

# Auto Liability Insurance In Kosovo In Order To Compensate The Damage

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**ABSTRACT** The advancement in human society and increase in disasters and damage that happen to both person and property has brought on need for personal and property protection against these disasters. The introduction of civil liability insurance for drivers follows as a logical consequence of the emergence of industrial progress and the increase in the number of vehicles that bring increased risk of accidents in traffic with human and material damage.

Consequently, insurance has been developed in order to compensate for various damages, especially traffic accidents, which are increasing day by day and threaten traffic participants: drivers, passengers, pedestrians, and also many other persons causing injury or the death.

The civil liability of drivers of vehicles is regulated by law. So "Law on compulsory motor third party liability insurance" regulates the field of auto liability insurance.

**KEYWORDS:** insurance, damages, accidents, people, contract, risk.

## Introduction

Events in a person's life starting from serious health issues to age related more happen to a person in life can often be associated with the decline of the standard of living. People and material wealth have been constantly endangered by disasters, which have been caused by natural causes as well as human negligence. Society is permanently fighting against these disasters by doing everything in their power to reduce and avoid disasters and with it the consequences that come with them. Second, after disasters or events have occurred, everything has been done to avoid the consequences of these disasters, to restore all that has been destroyed, damaged or ruined. Essentially, the first step is prevention, and the second insurance".<sup>147</sup>

According to this, we encounter security as a necessity alongside the appearance and development of humanity.

## Damage compensation

The study of the development of insurance, leads to the realization that since the beginning people and their wealth have been subjected to various

risks, caused by a variety of factors. Therefore, humans are constantly exposed to dangers from which are often not able to defend themselves.

<sup>145</sup> Law No. 04, L-077, also here

<sup>146</sup> Bakraqi, Xh. (2007). "Risk Management and Insurance", Prishtina, p.26.

<sup>147</sup> also here

As a result, insuring oneself and property has started being organised in cooperation with others to provide assistance or prevent damage, which can be foreseen and avoided. Therefore, the presentation and development of insurance also lies in the organisation of such assistance. In practice it often happens that the damage is caused by dangerous objects and activities. This issue is especially relevant in the compensation of damage, as this has proven difficult to obtain by the responsible persons and the organizers of various activities. Therefore, the issue of division of damages between several entities has been raised. This division of liability for the damage caused has been made possible by means of insurance rules. Cases of various accidents such as car accidents, fires, earthquakes and other forms of damage caused by human factor, are the cause of large and small damages. These damages, among other things, have economic consequences because their

manifestation reduces the wealth of individual entities. Insurance rules are most applicable in the area of liability for dangerous items and activities. Damages from dangerous items are becoming more and more numerous both in terms of the number of cases and their volume. They are so large that it is very difficult for owners of dangerous items or users of such items to pay such damages. It can often happen that the injured person does not receive compensation, even though the responsible person is known.

Therefore, the way out for receiving compensation for the damage caused is regulated by insurance. The rules of insurance insure the subject who is in danger of being harmed, as well as the subject whose activity may cause harm to another. With these rules one insures one's property or life and bodily integrity, while another insures oneself from liability for damage. The injured party who is insured has the right to claim compensation even in the case when the injured party is insolvent - ie when can compensate the damage, while the injured party who is insured from liability, transfers the damage from its activity to the insurance community to compensate the damage. In this way, the risk for the damage caused is transferred to the other entity to compensate it<sup>148</sup>. From this it can be seen that the insurance is useful and of special importance for both the injured party and the responsible person. The insurance provides compensation to the injured person even in the case when the responsible person is not able to pay the compensation, due to the lack of his property. The responsible person also benefits from the insurance, because he imposes on the insurance company the obligation for the eventual damage, which he could have caused with his dangerous activity.

Damage insurance means the legal relationship between the insurer and the insured established under the contract or the law, where the insurer is obliged to pay the sum insured to the insured, if the insured event occurs, while the insured is obliged to the insurer to pay the insurance premium at the moment of establishing the relationship between them. Insurance rules apply to liability for dangerous items and activities. In the insurance relationship, relations are established between the insurer and the insured, the third party and the insurance beneficiary.

