

COMPULSORY MOTOR VEHICLE INSURANCE AND SETTLEMENT OF CLAIMS FOR DEATH AND BODILY INJURY: THE ERITREAN EXPERIENCE

***By: Esayas Solomon & Yohannes Teclemichael
National Insurance Corporation of Eritrea Share Company***

Each individual has his own attitude towards any risk. And only those people who are risk-averse choose to voluntarily transfer risks and seek insurance cover in case of probable accidents, while others seem to be willing to carry their own risk. Public interest however, had led many governments to make it compulsory for certain types of risks to be insured against. One such risk is the risk of causing property damage, physical injury or death to third parties while using one's motor vehicle.

This article covers the issues related to the introduction of a compulsory motor vehicles insurance law in Eritrea, the provisions thereto, the impacts it has on third party claims for death and bodily injury and the importance of public understanding of such kind of legislations.

Motor insurance policies are usually designed to provide cover, in case of accidents, to the insured party, the vehicle and third parties involved. In many countries it has become compulsory to purchase motor insurance before driving on public roads. Although penalties for not having insurance cover vary from one country to another, it often involves a substantial fine, license and/or

registration suspension or revocation as well as possible imprisonment.

Although the insurance industry is not a recent phenomenon in Eritrea, it has only been four years since the third party insurance became compulsory. The National Insurance Corporation of Eritrea Sh. Co., being the only insurance company in the country, plays a vital role in settling compensations which are a result of the Proclamation's implementation. Since the coming into effect of the proclamation in 2002 the Corporation has paid a substantial amount to victims of motor vehicle accidents.

Prior to the current law compensation for death and bodily injury resulting from motor accidents used to be governed in Eritrea by the relevant provisions of the Transitional Commercial Code and Transitional Civil Codes of Eritrea. Compensation relating to death and bodily injury as a result of motor accidents used to be settled through one of the two mechanisms:

1. Vehicle owners who happened to be prudent to have motor liability insurance policy benefited from their policy and the Corporation was paying compensations to the victim or the victim's family as the case may be.

2. Those owners who do not have liability insurance used to have two possibilities:

- a) If the owner of the vehicle or the driver is able to come to terms with the claimant the compensation is paid as per the amount agreed on.
- b) Failing to settle the case amicably it used to be referred to a court of law the decision of which may be to the discontent of either party or possibly to both. In either way it is the owner of the vehicle and/or the driver involved in the accident that has to pay the compensation.

In the absence of legislation making it compulsory for vehicle owners to arrange insurance coverage for the innocent third parties involved, it was somewhat difficult, or even impossible at times, for the victims and/or their families to be compensated.

The compulsory third party proclamation is designed to protect innocent third party victims since the owner of the vehicle or the driver involved may not be in a position to pay the compensation due to the victim or to his beneficiaries. With the increasing number of motor vehicles and the corresponding number of accidents it was imperative to introduce an appropriate insurance scheme to protect the interest of innocent road accident victims. The financial crisis that would have been created without the protection afforded by this proclamation is demonstrated by looking at the substantial amount of compensations paid by the Corporation over the years; an amount which would have been

borne by vehicle owners who were not financially equipped to pay compensation.

The preamble of the Proclamation reads:

- Whereas it has been realized that road accident risk is constantly growing due to an ever-increasing number of motor vehicles;
- Whereas it is imperative to provide an appropriate insurance scheme to protect the interests of innocent road accident victims;
- Whereas it has also been found necessary to provide an appropriate insurance scheme to protect the interest of fair paying passengers;
- Now, therefore, it is hereby proclaimed as follows:

What the Proclamation Provides For

The Proclamation does not define who exactly is a third party. It can be inferred however, from the intention of the drafters and the provisions it contains regarding the class of persons excluded from coverage, that persons not falling within that exclusion can be considered as third parties for the purpose of compensation. Class of persons and property in respect of which liability is not covered by the proclamation include those:

- Arising out of and in the course of employment of the employee of a person insured by the insurance policy,
- In respect of any person who is a member of the insured person's household or a passenger in the insured person's motor vehicle,

- Of the driver or the owner of the insured motor vehicle,
- Of a fare-paying passenger in a vehicle not authorized to carry fare-paying passengers.

