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**COLLEGE OF LAW AND GOVERNANCE STUDIES**  
**SCHOOL OF LAW GRADUATES PROGRAM**

Master of Laws (LL.M) in Business Law

**CAUSATION UNDER ETHIOPIAN MOTOR VEHICLE INSURANCE, THE  
LAW AND PRACTICE**

A Thesis Submitted in Partial Fulfillment of the Requirements for  
the Award of Master of Laws (LL.M) in Business Law at School  
of Law, College of Law and Governance Studies, Addis Ababa  
University

By: Mehari Gebremedhin

Addis Ababa, Ethiopia

May 2021

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By: Mehari Gebremedhin Hishe

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May 2021

## **Declaration**

I, the undersigned, announce that the thesis is my original dissertation, that it has not been submitted for a degree at any other university, and that all sources of materials used in the thesis have been properly cited.

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## Acronyms

**Art.**-Article

**ASC**- Amhara Regional Supreme Court

**Com. C.** – Commercial Code

**Civ. C.** - Civil Code

**Civ. Pro. C**- Civil Procedure Code

**Crim. C.** -Criminal Code

**E.I.C**- Ethiopian Insurance Corporation

**FFIC**-Federal First Instance Court

**FHC**-Federal High Court

**FSC**- Federal Supreme Court

**L.D**- Lideta Division

**NICE**-National Insurance Company of Ethiopia

**S.C**-Share Company

**TSC**-Tigray Regional Supreme Court

## Table of Contents

Declaration.....	
Acknowledgment.....	
Acronyms.....	
Abstract.....	1
CHAPTER ONE.....	1
1. Introduction.....	1
1.1 Background of the study.....	1
1.2 Statements of the problem.....	2
1.2.1 Research questions.....	3
1.3 Objectives of the study.....	3
1.4 Significance of the study.....	4
1.5 Limitations of the study.....	4
1.6 Scope of the study.....	4
1.7 Literature Review.....	4
1.8 Methodology of the Research.....	7
CHAPTER TWO.....	8
2. General Over View Principles of Causation in Insurance Law.....	8
2.1 Understanding Risk.....	8
2.1.1 Meaning of Risk.....	8
2.1.2 Scope of Risk.....	9
2.2 General Principles of Insurance.....	9
2.2.1 Principle of Insurable Interest.....	9
2.2.2 The Principle of Utmost Good faith.....	10
2.2.3 The principle of Indemnity.....	10
2.2.4 Principle of Subrogation.....	10
2.2.5 Principle of Proximate Cause.....	11

2.2.5.1 Definition of the Doctrine of Proximate Cause.....	12
2.2.5.2 Determining causes of loss.....	13
2.2.5.3 Types of Loss.....	14
2.2.5.4 Approaches To Concurrent Causation In Insurance.....	17
2.2.6 General rules for determining causation in Insurance Disputes.....	20
 CHAPTER THREE.....	 23
3.The Significance and Applicability of Causation to Ethiopian Insurance Regime .....	23
3.1 Causation in Ethiopian Insurance Regime in General .....	23
3.2 Determination of Insurance Causation by Ethiopian Courts .....	26
3.3 Assessment of Causation in Motor Vehicle Insurance Cases and Comments.....	27
3.4 Causation under Ethiopian Criminal law .....	36
3.5 Causation Requirements in Tort and Insurance law in Ethiopia.....	39
3.6 Incorporation of the Doctrine of Proximate Cause in Ethiopian insurance law .....	42
3.7 Burden of proof in relation to Causation in insurance in Ethiopia .....	43
 CHAPTER FOUR.....	 46
4. CONCLUSIONS AND RECOMMENDATIONS .....	46
4.1 Conclusions.....	46
4.2 Recommendations.....	48
 Bibliography.....	 51
 Annexes.....	 57

## Abstract

*Causation is a fundamental component of insurance law. Causation in insurance law is an area where courts continuously experience difficulties. Causation is a crucial issue in ascertaining whether certain loss or damage is caused by a risk covered by an insurance policy. As an important principle of insurance law, the principle of causation is of great significance for determining whether an insurer should assume insurance liability. Many times, it is impossible to come to consensus on the liability or non-liability of the insurers and the insured; this is often the case where the causation of the peril is in issue. Insured's desire indemnity against the risk of certain types of losses; insurers issue policies which provide such indemnity in the event of certain perils, often with other perils being specifically excluded. Any coverage provided by the policy is contingent upon there being a causal connection between the loss, and a covered peril. In insurance law, it is recognized that loss or damage may be the product of multiple causes. A particular action or state of affairs may be serially or sequentially give rise to other factors, which may ultimately produce a loss; also, independent factors, neither of which is sufficient in itself to cause a loss, may do so when combined. Now, in insurance law, for the insurance company to be made liable first of all the cause of loss should be looked upon.*

*The area of different insurances seems old but the concept of proximate cause in these areas, especially in Ethiopia, is a new and upcoming concept. In this research paper, critically examines causation under Ethiopian insurance law and the application by Ethiopian courts with an emphasis on motor vehicle insurance to have a precise understanding about how Ethiopian courts treat causation. The most frequent type of issues which courts face when they deals with insurance cases is whether a risk cover by the policy caused the loss, because before an insured can recover from his insurer for the loss he has sustained, it is necessary to determine the cause of the loss.*

*Finally, this research paper examines the impact of our legal system's lack of a rule of causation. The researcher proposes a legislative action to be taken to bring forward a solution for settling causation disputes in insurance cases and lacunae of law.*

# CHAPTER ONE

## 1. Introduction

### 1.1 Background of the study

In modern societies insurance is a backbone of economy. Risks are inevitable in business activities. Business cannot afford to take all risks without a mechanism to share the risk systematically with other business that face similar risk.<sup>1</sup> The primary of function of insurance is to equitably distribute the financial losses of the insured. That means providing a financial support to business to cover their losses from uncontrolled and unavoidable risks using the fund built up by the contribution of all the members.<sup>2</sup> This benefits both the insured and the insurer. The insured feels secure that he will be protected from the insurance fund and this gives him freedom from anxiety. The insurer benefits from investing the fund.<sup>3</sup> When losses do occur, the policyholder expects to be compensated by insurer when the type of loss incurred falls within the scope of the provisions of his or her policy.<sup>4</sup> The most important part of insurance is determination of the risk.<sup>5</sup>

Most of the problems seen in insurance transactions revolve around indemnity and causation. In insurance causation is a fundamental principle.<sup>6</sup> Causation in insurance law is an area where courts continuously experience difficulties in determination.

In insurance law a causal connection between the peril insured and the sustained loss must be shown in order to establish the existence of liability of the insurer. If the insured seeks to claim from his insurer for the loss he has sustained he has to show that the loss was caused by the particular type of peril covered by the policy. The aim of this thesis is to show the practice in the law of insurance particularly in courts in relation to the rule of causation.

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<sup>1</sup> Ethiopia Insurance Corporation, *Effective Risk Management*, MEDIN ,Jan. 2016,at 39

<sup>2</sup> AVTAR SINGH (Dr.), *PRINCIPLES OF INSURANCE LAW (LIFE-FIRE-MARINE-MOTOR & ACCIDENT)* (7th ed.2004, New Delhi, India), at 4

<sup>3</sup> Id

<sup>4</sup> Mark Y.Umeda, *Concurrent Proximate Causes in Insurance Dispute: After Garvey, What Will Policyholders Expect?* 29 SANTA CLARA L. REV.,423 (1989), [http:// digitalcommons.law.scu.edu/law\\_review/vol29/iss2/6](http://digitalcommons.law.scu.edu/law_review/vol29/iss2/6)

<sup>5</sup> ETHIOPIAN INSURANCE CORPORATION, *Supra note 1*

<sup>6</sup> Helen Johansson, *Causation In Hull Insurance A Comparison Of English And Nordic Marine Insurance*(2013)(LLM dissertation, University of Lund), at 5 <http://lup.lu.se>

## 1.2 Statements of the problem

Causation is an essential element in any action because it proves that there is some reasonable connection between the defendant's actions and plaintiff's damage. As a result, a major issue in insurance contract analysis is the question of causation.<sup>7</sup>

The following are some of the problems stated that triggered the researcher to conduct a research concerning the problems related with the rule of causation under Ethiopian insurance law. The Ethiopian commercial code does not include provisions on rule of causation in insurance law. The primary issue regarding causation in insurance is when several perils causing the loss when not all the perils are insured under the same policy, or when a peril is uncovered or excluded. In this situation the question arises as to where the loss should fall or which underwriter will be liable to compensate for the loss. As a result, in court cases, it has created complicated problems in Ethiopian courts in deciding the issue of causation, and judges do not raise and address the issue of causation properly. This issue prompted me to undertake this study.

Difficulties in settling cases arise where concurrent proximate causes contribute to the insured's damage, but where one of the causes of the damage is specifically "excluded" under the insured's policy and another is "covered" under the insured's policy. Insurers often refuse to compensate for loss because one cause is specifically excluded. Conversely, the insured insists on coverage because one of the causes of the loss was covered under the policy.<sup>8</sup>

There are three essential questions in any legal inquiry as to whether an insured's loss is covered by their policy.<sup>9</sup> First," how did the loss happen? "Second," if multiple forms of insurance are in effect, which if any cover the loss?<sup>10</sup> "Third "if there is more than one cause of the loss, is there any coverage?"<sup>11</sup> Causation is a legal issue often implicated in answering the third question. In the final category of coverage issues, when multiple perils combine to cause a loss and not all

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<sup>7</sup> Y.Umeda „*Supra note 4* at 433

<sup>8</sup> Id.

<sup>9</sup> Randall L. Smith & Fred A. Simpson, *Causation in Insurance Law*, 48 S. TEX. L. REV.305,306(2006)

<sup>10</sup> Id.

<sup>11</sup> Id.

perils are covered, courts in most jurisdictions decide whether the covered peril is remote cause of loss or a direct, efficient, dominant or responsible cause of loss.<sup>12</sup>

In the Ethiopian context, particularly in relation to insurance law, there is no provision which governs causation enacted by state. The current Ethiopian insurance law with respect to successive or concurrent causation in insurance offers no predictable answers. The 1960 Ethiopian Civil Code doesn't contain provisions on causation. But the Commercial Code of Ethiopia attempted to have some provisions like Art.663, 664, 665 on the subject.

### **1.2.1 Research questions**

- How do Ethiopian Courts treat the issue of Causation in insurance cases?
- How do Courts apply the principle of causation to assist judges in making consistent decisions?
- Do the Ethiopian courts raise and determine properly the issue of insurance causation?
- Is it possible to use the provisions on causation which are in the Criminal Code to regulate causation matters on insurance though analogy?

### **1.3 Objectives of the study**

**General objective:** - to critically analyze, understand and demonstrate the implication of causation by Ethiopian courts.

**Specific objectives:** -

- To clarify causation based on court decisions
- Examining the relation between the provisions of the Criminal Code and to Commercial Code in relation to causation
- Understand the implementation of the principles of causation in insurance by courts in Ethiopia.
- To gain knowledge about the rule of causation and practical use of this principle in our country courts and insurance business.
- To put forward recommendations for policy decisions making.

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<sup>12</sup>Banks McDowell, Causation in Contracts and Insurance, 20 CONN.L.REV., 570 (1987-1988), <http://heinonline.org/HOL/Licence>

#### **1.4 Significance of the study**

The research will be contribute to theoretical understanding of the concept and to shade light on the legal and practical problems on the rule of causation in insurance in Ethiopia. With regard to knowledge, significance of the law of proximate cause is immense in insurance business. Many real life cases with multiple or linked causes of losses are resolved in light of the doctrine. The research aims to streamline insurance causation analysis in order to promote more consistent and holistic results in insurance coverage disputes. The research will contribute a body of knowledge to literature on the rule of causation in insurance areas in Ethiopia. To this end the final thesis may also be used as a reference material for interested researchers, who may focus on similar or related topics for further research and will serve as an awareness of creating paper discussion paper an extensive among all interested stakeholders in the area.

#### **1.5 Limitations of the study**

In the process of conducting a research the following limitations are expected to happen. Firstly, problems relating to the prevailing circumstances relating to Covid-19, difficulty in data collection process concerning its accessibility, especially the data, which would be collected from the courts and insurance companies. In addition, since the area of the research is new, unavailability of data on the subject.

#### **1.6 Scope of the study**

The study is concerned with assessing rule of causation under Ethiopian law of insurance particularly is discuss the legal and practical problems that have cooped up due to of the absence of causation provision in the Commercial Code focus on Causation in motor vehicle insurance. In doing that, the study deals with the problems exist in courts when deals with insurance cases on the issue of causation. In doing the research, rule of causation in insurance law of some jurisdiction have been dealt with for the purpose of comparisons.

#### **1.7 Literature Review**

Since every event is the effect of some cause, causation is indeed a significant part in the law of insurance.<sup>13</sup> Causation issues frequently dominate insurance coverage disputes.<sup>14</sup> When solving

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<sup>13</sup> E.R.HARDY IVAMY, GENERAL PRINCIPLES OF INSURANCE LAW 380(5<sup>th</sup> ed.1986)

<sup>14</sup> Erik S. Knutsen, *Causation In Canadian Insurance Law*, 50:3 ALBERTA LAW REVIEW 632(2013), <https://www.researchgate.net/publication/254924862>

challenging insurance causation questions, it is important to understand the primary purpose behind any causal language at issue in an insurance policy.<sup>15</sup> In insurance law, “doctrine of causation” refers to the legal principles that underscore how the cause of peril is determined. How does one analyze the logic of cause and effect under an insurance contract? When an occurrence of a peril befalls the insured, the insurer shall pay the indemnity, as agreed upon in the contract. However, how does one determine precisely the occurrence of a peril? For instance, if a firm owner’s insurance policy insures against the peril of fire, but excludes peril due to lightning strike; and then, a lightning strike causes a fire which subsequently burns down the firm, then how does one determine the cause of loss? Does it constitute loss due to fire, or due to lightning? The answer to such a question concerns the doctrine of causation in insurance law.<sup>16</sup>

Indemnification by the insurer is given not against the occurrence of the covered peril, but against the loss of or damage to the subject matter insured causally linked to perils covered in the manner required by the contractual terms of the policy.<sup>17</sup>

Causation is used to delineate payout triggers for insurer by attempting to define finite instances of insured and uninsured losses. Causal language can be located in a coverage clause or an exclusion clause. Because it is often a much nuanced exercise to describe in an insurance policy precisely how insurance causation affects insurance coverage, courts have had much difficulty determining how insurance policies use causation to control insurance payouts. A coherent and predictable process for sorting through this causal inquiry would help to unify the jurisprudence and streamline the costly litigation around insurance causation issues.<sup>18</sup> It is fundamental that the insurer is liable only in respect of losses that are caused by a risk insured against under a policy.<sup>19</sup> It is a fundamental principle of insurance law that, in the absence of a clearly, expressed intention to the contrary, the insurer is only liable for a loss proximately caused by the peril

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<sup>15</sup> Id.

<sup>16</sup> Michael Gavin Johnston, *A General Overview of Causation in American Insurance Law*, 7 GLOBAL JOURNAL OF POLITICS AND LAW RESEARCH, 31 ( Apr.2019), [www.eajournals.org](http://www.eajournals.org)

<sup>17</sup> HOWARD N. BENNETT, CAUSATION IN THE LAW OF MARINE INSURANCE, IN THE MODERN LAW OF MARINE INSURANCE 173 (D. Rhidian Thomas ed. 1996)

<sup>18</sup> S. Knutsen, *supra note 14*

<sup>19</sup> M.B.GOPALAN & M.B.RAGHAVAN, FIRE INSURANCE (LAW & PRACTICE) 208 (1<sup>st</sup> ed.2002)

insured against.<sup>20</sup> The concept of proximate or legal cause therefore involves a limitation of liability for public policy reasons.<sup>21</sup>

A loss may result by combination of different causes, but for insurance the insured cause must be selected.<sup>22</sup> Thus, the question of causation becomes relevant where there are two or more causes of loss, one which is covered by a policy and one of which expressly exempted.<sup>23</sup>

The insurer is liable only for those losses which have been proximate caused by the peril insured against. This is due to the fact general rule of insurance law is that only the proximate cause of the loss, and not the remote cause, is to be regarded in determine whether the recovery may be had under the policy of insurance.<sup>24</sup>

In order to provide alternative solution to these problem different theories have been applied from *sine quo non*, which may attribute a single act to the whole world, up to synchronized theories of the time. Through these process judges on their own have been rendering different decisions on issue of causation by applying different theories and common sense.<sup>25</sup>

In Ethiopia insurance law there is no clear causation principle used and no provision which govern causation matters. A research paper for LLB degree by Abdissa Midekisa<sup>26</sup> done on the issue of causation but this thesis not deals with Ethiopian insurance court cases and practice. In that time the number of insurance company was low and the insurance transaction in the economy is minimal. In this research, the writer broadly analysis the principles causation and court's decision on issue of causation, interview with insurance bench judges and insurance employee with comparative analysis of foreign cases. In addition to this the writer raises the

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<sup>20</sup>Peter Hevenga, *Insurance Contracts, Exception Clauses and Causation* , 3JOURNAL OF SOUTH AFRICAN LAW , 596(2004)

<sup>21</sup> Peter N. Swisher, *Insurance Causation Issues: The Legacy of Bird v. St. Paul Fire & Marine Ins. Co.*, 2NEVADA LAW JOURNAL, 355 (2002) <http://scholarship.richmond.edu/law-faculty-publications>

<sup>22</sup> JONE BIRDS ,ESSENTIAL BUSINESS LAW INSURANCE51-52(1976)

<sup>23</sup> MC-KUCHAL, MERCANTILE LAW,496(2<sup>nd</sup>ed .1981)

<sup>24</sup> RAOUL COLINVAUX, THE LAW OF INSURANCE 60(5<sup>th</sup> ed.1970)

<sup>25</sup> MALCOLM CLARKE, CAUSATION IN INSURANCE LAW,285(1983)

<sup>26</sup> ABDISA MIDEKISA, *Causation in Ethiopian Insurance Law a Practice Oriented Analysis: (1991)* (unpublished LLB. Thesis, Addis Ababa University, Ethiopia)

necessity of having provisions on rule of causation in insurance law and comment to regarding the application of provision of the criminal code on rule of causation in insurance issues.

### **1.8 Methodology of the Research**

This research is predominantly a doctrinal inquiry that is aimed to analyze relevant legal provisions and court decision on causation in respect of property insurance. A non-doctrinal method is also employed to expound some practical issues related to the research. To achieve such objectives, a qualitative approach of data collection has been employed as it is more appropriate to explore the experiences and attitudes of participants. The research has made use of interplay of both primary and secondary sources of data.

As primary source of data court cases, laws and interviews are used. In order to analyze the law governing the subject matter at hand, explanation of relevant provisions of laws and legal analysis has been conducted. As explanation of laws alone cannot show the practical applicability and significance of rule of causation in insurance, 3 insurance experts and 6 judges is held to solicit their attitudes and experiences. Participants of the interviews are selected on the basis of purposive (judgmental) sampling method taking into account their expertise, position, knowledge and experience in the area. Cases are not arranged based on the fact in issue in courts as a result the writer data collection is based accidental (convenience) sampling. In conducting the interview, a semi structured type of interviewing is undertaken because such approach allows the researcher to be consistent and flexible in asking questions with a view to probe important data.

The secondary sources of data that are reviewed in this research are literatures and form insurance policies. Literatures such as books, journal articles and other research results which lay the conceptual framework of liability insurance and the general applicability of causation are utilized. Finally, data are analyzed based on their nature. Thus, the analysis of laws and court decision are carried out taking into account the basic principles of laws. The data collected will be analyzed using comparative and thematic analysis techniques.

## CHAPTER TWO

### 2. General Over View Principles of Causation in Insurance Law

#### 2.1 Understanding Risk

We live in a risky world. Forces that threaten our financial wellbeing constantly surround us and are largely, outside our control. Some people experience the premature and tragic death of a family member, loss or destruction of their property from both manmade and natural disasters. There are other groups of people that are exposed to the traumatic effects of liability lawsuits despite the fact that there has been no accident.<sup>27</sup>

##### 2.1.1 Meaning of Risk

Insurance is a contract under which an insurer undertakes to protect an insured from a specified loss if it occurs.<sup>28</sup> An insured is afraid of loss which is called the risk of loss and an insurer undertakes to indemnify him from the anticipated loss if it occurs for a consideration called “premium”. Except in relation to compulsory insurance schemes, the law does not always compel a man to insure but if he desires he may be covered in respect of all or certain risks which he wants to be covered by insurer. The insurer fixes the premium according to the nature, quantity, quality and probability of the risk desired to be covered by the policy.<sup>29</sup> The life blood of an insurance contract is the risk it deals with determination.<sup>30</sup> The determination of the dimensions of the risk covered by an insurance contract is important to both parties. It is important for both the insured and the insurer because it enables them to determine the exact extent of the risk covered by the contract. Risk remains a risk until the happening of the contingency.<sup>31</sup> Once the contingency happens, it becomes a definite loss and it is for this loss that insurer has undertaken to indemnify the insured.<sup>32</sup>

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<sup>27</sup> THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, INSURANCE LAW AND PRACTICE (Study material) (July, 2014) at 1, [www.icsi.edu](http://www.icsi.edu)

<sup>28</sup> K S N MURTHY & KV S SARMA, MODERN LAW OF INSURANCE (Lexis Nexis, 4<sup>th</sup> ed. 2002, New Delhi, India) at 87

<sup>29</sup> Id.

<sup>30</sup> MURTHY & SARMA, *supra* note 28

<sup>31</sup> Id.

<sup>32</sup> Id.

### **2.1.2 Scope of Risk**

The risk covered by a policy, as well as the extent of insurance provided by the policy, must be precisely known to both the insurer and the insured.<sup>33</sup> This will define the extent of the risk that the insurer must assume in order to charge the required premium, as well as show the insured whether he has adequately covered the risks that should be covered.<sup>34</sup> If he hasn't, he will need to purchase extra policies to make up the difference. It is open to the parties to agree to extend or limit the insurer's liability in respect to the operation of the risk.<sup>35</sup> The insurer indemnifies the insured only for losses caused by the peril insured against as the direct and proximate cause.<sup>36</sup>

## **2.2 General Principles of Insurance**

Insurance contracts are subject to the commonly acknowledged principles of general insurance. A number of legal principles apply to insurance contracts. These legal principles basically arose from Cases laws, but at times are confirmed or even modified by statute or policy conditions.<sup>37</sup> Thus, the principle of insurable interest, utmost good faith, indemnity, subrogation and proximate cause are applicable to all insurance contracts.

### **2.2.1 Principle of Insurable Interest**

In simple words, the insured must have an interest in the preservation of the thing or life insured and has insurable interest in the financial loss that arises when he has to pay damages under the law.<sup>38</sup>

For a contract of insurance to be valid, it is not enough that the parties to it are competent to contract, that it is made with their free consent and that the consideration is lawful. It is necessary in addition, that the insured has insurable interest in the subject-matter of insurance.<sup>39</sup>

Insurable interest means an interest which can be protected by a contract of insurance. This interest is considered as a form of property in the contemplation of law.<sup>40</sup>

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<sup>33</sup> SINGH, *supra note 2* at 91

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> MURTHY & SARMA, *supra note 28*

<sup>37</sup> SINGAPORE COLLEGE OF INSURANCE, BASIC INSURANCE CONCEPTS AND PRINCIPLES, (5th ed. Oct., 2016) at 60

<sup>38</sup> THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, PRINCIPLES AND PRACTICE OF GENERAL INSURANCE (4th ed. Oct., 2008) at 231, <http://www.insuranceicai.org>

<sup>39</sup> SINGH, *supra note 2* at 74

### **2.2.2 The Principle of Utmost Good faith**

Insurer knows nothing and insured knows everything is the rationale behind “good faith” in all contracts of insurance.<sup>41</sup> A contract of insurance is a contract of *uberrimae fidei*, a contract based on utmost good faith.<sup>42</sup>

It is fundamental principle of insurance law that utmost good faith must be observed by the contracting parties. It is the duty of the insured not only full and adequate disclosure; it is his duty to disclose correct facts relating to contract.<sup>43</sup> This principle applies to all types of insurance contracts.<sup>44</sup>

### **2.2.3 The principle of Indemnity**

The insurer’s liability is limited to the actual proven loss.<sup>45</sup> The policy will indemnify the insured to the extent of damages and costs awarded, and legal costs incurred, subject to limits of liability.<sup>46</sup>

Indemnity means security, protection and compensation given against damage, loss or injury. According to the principle of indemnity, an insurance contract is signed only for getting protection against unpredicted financial losses arising due to future uncertainties. Indemnity doesn’t apply to all contracts of insurance. The principle of indemnity is a well-known legal principle that underlines all types of liability insurance.<sup>47</sup>

### **2.2.4 Principle of Subrogation**

In insurance law subrogation is the name given to the right of the insurer who has paid a loss to be put in the place of the insured so that he can take advantage of any means available to the insured to extinguish or diminish the loss for which the insurer has indemnified the insured.<sup>48</sup>

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<sup>40</sup> MURTHY & SARMA, *supra note* 28 at 59

<sup>41</sup> GOPALAN & RAGHAVAN, *supra note* 19 at 55

<sup>42</sup> RAJIV JAIN, INSURANCE LAW AND PRACTICE, (1<sup>st</sup> ed.2001) at 2.9

<sup>43</sup> THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, *supra note* 38

<sup>44</sup> KRISHNAN, LIABILITY INSURANCE(Insurance Institute of India,2<sup>nd</sup> ed. 2005) at 10

<sup>45</sup> GOPALAN & RAGHAVAN, *supra note* 21 at 247

<sup>46</sup> THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, *supra note* 38

<sup>47</sup> KRISHNAN, *supra note* 44 at 9.

