realize personal communications.

2. Injured person makes claim prior to the application of the proceedings and the insurer respond in one of the forms stipulated by art. 36 para. 4, inside the legal deadline.

In this position, the insurer makes an offer of compensation (art. 36 par. 4 letter „a”) or notify the injured person motivated refusal to settle all or part of the claims for compensation (article 36 par. 4, letter „b”), its action paralyzes right to seek penalties

for delay, by definition, from the date of approval or of the request for summons until the passage of 10 days of receipt by the insurer of a final judgment. Conclude and show that the period of 10 days prescribed by art. 36 of the rules, starting from the date of receipt by the insurer of a final judgment on the amount of compensation that is required to pay, *but only when*:

a) the aggrieved party has not made directly to the insurance claim or request for summons has not requested payment of penalties,

b) is resolved in the civil side of criminal,

c) the insurer has fulfilled its legal obligations imposed by art. 36 para. 4.

B. Default interest running from the date the application for summons in the following hypothesis:

The person injured did not wear the right conferred by law, Art. 35 of the CSA rules and not submit a claim to the insurer RC, but calls late penalties when making the request for summons for payment of compensation.

In our opinion, and according to case law⁶, penalties for late run from the date the application for summons since its previous defendant (insurer) was in possession of all the data as training samples liability and accident borne author scope of the claims. Therefore it seems unlawful manner of delivery delay penalties from the date the application for summons and not the date of approval of the insurance claim, as did the Brasov Court when a case, concluded that the default commence on 29.09.2012, the date of application for summons and not on 12.04.2012 at which the insurer has been notified of claims⁷.

C. Default interest running from the date the claim approval when:

The aggrieved party wears its right conferred by Art. 35 of the rules and introduce RCA claim by the insurer.

Exercise the right to seek damages to the injured party gives rise to reciprocal obligations on the insurer, expressly stated by Order 5/2010 issued by the CSA, Art. 36 and 38 . Therefore RCA insurer is obliged to open claim file, perform the finding of damages to the aggrieved party in writing of the documents to be submitted for settlement of the claim and to settle legal claims in time . As can be seen , the insurer is required to notify the injured party to resolve legal claim file within. But , we ask, is this legal term ? The answer, we consider us to be found in article 36 par. 4, which leaves no room for interpretation, the legal obligation of the insurance company to settle the claim for damages within the statutory three months .

In practice we may consider the following two situations:

1. Insurer ignores the provisions of art. 36 para. 4 of the Rules.

According to art. 36 para. 4 of Order 5/2010 issued by the CSA, inside 3 months, *the insurer shall:*

⁶ See Civil Decision no. 258/2011 Cluj Court of Appeal, Civil Division II, administrative and fiscal, in File no. 6130/101/2010 and Civil Decision no. 16 of 17.01.2012, the Court of Appeal, Civil Section, unpublished.

⁷ See Civil Decision no. 57/A/21.02.2014 Brasov Court, Section II civil administrative and taxation, Civil File no. 2952/226/2012, unpublished.

a) *To meet the demand of victims, formulating an offer of compensation according to their investigations;*

b) *To notify the aggrieved reasons for not approved, in whole or in part, claims for damages.*

Given that none of these obligations have been met within the statutory period, although the claim for damages has been made previously, the resulting conclusion can only be *that the insurer failed to fulfill legal obligations.*

2. Insurer meet the claim in one of the forms stipulated by art . 36 para. 4, but not inside the legal deadline.

It is obvious that this circumstance is equivalent to failure legal obligations as the rules stipulate a deadline by which the insurer can answer the claim . Thus, while communicating its position in relation to compensation , the insurer will be liable to penalty not meet the legal terms in which they could specify the position and, subsequently, to revoke the injured person to seek penalties for late damage after approval.

It is undeniable that violate these legal rules that instiutie clear obligations on the insurer, should be sanctioned. Otherwise, I did not discuss the legal rules, but other social norms . Or, it's just legal rules must intervene coercive force of the state where deviant behavior . Because otherwise, insurers deliberately violating legal obligations mentioned , and the practice is in this sense would not be liable to any legal sanction, or CSA intention was different, that of sanctions insurers prior to any decision.

In this respect, Art. Order 37 of the CSA is quite clear, namely: *„if the insurer does not fulfill its obligations RCA under the terms of art. 36 or meets them poor , including if unduly diminish the compensation, the amount of compensation due, payable by the insurer , apply a penalty of 0.1 % , calculated for each day of delay“.*

This item was introduced with the intention of punishing show passive behavior of insurance companies who settle claims and resolve them poor and sometimes unreliable, according to the law made by the victims, by requiring them to apply penalties mentioned the amounts they owe in compensation . In this context, precisely because, apparently, the amount of penalty of 0.1 % per day of delay is inadequate, insurers persevering in their attitude not fulfill the legal obligations set out in art. 36 , it was raised to 0.2 % per day of delay. See art. 37 CSA Order no. 14/2011 which states that *„if the insurer does not fulfill its obligations RCA in terms of art. 36 or meets them poor, including if unduly diminish the compensation, the amount of compensation due, payable by the insurer, apply a penalty of 0.2%, calculated for each day of delay“.* (We want to show that the current Financial Supervisory Authority (FSA)⁸ to carry out insurance just in idea , among others, to check how the insurance companies understand to compensate the law in legal terms. Through numerous irregularities noted in this regard have been implemented numerous administrative fines reaching withdrawing insurance companies also issue policies RCA . in this regard, Decision no. 659/29.08.2013

⁸ FSA is an autonomous administrative, professional, legal person, independent, self-financed, exercising powers under the provisions of Emergency Ordinance no. 93/2012, the acquisition and reorganization of all the powers and prerogatives of the National Securities Commission (NSC), the Insurance Supervisory Commission (CSA) and the Supervisory Commission of Private Pension System (PPSSC)

penalizing Euroins Romania insurance Reinsurance Company - SA with a temporary ban practice of compulsory civil liability for damages caused by car accidents RCA was published in Official Gazette no. 566 of 05.09.2013).

Another finding. Article 37 makes speech failure *in terms of art. 36*, without distinguishing between the terms stipulated in this article. Therefore introduced plural „term” just to emphasize that it takes into account not only the 10 days but at 3 months for fulfillment. If the reference relative to the penalties would have been only the period of 10 days, then, of course, CSA expressly provided in Art. 37 that in the event of failure within 10 days result in penalties for late application .

High Court of Cassation and Justice, Civil Division II, the Civil Decision no. 2156 of May 30, 2013 unpublished, concluded relative to these penalties, the Bucharest Court and Court of Appeal granted legally late payment because: *„The only condition that attracts application of penalties for delay is that the insurer is obligated to respond within the statutory period of three months from the submission of claims by endorsing favorable or unfavorable claims, the failed condition of the appellant – defendant”⁹.*

In conclusion, the latter situation, namely damage endorsement by the victims prior to the application for summons, default interest running from the date of approval of the application and not the summons or after the passage of 10 days of receipt by the insurer of a final court ruling, erroneously concluded some courts¹⁰.

⁹ ee in the same sense, Cluj-Napoca Court, Sentence civilă no. 1678 of 01.29.2013, Timișoara Court ruling civilă no. 14512 of 11.22.2013, Cluj Special Court Decisions civil no. 95/A/2013 and no. 48/2013, Cluj Court of Appeal, Civil Division II, Civil Decision no. 10665/2013, Court Buzau Civil Sentence no. 9796/2013.

¹⁰ Civil Sentence no. 5230/17.12.2012 of Turda Court, Civil Sentence no. 1580/25.10.2012 the Court Dej published.