The cover provided by the Proclamation is a maximum Nakfa 50,000,000 (Fifty Million) in respect of death and/or bodily injury of victims and a minimum Nakfa 2,000,000 (Two Million) in respect of damage to any property of a third party (Compensation relating to property damage is outside the ambit of this paper). In case of bodily injury however, medical expenses are only limited within the medical establishments in Eritrea unless treatment abroad is authorized by a Medical Board.

A penal sanction is provided by the Proclamation for those people who contravene the requirement of the proclamation and operate motor vehicles or permit any other person to use the same on public roads. A fine not exceeding Nakfa 5,000 (Five Thousand) is imposed for people who use trucks or public transport vehicles with out third party insurance while Nakfa 2,000 is imposed on those operating other types of motor vehicles than stated above.

Public Understanding of the Proclamation

As with any other legislation, public understanding of this proclamation plays a vital role in implementing and achieving the goals of the Proclamation. At the beginning, the public did not have enough understanding of the aims and objectives of the protection afforded by the proclamation.

Over the years measures had been and are still being taken both by the government and the Insurance industry to make the public aware of the provisions and applicability of the proclamation. Although the public's awareness could be said to have increased in the past four years, there still exists circumstances where the absence of understanding becomes apparent.

This happens in cases where an accident resulting in the disability or death of the victim takes place and the victim or his families, after being compensated in line with the Proclamation, still resort to the customary practice of demanding blood-money, or "Gar" in order to settle the feud that has been caused between the two families. Reluctance on the part of the insured to bring the matter before a court of law or their fear of not fulfilling what society customarily expects of them has resulted in compensation two times to the victims of road accidents.

The Corporation is doing all possible means to put an end to this practice. To this effect it engages in enlightening its clients (Vehicle owners) as to the procedures they have to follow when they are involved in an accident involving third parties. The public's understanding of the Proclamation directly influences the smooth operation of the Corporation's activities in handling claims and paying compensations to victims. For this reason the Corporation had been involved in activities which would help to raise the awareness of the public through various medias.

Settlement of Claims by the Corporation

The National Insurance Corporation of Eritrea Sh. Co. has been working for the past four years to achieve the actual implementation of the Proclamation paying claims for motor accident victims. The Corporation follows a certain procedure while handling claims.

The insured should notify the Corporation as to the happening of an accident by filling an appropriate form prepared for that purpose by the Corporation as soon as he becomes aware of the accident. For the Corporation to entertain a claim for motor accident damages it's imperative that the victim be a third party as provided by the Proclamation.

Thereafter, police accident reports must be made available because the Corporation needs to know the particulars of the accidents which *inter alia* include information about the driver, the list of victims, the nature of accident, the cause of accident and the like in order to establish liability. The Corporation also needs information about the claimant/s including documents showing medical results and names of beneficiaries incase of death of the road accident victim.

A number of factors are considered in determining the amount of compensation due to the claimant/s. Among the factors to be considered are age of the claimant or the deceased, earning capacity of the claimant or the deceased, the number of descendants of the claimant or the deceased and cause of the accident. With the later factor it has to be noted that the Proclamation relieves the operator of the vehicle or the

insurer of their liability in whole or in part where the damage is due solely or partly to the fault of the victim.

Claimants have right to legal redress in case where they don't agree with the amount of compensation offered to them by the Corporation. In practice however, the Corporation takes in to account the same factors which the Courts consider in fixing the amount of compensation. As a result claimants rarely submit issues related to the amount of compensation to the Courts. Even where the Corporation is involved in a case after the parties concerned had brought the matter before the Court, it usually resorts to taking the case back to conciliation to settle them out of court.

Finally, despite the legal requirement for victims of road accidents to lodge their claims, within two years from the date of occurrence of the accident or the claimant becoming aware of it, the Corporation is very lenient and does not reject claims on that ground.

Summary

When it came in to force in 2002, the Compulsory motor vehicles third party insurance proclamation was intended to provide an appropriate insurance scheme which will protect the interests of innocent victims of road accidents. With the effort of parties involved in its implementation, it has managed to guarantee the following advantages:

- Creation of a sustainable fund.
- Speedy and direct settlement of claims.
- Guaranteed payment of Compensation to claimants.
- Positive contribution in minimizing financial catastrophes which would have been created in the society. ■