<sup>48</sup> SINGH, *supra note* 2 at 82

Subrogation is described as “stepping into the shoes of another” and is applicable only to contracts of indemnity.<sup>49</sup>

To enable the insurer to become entitled to the rights of subrogation the three important requirements are; (1) the policy must be an indemnity policy (2) the insurer must have fully indemnified the insured and (3) no exclusion in the policy preventing the insurer from claiming the right of subrogation.<sup>50</sup>

### **2.2.5 Principle of Proximate Cause**

The doctrine of proximate cause is applied to ascertain whether or not the insurer is liable.<sup>51</sup> The doctrine which we know in law as Proximate Cause is based on profound principles of logic, and its proper application by the courts becomes of constantly increasing importance in the complications of modern civilization. The rule is reflected in the well-known maxim, “*In jure non remota causa, sed proxima spectatur*,” which literally means that in law, not the remote but the proximate cause is considered, and its main concept is summarized in Bacon's commentary.<sup>52</sup>

The principle of proximity is of great significance for determining whether an insurer should assume insurance liability.<sup>53</sup> As a key principle in insurance, the principle of proximate cause plays an important role in judging whether the insurer should bear the insurance liability.<sup>54</sup>

Policies of insurance usually afford protection against some perils and expressly exclude certain perils from the cover, and by implication other perils are not covered. The insurer's liability under the policy arises only if the cause of the loss is a peril insured against and not an expressly excluded or other peril.<sup>55</sup>

There is no difficulty if a single peril acts and causes the loss. There is certain complexity case in which it is not easy to ascertain the nature of event that caused the loss when multiple perils

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<sup>49</sup> THE INSTITUTE OF COMPANY SECRETARIES OF INDIA, *supra note 27* at 76

<sup>50</sup> GOPALAN & RAGHAVAN, *supra note 21* at 275

<sup>51</sup> *Id.* at 207

<sup>52</sup> William Wirt Howe, *On Proximate Cause*, 1 AMERICAN AND ENGLISH RAILROAD CASES N.S. (Frank C. Smith, ed.) xix (1895-1913) at 19, <https://heinonline.org/HOL/License>

<sup>53</sup> Xiao Sa, *Analysis On The Difficulties And Legislative Suggestions Of The Proximate Causes Of Insurance Law*, THE ATLANTIC PRESS, 2018 at 789 <https://www.atlantis-press.com/proceeding/emle-18/55909912>

<sup>54</sup> *Id.* at 791

<sup>55</sup> SINGH, *supra note 2* at 98

cause loss to the insured. Often these perils do not operate in isolation, but in succession or simultaneously and it will be difficult to assess the relative effect of each peril or pick out one of these perils as the actual cause of the loss.<sup>56</sup>

Therefore, to assess liability of insurer it is important to ascertain whether the loss occurred was a result of risks covered in the policy. For a claim against an insurer to be valid, there must be a proximate cause between the loss incurred and the risk insured against.<sup>57</sup>

#### **2.2.5.1 Definition of the Doctrine of Proximate Cause**

The word 'proximate' means proximate in efficiency, rather than proximate in time. Proximate cause in fact means the same thing as 'dominant' or 'effective' or 'direct' cause.<sup>58</sup>

As the well-known maxim of Lord BACON” *Causa Proxima non remota spectator,*” simply means” In law the near cause is looked to, not the remote one.<sup>59</sup> Even though his lordship did not specifically mention the word "proximate," as we proceed to the meaning of proximate cause, we will find that the word "immediate" mentioned there was meant to describe "proximate."<sup>60</sup>

The doctrine of proximate cause, as embodied in the legal maxim “*Causa Proxima non remota spectator,*” is the practical solution devised by law for determining the cause of the loss. This means that the proximate cause, rather than the remote cause, shall be considered as the cause of the loss. ‘Where different causes are concurrent and one must be selected, the matter is determined as one of fact and the choice falls upon the one to which may be variously ascribed the qualities of reality, predominance, efficiency...’ said Lord SHAW in the case of *Leyland*.<sup>61</sup>

The classic definition of proximate cause is: ‘Proximate cause means the active, efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source’.<sup>62</sup>

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<sup>56</sup> Id

<sup>57</sup> GOPALAN & RAGHAVAN, *supra note* 21 at 208

<sup>58</sup> Id

<sup>59</sup> Wan Izatul Asma Wan Talaat, “ *Causa Proxima Non Remota Spetatur: The Doctrine of Causation in the Law of Marine Insurance.*” 37 JOURNAL OF MARITIME LAW AND COMMERCE 480 (July 2003).p.480, <https://heinonline.org/HOL/License>

<sup>60</sup> Id

<sup>61</sup> *Leyland Shipping Co. v. Norwich Fire Insurance Co.*, (1918)AC350:[1918-19]All ER Rep443 HL

<sup>62</sup> *Pawsey & Co. v. Scottish Union and National Insurance Co.* (1907)

According to later decision decisions of the House Lords and Privy Council, the doctrine of Proximate Cause is no longer directed to the cause proximate in time, but “... is to be taken as referring to the dominant or effective cause even though it be not nearest in time”.<sup>63</sup>

In *Leyland Shipping Co. v. Norwich Union Fire Ins.*,<sup>64</sup> Lord SHAW observed: “To treat Proxima Causa as the cause which is nearest in time is out of the question. The cause which is truly proximate is that which is proximate in efficiency.”<sup>65</sup>

Scholars on the subject of insurance have repeatedly voiced their common interest that the term Proximate Cause implies the active, efficient cause that sets in motion a train of events which bring about a result, without the intervention of any force started and working actively from a new and independent source, is called proximate cause. It is the immediate cause and not the remote cause.<sup>66</sup>

From the above definitions we can conclude that the Principle of Proximate Cause means when a loss is caused by more than one causes, the nearest or the closest cause should be taken into consideration to decide the liability of the insurer.

#### ***2.2.5.2 Determining causes of loss***

To determine whether or not there will be an insurance payout, one must work backward from the loss at hand, examine the policy for coverage of that type of occurrence, and then determine whether or not the loss being claimed was caused by an excluded cause.<sup>67</sup>

In order to determine if certain loss is to be covered by the insurer or not there are three things that needs to be seen. First root cause of the loss needs to be known. Second, it should be seen if it is excluded from the policy or not. Finally, the root cause should be examined in order to determine whether or not there was a proximate cause.<sup>68</sup>

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<sup>63</sup> SINGH, *supra note 2* at 99

<sup>64</sup> *Leyland Shipping Co. v. Norwich Fire Insurance Co.*, (1918)AC101:[1918-19]All ER Rep443 HL.

<sup>65</sup> SINGH, *supra note 2* at 99

<sup>66</sup> COLINVAUX, *supra note 24* at 66

<sup>67</sup> KNUTSEN, *Supra note 14* at 637

<sup>68</sup> Smith & Simpson, *supra note 9*

Insurance policies provide compensation for loss. Insurance policy usually lists two types of perils. Insured perils are those against which the insurer is willing to provide coverage.<sup>69</sup> Excepted peril is a policy provision that eliminates coverage for some type of risk.<sup>70</sup> Insurers utilize exclusions to carve away coverage for risks they are unwilling to insure.<sup>71</sup> Excepted perils are those especially named causes of loss which the policy definitely rejects for the cover. Exception is usually found in the text of the policy in the form of a dependent clause beginning with the word "excepting" and used to limit a specific grant of coverage.<sup>72</sup>

There is a third type of perils which are called uninsured perils. These are perils that are not stated in either inclusion clause or exclusion.

When a loss occurs and a claim is made, it is necessary for the insurer to determine whether caused by one of the insured perils. If it is, then the insurer pays the claim. There are rules which may be used to determine whether the causes of a loss are one which the policy covers.

### **2.2.5.3 Types of Loss**

Causation consists of the connection between a peril and damages that may be covered by an insurance policy.<sup>73</sup> Losses may be incurred due to a single cause or by a sequence of causes. There are numerous situations where the test of causation is required, such situations stem from the existence of multiple causes for the same event. When understanding how to approach the question of causation, it is wise to first determine whether the causes operate consecutively or concurrently.<sup>74</sup>

In order to determine whether the loss is payable under the insurance, causes can be classified into three categories such as single cause, consecutive and concurrent causes.

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<sup>69</sup> Joshua T. Carback, *Anti-Concurrent Causation Clauses In Insurance Contracts: The State Of The Law In 2017*, *Transactions: 19 THE TENNESSEE JOURNAL OF BUSINESS LAW* 22 ( 2019)

<sup>70</sup> Marianne Bonner, *The Purpose of Insurance Exclusions* (Feb.,2018),<https://www.thebalancesmb.com/marianne-bonner-462097>

<sup>71</sup> Id.

<sup>72</sup> William C. Brewer Jr., *Concurrent Causation in Insurance Contracts*, 59 MICH. L. REV. 1162 (1961),<https://repository.law.umich.edu/mlr/vol59/iss8/2>

<sup>73</sup> Smith & Simpson, *supra note* 10 at 313

<sup>74</sup> Md Istiaq Hasan, *Implication of proximate cause by Insurance companies of Bangladesh* (Jan., 2017),at 11 <https://www.slideshare.net/>

## **I. Single Cause of loss**

There is no difficulty if a single peril acts and causes the loss. If a single cause, which is an insured peril, is the proximate cause of the loss the insurer will pay the claim.<sup>75</sup>

## **II. Consecutive Causation**

Consecutive causation involves a series of dependent and related acts or events. Like a chain of reaction, one event leads to another which ends in a loss. There are further two categories under consecutive causation such as, unbroken chain causes and broken sequence.

### **A). Unbroken Sequence of Causes**

The chain of causation continues without a break, and this form of causation is known as an unbroken sequence. A chain of causation is created in this type of causation, where different causes are of different nature, and this distinction is to be considered when a party files a claim.<sup>76</sup>

When the insured peril is one link in an unbroken chain which started from a cause not specifically excluded and there is no excluded peril between the insured peril and the loss, as a result the insurer will be liable for the claim.<sup>77</sup>

Where the peril contemplated by the policy precedes the excepted cause under the policy and actually produces the loss within the meaning of the policy, notwithstanding the operation of the excepted cause, the peril insured against is to be regarded as the proximate cause of the loss.<sup>78</sup>

However, if there is a peril excepted in policy precedes the happening of an insured peril then the case is different. In this case, the causation between the excepted peril and the insured should be considered, and if the insured peril may be assumed to be a reasonable result of the excepted peril, the insurer is not required to pay the claim to the insured.<sup>79</sup>

### **B). Broken Sequence**

When the sequence of causes is interrupted by a new cause not covered by the policy, which is not the likely outcome of the peril insured against in the ordinary course of events. However, the

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<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> GOPALAN & RAGHAVAN, *supra note 21* at 212

<sup>79</sup> Hasan, *supra note 74*

cause of damage under the meaning of the policy is not the peril insured against, but the intervening cause.<sup>80</sup>

If a new and independent cause arises and breaks the chain of sequence, claim would be payable as the new cause is an insured peril. If the new cause is an uninsured peril, the claim will be limited to damage caused by the insured peril.<sup>81</sup>

### **III. Concurrent Causation**

When the causes are concurrent but not successive, and continue to operate on the subject matter of insurance until they cause the loss, the loss is attributable to one cause as much as the other.<sup>82</sup>

In insurance law, concurrent causation occurs when a loss is brought by two or more potential causes. The causes of a loss dictate whether or not a person who has an insurance policy in fact has insurance coverage for that specific loss. Causation question is complicated in situations of concurrent causation because one cause of the loss may be covered by an insurance policy and another cause either not covered or specifically excluded from coverage.<sup>83</sup> Courts have addressed how insurance companies should respond when two perils one covered and one excluded combine to cause a loss.<sup>84</sup>

There are two main types of insurance disputes which feature concurrent causation issues and which require some doctrinal approach to enhance effective dispute resolution.<sup>85</sup> The first and most common dispute is a simple coverage question and the second type of dispute is a loss distribution dispute among multiple insurers.<sup>86</sup> Insurance coverage disputes between insurer and insured involve questions about whether or not a particular insurance policy covers a certain loss. The dispute can become more complicated where multiple potential causal inputs are in play in bringing about the loss.<sup>87</sup> Loss distribution disputes involve contests among multiple insurers as to which insurer will pay for a certain loss. These types of disputes involve overlapping coverage

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<sup>80</sup> GOPALAN & RAGHAVAN, *supra note* 21 at 212

<sup>81</sup> Hasan, *supra note* 74

<sup>82</sup> GOPALAN & RAGHAVAN, *supra note* 21 at 212

<sup>83</sup> Erik S. Knutsen, *Confusion About Causation In Insurance: Solutions For Catastrophic Losses*, 61 ALABAMA LAW REVIEW at 962

<sup>84</sup> Shannon O'Malley, *When Perils Combine-Concurrent Causation And Teas Law*, (Aug.,31,2017), <https://www.claimsjournal.com/news/southcentral/2017/08/31/280286>

<sup>85</sup> McDowell, *supra note* 12

<sup>86</sup> Id.

<sup>87</sup> KNUTSEN, *Supra note* 16 at 634

questions. Discerning which policy responds to a loss involves answering questions about causation that are important to the respective insurance policies at play in the dispute.<sup>88</sup>

When determining whether or not an insurance contract responds to a particular loss, courts, are challenged when forced to single out a particular causal trigger in a causal chain of events.<sup>89</sup> When courts are faced with question of causation associated with the idea of concurrent causation, they usually approach them in one of three ways: conservative approach, liberal approach, and dominant approach.<sup>90</sup> A fourth possible approach, apportionment, has been described only in academic literature to date but has not yet been adopted by courts.<sup>91</sup>

#### **2.2.5.4 APPROACHES TO CONCURRENT CAUSATION IN INSURANCE**

Different jurisdictions have different doctrinal rules for resolving insurance disputes. Most jurisdictions ask courts to find a proximate cause of the loss and determine coverage based on causal dominance and other jurisdictions take a more liberal approach, granting coverage for a loss as long as one concurrent cause is covered by the insurance policy.<sup>92</sup> Others take conservative approach, denying coverage if one of the concurrent causes is an excluded cause in the policy.<sup>93</sup>

##### **I. Conservative Approach**

It is also called the traditional minority approach which tends to restrict coverage in most concurrent causation situations.<sup>94</sup> Under this approach, if a covered cause combines with an excluded cause to produce a loss, then the insured cannot recover based on the rationale that an insurer should not be held responsible for any loss caused by an excluded peril.<sup>95</sup> Conservative approach to concurrent causation holds that if one cause in a causal chain is excluded from insurance coverage, the entire loss must be excluded from coverage, even if other causes may be

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<sup>88</sup>Id.at 635

<sup>89</sup> Knutsen, *supra note* 83 at 957

<sup>90</sup> ROBERT H. JERRY II ET.AL., UNDERSTANDING INSURANCE LAW 567-592 (4th ed. 2007)

<sup>91</sup>Knutsen, *supra note* 83 at 972

<sup>92</sup>Id.

<sup>93</sup>Id.

<sup>94</sup> Swisher, *supra note* 21 at 369

<sup>95</sup> Id.

covered by the policy.<sup>96</sup> In this approach damage was irrecoverable if one of the causes was an excluded clause in the insurance policy.<sup>97</sup>

The conservative approach gets more confusing if, among the concurrent causes, there is a covered cause plus a non-covered but non-excluded cause.<sup>98</sup> This approach differentiates between an excluded cause and a clause that is not included. In cases of a non-included clause, multiple approaches can be taken. First, a cause that is not included is the same as an excluded clause and hence, should not be covered as an implied exclusion.<sup>99</sup> Second, the loss is apportioned so as to not include that portion of the damage caused by that factor.<sup>100</sup> Third, the loss can be covered by the policy in spite of the presence of a non-included cause.<sup>101</sup> In some jurisdictions like Britain, courts tend to take a pro-coverage stance in such cases.<sup>102</sup>

## II. Liberal Approach

This approach to concurrent causation is the reverse of the conservative approach: in the case of a contest among causes, the insured wins. If one cause in the causal chain is a covered cause, the entire loss is covered under the liberal approach.<sup>103</sup>

This approach also called California approach holds that when loss occurs through the concurrence of covered and excluded risks, the insurer would be liable for the entire loss so long as at least one of the covered risks was a proximate cause of the loss.<sup>104</sup> This doctrine is a pro-insured approach because it requires coverage in situations where there are multiple perils concurrently causing a loss.<sup>105</sup>

This approach applies to only third party liability insurance in which concurrent causation is featured.<sup>106</sup> Property insurance losses follow the dominant cause approach.<sup>107</sup> The rationale

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<sup>96</sup> Knutsen, *supra* note 83 at 957

<sup>97</sup> Id.

<sup>98</sup> Id. at 973

<sup>99</sup> Id. at 974

<sup>100</sup> Hasan, *supra* note 74 at 13

<sup>101</sup> Id.

<sup>102</sup> Knutsen, *supra* note 83 at 972

<sup>103</sup> Id. at 976

<sup>104</sup> Swisher, *supra* note 21 at 369

<sup>105</sup> Carback, *supra* note 69 at 23

<sup>106</sup> Knutsen, *supra* note 83 at 977

<sup>107</sup> Id.

behind the restrictive application of this approach to third party liability insurance springs from the limited control that the insurer and insured possess in terms of coverage policy. First party insurance, unlike third party insurance, allows the insurer and insured to more surgically control both coverage and exclusionary language.<sup>108</sup>

### **III. Dominant Cause Approach**

The most prevalent approach to deciding concurrent causation insurance disputes is the dominant cause.<sup>109</sup> Dominant Cause is also known as the proximate cause.<sup>110</sup> This approach is the most commonly used approach to settle insurance claims involving concurrent causation; the jurisprudence surrounding this approach is not settled as that surrounding the conservative approach, causing it to be very unpredictable.<sup>111</sup>

The English legal system applies the proximate cause principle and for the insured to be indemnified under insurance policy two issues need to be established.<sup>112</sup> Firstly, the loss needs to be proximately caused by an insured peril. Secondly, the peril should not be excluded under the insurance policy.<sup>113</sup>

In this approach Courts is required to examine parallel causes and determine the most proximate cause. The characteristic of the cause will determine whether the insurer covers the loss occurred. If that cause is a covered cause, the loss is covered. If that cause is an excluded or non-covered cause, the loss is not covered.<sup>114</sup> The dominant cause need not always be the last cause in the chain of causation but is rather the more efficient cause the one which had the greater role to play in causing the loss.<sup>115</sup>

The dominant approach is constituted based on the facts and circumstances of every case and no binding guidelines can be laid down with respect to the same.<sup>116</sup>

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<sup>108</sup> Id.

<sup>109</sup> Knutsen, *supra note* 83 at 974

<sup>110</sup> Id.

<sup>111</sup> Id.

<sup>112</sup> Johansson, *supra note* 6 at 14

<sup>113</sup> Id.

<sup>114</sup> Knutsen, *supra note* 83 at 974

<sup>115</sup> Id.

<sup>116</sup> Id. at 975

Under this middle ground approach, which is the prevailing rule in a majority of jurisdictions today, if multiple concurrent causes exist, and if the dominant cause is a covered peril, then coverage would exist for the entire loss, even though other concurrent causes are not covered under the policy.<sup>117</sup> Under this paradigm, courts determine which among concurrent causes of a loss was the most substantial: if the most substantial cause is covered, the insured receives compensation.<sup>118</sup>

#### **IV. Apportionment Approach**

This approach which is developed via academic writings involves apportioning the loss to each of the causes which brought about the damage resulting in the loss. The apportionment rule applies when there are several causes for the loss but courts first have to settle which causes are of legal relevance.<sup>119</sup> This approach involves apportioning percentage responsibility to each cause in the causal scenario that had some role in bringing the loss.<sup>120</sup> The apportionment approach requires segregation of losses incurred by covered perils from losses caused by uncovered perils, tracking traditional tort apportionment doctrine.<sup>121</sup>

The apportionment approach is a practical solution to resolving disputes of concurrent causation. It divides the damage which may be attributed to each cause and the court can then decide on the basis of each cause individually the compensation which a particular individual may be entitled to.<sup>122</sup> Such approach would be ideal in a situation where the causes are clearly demarcated but in most real-life situations, individual causes and their contribution to the damage cannot be plainly determined.<sup>123</sup>

#### **2.2.6 General rules for determining causation in Insurance Disputes**

Situations regularly arise in insurance practice where a loss is attributable to multiple causes.<sup>124</sup> No insurance policy truly protects an insured against all sources of loss.<sup>125</sup> English Courts have

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<sup>117</sup> Swisher, *supra* note 21 at 370

<sup>118</sup> Carback, *supra* note 69 at 23

<sup>119</sup> Johansson, *supra* note 6 at 40

<sup>120</sup> Knutsen, *supra* note 83 at 977

<sup>121</sup> Carback, *supra* note 69 at 24

<sup>122</sup> Knutsen, *supra* note 83 at 977

<sup>123</sup> KNUTSEN, *Supra* note 14 at 650

<sup>124</sup> Richard A. Fierce, *Insurance Law - Concurrent Causation: Examination of Alternative Approaches*, 10 Southern Illinois University Law Journal 527 (1985)

accordingly formulated the following general rules for determining proximate cause in cases where perils are acting consecutively or concurrently.<sup>126</sup> Causation rules will be useful only if there is clear and consistent definition of the event or cause and of the effect.<sup>127</sup>

1. (A) The proximate Cause is the event, whether peril or exception, which, in the circumstances at the time of the event, led inevitably to loss of the kind in question.<sup>128</sup>

(B) If such loss occurs as the inevitable result of a peril, the full extent of that loss will be recoverable, even though such extent was no more than not unlikely to occur at the time of the peril.<sup>129</sup>

(C) In assessing whether a peril leads inevitably to loss, the chain of causation is not broken by the conduct of the insured or his servants; their negligence is part of the risk.<sup>130</sup>

2. Where perils are acting *consecutively in unbroken sequence*, that is, one peril is caused by and follows from another peril,<sup>131</sup>

(A) If there is one insured peril, but no excepted peril, insurer is liable for losses caused by the insured peril.<sup>132</sup>

(B) If an excepted peril is involved, and the excepted peril precedes an insured peril, the insurer is not liable;<sup>133</sup>

(C) The excepted peril follows an insured peril; the insurer is not liable if the loss caused by each is undistinguishable. If the loss cause is distinguishable, the insurer is liable for the damage caused by the insured peril up to the happening of the excepted peril.<sup>134</sup>

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<sup>125</sup> Id.

<sup>126</sup> SINGH, *supra* note 2 at 99

<sup>127</sup> Malcolm Clarke, *Insurance: The Proximate Cause in English Law*, 40 THE CAMBRIDGE LAW JOURNAL, 305 (1981)

<sup>128</sup> Id.

<sup>129</sup> Id.

<sup>130</sup> Id.

<sup>131</sup> SINGH, *supra* note 2 at 99

<sup>132</sup> Id.

<sup>133</sup> Id.

<sup>134</sup> Id.

3. Where perils are acting *consecutively in broken sequence*, that is, each peril is independent of the other,<sup>135</sup>

(i) If an excepted peril is involved, and precedes an insured peril, the insurer is liable for the loss caused by the insured peril.

(ii) If the excepted peril follows the insured peril, as an independent cause, the insurer is liable only for the loss caused by the insured peril up to the time of the intervention of the excepted peril.<sup>136</sup>

4. Where the perils are acting *concurrently*, that is simultaneously.<sup>137</sup>

If two concurrent and proximate causes, one a peril and the other an exception, the exception prevails.<sup>138</sup>

The insurer is liable if (a) both are covered perils and neither is an excluded risk. Alternatively, (b) the damages incurred by insured and excluded perils may be distinguished;<sup>139</sup>

The insurer is not liable if the losses cannot be distinguished. Where the cases are very complicated, the strict legal position is not invoked, but settled by compromise usually by the insurers by a generous interpretation of the facts.<sup>140</sup>

If the proximate cause of loss is an insured peril, such loss will not be recoverable if it is also caused by willful misconduct by the insured or his servants and public policy requires recovery to be refused.<sup>141</sup>

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<sup>135</sup>Id.

<sup>136</sup> Id.

<sup>137</sup> Id.

<sup>138</sup> Clarke ,*supra note 127* at 296

<sup>139</sup> SINGH, *supra note 2* at 99

<sup>140</sup>Id.

<sup>141</sup> Clarke ,*supra note 127*

## CHAPTER THREE

### 3. The Significance and Applicability of Causation to Ethiopian Insurance Regime

#### 3.1 Causation in Ethiopian Insurance Regime in General

The Com. Code<sup>142</sup> under Title III of Book III deals with the subject matter of insurance devoted to regulate the legal framework for insurance in Ethiopia.<sup>143</sup> As far as causation in Ethiopia is concerned, there is a problem relating to definition. Neither the Com. Code nor the Civil Code<sup>144</sup>, which supplements the Commercial Code, provides a definition of causation.