**148** S. Alishani, A. (2002). Law of Obligations General part, Pristina, p.177.

In the insurance rules, the insurer, the insured, the beneficiary, the third party, the insurance premium, the sum insured, the insured case and the risk are the most important expressions and things of the insurance and its organization. Therefore even in any insurance relationship they are present and play an important role. For this and other reasons these expressions require to be analyzed more closely:

a) Insurer is a community of property and persons insurance, which can be created by economic enterprises and other legal entities. So the insurer insures the insured against damage. He is obliged to compensate the damage caused to the insured if the insured case arises.

b) The insured is a subject that is insured against damage, by contacting the insurer with the obligation to pay the insurance premium to a natural person or legal entity. Thus, the insured is the subject in whose life the insured case appears, therefore, he also acquires the right for the insurer to pay the sum insured.

c) The insurance beneficiary is a subject to whom the insurer must pay the compensation on the basis of insurance if the insured case arises. He is not a party created by insurance against damage. He is a separate entity in respect of non-life insurance. So the user is an entity that does not participate in the conclusion of the insurance contract but only benefits from this contract. Eg; when the son establishes an insurance relationship with the insurer, with whom the insurer is obliged, if the insured event arises in the life of the father of this son, to pay the insured amount to the son's mother. In this case the boy's mother is the beneficiary of the insurance.

d) The third person from the contract concluded for insurance, acquires the right to independently and directly, request the fulfillment of the expectation for his own benefit even though he has not personally participated in the act of concluding the insurance contract, e nor has it been submitted by the authorizer. For example: there is a case when a life insurance contract is concluded between the insurer and the insured, that the insured amount is given to a relative of the insured when the insured event is caused.

e) The insurance premium is the price of risk. The premium is given for a certain risk and covers the

certain risk. This premium covers the sum insured and other things about insurance. It is an essential element of the insurance contract that the insured is obliged to provide to the insurer. The premium is a lot that is paid into the insurance fund. It is an essential element of insurance and in essence represents the creation of monetary means for the renewal of the caused property, respectively for the payment of the insured amounts”**149**.

The insurance premium is a large amount of money, which the insured, respectively the insurance contractor pays to the insurer, respectively to the specialized insurance institution based on the concluded insurance agreement. According to this the insurance premium can be said to be the price of risk. There is the closest connection between risk and premise.

The risk price, that is, the payment to the insurance fund is called either the insurance premium or the contribution, depending on whether it is voluntary insurance or compulsory insurance.

**149** S. Alishani, A. (2002). Law of Obligations General part, Pristina, p.187.

) The sum insured is the duty of the insurer to pay if the insured case is presented or is the amount of money provided by the contract or legal provision, which is paid when the insured case is caused. This insured amount is distinguished in the case of insurance of persons, property and liability insurance. In the case of personal insurance, the sum insured is equal to the insurance premium paid by the insurer when the insured event is caused, therefore it is even more important. In the case of insurance of the items, the sum insured is not equal to the compensation from the insurance, but is within its limits. What the insured amount will be depends on the value of the insured item. In liability insurance, the sum insured often has an unlimited amount of coverage, but this is not the rule and usually applies to vehicle insurance. . The insured, respectively the insurance contractor pays a certain amount (insurance premium) based on the principles of reciprocity and solidarity, while the insurer is obliged, when the insured event arises (risk) that it will pay the insured or any person the third compensation, respectively the contracted amount (insurance premium)”**150**.

g) The insured event is an event, the cause of which represents the realization of the risk that is included in the insurance. With the occurrence of

these events provided by law, the obligation of the insurer to pay the sum insured is created. This case should occur while the insurance exists, or the case where it is said that the insurer is obliged to pay the insurance premium only if the event that represents the insured event is caused, ie death should be caused if it is insured life, the item that is insured must disappear. So the secured case is an uncertain future event and independent of the will of the contractors.

The insured case is defined in the general terms of the insurance as any event independent and surprising from the will of the insurer, which operates mainly from the outside.

h) Risk is a future and harmful event. Risk is an event on which the insurance is related (insured case) and should be an uncertain future event, independent of the will of the contractors. So it follows that risk is one of the essential elements without which insurance can not exist. Risk means the occurrence of an economically harmful event. This is the basic definition and at the same time the broader definition of risk. Danger is the event itself, e.g. fire, accident, hail, etc., which brings the implementation of the insurer's obligation to make the payment, ie compensation for the damage created, covered by the insurance conditions. From all this we can conclude that risk means the subject of insurance**151**.

**150** S. Alishani, A. (2002). Law of Obligations General part, Prishtina, pp.190-198.

**151** Dauti, N. (2004). Law of Obligations, General Part, Prishtina, p. 98.

Civil liability insurance is one of the newest branches of insurance. The industrial revolution in the nineteenth century is one of the main drivers for the emergence and creation of liability insurance, when even in the law of civil liability came great changes. Although the first form of liability insurance has been recorded in maritime law since 1681, the first form of civil liability insurance for vehicles is found only in 1825 in the practice of the French insurance companies "L'Automedon" and "La Siene"**152**.