In the Ethiopian context, particularly in relation to insurance law, there is no provision which governs causation matters. The 1960 Ethiopian Commercial Code doesn't contain provisions in causation in insurance. There is no clear reason why the commercial Code of Ethiopia does not have such provisions. The gap is possibly attributable to error of the drafter of the code, Professor Alfred Jauffret, accompanied with oversight of the legislature of the country in ratifying it. But the Commercial Code tries to have some related provisions like Art.663, 664, 665 have. Though causation is at the heart of major coverage dispute, the Commercial Code does not have provisions on it.

Moreover, Article 663 (1) and Article 665 of the Commercial Code which oblige the insurer to guarantee the insured risks specified in the policy, say nothing about how the link between the risks materialized and the cause is determined. The absence of appropriate causation rules, as a result has led courts to not give a uniform and proper decisions. There have been cases in which courts frame issues of causation erroneously and they did not even carefully interpret what the law and the policies say. In some cases, they extended the scope of the policy to cover risks which were not covered by the policy.<sup>145</sup>

Furthermore, Article 664 of the Commercial Code makes the insurer answerable to the beneficiary for losses or damages due to the fault of persons, though intentional, for whom the

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<sup>142</sup> The Commercial Code of Ethiopia, Negarit Gazeta, extraordinary issue, Proc. No. 166, (1960)

<sup>143</sup> Com. C., Art., 654-712

<sup>144</sup> The Civil Code of Ethiopia, Negarit Gazeta, extraordinary issue, Proc. No. 3, (1965)

<sup>145</sup> Interview with Aron Kassaye, Senior Legal Officer in Ethiopian Insurance Corporation, in Addis Ababa, EIC building (Mar. 3, 2021)

beneficiary is responsible.<sup>146</sup> Such a duty, in my opinion, is too onerous for insurers, preventing them from being competitive and negatively impacting the involvement of foreign and domestic investors in the insurance sector. In addition to jeopardizing the insurance fund, these individuals will be inclined to intentionally cause the loss in order to benefit the insured, lead to the destruction of national wealth.<sup>147</sup>

When we look at the French insurance code<sup>148</sup> says nothing about the doctrine of proximate cause. It rather tries to list all covered and uncovered perils.<sup>149</sup>

In French insurance code, under Article L-121-2, a similar provision to that of Article 664 of the Ethiopian Commercial Code makes the insurer answerable for the losses and damages caused by persons for whom the insured is legally liable, regardless of the nature and seriousness of such persons fault. However, causation rule of the of England states that “*If the proximate cause of loss is a peril, such loss will not be recoverable if it is also caused by willful misconduct by the insured or his servants and public policy requires recovery to be refused*”<sup>150</sup>

The lack of causation provisions actually, creates a complex problem in the Ethiopian judiciary. Some professionals strongly claim that, “though the Civil Code and Commercial Code do not contain rules of causation, it is possible to use the provisions which are in the Criminal Code to regulate causation matters through analogy,”<sup>151</sup> Whereas other professionals in insurance argue against that.<sup>152</sup>

In Ethiopia insurance companies uses principle of Proximate Cause for the settlement of claims.<sup>153</sup> They are committed to settle claims efficiently and timely and for this they follow a structured approach for settlement of claim. When clients claim compensation, they immediately

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<sup>146</sup> Com. C., Art. , 663(1)

<sup>147</sup> Interview with Aron, *supra note* 145

<sup>148</sup> French insurance Code 2004 <http://www.aida.org.uk/pdf/French%20Insurance%20Code%202004>

<sup>149</sup> INSURANCE CODE, act no.92-665, CHAPTER II, Fire insurance, Article L-122-1

<sup>150</sup> Clarke ,*supra note* 139

<sup>151</sup> Interview with Yohanes Niguse, Judge at Federal High Court, in Addis Ababa, Federal High Court, lideta division building (Mar. 4, 2021)

<sup>152</sup> Interview with Aron, *supra note* 145

<sup>153</sup> Interview with Tadele tegegn , Head of Legal Department in Nile Insurance S.C, in Addis Ababa, Nile Insurance building (Feb. 25, 2021)

inspect the affected properties and file a report to the claim department.<sup>154</sup> Insurance companies, to prove causation use police investigation report and insurance company experts survey report. They may not automatically delegate an independent licensed survey company to determine the quantum and cause of loss in order to resolve the claim quickly.<sup>155</sup>

The insurers would not indemnify the insured for loss attributable to the insured's deliberate misconduct, ordinary loss of weight or ordinary wear and tear of the subject matter insured, caused by war, civil war, revolution, rebellion, insurrection, arising from strikes, lockouts, labor disturbances, riots or civil commotions, and caused by any terrorist.<sup>156</sup>

When insurance companies reject the claim of an insured, the insured may sue the concerned insurance company for breach of contract to enforce his or her right to the proceeds, whenever necessary.

In order to provide alternative solution to this problem different theories have been applied from *sine que non*, which may attribute a single act to the whole world, up to synchronized theories of time.<sup>157</sup> Through these process judges on their own have been rendering different decisions on issue of causation by applying different theories and common sense.<sup>158</sup> It is better to note that the general jurisprudence and comparative experience of other countries with modern insurance regime is also in favor of applying the principle of proximate cause to such cases.<sup>159</sup>

Ethiopia is now on the eve of its revising her Com. Code. Nevertheless, the proposed Draft Commercial Code<sup>160</sup> did not try to address the legal gap as to whether the rule of causation and principle of proximate cause should be applicable to insurance and the problem with the gap will persist if the draft is to be approved as it is.

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<sup>154</sup> Id

<sup>155</sup> Interview with Temesgen wendmagegn, Judge at Federal High Court, in Addis Ababa, Federal High Court, lideta division building (Mar. 1, 2021)

<sup>156</sup> The Commercial And Private Vehicle Policies Of EIC

<sup>157</sup> Clark, *supra note* 30

<sup>158</sup> Id

<sup>159</sup> Interview with , Nuredin Kedir Judge at Federal Supreme Court, in Addis Ababa, Federal supreme Court building (Feb. 19, 2021)

<sup>160</sup> Ministry of Justice Draft Revised Version of the 1960 Commercial Code of Ethiopia

On the discussion held on the revised Commercial code hold on February, 2016, the issue of causation was raise and it was proposed the principle of proximate cause and rule of causation on concurrent and successive causes should be introduce.<sup>161</sup> However, the fact is that the issue of causation rules in insurance is not incorporated in the Draft Code even if the drafters are cognizant of the issue.

According to Aron Kassaye, who was involved in proposing the rule of causation in the current Draft Commercial Code, the loophole in the law on the rule of causation in insurance was noticed and a draft rule of causation was proposed, but the MoJ did not include it in the final draft proposed.<sup>162</sup> A ‘ Team of fourteen National Experts’ who was commission by the Addis Ababa Chamber of commerce to go through the draft and make input into them Draft Version of the code, has prepared its comments and recommendations in July 2008. The team has stated that the chapter dealing with insurance on the Commercial Code is ok but needs a little amendment.<sup>163</sup> However, the gap of the law on rule of causation was not considered in that work which may appear that the problem in the law didn’t cross their mind.

### **3.2 Determination of Insurance Causation by Ethiopian Courts**

Judges are expected to fill legal gaps by way of interpretation whenever parties haven’t agreed on causation.

As a key principle insurance law, the principle of proximate cause plays an important role in judging whether the insurer should bear the insurance liability. In recent years, has received more and more attention from judges and is commonly used in practice.<sup>164</sup>

The concept of the principle of proximate cause is understood differently by judges. Some judges think that the principle is the special concept of insurance law.<sup>165</sup> Others think that it is the theory of causality in tort law.<sup>166</sup>

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<sup>161</sup> See the discussion report on the revised commercial code February, 2016,p.83

<sup>162</sup> Interview with Aron, *supra note* 145

<sup>163</sup> Private Sector Development , Addis Ababa Chamber of Commerce & Sectorial, Associations ” Recommendations And Position Paper Of The Business Community On The Revision Of The Commercial Code Of Ethiopia” PSD Hub Publication No.8(2009),at 40

<sup>164</sup>Interview with , Abrrha Mesele Judge at Federal Supreme Court, in Addis Ababa, Federal supreme Court building (Feb. 26, 2021)

<sup>165</sup> Id

According to Tadele Tegegn, Head of the legal Department in Nile Insurance S.C, although there is no clear provision in insurance law in Ethiopia, the insurance community generally recognizes the significance and status of the principle of proximate cause.<sup>167</sup> But courts do not raise and address properly the issue of causation in practice.<sup>168</sup>

The concept of causation is difficult to grasp and unpredictable, it is important to determine certain applicable rules of causation in the draft proposed Commercial Code in order to regulate the implementation of the principle in practice and guide the judges in deciding the case.<sup>169</sup>

There is a major efficiency problem with contemporary approaches to concurrent causation which includes issues of jurisprudential consistency, inefficient pleading problems, and inefficient counsel involvement in the insurance market.<sup>170</sup>

Expert evidence often becomes necessary in order to determine causation of various causal factors acting together to produce the loss.<sup>171</sup> In Ethiopia courts uses traffic police investigation reports in determination of causation but the skills of the traffic police is in question. In Ethiopia there are no independent private professional's survey institutions on the matter.<sup>172</sup>

As a result, the following are the key reasons for the above findings in Ethiopian insurance law: first, there is no legal provision in Ethiopia for the concept of causation, resulting in a lack of uniform rules to be used by judges in case trials. Second, theoretical research on the principle of causation has not yet strengthened.

### 3.3 Assessment of Causation in Motor Vehicle Insurance Cases and Comments

In the case of **Global Insurance S.C. v. Ato Fitsum Lakew and W/ro Biskut Zeleke**<sup>173</sup> the case concerns a litigation regarding payment of compensation. It began in the Oromiya Regional

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<sup>166</sup> Interview With Temesgen, *supra note* 155

<sup>167</sup> Interview with Tadele, *supra note* 153

<sup>168</sup> Id

<sup>169</sup> Interview With Abrha, *supra note* 164

<sup>170</sup> Interview with Musie Amare, Vice Chief Executive Officer of Ethiopian Insurance Corporation, in Addis Ababa, EIC building (Mar. 9,2021)

<sup>171</sup> Id

<sup>172</sup> Interview With Temesgen, *supra note* 155

<sup>173</sup> Global Insurance S.C v. Fitsum lakew, No. 90793, 15 FSC 410 (2013)

State, Adama Special Zone High Court, where the current respondents were the plaintiffs and sued the insurer based on terms of the comprehensive insurance policy to indemnify the damage occurred to this insured motor vehicle. The insurer argued that the risk has been excluded and that it has no liability to indemnify the insured as the number of passengers carried by the insured motor vehicle exceeded its seating capacity when the damage occurred. In the proceeding, the Court found that the cause of the damage was not the excessive load of the vehicle; rather it was excessive speed and sleepiness of the driver, which were not excluded by the policy. The High Court found that, while the cause of the damage was not the excessive number of passengers on the vehicle, the insurer is liable for the damage caused and that the insurer should indemnify the insured. The decision of the High Court was also affirmed by the Regional Supreme Court.

Finally, a petition was lodge to the FSC Cassation Division, contesting the ruling of the lower courts. The FSC Cassation Division reversed the decisions of the lower courts. In reversing the decisions of the lower courts the cassation division ruled that:

*“The property insurance policy entered into by the petitioner and respondents are lawful. However, lawful contracts shall not be made to gain worthless benefits by doing what is prohibited by law. Since the respondents' vehicle is a public transportation vehicle, it must observe transport laws, regulations and directives. However, during the accident, the vehicle carried 7 passengers beyond the exact capacity of the vehicle, which should be 11 passengers.... It is clear from the proceedings that among the total in the vehicle, 14 of them died due to the accident. As a result, as long as the number of passengers being transported in the motor vehicle at the time of accident exceeded the carrying capacity permitted by transport laws, the lower courts made fundamental error of law in deciding against the petitioner; to pay a sum of money as an indemnity to the respondents.”*

## **Comment**

The basic difference between the decisions of lower courts and that of the FSC Cassation Division reproduced above is that the FSC Cassation Division did not adequately raise and resolve (determine) the question of insurance causation when interpreting policy terms.

Exclusions serve various purposes. There might be various reasons to exclude some perils from coverage. Among these reasons, the following categories may be the most frequently cited in different insurance policies. These are: Catastrophic, Covered Elsewhere, Simple to Control, Not

Accidental, Maintenance Issues, and Illegal. All these reasons of exclusions may or may not be reflected at the same time in a single insurance policy.<sup>174</sup>

Conditions are frequently made stating that the cover is not extended to certain perils or certain results. When a loss is brought about by a certain event the cause and effect relationship would be seen in light of the insured peril and excluded perils as stated in the policy, in order to establish liability of insurer.

In this case, the exclusion provision states: “Any loss, damage, or liability caused by overloading or strain, or the number of persons exceeding the seating capacity of the insured vehicle as specified in the ownership booklet provided by the revered licensing authority.”

The final interpretive exercise in solving coverage disputes turning on insurance causation always rests on an evaluation of the insurance policy language at issue. Here, courts need to take a purposive approach to that language and ask why that language is used. The purpose of the policy, the underwriting intent behind the language used, and the consequences of coverage and coverage gaps on a systemic level all need to be considered. Otherwise, insurance jurisprudence about causation risks continuing to be an unpredictable patchwork that lacks holistic coherence.<sup>175</sup>

Based on the evidence discovered during the trial, the lower courts confirmed that the cause of the accident was the driver's excessive speed and sleepiness, which is not excluded by the policy. They also verified that the cause of the accident was not the excessive load. The lower courts were in in favor the insured, while interpreting the exclusion clause. They interpreted the exclusion clause in such a way that the insurer cannot avoid liability unless the damage was necessarily caused by the excessive carriage of passengers. The exclusion clause presented for interpretation is not as such ambiguous, though it is debatable whether or not damage will necessarily be caused by the excessive carriage of passengers. Apparently, the lower courts framed the issue of causation correctly and address properly the issue of causation: “what was the cause of the accident?” Did the accident happen due to excessive carriage of passengers?

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<sup>174</sup> GETAHUN GEBREMESKEL , Problems Associated With Conditions And Exclusions Of Motor Insurance: Third Party Insurance In Focus (2020)(unpublished LL.M Thesis, Addis Ababa University, Ethiopia)

<sup>175</sup> KNUTSEN, *Supra note* 14 at 658

The facts confirmed that the cause of the accident was excessive speed and sleepiness of the driver and not the excluded clause of excessive carriage of passengers.

On the other hand, the FSC Cassation Division focused on the exclusion clause and not the cause of the damage. Therefore, for the insurer to be relieved from liability it should be proved that the accident happened due to an excluded peril. In other words the cause of the accident must have been the excessive load of passengers. But in this case, the insurer didn't show that the cause of the accident was due to the excessive load of passengers. Therefore, in the writer's opinion, the decision of the FSC Cassation Division didn't state the cause for collision of the vehicle. The evidence given by traffic police confirmed that the cause of the accident was excessive speed and sleepiness of the driver, which is not excluded in the policy. As a result, the insurer is duty bound to pay the compensation.

An interview with judges also shows different stands on the issue. Interview with Ato Bereket Seifu<sup>176</sup> discussed that the basic aim of the exclusion clause is to avoid the insurer's liability when a loss is caused by an excluded peril, in this case the cause of the accident was not over loading but excessive speed. The accident was caused by a covered cause but the Cassation Division wrongly interpreted the policy and relived the insurer without ascertaining that the excluded peril was the cause of the accident. Ato Yohanes Niguse<sup>177</sup> argues against the position of Judge Bereket assessing that the insurance contract is law between the parties. The effect of breach of exclusion clauses toward the insured is always valid as the relation between the insured and the insurer is governed by the terms of the insurance policy made between them. If the insured did breach the policy condition or exclusion clause the insurer is not liable for the damage and there is no need of proving whether the exclusion clause is a cause for the damage or not. The number of passengers carried in the vehicle exceeded the carrying capacity permitted by transport law, this stated in the policy as exclusion clause. Therefore, there is no legal reason to make the insurer liable if the insured breaches the contract.<sup>178</sup> This shows different stands on the same issue among judges of the same court as regards causation in insurance.

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<sup>176</sup> Interview with Bereket Seyfu, Judge at Federal High Court, in Addis Ababa, Federal High Court, lideta division building (Mar. 4, 2021)

<sup>177</sup> Interview with Yohanes, *supra note* 151

<sup>178</sup> Id

The case between **Ato Chalow Tola** and **Buna Insurance S.C**<sup>179</sup> related to litigation for the payment of compensation instituted at FHC. The plaintiff sued the insurer based on the insurance policy to indemnify the damage occurred to the insured vehicle plate No.3-62442OR. The insurer argued that the risk has been excluded and it owes no liability to indemnify the insured, as the number of persons carried by the insured vehicle exceeded its seating capacity when the damage occurred. The loading capacity of the vehicle is 15 persons but at the time of accident 18 people were on board the vehicle.

The court decided as follows: *“the insurance contract is a law between the plaintiff and the defendant. The plaintiff didn’t respect the contract and transport law. The vehicle had 3 extra passengers beyond the capacity permitted by transport law. The FSC Cassation Division in File No.90793 in a similar case having given a binding interpretation the insurer has found not liable to pay compensation for the car that sustained damage due to accident.”*

In another case between **Ato Hadush Bayew** and **Ethiopian Insurance Corporation**<sup>180</sup> for compensation, the plaintiff sued the insurer based on the terms of the comprehensive motor insurance policy to indemnify the damage sustained by the insured vehicle plate No.3-08328TG. The insurer argued that the risk has been excluded and owes no liability to indemnify the insured, as the number of persons carried by the insured vehicle exceeds its seating capacity when the damage occurred .The loading capacity of the vehicle is 12 persons but at the time of the accident 13 people were traveling in the vehicle. According to the police report, cause of the damage was excessive speed.

The Court found that, *“The insurance policy made between the plaintiff and the defendant is legal. Since the vehicle of the respondents is a public transport vehicle, it shall follow the transport laws. But, during the accident the vehicle carried on 1 extra passenger beyond the exact capacity of the vehicle, which should be 11 passengers.in the policy general exclusion clause section 7 loading extra people out of permitted by the law the insurer is not liable. Hence, the FSC Cassation Division on Vol.15 File No. 90793 gives a binding decision as long as the passengers carried on the motor vehicle exceeded the carrying capacity permitted by transport laws, the insurer is not liable to pay compensation damage sustain during the accident. As a result the insurer is not liable to pay compensation”*

## **Comment**

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<sup>179</sup> Chalow Tola V. Buna Insurance S.C, No. 251911 FHC, L.D, (Jan.21,2021)

<sup>180</sup> Hadush Bayew V. Ethiopian Insurance Corporation , No.110548 TSC,( Mar.20,2019)

In order to identify if a loss results from causes in a liability insurance context, each purported cause must be a stand-alone legal claim in order to be a sufficient cause necessarily involved in bringing about the end result loss.<sup>181</sup> Traffic police investigation report often becomes necessary in order to determine the cause and effect of various causal factors acting together to produce the loss. In this case the police report shows the cause of the damage is excessive speed which caused the vehicle to overturn and sustain damage. The courts didn't frame and determine the issue of causation. In order to relieve the insurer from liability the occurrence of an excepted peril must be the cause of the damage. However Courts take the Cassation Division's decision in file No. 90793 as being precedent because its interpretation in giving decisions is binding as a law in the country.<sup>182</sup> But FSC Cassation Division in this case didn't raise and properly addressed the issue of causation to sustain damage. It only stressed the existence of excluded peril to be enough to relieve the insurer from liability without proving whether it is the cause of loss or not. In order to determine whether a certain loss is to be covered by an insurer or not, there are three things that needs to be seen. First cause of the loss needs to be known. Second, it should be seen whether it is excluded from the policy or not. Lastly, the circumstances created by the cause should be looked as to determine whether or not there was proximate cause.<sup>183</sup> In this case the proximate cause of the loss is excessive speed not over loading people.

In another stand of courts when we see the case of **Awash Insurance S.C v. Ato Samual Alemu**<sup>184</sup> concerns litigation regarding the payment of compensation. It started in the FFIC, where the current respondent was the plaintiff. He filed a suit against the now petitioner because the truck owned by the respondent plate No.3-34603 insured by the now petitioner, encountered an accident and sustained damage. The current petitioner argued that the respondent is not entitled to claim compensation because the insurance coverage of the vehicle relates to transportation of goods and not transportation of persons. The truck sustained damage when two persons were travelling in the vehicle and hence contended that it should not be held liable for a claim that falls outside its contractual obligation.

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<sup>181</sup> Johansson, *supra note* 6 at 40

<sup>182</sup> Federal Courts Proclamation Re-Amendment Proclamation No.454/2005, Fed. Neg. Gaz. 11<sup>th</sup> Year No.42, 14<sup>th</sup> June 2005, Art.2(1)

<sup>183</sup> Smith & Simpson, *supra note* 9

<sup>184</sup> Awash Insurance S.C V. Ato Samual Alemu , No. 48698, 10 FSC 299 (May 27,2013)

The FFIC decided the case reasoning that the insurer didn't prove that the cause of the accident were persons travelling in the vehicle. The police investigation report shows the accident happened when the driver, to save a pedestrian, swerved to the side and collided with a tree and sustained damage. As a result, the insurer is liable for the damage based on the insurance policy. The FHC which heard the appeal confirmed the decision of the FFIC. This petition is lodged to the Cassation Division of the FSC contesting the correctness of the decisions of the lower courts. The FSC Cassation Division confirmed the decisions of the lower courts by giving a reason two people travelling in the vehicle must be the cause for the accident that had happened but the insurer didn't prove this. The police report shows the cause of the damage is not the people traveling the vehicle but collision.

A similar case between **Oromiya Insurance S.C V. Mrs. Tigist Girma**<sup>185</sup> which started at FHC concerns litigation regarding the payment of compensation, where the current respondent was a plaintiff. He filed a suit against the petitioner alleging that a truck owned by the respondent plate No.3-56927 insured by the petitioner, encountered an accident and sustained damage. The petitioner argued that the respondent is not entitled to be compensated because insurance coverage to the vehicle was made for transportation of goods and not transportation of persons. The truck sustained damage when two persons were travelling in the vehicle and hence contended that it should not be held liable for the claim because it is an excluded risk as stated in section 7 of the insurance policy.

*The FHC decided the insurer did not prove by evidence that the cause for the accident was overload. Rather, the Sululta Wereda Justice Office report confirms the cause for the damage was speeding over. The cause of accident was not overload. FHC ruled, the insurer was based on the insurance policy is liable to pay compensation for the sustained damage. Appeal was lodged to the FSC but the issue of causation was confirmed.*

*The current petitioner submitted a petition to the Cassation Division of the FSC contesting the decision of lower courts that confirmed the issue of causation by stating that "based on section one No 7 of the insurance policy, if the accidents is caused due to over loading of goods or people the insurer is not liable. However, the insurer did not prove that the cause for the accident was overloading. Where truck used for goods transportation encounters an accident while transporting person unless it is that confirmed the cause of the accident is overload there is no any legal basis the insurer should be relieved from liability. "*

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<sup>185</sup> Oromiya Insurance S.C V. Mrs. Tigist Girma , No.160196,FSC(July 01,2019)

In cases of Mahteme Teshome vs. Ethiopian Insurance Corporation and Godahegn Mulat<sup>186</sup>, C.E.S General Trade PLC vs. Brhan Insurance S.C.<sup>187</sup>, Ato Hiwot Abera vs. Ethiopian Insurance Corporation<sup>188</sup>, and Ato Abrha Aregawi vs. Ethiopian Insurance Corporation<sup>189</sup> took the Cassation Division decision in file No. 48698 as a precedent in order to assess liability of an insurer it is important to ascertain whether the loss occurred was a result of risks covered or not in the policy. For a claim against an insurer to be valid, there must be a proximate cause between the loss incurred and the risk insured. To relieve the insurer from liability the excluded peril must cause the loss. The courts reject the stand of the Cassation decision file No. 90793 stated as load extra passengers beyond the capacity of the vehicle is to be used released the insurer from liability without proving the cause of the damage.

### **Comment**

Causation concerns of the connection between a peril and the damage sustained is covered by an insurance policy. Insurers can be held liable for damages incurred by perils covered by a policy. When a loss arises as a result of an excepted peril under the policy, the insurer is not liable. In this case the lower Courts and FSC Cassation Division raised and determined properly the issue of insurance causation. In order to relieve the insurer from liability it must be proved that the damage was caused by an excluded peril. The excluded peril must be cause the damage. In these cases,<sup>190</sup> the excluded peril two persons being transported in a vehicle means for transportation of goods didn't cause the damage. Damage on the vehicles happened due to accident. Accident is a covered risk, so the insurer is liable for the damage caused to the respondent's vehicle. This ruling of the Cassation Division is important for guiding lower Courts when deciding with causation issues in insurance.

The lower courts took the Cassation decision in file No.48698 as a precedent because it states that to relieve the insurer from liability the cause for the loss must be an excluded peril. This ruling of the court is important to guide the lower courts when they decide issues of causation. In

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<sup>186</sup> Mahteme Teshome vs. Ethiopian Insurance Corporation and Godahegn Mulat, No.01-47167 ASC, ( Dec. 23,2020)

<sup>187</sup> C.E.S General Trade PLC. Vs. Brhan Insurance S.C No.199746 FHC. L.D,(March 01, 2021)

<sup>188</sup> Hiwot Abera Vs. Ethiopian Insurance Corporation , No.115582 TSC,( Jan.09,2020)

<sup>189</sup> Abrha Aregawi Vs. Ethiopian Insurance Corporation ,No.115115 TSC (Apr. 08,2020)

<sup>190</sup> Oromiya Insurance S.C V. Mrs. Tigist Girma , No.160196,FSC(July 01,2019) & Awash Insurance S.C V. Ato Samual Alemu , No. 48698, 10 FSC 299 (May 27,2013)

order to assess liability of an insurer it is important to ascertain whether the loss occurred was a result of risks covered or not in the policy.

The lower courts rejects the cassation decision file No.90793 because carrying more passengers than the vehicle's capacity relieves the insurer of liability without requiring proof of the cause of the damage. They maintain that the occurrence of an excluded peril must result in a risk of damage. In order to decide the insurer's responsibility, the courts must first determine the cause of the loss. To be valid, a claim against an insurer must have a proximate cause between the loss incurred and the risk insured against. As a result, the Courts in the preceding cases properly resolve the question of causation insurance.

In case of **Smehar Freight Transport and General Grading plc V. NICE**<sup>191</sup> the case concerns litigation regarding the payment of compensation. It started in arbitration, where the current Petitioner was the plaintiff. The case arose because a commercial vehicle insured by the respondent collided and over- turned in Afar Regional State due to which the petitioner prayed for the payment of birr 521,071.38 it spent for reparation of the damage on the truck. The truck was covered by the respondent against accidental collision and overturning. But, the Respondent refused payment on the ground that the truck at the time of collision and overturning was having a trailer. This was stated as a condition for the exclusion of liability. The arbitrator decided by majority in favor of the insurer because use of the exclusion.

The owner appealed to the Supreme Court for reversal of the arbitral award. The court reasoned it was proved that that the truck had, at the time of the accident a trailer which was stated as an exclusion clause in the insurance policy and the court ratified the decision of the arbitrators.

### **Comment**

It was proved that the truck had a trailer at the time of the accident. It was also proved that this was stated as exclusion but the main thing is whether this alone is enough for the insurer to be relieved of liability. Police evidence shows only that the truck was with a trailer at the time and there was no damage to the materials carried by the truck and the trailer. But the evidence didn't show that the collision and turning over happened due to the use of a trailer.

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<sup>191</sup> Smehar Freight Transport and General Trading plc. Vs. NICE , No.4942/92 ,Case Report FSC on Commercial, Vol.1, No.1,34(Oct. 29,2001)

The arbitrators and the Supreme Court only showed that the truck had a trailer and didn't show the cause of the collision and turning over of the vehicle. In other words the tribunal and the court didn't bother about the connection in between the use of a trailer and the collision and turning over of the truck. The insurer raised the exclusion in order to be relieved from liability, since the accident did happen when the truck had a trailer. The exclusion is in order to prevent occurrence of accident due to use of trailer.

In my opinion, to relieve the insurer from liability it should be proven that the accident happened due to the use of a trailer. In other words, the cause of the accident should be the trail. But in this case the insurer didn't show the cause of the accident being the use of trailer. The decisions of the arbitrators and the FSC didn't state the reason for collision and overturning of the truck. Both decisions depended upon the exclusion clause but the exclusion clause must be the cause of the accident. In this case, the cause for accident was neither raised nor proven by the arbitrators and the FSC. But in similar issue in the case between **Niyala Insurance S.C v. Awash Insurance S.C and Ato Edris Adem**<sup>192</sup> the truck at the time of the collision was with a trailer which didn't have insurance coverage and the damage was caused by the trailer. This was stated as a condition for the exclusion of liability by the insurer. The Court proves that the cause of accident is use of trailer. The FSC's Cassation Division raised and addressed properly the issue of insurance causation in the case by proving the cause of damage. As a result, the insurer is not liable to make the damage good because the accident occurred due to an excluded peril.

### **3.4 Causation under Ethiopian Criminal law**

A theory of causation must provide a criterion for establishing a cause and effect relationship between a specific conduct and a result in such manner that similar situations are governed by a uniform rule.<sup>193</sup>

Certain acts and most omissions are considered offences without regard to consequences.<sup>194</sup> However, most acts require result if they are to be regarded as complete offences rather than attempt.<sup>195</sup>

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<sup>192</sup>Niyala Insurnace S.C V. Awash Insurance S.C and Ato Edris Adem, No. 76977, 14 FSC 279(Nov. 16,2012)

<sup>193</sup> Paul K. Ryut, *Causation In Criminal Law*, 106 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 786(APR., 1958 )

In Ethiopian criminal law, there is a concept known as causation. Regarding the application of provisions of Ethiopian Criminal Code<sup>196</sup> dealing with the question of causation in insurance practice first the content of the Ethiopian Crim. C should be discussed.

In cases where the commission of an offence requires the achievement of a given result, the offence shall be deemed to have been committed only if the result achieved is the consequence of the act or omission which the accused person charged.<sup>197</sup> Such a relationship, referred to as ‘*sine qua non*’ cause, is normally a remote probability, but a necessary condition for the particular event that has occurred.<sup>198</sup>”*The causation shall be presumed when the act or omission with in the provisions of the law would in the normal course of things, produce the result charged.*”<sup>199</sup> Accordingly, an act should not only be a necessary condition for the result, but should also be adequate enough to normally bring about the harm under consideration.<sup>200</sup>

Causation of harm does not; however, render the accused punishable if the result harm is unintended or goes beyond the offender’s intent or if accused didn’t foresee and disregard the harm or if he didn’t fail to foresee same while him could or should have.<sup>201</sup>

Where there are preceding, concurrent or intervening causes, whether due to the act of a third party or to a natural or fortuitous event, this relationship of cause and effect shall cease to exist when the extraneous cause was in it self-sufficient to produce the result.<sup>202</sup> When both are capable of producing the result, the accused may not be convicted with the result rather with that act itself which is backed up and completed by Art.27 in the case of criminal matter.

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<sup>194</sup> ELIAS N. STEBEK, ETHIOPIAN CRIMINAL LAW DIGEST PARTS I & II ( INTRODUCTORY READING FOR CRIMINAL LAW I),72( 2006)

<sup>195</sup> Id

<sup>196</sup> The Criminal Code Federal Democratic Republic of Ethiopia, Negarit Gazeta, Proc.No.414,(2004)

<sup>197</sup> Id, Art.24(1), para,1

<sup>198</sup> STEBEK, *supra note* 192 at 73

<sup>199</sup> Crim.C,Art.24(1), para,2

<sup>200</sup> STEBEK, *supra note* 192 at 74

<sup>201</sup> Id

<sup>202</sup> Crim.C,Art.24(2)

Causation is presumed to exist when there are concurrent, or intervening causes, but each of them are not independently capable of producing the result the cumulative effect of these causes produces the effect the issue seen under the Criminal Code.<sup>203</sup>

In general, the Criminal Code can answer more or less, questions related with the cases of chain of events and intervening causes. However, applying the rules of concurrent offenses to insurance is difficult.<sup>204</sup> In insurance, where a loss is caused by the action of two concurrent and independent causes, one of which is a peril and the other an excepted cause, the loss will not be recoverable. Where successive causes occur which are not capable of producing the effect, but bring the result cumulatively the last in point may be taken which is not clearly treated in insurance causation rule.<sup>205</sup>

In the case of concurrent cause, it is unclear whether we consider the insurer or the insured to be equivalent to the charged person. The Criminal Code, on the other hand, holds all criminals responsible based on their degree of involvement in the crime, but applying the Criminal Code to insurance does not solve the issue due to its inefficiency in addressing insurance matters and the fact that it was enacted to achieve criminal justice.<sup>206</sup>

The causation principles in Article 24 of the Criminal Code are incompatible to determining causation in insurance law. Ato Yohanes Nigusse argues that the analogical entertainment of the Criminal Code's provisions of causation can solve the matter.<sup>207</sup> But Ato Temesgen wendimagegn argues against this. As we all know, the nature of the rules of causation in criminal law is to establish the offender's intention and punishment is associated with the offender's intention, while the nature of the rules of causation in civil law, especially insurance law, is to create a specific right to compensation.<sup>208</sup>

Causation in insurance law its function for determination of liability. Since the purpose of criminal law differs from those of the civil law, it is natural that the applicable principle of justice should also differ in its purpose. In the civil law a causal connection must be found not

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<sup>203</sup> Id, Art.24(3)

<sup>204</sup> Interview with Aron, *supra note* 145

<sup>205</sup> Id

<sup>206</sup> Interview With Temesgen, *supra note* 155

<sup>207</sup> Interview with Yohanes, *supra note* 151

<sup>208</sup> Interview With Temesgen, *supra note* 155

only in order to establish liability but also in order to determine the extent of liability.<sup>209</sup> So, since there are variations in the underlying policy and context, and they are different in nature and intent, we will not use the analogical entertainment of these laws, but we will use general rules of causation insurance developed by other jurisdictions.

### **3.5 Causation Requirements in Tort and Insurance law in Ethiopia**

Causation requirements play an important role in pleading and proving tort and negligence cases.<sup>210</sup> To bring a tort action in negligence, the plaintiff must plead and prove, by a preponderance of the evidence, all four basic elements : the defendant owed reasonable and ordinary care toward plaintiff and protect the plaintiff against unreasonable risks, defendant breached this duty to the plaintiff by his unreasonable conduct, defendant's unreasonable conduct was the cause-in-fact and the proximate cause of the harm suffered by the plaintiff, and the plaintiff suffered actual harm or damages to the plaintiff person or property.<sup>211</sup>

In tort cases, applies a "but for" test to determine whether defendant's conduct was the cause-in-fact of the plaintiff's harm, based upon a causal chain of events without any intervening, superseding causes.<sup>212</sup>

Insurance causation is not tort causation.<sup>213</sup> The only reason causation becomes relevant in insurance is because the language of a policy has demanded it is relevant for some coverage or exclusionary purpose. Tort law, however, does involve socially imposed duties. Causation in tort law designed to link a tortfeasor's fault with the responsibility for harm that resulted to the injured plaintiff.<sup>214</sup>

The principle of proximate cause in insurance law is closely related with the theory of causation in tort law.<sup>215</sup> But principle of proximate cause in insurance law is not equivalent to the theory of causation in the tort law. First of all insurance law as special law of Com. Code, has its own

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<sup>209</sup> Ryut, *supra note* 191 at 803

<sup>210</sup> Peter Nash Swisher, Causation Requirements In Tort and Insurance Law Practice: Demystifying Some Legal Causation Riddles, (2007), at 3 <http://scholarship.richmond.edu/law-faculty-publications>

<sup>211</sup> Id.

<sup>212</sup> Id.at.4

<sup>213</sup> KNUTSEN, *supra note* 14 at 638

<sup>214</sup> Id.

<sup>215</sup> Interview With Abrha, *supra note* 164

nature in theory and practice. Causation in tort law cannot satisfy its needs and it is difficult to be a criterion for judging whether an insurer should bear insurance liability. Second, determination of causation in insurance law is subject to the contract among the parties and should pay attention to the reasonable expectation of parties due to the contract.<sup>216</sup>

In concurrent causation substantial factor rule is applying. If two, or more, causes concur to bring about an event and either one of them, operating alone, would have been sufficient to cause the identical result, and then each cause-in-fact has played so important a part in producing the result that legal responsibility should be imposed upon it as a substantial factor of the ultimate result.<sup>217</sup>

The plaintiff has the burden of proof to show, through direct evidence or circumstantial evidence, that defendant was the cause-in-fact of the plaintiff's injuries. The defendant's negligence must have been the probable cause, rather than merely a possible cause, of the plaintiff's injuries<sup>218</sup>.

Because causation-in-fact, standing alone, will often impose liability for extremely remote and insignificant causes, tort practitioners must also plead and prove that the defendant's negligent conduct was the proximate cause of the plaintiff's damages. Proximate Cause as a limitation to liability based upon Public Policy grounds and based upon Concepts of Foreseeability.<sup>219</sup>

There are many differences, as well as similarities, between legal causation issues in tort and insurance law and that general rules of proximate causation often are applied in a different, and more literal, manner in an insurance law context than in a traditional tort action.<sup>220</sup>

In insurance contract disputes four different factors need to be considered: coverage provisions of an insurance policy, the occurrence of the event, loss or damage and the causal "connector" between the event and the loss.<sup>221</sup> Causation requirement is a connector between the occurrence and the loss.<sup>222</sup>

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<sup>216</sup> Id.

<sup>217</sup> Swisher, *supra note* 208 at 4

<sup>218</sup> Id.at 5

<sup>219</sup> Id.at 9

<sup>220</sup> Id.at 19

<sup>221</sup> McDowell, *supra note* 12 at 575

<sup>222</sup> Id.

Insurance policy is a voluntary undertaking by which obligations are voluntarily assumed. Tort liability for negligence is not to be applied in construing insurance policy. In tort law the law to impose liability by its own terms of responsibility and quite another to construe for insurance law.<sup>223</sup>

One crucial distinction between tort and insurance causation principles is the "reasonable expectations of the parties" in insurance causation disputes.<sup>224</sup> In tort the rules of proximate cause are applied for the single purpose of fixing culpability, with which insurance cases are not concerned. The question in tort cases is always, why did the injury occur? Insurance cases are not concerned with why the injury occurred or the question of culpability, but only with the nature of the injury and how it happened.<sup>225</sup>

In tort and insurance law, then, "common sense and reasonable judgment, logic and public policy" ultimately will resolve most of these legal causation issues.<sup>226</sup>

The 1960 Ethiopian Civil Code doesn't define and contain provisions on causation. In Ethiopian tort Causation is a link between the defendant's conduct and the plaintiff's damage.<sup>227</sup> If only one cause no problem but if a number of different factors it is complicates the identification of the cause. In 'but for' Test the plaintiff show she would not have been injured in the way she was but for the defendant's conduct.<sup>228</sup>

Once the conduct of the tortfeasor causes the damage, the tortfeasor will be obliged to make that damage good<sup>229</sup>; but if damage was an unforeseeable consequence of the act, the damage is said to be too remote based on reasonable man standard.<sup>230</sup> Therefore, Ethiopian Civil Code uses Proximate Cause as a limitation to liability based upon Concepts of Foreseeability.<sup>231</sup>

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<sup>223</sup>Swisher, *supra note* 208 at 19

<sup>224</sup> Id.at 20

<sup>225</sup> Id.at 23

<sup>226</sup> Id.at 34

<sup>227</sup> Civ. C, Art.2027

<sup>228</sup> Id.

<sup>229</sup> Id, Art.2028

<sup>230</sup> Id, Art.2039

<sup>231</sup> Id, Art.2039

### 3.6 Incorporation of the Doctrine of Proximate Cause in Ethiopian insurance law

It is fundamental rule of insurance law that the loss must have been proximately caused by a peril insured against.<sup>232</sup> If an insured seeks to claim from his insurer for a loss he has sustained he must show that the loss was caused as a result of a peril covered by the policy and that the cause of the loss is proximately caused by a peril insured against. There must be a direct relationship of cause and effect of as the cause is a proximate and efficient though not necessarily in point of time.<sup>233</sup>

The object of insurance is to provide indemnity not for any loss but only for such losses caused by the insured perils. The perils insured are clearly stated in the policy and the liability of the insurer arises only if the loss is caused by one or more of these perils.<sup>234</sup>

It is clear that a loss may be caused either by an insured peril or an uninsured peril or an excepted peril. Thus, it is important to determine the cause of loss to decide whether the loss is payable or not.

The principle of proximate cause seems to be more realistic and better reasoned in relation to concurrent causation, in order to validate the insurer's contractual rights and obligations as well as the insured's reasonable expectations of coverage, is to require the finding of a covered dominant cause in any concurrent causation controversy.<sup>235</sup> If multiple concurrent causes exist, and if the dominant cause is a covered peril, then coverage would exist for the entire loss, even though other concurrent causes are not covered under the policy.<sup>236</sup> Under this paradigm, courts determine which among the concurrent causes of a loss was the most substantial: if the most substantial cause is covered, the insured receives damages.<sup>237</sup>

Ato Yohanes Niguse suggested the incorporation of the rule of proximate cause to the Ethiopian insurance law in order to solve the problems of causation in practice.<sup>238</sup> The following suggestions were made for improving the proximate cause system of Ethiopia. First, the

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<sup>232</sup> JONE BIRDS ,ESSENTIAL BUSINESS LAW INSURANCE,51(1979)

<sup>233</sup> Id.

<sup>234</sup> Interview with Tadele, *supra note* 153

<sup>235</sup> Swisher, *supra note* 208 at 370

<sup>236</sup> Id.

<sup>237</sup> Carback ,*supra note* 69 at 23

<sup>238</sup> Interview with Yohanes, *supra note* 151

Principle of proximate cause should be clearly defined in the law. Second, research on the principle of proximate cause should be strengthened in order to guide judicial practices and guarantee the sustainability of and healthy development of insurance industry in Ethiopia. Finally, revisions to the insurance law and the study of theoretical research on the principle are time-consuming and do not address immediate needs. As a result, the publishing guiding cases will effectively address the problem by the issuance of guiding cases by the FSC Cassation Division by judicial interpretation until the insurance law is revised.<sup>239</sup>

Therefore, Ethiopia should in to her legal system incorporate the principle that the insurer is liable only for those losses which have been proximately caused by a risk insured against.

### **3.7 Burden of proof in relation to Causation in insurance in Ethiopia**

In coverage litigation, no issue is more neglected, but more critical than the burden of proof.<sup>240</sup> The insured or insurer loses its case solely because it fails to adequately address the burden of proof.<sup>241</sup> Regrettably, the insured or the insurer may have possessed the evidence to sustain its burden of proof but failed to come forward with it, merely out of unawareness that the law places the burden upon it.<sup>242</sup>

Burden of proof contains two parts, production of evidence and burden of persuasion. The burden of persuasion stays with the party that bears the burden. Firstly, the insured needs to prove that the loss was caused by a peril insured by the policy.<sup>243</sup> Secondly, the insured needs to prove that the event was the proximate cause of loss.<sup>244</sup>

In Ethiopian insurance law there is no special provision for the burden of proof of the principle of proximate cause. So the provisions of the Civil Procedure Code<sup>245</sup> on the burden of proof should be applied. In the context of a coverage case, the insured must show that the claim falls

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<sup>239</sup> Id.

<sup>240</sup> R. Brent Cooper, *Burdens of Proof in Coverage Litigation*, TEXAS LAWYER AN ALM Publication, (January 30, 2012), <http://www.cooperscully.com>

<sup>241</sup> Id.

<sup>242</sup> Id.

<sup>243</sup> Johansson, *supra note 7* at 23

<sup>244</sup> Id.

<sup>245</sup> Civil Procedure Code of The Empire of Ethiopia of 1965, Negarit Gazeta, Extraordinary Issue No.3 of 1965 ,Art.1,259,261

within the policy.<sup>246</sup> As a general rule, a plaintiff bears the burden of proving his or her case.<sup>247</sup> The insured has the burden of proving that the loss or damage to the insured subject matter is due to an insured peril. The standard of proof here, as in any other civil case, is the preponderance of evidence.<sup>248</sup> Proof of the proximate cause basically depends on the circumstances of the loss.<sup>249</sup>

At the beginning of the proceedings, the plaintiff bears the burden of presenting evidence.<sup>250</sup> However, this burden may shift to the defendant if defendant admits the allegations of the statement of claim and has risen what is called affirmative defenses.<sup>251</sup> The insurer has the burden of proof as to affirmative defense.<sup>252</sup> Exclusion in the contract or an exception to coverage claimed by the insurer constitutes an affirmative defense.<sup>253</sup>

The burden of proof is on the respective parties to prove their specific allegations. The insured has to establish the loss was caused by the peril insured against. If he succeeds in proving the loss, the insurer is placed under the burden to establish that although the loss has occurred on account of the peril insured against it was of a nature which falls within the category of exception to the policy, when an insurer pleads that, the loss falls within the exception the insured is then placed under the burden to prove that the loss suffered by him does not fall within the exception.<sup>254</sup> However, the insurer normally needs to prove that a loss was caused by an excepted peril.<sup>255</sup>

Ethiopian Courts if they consider it necessary that the facts in dispute need to be established may appoint experts to verify such fact.<sup>256</sup> Expert evidence can be admitted to see whether the fact in question was material in the facts of the particular case.<sup>257</sup> For all these reasons, we have no doubt that the burden of proving the fact which excludes the liability of the insurer to pay

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<sup>246</sup> Cooper, *supra note* 238

<sup>247</sup> Civ. Pro. C., Art.258(1),261

<sup>248</sup> IVAMY, *supra note* 153at 413

<sup>249</sup> Id.

<sup>250</sup> Civ. Pro. C., Art.258(1),261

<sup>251</sup> Id

<sup>252</sup> Cooper, *supra note* 238

<sup>253</sup> Id

<sup>254</sup> JAIN, *supra note* 42 at 2.4

<sup>255</sup> Johansson, *supra note* 7 at 24

<sup>256</sup> Civ. Pro. C., Art.136

<sup>257</sup> SINGH, *supra note* 2 at 24

compensation lies on the insurer alone and no one else.<sup>258</sup> In the event of loss, the burden of proof is on the insured he has to prove that the proximate cause of loss was an insured peril. If the insurer argues that the loss was caused by an excepted peril, the onus of proof shifts to them. The burden of proof to exclude its liability falls on the insurer.<sup>259</sup>

Therefore, regarding burden of proof in the Ethiopian insurance law there is no special provision for the burden of proof of the principle of proximate cause. So the provisions of the Civil Procedure Code on the burden of proof should be applied until Ethiopia gets a comprehensive Code of evidence.

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<sup>258</sup> N. MAHESHWARA SWAMY, INSURER'S LIABILITY UNDER THE MOTOR VEHICLES ACT 1988, 589(New ed.2005)

<sup>259</sup> Id.

## CHAPTER FOUR

### 4. CONCLUSIONS AND RECOMMENDATIONS

#### 4.1 Conclusions

Causation in insurance is a matter of importance and it is vital to understand the difficulties that are built into causation. When deciding causal connection many different factors need to be taken into account like the expression used in the insurance policy, intention of the parties and the specific circumstances of each case. The very existence of liability of the insurer is dependent on the truth of causal connection. In order to cover up on the policy of insurance, the insured must show that the loss was cause as a result of perils covered by the policy.

The research leads us to the conclusion that the rule of proximate cause is extremely important in today's insurance industry in Ethiopia. Many real life cases with multiple causes of losses are solved with this law. In Ethiopia there is no law that addresses these confusing situations.

As have been observed, however, the determination of the proximate of proximate cause is not an easy task. Generally there is no difficulty if a single peril acts and causes the loss but often these perils do not operate in isolation, but acts in succession or simultaneously and it will be difficult to assess the relative effect of each peril or pick out one of these perils as the actual cause of loss, so that there may arise doubts as to proximate cause.

In Ethiopia insurance law, however, it has been found that the Com. Code is silent in respect of rule of causation. Yet, the use of the principle of causation important to identify insurance liability can not only fully balance the interests of insurance parties; it is also promoting the healthy development of the insurance industry.

Despite the above benefits of the rule of causation, its applicability to insurance is unsettled in the Com. Code.

Causation in Ethiopia are concerned, there is a problem related to definition. Neither the Commercial Code nor the Civil Code, which supplements the commercial code, provides a definition of causation. The only available rules concerning causation are indicated under Article 24 of the Criminal Code. However, the extension of the principle of causation found in the

Criminal Code to our insurance law would not bring about lasting solution to the prevailing causation problems. It is insufficient to address all issues of causation. Causation in insurance law its function for determination of liability. Since the purpose of criminal law differs from those of the civil law, it is natural that the applicable principle of justice should also differ in its purpose. In the civil law a causal connection must be found not only in order to establish liability but also in order to determine the extent of liability. So, since there are variations in the underlying policy and context, and they are different in nature and intent, we will not use the analogical entertainment of these laws, but we will use general rules of causation insurance developed by other jurisdictions until the legislator enacts causation rules appropriate for insurance law.

On top of this, Article 663 (1) and Article 665 of the commercial code which obliges the insurer to guarantee the insured risks specified in the policy, says nothing about how the causation between the risks materialized and the cause is determined. The absence of appropriate causation rules, as a result, leads courts to not give a uniform and proper decision. There are cases whereby courts frame issues of causation erroneously and they do not even carefully interpret what the law and the policy says.

According to data gained from decisions show that there is no uniform stand regarding the effect of exclusion towards compensation. Even, the FSC Cassation Division has been given different contradictory ruling regarding the effect of exclusion clauses in case of prove of causation. In one hand, the courts made to relieve the insurer from liability the excluded peril must be prove the cause for the damage sustain.<sup>260</sup> On the other hand, they made the insurer free from liability to the claim without proving the excluded peril the cause of the sustain damage only see the breach of the condition only.<sup>261</sup>

Regarding burden of proof under the Ethiopian insurance law there is no special provision for the burden of proof. So, the provisions of the Civil Procedure Code on burden of proof should be applied.