Liability insurance is the law or agreement that provides for a series of legal relations between three entities: the insurer, which through the collected principles assumes the consequences of damage to the insured property, of the insured who is relieved of a consequence of civil liability for

due to such event which includes the damage and the third person to whom the compensation is made from the insurance compensation in case the same from this event suffers the damage. Also according to the author in his work emphasizes that "The modern understanding that liability for damage is not necessarily related to guilt, is accepted when the mass use of hazardous materials begins and the implementation of high-risk activities.

"Insurance provides protection and security against the risk of causing damage for which civil liability is given and also provides protection for injured persons and what is most important is that the damage will be compensated, not who is to blame for the damage caused." Such a situation consists in the fact that the insurer assumes that the third party or the injured party instead of the insured to pay the damage up to the sum insured, resulting from a negative event for which the insured had civil liability. Compulsory liability insurance is the way for the injured party to be compensated for the damage at the expense of all those who, through their activity, create a risk of causing damage. The injured party has the right to seek compensation directly from the insurer in connection with the damage.

One of the largest types of liability insurance and which is most often encountered in practice is compulsory liability insurance for damages caused by the use of motor vehicles and compulsory motor third party liability insurance. The introduction of civil liability insurance for drivers should be said to be only a logical consequence of the emergence and development of vehicles, with industrial and technical / technological progress that necessarily accompanies the increased risk of damage to things or people from these complex equipment which are used in everyday life<sup>153</sup>.

**152** Shulejikit, P. (1967). "Civil Liability Insurance", Pristina, page 17.

**153** Shulejikit, P. (1967). "Civil Liability Insurance", Pristina, page 35.

The end of the last century witnessed a tremendous progress of the productive forces, science and technology and the blame for the damage caused by the operation of these various machines was difficult but often also impossible to determine. More and more often damages are caused that occurred without any fault and the need arose to

find the person responsible for compensating that damage. Thus, there is a need to install objective liability for causing damage, which means fault-free liability. According to this new concept all those who created the risk must and if this risk falls at the expense of others, bear the consequences despite the existence of error. Thus, the subjective view has been replaced by the objective one and that the concept of error has been replaced by the concept of risk.

After the appearance of the first cars with internal combustion engines, in 1885 and 1886, where it is worth mentioning that the designers of this car were G. Daimler and K. Benz, begins a rapid development of vehicles and mass use of motor vehicles so today it can be said that the use of vehicles has become synonymous with modern times and without vehicles there is no developed trade nor transport and tourism in one country<sup>154</sup>. However, although humanity has benefited greatly from the use of motor vehicles it has also suffered great damage from the use of these motor vehicles and has created a number of new dangers, namely the number of damages and casualties in traffic accidents is always growing up. Liability is often difficult and sometimes impossible to determine, for example: to damages caused accidentally. It was therefore necessary to find a solution to the question of how to economically protect responsible persons and to guarantee the injured persons an effective security and protection. To a greater or lesser extent, everyone is exposed to danger, both those who drive and those outside the vehicle. "Risks of damage threaten not only the participants of traffic: drivers, passengers, pedestrians but also many other persons who from the use of motor vehicles can cause damage to property or damage due to injury or death of another person."

### Insurance Law

Since it can happen that the injured person does not receive compensation even though the person responsible for the damage is known, then as a way to receive compensation for the damage caused is regulated by insurance. The rules of insurance insure the subject who is in danger of being harmed, as well as the subject whose activity may cause harm to another. With these rules one insures one's property or life and bodily integrity, while another is insured against liability for damage. The

injured party who is insured has the right to claim damages even in the case when the injured party is insolvent - ie when can not compensate the damage, while the injured party who is insured from liability, the damage from his activity to the insurance community for him compensate the damage.

**154** Encyclopedia of the Lexicographical Institute, Volume I, Zagreb, pages 297-298.

The law on liability insurance provides for a series of legal relations between three entities: the insurer, which through the collected (insurance) premiums assumes the consequences of damage to the insured property, of the insured who is relieved of a consequence of civil liability due to such event which includes the damage and the third person to whom the compensation is made from the insurance compensation in case the same from this event suffers the damage. The risk for the damage caused is transferred to the other entity to compensate it **155**.

From this it is seen that the insurance is useful and of special importance for both the injured party and the responsible person. The insurance provides compensation to the injured person even in the case when the responsible person is not able to pay the compensation, due to the lack of his property. The responsible person also benefits from the insurance, because he imposes on the insurance company the obligation for the eventual damage, which he could have caused with his dangerous activity. Damage insurance means the legal relationship between the insurer and the insured established under the contract or the law, where the insurer is obliged to pay the sum insured to the insured, if the insured event occurs, while the insured is obliged to the insurer to pay the insurance premium at the moment of establishing the relationship between them.