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<sup>260</sup> Oromiya Insurance S.C Vs. Mrs. Tigist Girma , File No.160196,FSC(July 01,2019)

<sup>261</sup> Global Insurance S.C and Fitsum lakew, File No. 90793, vol.15 FSC 410 (2013)

The final interpretive exercise in solving coverage disputes turning on insurance causation always rests on courts an evaluation of the insurance policy language at issue. Here, courts need to take a purposive approach to that language and ask why that language is used. The purpose of the policy, the underwriting intent behind the language used, and the consequences of coverage and coverage gaps on a systemic level all need to be considered. Otherwise, insurance jurisprudence about causation risks continuing to be an unpredictable patchwork that lacks holistic coherence.

The incorporation of the rule of causation into our law increases the certainty and predictability of insurance litigation. The cost of insurance will be decreased because the number of cases involving litigation by the insurer will be reduced; the insured will not litigate a case in which he does not appear to recover, and the insurer will not defend a case in which the insured appears to recover. Claims will be paid more quickly, and the insured will face less expensive and time-consuming litigation.

The lack of rule of causation in our insurance law creates a huge gap on the judiciary system and on the public faith in relation to insurance law. As I mentioned in the above courts and judges take their own different stand in similarly cases as they wish.

Therefore, Ethiopia Courts treat causation inconsistently. Why courts contradict each other in the decision they rendered in similar case, the reason behind this contradiction is the lack of rule of causation in our law and the different attitudes of judges in the area of study. Since, the doctrines on rule of causation did not incorporation in our law courts take their own stand as they wish.

#### **4.2 Recommendations**

So, how this legal gap can be filled seems to be an important issue that must be addressed. The determination of causality must be geared to this purpose, and the choice of appropriate test is therefore essentially a matter of legal policy rather than science or philosophy. This is not to say that empirical and philosophical assessments are insignificant in deciding policy, since sound policy must be based on scientific facts and philosophical criteria.

The legal gap on the rule of causation can be listed as an issue of the Ethiopian infant insurance industry that requires policy attention. As a result of the above findings, the author of this study would like to make the following recommendations:

1. The general jurisprudence on the law of insurance shows rule of causation is important for determination of compensation as a result Ethiopia needs for legal reform. The legal gap with respect to causation in the insurance law seeks a solution. As a result, the insurance law, in its forthcoming revision, shall be amended in such a way that to incorporate general rule of causation clauses in causation determination. Regarding the law and the smooth flow and rapid development of the business, it is recommended that legislators issue comprehensive clauses governing causation insurance, taking into account the situation of the government's economic policy, the situation of society in which the business is carried on, and the direction of development of the global economy, especially insurance business. To assist courts in issuing consistent decisions and to make insurance law full, our law should include a causal provision that addresses problems that the new insurance law will face.
2. Another solution to the issue that can be a good device to close the legal gap is to introduce insurance policies that have a 'causation clause.' As a result, in the absence of a clear law that bestows causation, insurers can include clear causation clauses in standard types of policies. As a result of insurance policies in Ethiopia failing to specifically include the rule of causation, insurance companies are advised to draft their insurance policies with a clear and precise rule of causation clause as it can minimize challenges of causation and prove of causation until a legislative action is taken.
3. Incorporating the proximate cause principle into our insurance law. An in-depth summary of the specific application status of the principle of proximate cause in Ethiopian judicial practice is required. The principle of proximate cause should be stipulated in Ethiopian Insurance Law, and the guiding rules for the principle of proximate cause should be further elaborated by the issuance of guiding cases by the FSC Cassation Division. In order to make up for the loopholes in the legislation on the principle of causation, and provide legislative support for the practical application of the principle of causation, the principle of proximate cause should be universally applied and accurately applied in practice.
4. In order to regulate the determination of the principle of proximate cause in practice and guide courts to decide the case, it is necessary to determine some operational and applicable rules to Ethiopian insurance law. Fortunately, a series of such general rules of

causation practicality have emerged in the course of long-term insurance practices. As a result Ethiopian Courts should rely on insurance jurisprudence in the Anglo-American legal system until it introduces it into its own legal system.

5. Ethiopia requires judicial action to apply the rule of causation developed by other jurisdictions. Capacity building for judges in various short-term programs that include training on the subject of insurance industry, which is supported by domestic and foreign laws, and practice by strengthening theoretical research on causation insurance.
6. Regarding burden of proof in the Ethiopian insurance law there is no special provision for the burden of proof of causation. So the provisions of the Civil Procedure Code on the burden of proof should be applied until Ethiopia gets a comprehensive Code of evidence.
7. Finally, publish guiding cases on the principle of proximate cause. It is necessary to solve the problem that the judges have different standards in the trial of cases using the principle of proximate cause and have great differences in conceptual understanding. The guiding cases can be effectively resolved through the issuance of guiding cases by the FSC Cassation. The Federal Supreme Court in its Cassation Bench has constitutionally empowered to give cassation over any level of court decision containing basic error of law.<sup>262</sup> Its interpretation in giving decisions is binding as of law in the country.<sup>263</sup> Thus, the court is expected to give decisions that escalate the jurisprudence of the law on the issue of causation whenever a case is brought to its attention to give clear and well researched interpretations that fill the gap of the law when cases of such nature are submitted to it.

Hence, the legal gap must be filled taking into account the basic principle of legal interpretation by making use of the general jurisprudence on the issue of causation. However, as interpretation by Ethiopian courts can't be a long lasting solution, a legislative decision on the issue is also required. Thus, legislative measure seems apt in the revision of the insurance law which is now underway.

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<sup>262</sup> Federal Democratic of Ethiopia Constitution, Proc. No.1, Fed. Neg. Gaz. 1<sup>st</sup> Year No., 21<sup>st</sup> August 1995, Art 80(3/1-a)

<sup>263</sup> Federal Courts Proclamation Re-Amendment Proclamation No.454/2005, Fed. Neg. Gaz. 11<sup>th</sup> Year No.42, 14<sup>th</sup> June 2005, Art.2(1)

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Interview with Aron Kassaye, senior legal officer in Ethiopian Insurance Corporation, in Addis Ababa, EIC building (Mar. 3, 2021)

Interview with Bereket Seyfu, Judge at Federal High Court, in Addis Ababa, Federal High Court, lideta division building (Mar. 4, 2021)

Interview with Musie Amare, vice Chief Executive officer of Ethiopian Insurance Corporation, in Addis Ababa, EIC building (Mar. 9, 2021)

Interview with, Nuredin Kedir Judge at Federal Supreme Court, in Addis Ababa, Federal Supreme Court building (Feb. 19, 2021)

Interview with Roba Tilahun, Judge at Federal First instance Court, in Addis Ababa, Federal First instance Court, Lideta division building (Feb. 18, 2021)

Interview with Tadele tegegn, head of legal department in Nile Insurance S.C, in Addis Ababa, Nile Insurance building (Feb. 25, 2021)

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The commercial and private vehicle policies of EIC

## Annexes

ዳኞች:-

1. አልማው ወሌ
2. ዓለ. መሐመድ
3. ረታ ቶሎሳ
4. አዳነ ንጉሤ
5. ሙስጠፋ አህመድ

አመልካች:- ግሎባል ኢንሹራንስ አልቀረበም

ተጠሪዎች:-

- |  |   |                     |
|--|---|---------------------|
| <ol style="list-style-type: none"> <li>1. አቶ ፍጹም ላቀው</li> <li>2. ወ/ሮ ብስኩት ዘለቀ</li> </ol> | } | ጠበቃቸው አትናቦን ነጋሳ ቀረቡ |
|--|---|---------------------|

መዝገቡን መርምረን የሚከተለውን ፍርድ ሰጥተናል።

**ፍ ር ድ**

ለዚህ የሰበር ክርክር መነሻ የሆነው ጉዳይ በአሁን የሰበር ተጠሪዎች ከሳሽነት የተጀመረው በአዳማ ልዩ ዞን ከፍተኛ ፍርድ ቤት ሲሆን አመልካች ደግሞ ተከላሽ ነበር። ክሱም :- የከላሾች አውራሽ የጋራ ንብረት የሆነው የሰሌዳ ቁጥሩ 3.19516 ኢ.ሮ ሚኒባስ መኪና በተከላሽ ኩባንያ የኢንሹራንስ ሽፋን ያለው ሲሆን በ20/10/2004 ዓ/ም ከጠዋቱ 12:10 ሲሆን ከአዳማ ወደ አዲስ አበባ እየተጓዘ ቢሾፍቱ ከተማ መግቢያ ላይ ትክክለኛ ምልክት ሳያሳይ መንገድ ዘግቶ የቆመውን መኪና በመግጨት ከፍተኛ የሆነ ጉዳት የደረሰበት ሲሆን ተከላሽም መኪናውን አንስቶ የተጎዱ ተሽርካርካሪዎች ወደሚጠገኑበት ቦታ ወስዶ መኪናውም ሙሉ በሙሉ ከጥቅም ወጪ መሆኑን ካረጋገጠ በኋላ የተሽርካሪውን ዋጋ ብር 350,000 ለመክፈል ዝግጁ መሆኑን ለከላሾች ከገለጸ በኋላ መኪናው ላይ አደጋ የደረሰው ትርፍ ሰው

ጠቅላይ ሰብአዊ ፍርድ ቤቅ  
የብሔራዊ ግዴታ  
5/8/06  
ገብረገብ ተገሩ



ህግ ሆኖ ስለሚያስገድድ ተከላሽ ክስ የቀረበበትን ገንዘብ ከነወለዱ፣ ለዳኝነት የተከፈለውን እንዲሁም ወጪና ኪሳራ ሊከፍል ይገደዳል ብሏል።

ጉዳዩ በይግባኝ የቀረበለት የኦሮሚያ ጠ/ፍርድ ቤት ይግባኝ ሰሚ ችሎት አመልካች ያቀረበውን የይግባኝ በፍ/ሥ/ሥ/ሀ/ቁ/337 መሰረት በመዝጋት በማሰናበቱ የሰበር አቤቱታውን ለዚህ ችሎት አቅርቧል።

አመልካች ባቀረበው የሰበር አቤቱታም የጠቀሳቸው የቅሬታ ነጥቦች ፡-ጉዳት የደረሰበት ሚኒባስ መኪና የኢንሹራንስ ሽፋን ዋስትና የተገባለት ቢሆንም በወቅቱ 18 ሰዎችን አሳፍሮ ሲገንዝ መንገድ ዳር ተበላሽቶ ከቆመው መኪና ጋር ተጋጭቶ 14 ሰዎች ሞተው 4 ሰዎች የተጎዱ መሆኑን የአድአ ወረዳ ፖሊስ በደብዳቤ ከገለጸው የተረጋገጠ ሲሆን በኢንሹራንስ ውሉም ሆነ በመንገድ ትራንስፖርት ባለሥልጣን በተሰጠው የባለቤትነት ማረጋጫ ደብተር(ሊብራ)የመኪናው የመጫን አቅም 11 ሰው ብቻ መሆኑ በተገለጸበት ሁኔታ መኪናው 7 ሰዎችን በትርፍነት ጭኖ ጉዳቱ በመድረሱ በኢንሹራንስ ኩባንያ ፖሊሲ ጠቅላላ ማግለያ በሚለው ክፍል ተራ ቁጥር 6 « በኢንሹራንስ ውሉና ከሚመለከተው አካል በተሰጣቸው የባለቤትነት ማረጋጫ ደብተር ላይ ከተገለጸው ሰው ብዛትና መኪናው ካለው መቀመጫ ብዛት በላይ ጭኖ ለሚደርስ አደጋ ኢንሹራንስ ኩባንያው ማንኛውንም ክፍያ ለመክፈል ሀላፊነት አይኖርበትም » ስለሚል ይህንንም ግዴታ ኢንሹራንስ ሰጭጃ ሆነ ኢንሹራንስ ገቢው በንግድ ህግ አንቀጽ 657(2-3) መሰረት በተጨማሪ የማግለያ ውል የግዴታ ስምምነት የተፈራረምን ስለሆነ አመልካች የጉዳት ካሳውን ለመክፈል እንደማልገደድ በመጠቀስ ያቀረብኩትን ክርክር ፍርድ ቤቶቹ ሳይቀበሉት ያለፉት አግባብነት የለውም፤

አንድ መኪና ከአቅም በላይ ጭኖ ሲገንዝ እንደፈለጉት መሪም ሆነ ፍሬን መያዝ መቆጣጠር እንደማይቻል እና ከአቅም በላይ መጫን ለአደጋ ምክንያት እንደሚሆን የባለሙያ ምስክርነት በተሰጠበት ሁኔታ ፍርድ ቤቱ ከአቅም በላይ መጫን ለአደጋ ምክንያት አይሆንም፤ እንዲሁም በኢንሹራንስ ፖሊሲው ላይ ከላሾች ግዴታ ገብተው የፈረሙት ነገር ስለሌለ የመኪናውን ግምት፣ የጠበቃ አበል 10 ፐርሰንት ወጪ ኪሳራ ብር 500 ጫምሮ አመልካች ሊከፍል ይገባል ሲሉ የወሰኑት ተቀባይነት የለውም የሚሉ ናቸው።

ተጠሪዎች በበኩላቸው በሰጡት መልስ፡-በአመልካችና በተጠሪዎች መካከል በተደረገው የኢንሹራንስ ዋስትና ውል የመድን ሽፋን የተሰጠው መኪና ትርፍ ሰው ከጫነ አመልካች

ቤተሰብ ጠቅላይ ግዴታ ለገደብ  
ታሪክ ግዴታ  
4ጠቅላይ ግዴታ 5/8/06  
JULIUS + IX

ሀላፊነት አይኖረውም በሚል አልተስማምንም ፣ በዚህ መልኩ ስለመዋዋላችን የሚገልጽ ማስረጃም አመልካች ለሥር ክፍተኛ ፍርድ ቤት አላቀረበም፤ አመልካች የኢንሹራንስ ፖሊስ ነው በማለት ለሥር ፍርድ ቤት ያቀረበውም የፖሊሲ ቁጥር የሌለው ለማስታወቂያ ተብሎ የተዘጋጀውን ብሮሽር በመሆኑ ተጠሪዎችን የሚያስገድድ አይሆንም፤ እንዲሁም በተሽርከርካሪው ላይ አደጋ የደረሰው በፍጥነት በመንዳትና በአሽከርካሪው ማቀላፋት ምክንያት መሆኑ በማረጋገጥ የትራፊክ ፖሊስ ማስረጃ የሰጠበት ጉዳይ በመሆኑ አመልካች አደጋው የደረሰው ትርፍ ሰው በመጫኑ ምክንያት ነው ሲል ያቀረበው ክርክር ተቀባይነት የለውም ሲሉ ተከራክረዋል።

ተጠሪዎች ላቀረቡት መልስም አመልካች የመልስ መልስ በማቅረብ ተከራክሯል።

የጉዳዩ አመጣጥ ከዚህ በላይ የተመለከተው ሲሆን እኛም፡- ጉዳት ለደረሰበት መኪና ተጠሪዎች የጠየቁትን ገንዘብ አመልካች የመክፈል ሀላፊነት አለበት? ወይስ የለበትም? የሚለውን ጭብጥ ይዘን ክርክሩን እንደሚከተለው መርምረናል።

በአመልካችና በተጠሪዎች መካከል የንብረት ኢንሹራንስ ውል ስለመደረጉ በግራ ቀኙ የታመነ ጉዳይ ሲሆን አመልካችም የተጠሪዎች ንብረት ለሆነው ጉዳት ለደረሰበት ሚኒባስ መኪና የብር 350,000 የዋስትና ሽፋን ሰጥቷል። መኪናውም በደረሰበት አደጋ ጉዳት የደረሰበት መሆኑ የተረጋገጠ ጉዳይ ሲሆን የግራ ቀኙን ወገን እያከራከራቸው የሚገኘው ደግሞ ኢንሹራንስ ሰጪው ለደረሰው ጉዳት በሰጠው ዋስትና ሽፋን መሰረት ሀላፊ የመሆኑና ያለመሆኑ ጉዳይ ነው። አመልካች በመኪናው ላይ ለደረሰው ጉዳት የዋስትናውን ገንዘብ የመክፈል ግዴታ የሌለኝም ሲል በዋናነት የሚከራከረው መኪናው ላይ አደጋ ሊደርስ የቻለው የመጫን አቅሙ 11 ሰዎች ሆኖ ሳለ በትርፍነት ሰባት ሰዎችን በመጫኑ ምክንያት ክብደት በመጨመሩ የመኪናው መሪና ፍሬን እንደልብ ባለመታዘዛቸው ነው። በኢንሹራንስ ፖሊሲው ከተቀመጡት ጠቅላላ የማግለያዎች በአንቀጽ 6 የኢንሹራንስ ዋስትና ሽፋን የተሰጠው መኪና መጫን ከሚገባው የሰው ቁጥር በላይ በትርፍነት ጭኖ አደጋ የደረሰበት እንደሆነ አመልካች ከባንያ የዋስትናውን ገንዘብ የመክፈል ሀላፊነት እንደሌለበት ተመልክቷል በሚል ነው። ተጠሪዎች ግን በኢንሹራን ፖሊሲው ተጠቅሷል በሚል አመልካች ቢከራከርም በማስረጃነት የኢንሹራንስ ፖሊስ ነው በማለት ያቀረበው ለማስታወቂያ ሥራ ተብሎ የተዘጋጀ ብሮሽር እንጂ ትክክለኛ የኢንሹራንስ ፖሊሲ አይደለም፤ እንዲሁም አመልካች የጠቀሰው የማግለያ

ጠቅላይ ልማት ሚኒስቴር  
የግብርና ጉዳዮች  
አዳማ ልብሰ ልብሰ  
Slielag  
ገብረ-ገብረ

ምክንያትም አመልካችና ተጠሪዎች በገባነው የኢንሹራንስ ውል ያልተጠቀሰ በመሆኑ የሚያስገድደን አይደለም የሚል ክርክር አቅርቦዋል።

የንብረት ኢንሹራንስ ውል ከተለያዩ የውል አይነቶች አንዱ ሲሆን ውሉም ህጋዊ የሆኑ ተግባራት በሚከናወኑበት ጊዜ ሊደርስ የሚችለውን ጉዳት በዋስትናው ሽፋኑ መሰረት ለመካስ በማሰብ ሊደረግ የሚገባ ነው።

በፍ/ሀ/ቁ/1678 (ለ) እንደተመለከተው አንድ ውል በቂ የሆነ እርግጠኛነት ያለውና ህጋዊ የሆነ ጉዳይ ለማክናወን ሊደረግ ይገባል። በአመልካችና በተጠሪዎች መካከል የተደረገው የንብረት ኢንሹራንስ ውልም በህጉ መሰረት የተደረገ ነው። ሆኖም ህጋዊ ውል የሚደረገው በህግ እንዲደረግ ያልተፈቀደውን ድርጊት ወይም የህግ ክልከላ የተደረገበትን ጉዳይ በማክናወን ያልተገባ ጥቅም ለማግኘት በማሰብ ወይም በሚኖረውን ፍላጎት መነሻ ሊሆን አይገባም። የተጠሪዎች መኪና ለህዝብ ትራንስፖርት አገልግሎት የሚውል መሆኑ የታመነ ጉዳይ ሲሆን ይህንኑ አገልግሎት በሚሰጥበት ጊዜም ትርጉስፖርት አዋጅ፣ ደንብና መመሪያዎችን መከተል ይኖርበታል። ነገር ግን አደጋው በደረሰበት ወቅትም መኪናው መጫን ከሚገባው 11 ሰዎች በላይ 7 ሰዎችን ጭኖ ሲጓዝ እንደነበር የተረጋገጠ ፍሬ ነገር ሲሆን ተጠሪዎቹም ቢሆኑ መኪናው ትርፍ ሰዎችን አልጫነም ሲሉ ቀረቡት ክርክር የለም። መኪናው ከጫናቸው 18 ሰዎች ውስጥም በወቅቱ 14 ሰዎች መሞታቸው ከክርክሩ መገንዘብ ተችሏል። መኪናው በህጉ ከተቀመጠው የሰው ቁጥር በላይ መጫኑ የትራንስፖርት ህጉን የሚጥስ ሲሆን ህጉ ተጥሶ ከተፈቀደው የሰው ቁጥር በላይ ሰዎችን ጭኖ ሲጓዝ ለደረሰው አደጋ አመልካች የዋስትናውን ሽፋን ገንዘብ የመክፈል ሀላፊነት ሊኖረው አይችልም።

በአጠቃላይ በመኪናው ላይ ጉዳቱ የደረሰው ያለውን የትራንስፖርት ህግ በመጣስ ከወንበር በላይ በትርፍ 7 ሰዎችን ጭኖ ስለመሆኑ ለሥር ፍርድ ቤት የትራፊክ ፖሊስ በማስረጃነት ከላከው ሪፖርት የተረጋገጠ ጉዳይ ነው። በመሆኑም በመንገድ ትራንስፖርት ህግ ከሚፈቀደው ውጪ ትርፍ ሰዎችን ጭኖ ሲጓዝ በመኪናው ላይ የደረሰው ጉዳት ሆኖ ባለበት የሥር ፍርድ ቤቶች አመልካች በኢንሹራንስ ውሉ መሰረት የዋስትና ሽፋን ገንዘብ ሊከፍል ይገባል ሲሉ የወሰኑት መሰረታዊ የሆነ የህግ ስህተት የተፈጸመበት ሆኖ በመገኘቱ ተከታዩን ውሳኔ ሰጥተናል።

ብሔራዊ የጥያቄ ጽ/ቤት  
ጥያቄ ገቢ  
ጽ/ቤት ጽ/ሰራተኛ  
ጽ/ቤት ጽ/ሰራተኛ  
ጽ/ቤት ጽ/ሰራተኛ

ው ሳ ኔ

1. የአዳማ ልዩ ዞን ከፍተኛ ፍርድ ቤት በመ/ቁ/15121 በቀን 14/08/2005 ዓ/ም በዋለው ችሎት የሰጠውን ውሳኔና የኦሮሚያ ጠ/ፍርድ ቤት ይግባኝ ሰሚ ችሎት በመ/ቁ/161389 በቀን 15/08/2005 ዓ/ም በዋለው ችሎት የሰጠውን ትዕዛዝ በፍ/ሥ/ሥ/ሀ/ቁ/348(1) መሰረት ሽረናል።
2. ተጠሪዎች የትራንስፖርት ህጉን ጥሰው ከወንበር በላይ ትርፍ ሰዎችን ጭነው መኪናው እየተጓዘ በመኪናቸው ላይ ለደረሰው ጉዳት አመልካች የዋስትናውን የሽፋን ገንዘብ የመክፈል ሀላፊነት አይኖርበትም ብለናል።
3. የዚህን ፍርድ ቤት ወጪና ኪሳራ የግራ ቀኝ ወገኖች የየራሳቸውን ይቻሉ።
4. መዝገቡ የተዘጋ ስለሆነ ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የአምስት ዳኞች ፊርማ አለበት።

ታ/ተ

የፍርድ ቤት ማህተም  
በቀን 15/08/2005  
በፍ/ሥ/ሥ/ሀ/ቁ/348(1)  
በሰረዘበት ሽረናል



የመቁ/ቁ251911

ቀን:- 13/05/2013 ዓ.ም

የግብርና ሚኒስቴር  
የግብርና ሚኒስቴር  
የግብርና ሚኒስቴር

### የሐንሰ ገንብ

ከሳሽ: ቻለው ቶላ ማረሚያ

ተከሳሾች:- ቡና ኢንፎርግሽን ኩባንያ በሌሎበት

መዝገቡ ተመርምሮ ተከታይ ፍርድ ተሰጥቷል።

### ፍርድ

ለዚህ ፍርድ መነሻ የሆነው ከሳሽ ጥር 19 ቀን 2012 ዓ.ም በተከሳሽ ላይ የመሠረተው ክስ ሆኖ ይዘቱ በአጭሩ ከሳሽ የሠሌዳ ቁጥሩ ክድ 3-62442 አሮ ስራቱ ጃፓን ማኒ ባስ ለሆነው ተሽከርካሪው ከተከሳሽ ኩባንያ ሙሉ የመድን ዋስትና በቁጥር BIC/DT/MTC/0334/1218 በመግባት ለመድን ዋስትናው የሚከፈለውን አረቦን ክፍያሉ።

ይህ የመድን ዋስትና የተገባለት የከሳሽ ተሽከርካሪ በአማራ ብሄራዊ ክልላዊ መንግስት ምስራቅ ጎረቤት ዞን ጎንዛምን ወረዳ ልዩ ቦታው ቁልቻ ተብሎ በሚጣራ ስፍራ በ04/13/2011 ዓ.ም በአሽከርካሪ ደሳለኝ ታምሩ ሲሽከረከር ቁልቻ ወንዝ ድልድይ ላይ በደረሰበት የመገልበጥ አደጋ ተሽከርካሪው ሙሉ በሙሉ ወድመዋል። በአደጋው ምክንያት አንድ ተሳፋሪ ወ/ሮ ሙሉ ወ.ብሰጪ የተባለች ስትሞት፣ በወጣት ጌታቸው ዘረሁን፣ በወ/ሮ ዞማ አበራ እና በወ/ሮ መሰረት ጸሀይ በተባሉ ተሳፋሪዎች ላይ ደግሞ የአካል ጉዳት የደረሰባቸው በመሆኑ ለህክምና ፣ ለሞቱት ሰው ወራሾችና ለተጎዱ ለምች ካሳ በሽምግልና ብር 145,000 /አንድ መቶ አርባ አምስት ሺህ/ ከሳሽ ክፍያሉ ።

ተከሳሽ ለከሳሽ በሰጠው የንግድ ተሽከርካሪ የመድን ዋስትና ውል ኢንፎርግሽን በተገባለት ተሽከርካሪ ላይ ጉዳት ቢደርስ ለኢንፎርግሽን ገቢው ካሳ እንደሚከፍል፣ የኃላፊነት ወሰን በሚመለከትም የሞተር ተሽከርካሪ ላይ ለሚከሰት ጉዳት ወይም ውድመት ተሽከርካሪውን እንደሚጠግን ወይም የማይጠግን ከሆነም በሠንጠረዥ ላይ በተገለጸው መሠረት በጥሬ ገንዘብ እንደሚከፍል እንዲሁም በመድን ገቢ ተሽከርካሪ ላይ የመገልበጥ አደጋ የደረሰ እንደሆነ መድን ሰጪው በአደጋው ለሚደርስ ሞት ፣ የአካል ጉዳት ፣ በንብረት ጉዳት ለሚፈጠር ኃላፊነት ተከሳሽ ዋስትና እንደሚሰጥ የተሰማማ ቢሆንም ተከሳሽ ከሳሽ ያወጣሁት ወጪና ኪሳራ በመድን ውሉ መሠረት ካሳ እንዲከፍል ቢጠየቅም በቁጥር ዩ/ኢ/ካሳ/5 083/19 ጥቅምት 12/2012 ዓ.ም በጻፈው ደብዳቤ ጉዳቱ በደረሰበት ወቅት ተሽከርካሪው "ትርፍ ሰው" ጭና ገበር በሚልና በደረሰው አደጋ መንስኤ ስለመሆኑ ባላረጋገጠበት ምክንያት ለመክፈል ፈቃደኛ አልሆነም።



በመሆኑም ከሳሽ በተከሳሽ የመድን ዋስትና የሰጠው ተሽከርካሪ በመገልበጥ አደጋ ሙሉ በሙሉ በመጎዳቱ በአደጋው ለተጎዱ ሰዎች የተከፈለውን ብር 145,000 /አንድ መቶ አርባ አምስት ሺህ/፣ ጉዳት የደረሰበትን ተሽከርካሪ ከአደጋው በታ አስጎትቶ ለማውጣት እና ለማጓጓዝ የተከፈለ ብር 33,500 (ሰላሳ ሶስት ሺህ አምስት መቶ) እንዲሁም በተከሳሽ የመድህን ሽፋን ተሰጥቶት ጠቅላላ ጉዳት የደረሰበት ተሽከርካሪ ዋጋ ግምት ብር 800,000 /ስምንት መቶ ሺ ብር/ በድምሩ ብር 978,500 (ዘጠኝ መቶ ሰባ ስምንት ሺህ አምስት መቶ ብር) እና በዚህ ክስ ምክንያት ያወጣሁት ወጪና ኪሳራ ጨምሮ እንዲከፍል ይወሰንልኝ በማለት ዳኝነት ጠይቀዋል።

በሰነድ ማስረጃነትም ዘርዘር ያቀረበው ፡-

1. በከሳሽና በተከሳሽ መካከል በ18/4/11 ዓ.ም በፖሊሲ ቁጥር በአይሲ/ዲአ/ኤምአይሲ/0334/1218 ከ19/04/2011-17/04/2011 ዓ.ም ድረስ የተደረገ የንግድ ተሽከርካሪ የመድን እና የ3ኛ ወገን መድን ውል ስምምነት 11 ገፅ ፎቶ ኮፒ
2. የትራፊክ ፖሊስ በ736/125/44 በቀን 5/2/2012 ዓ.ም የጻፈው አደጋ ሪፖርት 4 ገፅ ኮፒ
3. ተከሳሽ በቁጥር ቡ/ኢ/ካሣ/5083/19 በቀን 12/02/2012 ዓ.ም ተከሳሽ በገባው የመድን ዋስትና ውል መሠረት ግዴታውን እንዲወጣና ተገቢውን ካሳ እንዲከፍል የተጠየቀበት ደብዳቤ 1 ገፅ ቀርቦአል፤ ዋናው በከሳሽ እጅ ይገኛል
4. ተከሳሽ በቁጥር ቡ/ኢ/ካሣ/5083/19 በቀን 12/02/2012 ዓ.ም በከሳሽ ተሽከርካሪ ላይ ለደረሰው አደጋ የመድን ዋስትና ሽፋን ለመስጠት ፈቃደኛ አለመሆኑን የገለፀበት ደብዳቤ 1ገፅ ፎቶ ኮፒ
5. የወደቀውን መኪና ከዋሻ ወስጥ ጎትቶ ለማስወጣትና ወደ አዲስ አበባ ለማስጫን የተከፈለ ወጭ ብር 33,500 (ሰላሳ ሶስት ሺህ አምስት መቶ) የተከፈለበት ደረሰኞች 3 ገጽ ኮፒ
6. በአደጋው ምክንያት አደጋ የደረሰባቸው 3 ሰዎችን ለማሳክም እና ለሞተ ሰው ወራሾች ካሳ በ09/02/2012 ዓ.ም ብር 145,000 /አንድ መቶ አርባ አምስት ሺህ/ በሽማግሌ የአርቅ ስምምነት የተከፈለበት ማስረጃ 8 ገጽ ፎቶ ኮፒ አያይዘው አቅርበዋል።

ተከሳሽ መጥሪያ ደርሶት በጽሁፍ መልስ ስላልሰጡ እና ክስ በሚለማበት ቀን ያልቀረቡ በመሆኑ በፍ/ብ/ሥ/ሥ/ሀ/ቁ 199 መሠረት በጽሁፍ መልስ የመስጠት መብቱ ታልፎ በፍ/ብ/ሥ/ሥ/ሀ/ቁ 70(ሀ) መሠረት በሌሎች ጉዳዩ እንዲታይ ታላል።

የጉዳዩ አመጣጥ ከዚህ በላይ የተመለከተው ሲሆን ፍርድ ቤቱ ጉዳት ለደረሰበት መኪና ከሳሽ የጠየቁትን የኢንሹራንስ ገንዘብ ተከሳሽ አልከፍልም ያለበት ምክንያት ተገቢነት አለው? ወይስ የለውም? ተገቢነት የለውም የሚባል ከሆነ ተከሳሽ ሊከፍለው የሚገባ የካሳ መጠን ምን ያህል ነው? የሚለውን ጭብጥ በመያዝ ጉዳዩ ተገቢነት ካላቸው የህግ ድንጋጌዎች በማገናዘብ በሚከተለው መልክ መርምሮታል ፡-

ፍርድ ቤቱ መዝገቡ መርመሮ እንዳየው በከሳሽና በተከሳሽ መካከል ለክሱ መነሻ የሆነው ተሽከርካሪ ኢንሹራንስ ውል ስለመኖሩ እና በደረሰበት አደጋ በተሳፋሪዎችና በተሽከርካሪው ጉዳት የደረሰ መሆኑ ከሳሽ ባቀረበው ማስረጃ የተረጋገጠ ጉዳይ ሲሆን ኢንሹራንስ ሰጪው ለደረሰው ጉዳት በሰጠው ዋስትና ሽፋን መሰረት የመሆኑና ያለመሆኑ ጉዳይ ሲታይ



ተከላሽ በ12/02/2013 ዓ/ም ለከላሽ በጻፈው በመኪናው ላይ ለደረሰው ጉዳት የዋስትናውን ገንዘብ የመክፈል ግዴታ የለብኝም ሲል በዋናነት የገለጸው መኪናው ላይ አደጋ ሲደርስ የመጫን አቅም በላይ ተሳፋሪዎች የጫን በመሆኑ በገዙት ኢንሹራንስ ውል ስለማይሸፈን ተከላሽ ኩባንያ የዋስትናውን ገንዘብ አልከፍልም በሚል ነው።

ተከላሽ አልከፍልም ያለበት ምክንያት እንደያብራሩ ፍርድ ቤቱ በ15/04/2013 ዓ/ም በዋለው ችሎት ከላሽን ሲጠይቅ ተሽከርካሪው ትርፍ ጭነዋል። ትርፍ መጫን የትራፊክ ደንብ መተላለፍ እንጂ የኢንሹራንስ ካሳው ሊያስቀር አይችልም።ውላችንም ሕግም አይከለክለንም በማለት አብራርተዋል።ከላሽ በሰነድ ማስረጃነት ያቀረበው የአደጋ ማሳወቂያ ቅጽ በአደጋው ጊዜ ተሽከርካሪው 18 ሰው ጭኖ የነበረ መሆኑ ያስረዳል። የቀረበው የኢንሹራንስ ውል ሰነድ ጉዳት የደረሰበት ተሽከርካሪ የመጫን አቅሙ ሹፊሩን ጨምሮ 15 ሰው መሆኑ ያስረዳል።

ከላሽ ትርፍ መጫን የትራፊክ ደንብ መተላለፍ እንጂ የኢንሹራንስ ካሳው ሊያስቀር አይችልም።ውላችንም ሕግም አይከለክለንም በማለት ያቀረቡት መከራከርያ በተመለከተ በፍ/ሀ/ቁ/1678 (ለ) እንደተመለከተው አንድ ውል በቂ የሆነ እርግጠኛነት ያለውና ህጋዊ የሆነ ጉዳይ ለማክናወን ሊደረግ ይገባል በማለት ተደንገገዋል።በከላሽና ተከላሽ መካከል የተደረገው ኢንሹራንስ ውል በንግድ ሕጉ መሰረት የተደረገ ሲሆን ይህ ውል በፍ/ሕ/ቁ 1731(1) መሰረት በከላሽና ተከላሽ መካከል ሕግ ነው።

ተከላሽ በገባው ውሉ መሰረት ሊገደድ የሚገባው ከላሽ በውሉ መሰረት ግዴታው በማክበር ተሽከርካሪው ስራው ሲሰራ ጉዳት ሲደርስ ነው። ተከላሽ ከውሉ ውጭ ተሽከርካሪው 18 ሰው ጭኖ ሲንቀሳቀስ ጉዳት የደረሰው ለመሆኑ ከላሽ ያቀረበው ማስረጃ ያስረዳል ከላሽ ራሱም አምነዋል።

ህጋዊ ውል የሚደረገው በህግ እንዲደረግ ያልተፈቀደውን ድርጊት ወይም የህግ ክልከላ የተደረገበትን ጉዳይ በማክናወን ያልተገባ ጥቅም ለማግኘት በማሰብ ወይም በሚኖረው ፍላጎት መነሻ ሊሆን አይገባም። የከላሽ መኪና ለህዝብ ትራንስፖርት አገልግሎት የሚውል መሆኑ የታመነ ጉዳይ ሊሆን ይህንኑ አገልግሎት በሚሰጥበት ጊዜም የትርጓሰፖርት አዋጅ፣ደንበኛ መመሪያዎችን የማክበር ግዴታ ይኖርበታል። በከላሽና ተከላሽ መካከል የተደረገው የኢንሹራንስ ውል የተሽከርካሪው የመጫን አቅሙ 15 ሰው ነው ብለው ሲዋወሩ ተሽከርካሪው በትራንስፖርት አዋጅ፣ደንበኛ መመሪያ መሰረት ተሽከርካሪው ከ15 ሰው በላይ መጫን ስለማይችልና አቅም ስለሌለው ሲሆን ከዚህ በላይ ቢጭን በተሽከርካሪው ይሁን በተሳፋሪው አደጋ ስለሚያስከትል ነው። ነገር ግን አደጋው በደረሰበት ወቅትም መኪናው መጫን ከሚገባው 15 ሰዎች በላይ 3 ሰዎችን ጭኖ ሲንዝ እንደነበር በቀረበው ሰነድ ማስረጃ የተረጋገጠ ሲሆን ከላሽም አምነዋል ።

ከላይ እንደተገለጸው የኢንሹራንስ ውሉ በከላሽና ተከላሽ መካከል ሕግ በመሆኑና ይህን ሕግ እና የትራንስፖርት ሕጉ ያሳከበረው ከላሽ በመሆኑና መኪናው በህጉ ከተቀመጠው የሰው ቁጥር



በላይ መጫኑ የትራንስፖርት ህጉን የሚጥስ በመሆኑ ህጉ ተጥሶ ከተፈቀደው የሰው ቁጥር በላይ ሰዎችን ጭኖ ሲጓዝ ለደረሰው አደጋ ተከላኝ የዋስትናውን ሽፋን ገንዘብ የመክፈል ሥልጣን ሊኖረው አይችልም። የፊደራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎትም ለተመሳሳይ ጉዳይ በሰበር መ/ቁ 90793 አስገዳጅ የሕግ ትርጉም ሰጥቶበታል።

በመሆኑም ተከላኝ የዋስትናውን ሽፋን ገንዘብ አልከፍልም ያለበት አግባብ ተገቢነት ያለው በመሆኑ የመክፈል ሥልጣን የሰጠው በማለት የከላኝ ክስ ውድቅ በማድረግ ፍርድ ተሰጥቶታል።

ውሳኔ

1. የከላኝ ክስ ውድቅ ተደርጎዋል። መዝገቡ ተዘግቶታል መዝገብ ቤት ይመለስ።

ዳኛ የሐንስ ንጉስ  
የማይነበብ የዳኛ ፊርማ አለበት



ሰ/መ/ቁ 48698

ግንቦት 19/2002 ዓ.ም

ዳኞች፡- ሂሩት መለስ

ተሻገር ገ/ስላሴ

ታፈስ ይርጋ

አልማው ወሌ

ዓለ. መሐመድ

አመልካች፡- አዋሽ ኢንሹራንስ ኩባንያ - አልቀረቡም

ተጠሪ፡- አቶ ሣሙኤል ዓለሙ - ጠበቃ ፈቃዱ አስፋው ቀረቡ

መዝገቡን መርምረን ቀጥሎ የተመለከተውን ፍርድ ሰጥተናል።

ፍርድ

ይህ የተጀመረው በፌዴራል መጀመሪያ ደረጃ ፍ/ቤት ሲሆን ተጠሪ በአመልካች ላይ ባቀረቡት ክስ በአመልካች ኩባንያ የመድን ሽፋን የገባሁለት የሰ/መ/ቁ 3-34603 የሆነ መኪና በደረሰበት አደጋ ምክንያት ጉዳት ደርሶበታል። በመድን ውሉ መሰረት ተከላሽ ተገቢውን ካሳ እንዲከፍለኝ ብጠይቅም ፈቃደኛ አልሆነም ስለዚህ ተከላሽ ጉዳት የደረሰበትን መኪናዬን ሙሉ ዋጋ ብር 235,000 እንደዚሁም መኪናው በጊዜው ባለመጠገኑ ወይም ዋጋውን ባለመክፈሉ ምክንያት በከላሽ ላይ የደረሰውን የጥቅም መቋረጥ ብር 58,000 ጨምሮ ክሱ ካስከተለው ወጭና ኪሳራ ጋር እንዲከፈል ይወሰንልኝ በማለት ጠይቀዋል።

የከላሽ ክስና ማስረጃ ለተከላሽ ደርሶ በሰጠው መልስ በከላሽ መኪና ላይ ጉዳት የደረሰው ከመድን ውሉ ወጭ ሁለት ሰዎችን ጭኖ ሲያጓጉዝ ሲሆን የመድን ሽፋን የተገባው ጭነት ጭኖ የሚያጓጉዝ ለሚደርስ ጉዳት ነው። ስለሆነም የከላሽ መኪና ሰው ጭኖ ሲጋዝ ለደረሰው ጉዳት ከመድን ውሉ አኳያ ተከላሽ ካሣ ለመክፈል ግዴታ የለበትም የክፍያ መጠኑን በተመለከተ ከላሽ የደረሰበት መኪና ሲጠገን የማይችል ስለመሆኑ ባላስረዱበት ሁኔታ ሙሉ ዋጋ እንዲከፈላቸው መጠየቃቸው ተገቢነት የለውም። በመድን ውሉ የተጠቀሰው የገንዘብ መጠንም መኪናው የመድን ሽፋን በተሰጠው ጊዜ የተገመተ እንጂ አሁን ያለውን የመኪና

ፌዴራል ጠቅላይ ፍርድ ቤት  
ተሻገር ገ/ስላሴ  
ፊርማ [Signature] ቀን 04/08/03  
ሀይማኖት

ዋጋ ስለማያስረዳ በዚህ ልክ ካሳ ሊከፍል አይገባም። በመድን ውሉ መሰረትም ተከላሽ ለተቋረጠ ጥቅም ኃላፊነት የለበትም በማለት ተከራክሯል።

የግራ ቀኝ ክርክር በዚህ መልኩ የቀረበለት የፌዴራል መጀመሪያ ደረጃ ፍ/ቤት ጉዳዩን መርምሮ ኃላፊነትን በተመለከተ ተከላሽ በከላሽ መኪና ላይ ጉዳት የደረሰው ሰው ጭኖ ሲንዝ እንጂ ዕቃ ጭኖ ሲንዝ ስላልሆነ ኃላፊነት የሌብኝም በማለት ቢከራከርም ሰው ጭኖ ጉዳት ስለመድረሱና የሰዎችን መጫን ከአደጋው ጋር ያለውን ግንኙነት አላስረዳም። ይልቁንም በማስረጃነት የቀረበው የትራፊክ ፖሊስ ሪፖርት በከላሽ መኪና ላይ ጉዳት የደረሰው መሐል መንገድ ላይ የገባን ሰው ለማዳን ሲሞክር መኪናው መንገዱን ስቶ ከዛፍ ጋር በመጋጨቱ ምክንያት እንደሆነ የሚያረጋግጥ ስለሆነ ሰው ጭኖ መንዘቱ የአደጋው መንስኤ ባለመሆኑ ተከላሽ በመድን ውሉ መሰረት በመኪናው ላይ ለደረሰው ጉዳት ኃላፊነት አለበት በማለት ውሳኔ ሰጥቷል።

የካሳ መጡኑን በተመለከተ ፍ/ቤቱ ጉዳት የደረሰበትን የከላሽ መኪና በባለሙያ እንዲገመት አድርጎ ጉዳቱ በመቶኛ ሲሰላ 83.48 % በገንዘብ ሲሰላ ደግሞ ብር 196,546.98/ አንድ መቶ ዘጠና ስድስት ሺህ አምስት መቶ አርባ ስድስት ሺህ ከዘጠና ስምንት ሳንቲም/ አረጋግጦ ከ 75% በላይ ጉዳት ከደረሰ አንደ መቶ መድሀን /Total Loss/ስለሚቆጠር የመኪናውም ግምት ብር 235,000 /ሁለት መቶ ሰላሳ አምስት ሺ/እንደሆነ ግራ ቀኝ ባደረጉት የመድን ውል ላይ ስለተመለከተ ተከላሽ ይህንን ገንዘብ ለከላሽ እንዲከፈል የተቋረጠ ጥቅምን በተመለከተ ግን በመኪናው ላይ የደረሰው ሙሉ ውድመት ስለሆነ ተከላሽ ለመክፈል አይገድዱም በማለት ውሳኔ ሰጥቷል።

ተከላሽ በዚህ ውሳኔ ቅሬታ አድርጎት የይግባኝ ቅሬታውን ለፌዴራል ከፍተኛ ፍ/ቤት ያቀረበ ቢሆንም የሥር ፍ/ቤት ውሳኔ ጉድለት የሌለው ነው በማለት ፍ/ቤቱ ይግባኙን ሳይቀበለው ቀርቷል።

የሰበር አቤቱታው የቀረበው ይህንን በመቃወም ሲሆን ይህም ችሎት አቤቱታውን መርምሮ በተጠሪ መኪና ላይ በአደጋ ምክንያት ጉዳት በደረሰ ጊዜ 2 ሰው ጭኖ መገኘቱ ከመድን ውሉ አኳያ አመልካች ኃላፊ ነው በመባሉ ተገቢነቱን ለማጣራት አቤቱታው ለሰበር እንዲቀርብ አድርጎ ግራ ቀኝን አከራክሯል።

በአጠቃላይ የግራ ቀኝ ክርክር ከላይ የተጠቀሰው ሲሆን በበኩላችንም ጉዳዩን እንደሚከተለው መርምረናል።

ምላሽ ማግኘት የሚገባውም የጉዳዩ ጭብጥ አመልካች ለደረሰው ጉዳት ኃላፊ ነው መባሉ በአግባቡ ነው ወይስ አይደለም? በአግባቡ ነው ከተባለስ የካሳ ክፍያው መጠን ተገቢነት አለው ወይንስ የለውም የሚለት ናቸው።

ፌዴራል ጠቅላይ ፍርድ ቤት  
ገቢዎች ገዢ  
04/08/13  
1299





ዳኞች - መዓዛ አሸናፊ

ተፈሪ ገብሩ (ዶ/ር)

ቀነአ ቂጣታ

ተሾመ ሸፈራው

ኑረዲን ክድር

አመልካች፡- አሮሚያ ኢንሹራንስ ኩባንያ አ.ማ፡- ሲራጅ ማማ ቀረቡ

ተጠሪ - ወ/ሮ ትዕግስት ግርማ ፡- ጠበቃ ሰለሞን ገ/ሚካኤል ቀረቡ

መዝገቡ ተመርምሮ የሚከተለው ፍርድ ተሰጥቷል፡፡

ፍርድ

የሰበር አቤቱታው የቀረበው አመልካች የፌዴራል ከፍተኛ ፍርድ ቤትና የፌዴራል ጠቅላይ ፍርድ ቤት የሰጡት ውሳኔ መሠረታዊ የህግ ስህተት ያለበት ስለሆነ ይታረምልኝ በማለት ሰላመለከተ ሲሆን ክርክሩ ተጀመረው የአሁን ተጠሪ በአመልካች ላይ ባቀረቡት ክስ ነው፡፡


ከክርክሩ መገንዘብ እንደሚቻለው ተጠሪ ለፌዴራል ከፍተኛ ፍርድ ቤት ባቀረቡት ክስ የሰሌዳ ቁጥር 3-56927 ኢት ለሆነው የጭነት መኪናቸው አመልካች በመድን ዋስትና ፖሊስ ቁጥር AB/MTCM/3268 የመድን ሽፋን በመስጠት ብር 800,000.00 (ስምንት መቶ ሺህ) ካሳ ለመክፈል ተስማምቷል፤ የመድን ውሉ ፀንቶ ባለበት ጊዜ ሰኔ 14/2008 ዓ.ም ጫንጮ ቡባ በተባለ ቀበሌ መኪናው ጉዳት የደረሰበት ሲሆን አመልካች መኪናውን ከወሰደ በኋላ ካሳ እንዲከፍለኝ ስጠይቀው ሀምሌ 9/2011 ዓ.ም በተጻፈ ደብዳቤ ጉዳቱ የደረሰው ትርፍ ሰው በመጫኑ ምክንያት ስለሆነ ካሳ አልከፍልም ብሏል፤ ስለሆነም አመልካች ካሳውን አልከፍልም ያለበት ምክንያት ተቀባይነት የለውም ተብሎ የመኪናውን ዋጋ ብር 800,000.00፤ በመኪናው ብሰራ ኖሮ በወር ብር 90,000.00 አገኝ ስለነበር በአምስት ወራት ብር 450,000.00 አገኝ ነበር፤ በአጠቃላይ አመልካች ለተጠሪ ብር 1,250,000.00 (አንድ ሚሊዮን ሁለት መቶ ሃምሳ ሺህ) ከነወለዱ እንዲሁም ወደፊት ከሚደርስ የወጪ መቋረጥ ጋር ታስቦ እንዲከፍል እንዲወሰንልኝ በማለት ዳኝነት ጠይቀዋል፡፡

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ገልጻል  
ፊ.ር.ማ 50 ቀን 25/10/2011  
ሠጥቷል

አመልካች ለክሱ በሰጠው መልስ ከመኪናው የጭነት አገልግሎት ውጪ ሁለት ሰዎች ጭኖ ሲሄድ ጉዳቱ የደረሰ በመሆኑ በመድን ውሉ አጠቃላይ ማግለያ አንቀጽ 7 መሰረት ካሳ የመክፈል ኃላፊነት የለብኝም፤ ይህ ከታለፈ የመኪናው ዋጋ ባልተገመተበትና ሙሉ ውድመት ባልደረሰበት ሁኔታ እንዲሁም የዋጋው 10% ብር 80,000.00 እና የቅሬት አካል ዋጋው ሳይቀነስ ክፍያ መጠየቃቸው ተገቢ አይደለም፤ የተቋረጠ ገቢን በተመለከተም ይህን የመክፈል ኃላፊነት የሌለብኝ መሆኑ በውሉ ላይ ስለተመለከተና ተጠሪ ጉዳቱን ለመቀነስ ጥረት ስላላደረጉ እንዲሁም የወር ገቢውም በማስረጃ ስላልተረጋገጠ አጠቃላይ ክሱ ውድቅ ሊደረግ ይገባል በማለት ተከራክሯል።