This area in Kosovo is regulated by the following laws:

□ Law no. 04 / L-018 - Law on Compulsory Motor Third Party Liability Insurance<sup>156</sup> published in the Official Gazette of the Republic of Kosovo no.4 in July 2011 (which has 44 articles),

□ Law no.02 / L-70 - Law on Road Traffic Safety, and

□ Law no. 04 / L-077 - Law on Obligations;

The Law on Compulsory Motor Third Party Liability Regulation regulates the field of motor third party liability insurance for damages caused

to third parties and which is defined by this law as compulsory insurance. The subject of insurance is the owner of the motor vehicle, who before using it must contract insurance to cover liability for damages caused to third parties in case of death, bodily injury, damage to health or damage to property.

The motor third party liability insurance contract also covers damages to passengers, including damages to items found in the motor vehicle and used for personal use.

Whereas, for KFOR motor vehicles and with the prefixes: UN, EU, OSCE and CD, they must have proof of motor third party liability acceptable by the CBK, respectively the Bureau and that at least provides insurance coverage defined by this law.

**155** S. Alishani, A. (2002). Law of Obligations General part, Pristina, pp.190-198.

**156** Law no. 04 / L-018 - "Law on compulsory motor third party liability insurance;

According to the Law, as proof of compulsory insurance is issued the motor third party liability insurance policy, which can be contracted only by insurers licensed by the CBK and which is unique for the entire territory of the Republic of Kosovo. The insurance policy is in force starting exactly from the date and time of issuance of the policy and the signing of the contract between the insurer and the policyholder. In cases when the ownership of the motor vehicle changes during the insurance period, the rights and responsibilities deriving from the insurance contract are transferred to the new owner and are valid until the termination of the insurance contract<sup>157</sup>.

The owner of the motor vehicle is obliged to enter into an insurance contract according to paragraph 1. of article 3 of this law and the insurance conditions are an integral part of the insurance contract and must be delivered to the insured upon the conclusion of the contract. Thus, based on this Law, when the motor vehicle is provided with a registration document, the responsible authority issues this document, only after the introduction of the motor vehicle auto liability insurance policy, ie before engaging in traffic and until it is provided with a registration document. registration, must be provided with motor third party liability insurance. The driver of the motor vehicle is obliged to carry with him the insurance policy or other proof which proves the contract of motor third party liability

insurance, as well as to present it whenever requested by the official person. Also, in case of accident, the driver is obliged to provide personal data and data related to motor third party liability insurance to all persons involved in the accident, who may be entitled to compensation on the basis of this insurance.

By law, motor third party liability insurance covers<sup>158</sup>:

1. damages to persons and property caused to third parties by the use of a motor vehicle.
2. damage caused using a motor vehicle, also includes damage caused to third parties through objects which fall from the motor vehicle or anything else that is related to the motor vehicle.
3. damages caused by the use of the motor vehicle to third parties by the unauthorized driver of the motor vehicle.

This insurance does not cover damages to items that are transported, unless they are for the personal use of passengers. The right to compensation for material and non-material damage is made in accordance with the provisions of the "Law on Obligations" **159**.

**157** Also here

**158** Law no. 04 / L-018 - "Law on compulsory motor third party liability insurance.

**159** Law no. 04 / L-077 - Law on Obligations Relations

Auto liability insurance does not provide insurance coverage and is not entitled to compensation:

- a) the driver of the motor vehicle who is responsible for the accident;
- b) the owner, co-owner and any other user of the motor vehicle, with which the accident was caused, for damages to items.
- c) the passenger who voluntarily is in the motor vehicle with the use of which the damage was caused, when it is proven by the insurer that the passenger was aware that the vehicle was stolen or robbed;
- d) the passenger who is voluntarily in an uninsured vehicle with which the accident was caused, when it is proven that the passenger was aware of this circumstance.
- e) the injured person due to:
  1. the use of a motor vehicle in sports events on the road or parts of roads not allowed for use by other

drivers, in order to achieve maximum speeds or to train for racing;

2. the action of nuclear energy during the transport of radioactive materials;
3. military operations or maneuvers, revolts or terrorist acts, if it is proven that the damage is causally related to such events.
4. action of force majeure as well as other cases of exclusion by law of liability for damage caused by a motor vehicle.