ክርክሩ በዚህ መልኩ የቀረበለት የከፍተኛው ፍርድ ቤት ጉዳዩን መርምሮ ከሳሽ መኪናው ከተጎዳ በኋላ የተቋረጠብኝን ጥቅም ተከሳሽ ይክፈለኝ በማለት ያቀረቡት ጥያቄ ግራቀኙ ያደረጉትን ውል መሰረት ያደረገ ባለመሆኑ ተቀባይነት የለውም ስለሆነም መኪናው በመቆሙ ምክንያት የተቋረጠ ገቢ ብር 450,000.00 እና ወደፊት የሚቋረጠውን ገቢ ተከሳሽ እንዲከፍል በማለት የቀረበው የዳኝነት ጥያቄ ተቀባይነት የለውም፤ በሌላ በኩል መኪናው ትርፍ ሰው ጭኖ እንደነበር ቢገለጽም ለጉዳቱ መድረስ ምክንያት የሆነው መንስኤ የጥንቃቄ ጉድለት እና በፍጥነት ማሽከርከር መሆኑን የሱልልታ ወረዳ ፍትህ ጽ/ቤት አጣርቶ ለፍርድ ቤቱ በፃፈው ደብዳቤ አረጋግጧል፤ ስለሆነም መኪናው ትርፍ ሰው መጫኑ ለጉዳቱ መንስኤ ባልሆነበት ሁኔታ ተከሳሽ ካሳ አልከፍልም በማለት ያቀረበው ክርክር የውሉን ይዘትና መንፈስ ያላገናዘበ ስለሆነ ውድቅ ሊደረግ ይገባል፤ በመሆኑም ተከሳሽ ለጉዳቱ ካሳ የመክፈል ኃላፊነት አለበት፤ የካሳውን መጠን በተመለከተ ተከሳሽ ጉዳት መድረሱን ሳይክድ ሙሉ ጉዳት አይደለም የሚል ከሆነ ይህን የማስረዳት ሽክም አለበት ይሁንና ተከሳሽ ጉዳቱ ሙሉ ውድመት አይደለም ከማለት ውጪ ጉዳቱ ከፊል ጉዳት መሆኑን ስላላስረዳ በዚህም ረገድ ያቀረበው ክርክር ተቀባይነት የለውም፤ በአጠቃላይ ከመኪናው ግምት ብር 800,000.00 ላይ በውሉ መሰረት 10% ብር 80,000.00 ተቀናሽ ተደርጎ ቀሪውን ብር 720,000.00 (ሰባት መቶ ሃያ ሺህ) ከነወለዱ አመልካች ለተጠሪ ሊከፍል ይገባል በማለት ወስኗል።

በዚህ ውሳኔ ላይ የይግባኝ ቅሬታ የቀረበለት የፌዴራሉ ጠቅላይ ፍርድ ቤት የይግባኝ ክርክሩን ከሰማ በኋላ የሥር ፍርድ ቤት ያሳለፈውን ውሳኔ በማሻሻል በአመልካች የማከማቻ ሥፍራ ተቀምጦ የሚገኘውን የተጎጅውን የጭነት መኪና ቅሪት አካል አመልካቹ እንዲረከብ በማለት የወሰነ ሲሆን ሌላውን የውሳኔ ክፍል አጽንቷል። የሰበር አቤቱታው የቀረበው ይህን በመቃወም ነው።

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልግሎት  
ፊርማ  ቀን 25/10/2011  
w597

አመልካች ሰኔ 20/2010 ዓ.ም በፃፈው የሰበር ማመልከቻ በተሰጡት ውሳኔዎች ላይ ያለውን ቅሬታ ያቀረበ ሲሆን አቤቱታው በአጣሪ ችሎት ተመርምሮ የመድን ውል የተገባለት የተጠሪ የጭነት መኪና ትርፍ ሰው ጭኖ የነበረ ቢሆንም የጉዳቱ መንስኤ የጥንቃቄ ጉድለት እና በፍጥነት ማሸከርከር በመሆኑ አመልካች ካሳ እንዲከፍል ተብሎ መወሰኑ ግራ ቀኙ ወገኖች ካደረጉት ውል አንጻር አግባብነቱን ለመመርመር በሚል ጉዳዩ ለሰበር ችሎት እንዲቀርብ እና ተጠሪ መልስ እንዲሰጡበት ተደርጓል። በዚህ መሰረት ግራቀኙ የሰር ክርክራቸውን በማጠናከር በጽሁፍ ተለዋውጠዋል።

ከፍ ሲል ባጭሩ የገለፅነው የጉዳዩን አመጣጥ ነው። በበኩላችን የግራ ቀኙን ክርክር ቅሬታ ከቀረበበት ውሳኔ እና ከህጉ ጋር በማያያዝ መርምረናል። እንደመረመርነው የዚህን ፍርድ ቤት ውሳኔ የሚሹት ጭብጦች፡-

1ኛ. ጉዳት የደረሰበት የጭነት መኪና ሁለት ሰዎች መጫካ ለጉዳቱ መንስኤ ባልሆነበት ሁኔታ አመልካች በዚህ ምክንያት ካሳ አልከፍልም በማለት ያቀረበው ክርክር የውሉን ይዘት ያላገናዘበ ስለሆነ ተቀባይነት የለውም ስለሆነም ካሳ የመክፈል ኃላፊነት አለበት ተብሎ በተሰጠው ውሳኔ የተፈፀመ የህግ ስህተት አለ? ወይስ የለም?

2ኛ. የካሳውን መጠን በተመለከተም አመልካች ሙሉ ጉዳት አይደለም የሚል ከሆነ ይህን የማስረዳት ሸክም እያለበት ጉዳቱ ሙሉ ውድመት አይደለም ከማለት ውጪ ጉዳቱ ከፊል መሆኑን ስላላስረዳ ክርክሩ ተቀባይነት የለውም ተብሎ ከመኪናው የውሉ ጊዜ ግምት ላይ 10% ብቻ ተቀናሽ ተደርጎ ቀሪውን ብር 720,000.00 (ሰባት መቶ ሃያ ሺህ) እንዲከፍል መወሰኑ በአግባቡ ነው? ወይስ አይደለም? የሚሉ ናቸው። በዚህ ቅደም ተከተል ተመልክተናቸዋል።

ቀዳሚው ጭብጥ ለደረሰው ጉዳት ኃላፊነትን የተመለከተ ሲሆን አመልካች ባቀረበው ክርክር መኪናው ከጭነት አገልግሎት ውጪ ሁለት ሰዎች ጭኖ ሲሄድ ጉዳቱ የደረሰ በመሆኑ በመድን ውሉ አጠቃላይ ማግለጫ አንቀጽ 7 መሰረት ካሳ የመክፈል ኃላፊነት የለብኝም በማለት ተከራክሯል። ተጠሪ በበኩላቸው መኪናው ከአቅሙ በላይ የጫካ ለመሆኑና በተፈጠረበትም ጫና መነሻ አደጋ የደረሰበት ስለመሆኑ የቀረበ ማስረጃ የለም፤ ይልቁንም በትራፊክ ፖሊስ የተረጋገጠው መኪናው ከአቅሙ በታች ጭኖ እንደነበር ነው፤ ስለሆነም አንድ ሰው በትርፍነት ተጫካ የሚል ምክንያት በመስጠት በማግለጫው ለመጠቀም የቀረበው ክርክር ተቀባይነት ሊኖረው አይገባም በማለት ተከራክሯል።

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልጻዊ  
ራ.ር.ማ 25/10/2011  
W.F.H





ው ሣ ኔ

1. የፌዴራሉ ከፍተኛ ፍርድ ቤት በኮ/መ/ቁ 179753 መጋቢት 10/2010 ዓ.ም ያሳለፈው ውሳኔ፤ እንዲሁም የፌዴራሉ ጠቅላይ ፍርድ ቤት በፍ/ይ/መ/ቁ 156454 ግንቦት 27 ቀን 2010 ዓ.ም የሰጠው ውሳኔ በፍ/ብ/ሥ/ሥ/ሀ/ቁ 348(1) መሰረት ተሻሽሏል።
2. አመልካች ጉዳቱን የመካሰ ኃላፊነት አለበት በማለት የተሰጠው ውሳኔ የሚነቀፍ አይደለም ብለናል።
3. የካሳው መጠን ላይ ውሳኔ የተሰጠው ለጉዳዩ ተፈጻሚነት ያላቸውን የንግድ ህጉንና ክርክሩ የሚመራበትን የፍ/ብ/ሥ/ሥ/ሀ/ቱን ድንጋጌዎች ይዘት መሰረት ባላደረገ ሁኔታ በመሆኑ በዚህ ረገድ የተሰጠው ውሳኔ በፍ/ብ/ሥ/ሥ/ሀ/ቁ 348(1) መሰረት ተሻሽሏል።
4. የፌዴራሉ ከፍተኛ ፍርድ ቤት የተዘጋውን የኮ/መ/ቁ 179753 በማንቀሳቀስ ሊከፈል በሚገባው ካሳ ላይ ግራቶች ያቀረቡትን ክርክር በህጉ አግባብ በመምራትና በማስረጃ በማጣራት ተገቢውን እንዲወስን ጉዳዩን በፍ/ብ/ሥ/ሥ/ሀ/ቁ 343(1) መሰረት መልሰናል። የውሳኔው ግልባጭ ይድረሰው።
5. የሰበር ክርክሩ ያስከተለውን ወጪና ኪሳራ ይቻቻሉ።

መዝገቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የአምስት ዳኞች ፊርማ አለበት

ሠ/ኃ

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክለ ግልባጭ  
ፊርማ 5 ቀን 25/10/2011  
ሠ/የ/የ

የፋ/መ/ቁጥር 01-47167

ቀን ታህሳስ 14 ቀን 2013 ዓ.ም

ዳኞች፡- አሰፋ ጌትነት

አሊ አህመድ

ብርሃኑ አሣሣ

ከሳሽ፡- ..... ማህተመ ተሸመ ጠበቃ አዲስ መንግስት ቀረበ

ተከሳሽ፡- ..... 1ኛ. የኢትዮጵያ መድን ድርጅት ነ/ፈጅ አስገዳም አሰፋ ቀረበ

2ኛ. አቶ ጎዳሽኝ ሙላው አልቀረበም

መዝገቡ ለዛሬ የተቀጠረው ለመመርመር ሲሆን ተመርምሮ የሚከተለውን ፍርድ ሰርተናል

ፍርድ

የክርክሩ መነሻ የሆነው ጉዳይ የንብረት ጉዳት ካሳን የሚመለከት ሲሆን ከሳሽ በቀን ህዳር 18 ቀን 2010 ዓ/ም በተፃፈ ክስ ከሳሽ የሰሌዳ ጥገና ኮድ ቁጥር A04448 አ.አ የሆነ ጃፓን ሰራሽ ኤፍ.ኤስ.አር የጭኔት ተሽከርካሪ ባለቤት ሲሆን ተሽከርካሪው ከሚጭናቸው ሰዎች ውጭ 62 ኩንታል የመጫን አቅም ያለውና ለንግድ አገልግሎት እንዲውል ተፈቅዶልኝ በመስራት ላይ የሚገኝ ተሽከርካሪ ነው።

1ኛ ተከሳሽ የኢት/መድን ድርጅት በዚህ ተሽከርካሪ ላይ ከኢ.ኤ.አ 26/01/2016 (ጥር 18 ቀን 2009 ዓ/ም እስከ ኢ.ኤ.አ 30/06/2017 (ሰኔ 23 ቀን 2009 ዓ/ም) ባለው ጊዜ ውስጥ ለሚደርስበት ጉዳት እስከ ብር 1,500,000.00 (አንድ ሚሊዮን አምስት መቶ ሺህ ብር) የሚደርስ ካሳ ለመክፈል በ3ኛ ወገን ላይ ለሚደርስ ጉዳት እስከ ብር 100,000.00 (አንድ መቶ ሺህ ብር) የመድን ሽፋን ሰጥቷል።

ተሽከርካሪው በቀን 16/10/2009 ዓ/ም በ2ኛ ተከሳሽ አማካኝነት ሸቀጣሽቀጥ ጭኖ በመጓዝ ላይ እያለ በምዕራብ ጎጃም ዞን ጃቢ ጠህናን ወረዳ ባጋጠመው የመገልበጥ አደጋ ጉዳት ደርሶበታል። የደረሰው ጉዳት ተከትሎ በወቅቱ ለ1ኛ ተከሳሽ ያላወቅን ሲሆን ተከሳሽም በተሽከርካሪው ላይ የደረሱ ጉዳቶችን በመለየት ተሽከርካሪው ተጎድቶ በቆመበት ባህር ዳር ከተማ ለማሸጠን ጋራገሮችን በማጫረት ከሶስት ተጫራቾች ዋጋ በመቀበል ዝቅተኛ ዋጋ ወጭ ብር 648,800.00 (ስድስት መቶ ስምንት ሺህ ስምንት



መቶ ብር) ተስፋሁን የማነ ጋራሻር በማቅረብ ተከላሽ ድርጅት የጨረታ አሸናፊውን ከለየ በኋላ ፈጥኖ ያስጠግንልኛል በሚል ስጠባበቅ በወቅቱ መኪናው ላይ ሶስት ሰው ጭኖ ስለነበር አደጋው የደረሰው በትርፍ ጭነት ምክንያት ነው በሚል መኪናውን ሊያስጠግንልኝ ፈቃደኛ ሳይሆን ቀርቷል። ይሁን እንጂ የክፍሉ ወረዳ ፖሊስ ጽ/ቤት በቀን 17/2/2009 ዓ/ም በተፃፈ ማስረጃ የአደጋው ምክንያት ከቦታው ጠመዘማዊነትና ቁልቁለት የመነጨ ስለመሆኑና አሽከርካሪው እዚህ ቦታ ላይ ሲደርስ ተገቢ ጥንቃቄ ባለማድረጉ አደጋው ሊደርስ የቻለ ስለመሆኑ እና በወቅቱም ተሽከርካሪው ከ50-55 ኩንታል ጭኖ እንደነበር በማረጋገጥ ገልጾ እያለ 1ኛ ተከላሽ አደጋው በትርፍ ጭነት ምክንያት እንደተፈጠረ አስመስሎ ለማስጠገን ፈቃደኛ ሊሆን ያልቻለ በመሆኑ 1ኛ ተከላሽ የመድን ሽፋን ለመስጠት አርቦን የተቀበለበት ተሽከርካሪ የደረሰበትን ጉዳት ማስጠገኛ ወጭ የመሸፈን ሀላፊነት አለበት እንዲባልልን እንዲሁም ዝቅተኛ የማስጠገን ጥጋውን ብር 648,800.00 (ስድስት መቶ አርባ ስምንት ሺህ ስምንት መቶ ብር) እንዲከፍለን።

በተጨማሪም 1ኛ ተከላሽ ግዴታውን ባለመወጣቱ ምክንያት በሶስት ሳምንት ጊዜ ውስጥ ሊጠጋቀቅ የሚገባውን ጥገና በመጓተቱ የሚያገኘው ጥቅም ስለተቋረጠ ተሽከርካሪው መጠገን ከነበረበት ጊዜ ጀምሮ ተጠግኖ ስራ አስኪሚጀምርበት ጊዜ ድረስ ያለው ጊዜ ታስቦ በቀን የተጣራ ገቢ ብር 1,500.00 (አንድ ሺህ አምስት መቶ ብር) ተሰልቶ ጠቅላላ የተቋረጠብኝን ጥቅም እንዲከፈለኝ ።

2ኛ ተከላሽ ከጥንቃቄ ጉድለት ያደረሰው ጉዳት ነው ስለተባለ የተሽከርካሪውን የማስጠገኛ ወጭ የመሸፈን ግዴታ አለበት ተብሎ ከ1ኛ ተከላሽ ጋር የአንድነት ሀላፊነት አለበት ተብሎ እንዲወሰንልን። በተጨማሪም ለዚህ ክስ ምክንያት የሆነውን ወጭና ኪላራ እንዲከፍለን በማለት ክስ አቅርቧል።

1ኛ ተከላሽ የኢትዮጵያ መድን ድርጅት ቀርቦ በቀን ታህሳስ 26 ቀን 2010 ዓ/ም በተፃፈ መከላከያ መልስ የከላሽ ተሽከርካሪ የመጫን አቅሙ 62 ኩንታል እና ሁለት ሰዎችን ብቻ እንደሆነ ከሊብሬው ላይ የተገለፀ ቢሆንም አደጋው በደረሰበት ወቅት ፖሊስ እንዳረጋገጠው ከሹፊሩና ከረዳቱ ወጭ 3 ሰዎች በሆነ ሆኖ ስለመሆኑ ከመገለፁ ባሻገር ከላሽ አደጋው በደረሰበት ወቅት አደጋውን



ሰማቸው ያልታወቁ 4 (አራት) ሰዎች የተጎዱ መሆኑን ተነገርናል በማለት የገለጹ በመሆኑ ይህም ከሳሽ እራሱ ትርፍ ሰዎችን ጭና የነበረ ስለመሆኑ ያመነ ስለሆነ ሁለት ሰዎችን ብቻ እንዲይዝ በተሰራ ተሽከርካሪ ጋቢና ውስጥ ስድስት ሰዎችን በመጫን ሹፌሩ በአግባቡ ተሽከርካሪውን በነፃነት እንዳያሽከረከርና እንዳይቆጣጠር በማድረግ ለአደጋ ያጋለጠው በመሆኑ ለደረሰው አደጋ ምክንያት የመንገድ ሁኔታ እንዳለ ሆኖ ሹፌሩ ከልክ በላይ ሰዎችን በመጫኑ በመሆኑ በመድን ውሳኔን መሰረት ለዚህ አይነት ሁኔታ የመድን ሽፋን የመስጠት ሀላፊነት የሌለብን በመሆኑ ክስ ተገቢነት የለውም።

ተሽከርካሪው የሚሰጠው አገልግሎት የተለያዩ ሽቀጦችን ለማጓጓዝ እንደሆነ በመድን ውለ ላይ የተገለፀ ሲሆን ተሽከርካሪው ከሚሰጠው አገልግሎት ውጭ ሰዎችን ለማጓጓዝ ተጠቅሞባቸዋል። ይህም ከሳሽ የመድን ውለን በመጣስ ተሽከርካሪውን በህግ ላልተፈቀደለት አገልግሎት ባላዋለበት ጊዜ የደረሰ አደጋ በመሆኑ ሀላፊነት የለብንም።

ተከላሽ ተሽከርካሪውን ለማስጠገን ጨረታ ያወጣ ሲሆንም ከሳሽ እንደሚሉት ጨረታው ተካሂዶ ተስፋዩ የማነ ጋራዥ በብር 648,800.00 ብር ጨረታውን አላሸነፈም በድርጅታችን አሰራር መሰረት አንድን የተጎዳ ተሽከርካሪ ለማስጠገን ጨረታ ሲወጣ በተጫራችነት የሚቀርቡት ጋራዥና የድርጅቱ ሰርቪየር ሲሆኑ ከጋራዥ ውስጥ ሰርቪየሩ ካቀረበው ዋጋ በታች ያቀረበ ጋራዥ ካለ አነስተኛው አሸናፊ የሚሆን ሲሆን ሁሉም ጋራዥ የድርጅቱ ሰርቪየር ካቀረበው በላይ ካቀረቡ ግን የሰርቪየሩን ዋጋ ለመስራት የተስማሙ ብቻ የጨረታው አሸናፊ የሚሆን ሲሆን በዚህ ጉዳይ ላይ ግን አሸናፊው አልተለየም በተለይም እንኳ (ደግሞ) ጥገናውን የሚካሄደውን የድርጅቱ ሰርቪየር ባቀረበው 545,930 (አምስት መቶ አርባ አምስት ሺህ ዘጠኝ መቶ ሰላሳ ብር) እንጂ ተስፋሁን የማነ ጋራዥ ባቀረበው ዋጋ ልክ ልንከፍል አይገባም።

የከላሽን ተሽከርካሪ ለማስጠገን የድርጅቱ ሰርቪየር ካቀረበው የጥገና ዋጋ ላይ መነሻ ክፍያ፣ መዋጮ እና የሳልቫጂ ዋጋ ተቀናሽ መደረግ ያለበት ሲሆን ተከላሽ ሀላፊነት የለብን እንጂ አለባችሁ የምንባል ከሆነ የድርጅቱን ሰርቪየር በገመተው ገንዘብ ላይ 10% ብር 54,593.00 (አምሳ አራት ሺህ አምስት መቶ ስድስት ብር) ተቀናሽ ሲሆን ይገባል። በተጨማሪም



ግራቆኝን ባደረገው ውል መሰረት የከሳሽ ተሽከርካሪ አሮጌ እቃዎች በከዲስ እቃ ሲቀየሩ ከሳሽ ከክበረው የተሽከርካሪ ዋጋ በላይ እንዲሳካ የሚያደርገው በውሉ ይህን ለማተካከል የመዋጮ ሰርኪት የውሉ አካል የተደረገ በመሆኑ በዚህም መሰረት በከሳሽ ተሽከርካሪ ጉዳት ከደረሰባቸው የተሽከርካሪው ክፍሎች ላይ 5% ከሳሽ መክፈል እንዳለበት በባለሙያ በሪፖርቱ ላይ የተወሰነ ስለሆነ የዘጠኝ እቃዎች ዋጋ 475,980.00 ብር ሚሆን የዚህን 5% ብር 23,799 (ሃያ ሶስት ሺህ ሰባት መቶ ዘጠና ዘጠኝ ብር) ስለሆነ ይህ ብር ተቀናሽ እንዲደረግልን።

የተቋረጠ ጥቅም ለተባለው የተቋረጠ ጥቅም ጥያቄ በመድን ውላችን ላይ በክፍል አንድ የተገለሉ ሁኔታዎች ተራቱጥር ሁለት ላይ በግልፅ እንደተመለከተው በመድን ገቢው ላይ የደረሰው ኪሳራ ወይም ተሽከርካሪው ስራ ላይ ባለማዋሉ መሰረት የደረሰው የጥቅም መቋረጥ ተከሳሽ የመክፈል ሀላፊነት የለለበት ስለሆነ የካሳ ጥያቄ ክስ ውድቅ ይደረግልን በተጨማሪም ከሳሽ የጻፍነት ክፍያ ያልከፈለበትን የካሳ ጥያቄ በመሆኑ ተቀባይነት ሊኖረው አይገባም።

ይህ ተፅዕኖ የተቋረጠ ጥቅም ይከፍላል ከተባለ ይኸውም የከሳሽ ሽከርካሪ የደረሰበት ጉዳት በ20 ቀን ውስጥ ተሰርቶ ሊጠናቀቅ የሚችል እንደሆነ የድርጅቱ ሰርቪየር ባቀረበው የሰርቪየሩ ሪፖርት ያረጋገጠ ሲሆን ይህም በመድን ውሉ መሰረት አልተጠነከረም ካሉ ባለመጠን ምክንያት የሚደርሰውን ኪሳራ ለመቀነስ የበኩላቸውን እንቅስቃሴ ማድረግና ተሽከርካሪው እንደማይጠነከሩ ካወቁበት ቀን ጀምሮ በሃያ ቀናት ውስጥ በግላቸው አስጠግነው ወደ ስራ ማለማራት ሲኖርባቸው ይህን ጥንቃቄ ሳያደርጉ የቀሩ በመሆናቸው ለደረሰውና ለወደፊት ለሚደርሰው ኪሳራ ራሳቸው ሀላፊነት ሊወስዱ ይገባል ሀላፊነት አለባቸው እንኳ ከተባለ የ10 ቀናት ብቻ ነው ልንጠየቅ የሚገባ እንዲሁም ተሽከርካሪው የሹፊር የረዳት እና የነጻጅ መዋጮን የሚቀነስ በመሆናቸው በቀን 1,500.00 (አንድ ሺህ አምስት መቶ ብር) የማያስገኝ በመሆኑ እና ሁሉንም ቀናቶች ለሰራ የማይችል ስለሆነ ክስ ተገቢነት የለውም ልንጠየቅ አይገባም በማለት መልሳቸውን አቅርበዋል።

2ተኛ ተከሳሽ ጎዳኝን ሙሉው መጥሪያ የደረሰው ለመሆኑ ደረሰኝ ፈርሞ ያልቀረበ በመሆኑ ክርክሩ በሌላበት እንዲቀጥል ተደርጓል።



ግራቶችም በቃል እንዲከራከሩ ተደርጎ ተሸከርካሪው አደጋ ሊደርስ የቻለው መከፋው ከተፈቀደለት መጠን በላይ በመጫኑ ነው ወይስ አይደለም? ጥፋት አለበት የለበትም? ሀላፊነት ያለበት ወገን ማን ነው? የሀላፊነት መጠነ-ስ ምን ያህል ነው የሚለውን ነጥቦች በጭብጥነት ተይዘው የከላሽና የ1ኛ ተከላሽ ምስክሮች ቀርበው እንዲመሰክሩ የተደረገ ሲሆን በተጨማሪም ከላሽ በኩል ማስረጃ ዝርዝር እንዲቀርብለት የጠየቃቸው ማስረጃዎች በ1ኛ ተከላሽ ድርጅት የሚገኙ የተለያዩ ጋራገሮች በጨረታ ለመውደድ ያስገቡትን የዋጋ ዝርዝር ከ1ኛ ተከላሽ ድርጅት እንዲቀርብ ተደርጎ የመዘገቡ አካል ተደርገዋል።