By law, the liability of the insurer under the motor third party liability insurance contract is limited to the mandatory sum insured valid by law, on the day of the accident, except when a higher sum insured is contracted<sup>160</sup>. The obligatory minimum amount of insurance for contracting motor third party liability insurance, according to paragraph 1. of this article, is as follows:

1. for damages to persons, for insured case, regardless of the number of injured persons one million (1,000,000) Euro
2. for property damage, for insured case, regardless of the number of injured persons two hundred thousand (200,000) Euros.
3. for damages caused by the use of buses and motor vehicles intended for the transport of dangerous goods, double the minimum insurance amounts defined in sub-paragraphs 2.1 shall apply. and 2.2. of this paragraph.

In case there are several parties injured by an event and the total value of the damage exceeds the amount of insurance specified in paragraph 2. of this Article, the rights of the injured parties to the insurer are reduced proportionally. The minimum insurance amounts are approved by the Government of the Republic of Kosovo, upon the proposal of the CBK. This change of amounts is published in the official journal of Kosovo. Whereas, the CBK determines for insurers the frames of contracting insurance coverage on the minimum insurance amount.

**160** Law no. 04 / L-018 - "Law on compulsory motor third party liability insurance;

Regarding the extent of insurance territories, based on this law, the contract for compulsory motor third party liability insurance covers damages caused in the Republic of Kosovo. Motor third party liability insurance, in addition to damages caused in the Republic of Kosovo, also covers

damages in the territories of states members of the green card system, unless otherwise contracted.

According to Article 16 of this Law<sup>161</sup>, for a motor vehicle registered outside Kosovo and which entered the territory of the Republic of Kosovo must be provided with a green card valid for the territory of the Republic of Kosovo or other valid insurance document that guarantees coverage auto liability insurance, at least in the amounts specified in Article 13 of this law.

The Kosovo Insurance Bureau is authorized to recognize the validity of international insurance documents, according to paragraph 1. of this article, which notifies in advance the authorities responsible for border control. Also, the Bureau is competent for the organization and implementation of the motor third party liability insurance system.

Article 18 of this law regulates the compensation from the use of uninsured motor vehicle, and according to paragraph 1. of this article: "The injured person who has been damaged within the territory of the Republic of Kosovo by a motor vehicle, whose owner is not covered by motor third party liability insurance, has the right to seek compensation from the Bureau"<sup>162</sup>

In cases when the damage is caused by a motor vehicle according to paragraph 1. of this article, the Bureau guarantees for obligations within the limits set according to article 13 of this law. The Bureau may delegate the treatment and payment of such damages to one of its members or a specialized claims settlement structure licensed by the CBK, which is obliged to handle and pay the damages at the expense of the compensation fund. . Also, the Bureau has the right to recourse for these damages from the responsible person and that for the amount paid, expenses and interest.

In the event of an accident, participants involved in a road accident, in addition to the accident report drafted by the traffic police, must complete, sign and exchange the "European Accident Report" form. This completed and signed form serves as evidence for the accident when filing a claim for compensation as well as for reporting the case by the insured. The insurer is obliged to submit the form of the "European Accident Report" to the insured in the case of contracting motor third party liability insurance, together with the insurance policy.

161 Article 16 of Law no. 04 / L-018 - "Law on compulsory motor third party liability insurance.

162 Article 18 par.1 of Law no. 04 / L-018 - Law on compulsory motor third party liability insurance.

Also, the driver of the motor vehicle is obliged to keep with him the form from paragraph 1. of this article and to exchange it with the other participant in the accident. Authorized bodies for traffic supervision, judicial bodies and other bodies or institutions, which implement procedures after a traffic accident or have at their disposal data on the accident and the injured, are obliged to act according to the requirements of insurance companies and Bureau, regarding the submission of data and relevant documentation for the traffic accident and the injured party, necessary for the handling of claims for compensation. The Law also regulates the right to file a claim for compensation (Article 25), the procedure for claims for compensation (Article 26) and the treatment of claims for compensation (Article 27).

### **163**

The issue of compensation for damage caused by vehicles is a matter of special importance, since when determining the amount of compensation for damage there are shortcomings by insurers, therefore, the injured parties go to court and this affects the increase of the number of court cases for damages before the courts in Kosovo and Albania, which leads to an overload of cases and is affecting their procrastination causing major delays. Therefore, setting preclusive deadlines and amounts for compensation of damage for citizens would enable them to more quickly and fully realize the right to compensation.

163 Law, *ibid.* - the right to file a claim for compensation (Article 25), procedure of claims for compensation (Article 26) and treatment of claims for compensation (Article 27);

164 Law No.04 / L-018 "On Compulsory Motor Third Party Liability Insurance"

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