የግራቶች ክርክር ይዘትና የቀረቡት ማስረጃዎች ከላይ የተገለፁትን ሲመስል እኛም መዘገቡን ከህጉ ጋር በማገናዘብ መርምረንዋል ይኸውም በከላሽ ተሸከርካሪ ላይ ጉዳት ስለመድረሱ ግራቶች ያልተካካዱበት ጉዳይ ሲሆን አከራካሪው ነጥብ አደጋው በምን ምክንያት ሊደርስ ቻለ? 1ኛ ተከላሽ በመድን ሽፋን ፖሊሲ ውል ላይ የከላሽ ተሸከርካሪ አገልግሎቱ ለዕቃ ማጓጓዣ ሆኖ አያለ መጫን ከነበረበት በላይ ሰዎችን ጭኖ የተገለበጠ በመሆኑ ከአገልግሎቱ ውጭ ሰው የጫን በመሆኑ እና እንዲጭን ከተፈቀደለት ሰዎች ውጭ አራት ሰዎችን በመጫን የደረሰ ጉዳት ስለሆነ ልንጠየቅ ልይገባም በሚል የተከራከረ ሲሆን ከላሽ በበኩል የአደጋው መንስኤ የመንገድ ጠመዘማዛነትና ቁልቁለት መሆን እንዲሁም ከጥንቃቄ ጉድለት (ከአሽከርካሪው ጥንቃቄ) ጉድለት የተከሰተ አደጋ ነው ይህም ግራቶችን ባደረገው የመድን ውል ላይ 1ኛ ተከላሽ የመካሰ ሀላፊነት አለበት በሚል የተከራከሩ ሲሆን የአደጋውን መንስኤ በተመለከተ የክፍል ፖሊሲ ጸ/ቤት በቀን 17/12/2009 ዓ/ም በተፃፈ የአደጋው ምክንያት የጥንቃቄ ጉድለት ሲሆን አደጋው ሊደርስ የቻለው የአደጋው ቦታ ክርብ እና ቁልቁለት በመሆኑ ጥንቃቄ አድርጎ ማሸከርከር ሲገባው ጥንቃቄ ባለማድረጉ እንደሆነ የተገለፀ ሲሆን በተጨማሪም የከላሽ ምስክሮች አደጋው ሊደርስ የቻለው የአደጋው ቦታ ቁልቁለትና ክርብ ስለነበር ፍጥነት ስለነበረው ሊገለበጥ እንደቻለ በተመሳሳይ ሁኔታ አስረድተዋል በሌላ በኩል የቀረቡት የ2ኛ ምስክሮች ተሸከርካሪው በምን ምክንያት ጉዳት ሊደርስበት እንደቻለ ያስረዱት ነገር የለም።

በመሆኑም ግራቶች ባደረጉት የመድን ሽፋን ታሳቢ ውል ላይ በክፍል 1 የተገለፁ ሁኔታዎች በሚለው በተራቁጥር 7 ላይ ትርፍ መጠን በማስጠበቅ ለአደጋው ምክንያት ከሆነ



ተከላሽ መድን ድርጅት ሃላፊነት እንደሌለበት ተገልጾ የሚገኝ ሲሆን 1ኛ ተከላሽ ለአደጋው ምክንያት የከላሽ ተሽከርካሪ ትርፍ ሰዎችን በመጫን የደረሰ ሰለመሆኑ በአናባቢ በማስረጃዎች አላረጋገጠም ይልቁንም የከላሽ ምስክሮች እና የቀረበው የፖሊስ ሪፖርት የተሽከርካሪው ጉዳት መንስኤው ከጥንቃቄ ጉድለት ከመንገድ ቁልቁለት እና ከርቭ ከመሆኑ የተነሳ እንደሆነ አስረድተዋል። በተያያዘም የፌዴራል ጠ/ፍ/ቤት ሰበር ሰሚ ችሎት በቅፅ 10 በመ/ቁ 48698 በሆነ የጭነት ተሽከርካሪ ለጭነት ማጓጓዣ አገልግሎት ለሚውል ተሽከርካሪ ሰዎችን ጭኖ አደጋ በደረሰበት ጊዜ ለአደጋው መንስኤ ሰዎችን መጫኑ መሆኑ ካልተረጋገጠ ሰው በመጫኑ ብቻ ኢንሹራንስ ድርጅት ሃላፊነት የለውም ሲባል የማይቻል ስለመሆኑ አስገዳጅነት ያለው የህግ ትርጉም ሰጥቶበታል። ወደ ተያዘው ጉዳይ ስንመለስ ምንም እንኳ የከላሽ ተሽከርካሪ አገልግሎቱ ለጭነት እያሰ ሰዎችን አሳፍሮ በመጓዝ የተገለበጠ ቢሆንም የአደጋው መንስኤ ሰዎችን በመጫኑ ባለመሆኑ እና የከላሽ ተሽከርካሪ የሚጭነው 62 ኩንታል ሲሆን በወቅቱም ከ50 እስከ 55 ኩንታል ጭኖ የነበረ ስለመሆኑ የክፍሉ ፖሊስ ጽ/ቤት ከላከው ሪፖርት ላይ የተገለፀ በመሆኑ 1ኛ ተከላሽ በመድን ሽፋን ፖሊስ ውል መሰረት ለከላሽ ተሽከርካሪ ለደረሰበት ጉዳት የመካሰ ሃላፊነት አለበት ብለናል።

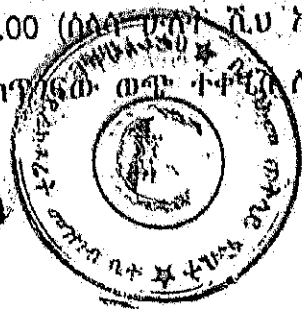
ሌላው ነጥብ 1ኛው ተከላሽ መድን ድርጅት ለደረሰው ጉዳት ሃላፊነት አለበት ከተባለ በየትኛው ዋጋ መሰረት ነው ሃላፊ ሲሆን የሚገባው የሚለውን ነጥብ ሲመረምር ከላሽ በተሽከርካሪው ላይ ለደረሰው ጉዳት 1ኛ ተከላሽ ጨረታ አውጥቶ ተስፋዩ ይልማ የተባለው ባለጋራሽር በብር 648,800.00 (ስድስት መቶ አርባ ስምንት ሺህ ስምንት መቶ ብር) መለዋወጫ እና ለእጅ ዋጋ አሸንፎ የሱራ ትዕዛዝ ተሰጥቶት የነበር ቢሆንም ለክፍሉኝ አልቻሉም በማለት የተከራከረ ሲሆን 1ኛ ተከላሽ በበኩሉ ጨረታው አልተጠናቀቀም የድርጅቱ ሰርቪየር የገመተው ብር 545,930.00 (አምስት መቶ አርባ አምስት ሺህ ዘጠኝ መቶ ሰላሳ ብር) ስለሆነ ሃላፊነት አለባቸው ከተባለ ዝቅተኛው ዋጋው የጉዳት ገማች (ሰርቪየር) ግምት ሲሆን ይገባል በሚል ተከራክሯል በመሆኑም እራሱ ተከላሽ የተጎዳውን የከላሽ ተሽከርካሪ ለማስጠን ለተለያዩ ጋራገሮች የዋጋ ማቅረቢያ ቅፅ "proforma" በትኖ ዝቅተኛውን ዋጋ ተስፋዩ ይልማ ለተከላሽ ድርጅት ያቀረበለት ለመሆኑ ከተከላሽ ድርጅት የሚጠየቁት ላይ ለመረዳት የተቻለ በመሆኑ 1ኛ ተከላሽ ድርጅት ለከላሽ ተሽከርካሪ ለደረሰበት ጉዳት መለዋወጫ እና ለእጅ ዋጋ



ዝቅተኛ ዋጋ ባቀረበው ጋራዥ ተስፋዩ ይልማ ባቀረበው የገንዘብ መጠን ብር 648,800 (ስድስት መቶ አርባ አምስት ሺህ ስምንት መቶ ብር) የመክፈል ሀላፊነት የለብንም በማለት ቢከራከርም የከላሽ ድርጅት አራሱ ዋጋ (መድን) ከፋይ ሁኖ ገለልተኛ የሆነ ዋጋ ያቀርባል ተብሎ ሲገመት የማይችልና 2ኛ ድርጅቱ አራሱ ለማስጠን እና ለዕቃ መለዋወጫ ጨረታ እንደማውጣቱ መጠን ከጨረታ መርህ አንጻር ገለልተኛ ባለጋራዦች ይወዳደራሉ ተብሎ የሚጠበቅ በመሆኑ 1ኛ ተከላሽ ድርጅት ዝቅተኛ ዋጋ ባቀረበው ባለጋራዦች ተስፋዩ ይልማ ባቀረበው የገንዘብ መጠን የመካከ ሀላፊነት አለበት ብለናል።

ለላው ከላሽ ያቀረበው ጥያቄ የተቋረጠ ጥቅምን የሚመለከት ሲሆን ከላሽ በክፍሉ ላይ ተሽከርካሪው በቀን የተጣራ ገቢ ብር 1,500.00 (አንድ ሺህ አምስት መቶ ብር) ይሰራል በሚል ከመገለፅ ውጭ በግልፅ የተቋረጠበት የገንዘብ መጠንን ጠቅሶ ዳኝነት አልጠየቀበትም። እንዲሁም ለተቋረጠ ጥቅም መድን ድርጅት የመክፈል ሀላፊነት እንደሌለበት በመድን ሽፋን ውሳኔው ላይ የተገለፀው ሲሆን ከላሽም ጉዳቱ ከደረሰበት ጊዜ አንስቶ በቂ በሆነ ጊዜ ተሽከርካሪው አስጠግኖ ወደ ስራ በማስገባት ኪሳራውን የመቀነስ ሀላፊነት አያለበት ይህን ስለማድረግ ያስረዳው ነገር የሌለ በመሆኑ የከላሽን የተቋረጠ ጥቅም ዳኝነት ተገቢነት የለውም ብለናል።

ለላው ነጥብ የአደጋ መነሻ ክፍያ (excess)፣ መዋጮ (contribution) ዋጋዎችን በተመለከተ ሲሆን የአደጋ መነሻ ክፍያን በተመለከተ ግራቀኝ ባደረጉት የመድን ፖሊሲ ውል ላይ ብር 5,000.00 (አምስት ሺህ ብር) ወይም ከጥገናው አጠቃላይ ዋጋ 10% ተቀናሽ እንደሚሆን የተገለፀ በመሆኑ በውሳኔው መሰረት አጠቃላይ ከጥገና ዋጋው ብር 648,800.00 (ስድስት መቶ አርባ ስምንት ሺህ ስምንት መቶ ብር) ውስጥ 10% የአደጋ መነሻ ክፍያ ብር 64,880 (ስልሳ አራት ሺህ ስምንት መቶ ሰማንያ ብር) እንዲሁም ከከላሽ ተሽከርካሪ ጉዳት ከደረሰባቸው ክፍሎች ላይ መዋጮ 5% ከላሽ የመክፈል ሀላፊነት ያለበት በመሆኑ አጠቃላይ ለጥገና ከሚከፈለው ክፍያ ላይ 5% ብር 32,440.00 (ሶስት ሺህ አራት መቶ አርባ ብር) ከላሽ ለተከላሽ ሊከፍል ይገባል ብለናል ወይም ከጥገናው ውጭ ተቀናሽ ሊደረግ ይገባል ብለናል።



ሌላው የ2ተኛ ተከላሽ ሃላፊነትን የሚመለከት ሲሆን 1ኛ ተከላሽ ንብረትነቱ የከላሽ ተሽከርካሪ በሆነው ላይ ለሚደርስ ጉዳት ካሳ የመክፈል ግዴታ የመድን ሽፋን የሰጠ ሲሆን ይህም በመድን ፖሊሲ ውል ላይ 1ኛ ተከላሽ መድን ድርጅት በግልፅ ሀላፊነትን አይመለከትም ተብሎ ከተደነገገው ውጭ ካሳ የመክፈል ሀላፊነት ያለበት ሲሆን በዚህ መሰረትም ለከላሽ ተሽከርካሪ ጉዳት መድረስ የመንገዱ ቁልቁሳትና ጠመዝማዛነት እንዲሁም የጥንቃቄ ጉድለት በመሆኑ በዚህም 1ኛ ተከላሽ ለደረሰው ጉዳት ሀላፊነት ያለበት ስለሆነ 2ተኛ ተከላሽ የተሽከርካሪው ሹፌር በመሆኑ ሀላፊነት የለበትም ብለናል።

ውሳኔ

- ንብረትነቱ የከላሽ በሆነው ተሽከርካሪ ላይ ለደረሰው ጉዳት 1ኛ ተከላሽ የኢትዮጵያ መድን ድርጅት ሀላፊነት አለበት ብለናል።
- በመሆኑም በከላሽ ተሽከርካሪ ላይ ለደረሰው ጉዳት የኢጅ ዋጋ እና የመለዋወጫ ኢቃ ግምቱ ብር 648,800.00 (ስድስት መቶ አርባ ስምንት ሺህ ስምንት መቶ ብር) ሲሆን ከዚህ ገንዘብ ላይ የአደጋ መነሻ ክፍያ 10% ብር 64,880.00 (ስልሳ አራት ሺህ ስምንት መቶ ሰማኒያ) እንዲሁም 5% መዋጮ ብር 32,440.00 (ስላሳ ሁለት ሺህ አራት መቶ አርባ ብር) ከአጠቃላይ የጥገና ዋጋ ተቀናሽ ተደርገው 1ኛ ተከላሽ መድን ድርጅት ለከላሽ ብር 551,480.00 (አምስት መቶ ሃምሳ አንድ ሺህ አራት መቶ ሰማኒያ ብር) ሊከፍል ይገባል በማለት ውሳኔ ሰጥተናል።
- የተጳፈጠ ጥቅምን በተመለከተ 1ኛ ተከላሽ የኢትዮጵያ መድን ድርጅት ሊጠየቅ አይገባም በማለት ተወስኗል።
- 2ተኛ ተከላሽ በደረሰው የተሽከርካሪ ጉዳት ላይ ሊጠየቅ አይገባም በማለት ውሳኔ ሰጥተናል።
- ወጭና ከሰራን በተመለከተ ከላሽ በክፈለው የዳንኑ ገንዘብ ብር 9,338.00 (ዘጠኝ ሺህ ሶስት መቶ ሰላሳ ስምንት ብር) እንዲሁም ለጠበቃ አበል በተወሰነው ገንዘብ መጠን ለብር 551,480.00 (አምስት መቶ ሃምሳ አንድ ሺህ አራት መቶ ሰማኒያ ብር) ላይ







**የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የፌዴራል ከፍተኛ ፍርድ ቤት**

የፌ/ዘ/ፍ/ቤት 5ኛ ፍ/ዘ/ቸ/ሎት  
የኮ/መ/ቁ 199746  
የካቲት 22 ቀን 2013 ዓ.ም

**ዳኛ:- በረከት ሳይቶ**

ከላሽ :- ሲ.ኢ.አስ ጠቅላላ ንግድ ኃ/የተ/የግ/ማ -

የቀረበ የለም::

ተከላሽ :- ብርሃን ኢንሹራንስ አ.ማ -

የቀረበ የለም::

መዝገቡ ተመርምሮ ተከታዩ ፍርድ ተሰጥቷል::

**ፍርድ ::**

ጉዳዩ ከኢንሹራንስ ጋር በተያያዘ የቀረበ ክርክርን የሚመለከት ሲሆን ከላሽ ህዳር 20 ቀን 2010 ዓ.ም በተፃፈ የክስ መመስረቻ ፅሁፍ ንብረትነቱ የከላሽ የሆነ እና በተከላሽ የመድን ሽፋን የተሰጠው የሰሌዳ ቁጥሩ 03-26294 ኢ.ት ተሽከርካሪ በደ/ብ/ሀ/ክ/መንግስት ጉራጌ ዞን ሶዶ ወረዳ ጢያ ከተማ ቀበሌ 01 ልዩ ቦታው ቀሪ የተባለ አካባቢ በአቶ መሳይ አራርሳ ሲሽከረከር ህዳር 22 ቀን 2008 ዓ/ም በግምት ከምሽቱ 1:00 አካባቢ ወደ አዲስ አበባ አቅጣጫ ሲመጣ ንብረትነቱ የአቶ ሳለም ሹራ የሰሌዳ ቁጥሩ 3-A03675 የሆነው አይሱዘ. የጭነት መኪና ከአዲስ አበባ ወደ ሆላዕና ሲጓዝ የከላሽ አሽከርካሪ የትራፊክ ደንብን በመጣስ መስመሩን ባለመጠበቁና መስመር ደርቦ በመግባቱ በከላሽ ተሽከርካሪ ላይ ጉዳት ደርሷል::

ተከላሽም በሰጠው የኢንሹራንስ ሽፋን መሰረት የአደጋውን መንስኤ በራሱ እና ከትራፊክ ባለሞያዎች ካጣራ በኋላ በማስገኘት በተነዱ የተሽከርካሪዎች ማቆያ ተረከቦ በማኖር በተሽከርካሪው ላይ ለሚታዩ ውድመቶች ከአስመጭው ድርጅት የዋጋ ማቅረቢያ በማሰባሰብ ጥገናውንም አስመልክቶ ከጋራዦች የአጅ ዋጋ አሰባስቦ አጠናቆ ነበር:: ተከላሽ በዚህ መሰረት የሚያወጣው ወጪ ከፍተኛ መሆኑን ሲገነዘብ ከላሽ በማያውቀው ሁኔታ ሹፌሩን በኢንሹራንስ ለመርዳት ነው ነው በማለት ተሽከርካሪው 14 ሜትር ኪዩብ አሸዋ እንደጫነ ማስረጃ ከአሸዋ አምራች ማህበሩ ስጡኝ በማለት ማስረጃውን ከማህበሩ ህገ ወጥ በሆነ መንገድ ከወሰደ በኋላ ተሽከርካሪው ከተፈቀደለት የመጫን አቅም በላይ 14 ሜትር ኪዩብ የጫነ ስለሆነ አደጋውም የደረሰው ለአደጋ በሚያጋልጥ ሁኔታ ውስጥ ሆኖ ነው በማለት ተሽከርካሪውን ህዳር 30 ቀን 2008 ዓ.ም ተረከቦ ከአንድ አመት ቆይታ በኋላ ህዳር 27 ቀን 2009 ዓ.ም ከላሽ ተሽከርካሪውን እንዲረከበው አሳውቋል::

በከላሽ ተሽከርካሪ የባለቤትነት ማረጋገጫ ሲብራ ላይ የመጫን አቅሙ 151.1 ኩንታል እንደሆነ፤ እስፖንዳዊም ፋብሪካ ከሰራው ወጪ የገንዘብ ተጠቃሚ ሆኖ ከመሆኑ በላይ የትራፊክ ባለሞያ ሪፖርቱም ተሽከርካሪው በህግ የተፈቀደ ጭነት እንደጫነ የሚያሳይ ሆኖ እያለ ተከላሽ ተሽከርካሪው 10





# የኢትዮጵያ ሬዲዮና ቴሌቪዥን ሚኒስቴር የፌዴራል ከፍተኛ ፍርድ ቤት

የፌ/ከ/ፍ/ቤት 5ኛ ፍ/ሳ/ቸሎት  
የኮ/መ/ቁ 199746  
የካቲት 22 ቀን 2013 ዓ.ም

ሜትር ኪዩብ መጫን ሲገባው 14 ሜ.ኪዩብ ጭኖ ነበር የተባለው በሀገውጥ መልኩ የተገኘን ማሰረጃ መሰረት በማድረግ ነው።

የከላሽ ተሽከርካሪ 2004 ዓ.ም ጁ.ሲ ሞዴል ሲሆን የዋጋ ለውጥ ሊኖር እንደሚኖር ቢሆንም የከላሽ ተሽከርካሪን በብቸኝነት ከሚያስመጣው ከኢትዮ ኒፖን ቴክኒካል ካምፓኒ አክሲዮን ማህበር ለመለዋወጫ ዕቃዎች ግዥ ብር 544,789.37 (አምስት መቶ አርባ አራት ሺህ ሰባት መቶ ሰማንያ ዘጠኝ ብር ከሰላሳ ሰባት ሳንቲም) እንዲሁም ከውጭ ጋራዦች ለጥገና ብር 207,000.00 (ሁለት መቶ ሰባት ሺህ) በአጠቃላይ ብር 751,789.37 (ሰባት መቶ ህምሳ አንድ ሺህ ሰባት መቶ ሰማንያ ዘጠኝ ብር ከሰላሳ ሰባት ሳንቲም) ወጪ የሚደረግ እንደሆነ ከላሽ ለማረጋገጥ ችሏል።

በመሆኑም ተከላሽ ለተሽከርካሪው በሰጠው የኢንሹራንስ ሽፋን መሰረት ተሽከርካሪው ላይ ለደረሰው አደጋ አስጠግኖ ለከላሽ የማስረከብ ኃላፊነት አለበት ተብሎ ተሽከርካሪው ውሳኔ ሲሰጥ በሚኖረው የገበያ ዋጋ አስጠግኖ ለከላሽ እንዲያስረክብ ወይም በወቅቱ የገበያ ዋጋ ገንዘቡን እንዲከፍል፣ ተከላሽ በራሱ ጥፋት ተሽከርካሪውን አስጠግኖ ለከላሽ ማስረከብ ሲገባው ፍቃደኛ ባለመሆኑ ተከላሽ ተሽከርካሪውን አስጠግኖ ለከላሽ አስከፊያ ለከላሽ በከላሽ የኢኮኖሚ ጥቅም ላይ የሚደርሰውን ጉዳት በማጣራት በፍ/ሥ/ሥ/ህ/ቁ 216 መሰረት በሌላ ዳኝነት ከላሽ የመጠየቅ መብት አለው እንዲባል እና ከሱ ካስከተላቸው ወጪዎች ጋር እንዲከፍሉ እንዲወሰንለት ጠይቋል። እንደ ክስ አቀራረቡ ሊያስረዱልኝ ይችላሉ ያላቸውን ልዩ ልዩ የሰነድ ማሰረጃዎች አያይዞ አቅርቧል። የምስክርኝንም ዝርዝር ጠቅሷል።

የከላሽ ክስ ማሰረጃዎች ለተከላሽ እንዲደርሱ ተደርጎ ተከላሽ ጥር 24 ቀን 2010 ዓ.ም ባቀረበው መከላከያ መልስ የመጀመሪያ ደረጃ መቃወሚያና የፍሬ ነገር ክርክር አቅርቧል። ፍርድ ቤቱ የተከላሽን የይርጋ መቃወሚያ ከከላሽ ክርክር አንጻር መርምሮ ጥር 05 ቀን 2011 ዓ.ም ወደቅ ማድረጉን መዝገቡ ያስረዳል። የተከላሽ የፍሬ ነገር ክርክር አጭር ይዘት ተከታዩ ነው።

ተከላሽ የከላሽን የካሳ ይከፈለኝ ጥያቄ ሳይቀበለው የቀረው የከላሽ ተሽከርካሪ በሀገ ከተፈቀደለትና ተሽከርካሪው ሊጭን ከሚገባው የጭነት መጠን በላይ 51.7 ኩንታል የሚመዘን 4 ሜትር ኪዩብ ትርፍ አሸዋ ጭኖ ሲጓዝ በዚህም ምክንያት ተሽከርካሪውን መቆጣጠር ሳይችል በመቅረቱ የተፈጠረ አደጋ በመሆኑ ነው። ከላሽ ያቀረበው የትራፊክ ፖሊስ ሪፖርቱ ለማዳደ ምናልባትም ከላሽን ለመጥቀም በተሳሳተ መልኩ የተዘጋጀ በመሆኑ ተግማኒነት የለውም። በትራፊክ ሪፖርቱ የጭነት ልክ በሚለው ላይ “በሀገ የተፈቀደለት” ተብሎ የተጠቀሰው ተሽከርካሪው የሚለው ምን ያህል እንደሆነ ተለክቶ ሳይሆን በልማዳዊ አሰራር ወይም ተከላሽን ለመርዳት ነው። የከላሽ ተሽከርካሪ ጭኖ የነበረው 14 ሜ.ኪ መሆኑን





# የኢትዮጵያ ሌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የሌዴራል ከፍተኛ ፍርድ ቤት

የፌ/ዘ/ፍ/ቤት 5ኛ ፍ/ሳ/ችሎት  
የክ/መ/ቁ 199746  
የካቲት 22 ቀን 2013 ዓ.ም

በሩክ ተስፋዬ ከተባለ ሕጋዊ አሸዋ ሻጭ ለከላሽ አሽከርካሪ የተቀበለው የግዢና ጭነት ሰነድ ያረጋግጣል።

አደጋው የደረሰው የከላሽ ተሽከርካሪ መስመሩን ለቆ ሲጓዝ የነበረ መሆኑ በፖሊስ የተረጋገጠ ቢሆንም የፖሊስ ሪፖርቱ አንድ ተሽከርካሪ ምንም ችግር ባይኖርበት ከአሽከርካሪው ቁጥጥር ወጪ ሆኖ ይህን ያህል ከባድ አደጋ ሲያደርስ ምክንያት ሊሆኑ የሚችሉ ሌሎች ነገሮች መኖራቸውን (ለአብነት ከአቅም በላይ መጫን) ሙያዊ ትንተናና ትርጉም አልተሰጠበትም። በዚህ ምክንያት ምንም የቴክኒክ ችግር ያልነበረበት ተሽከርካሪ ብሎም ጤነኛ አሽከርካሪ መስመሩን ለቆ አደጋ አደረሰ ብሎ ለመደምደም አይቻልም። ስለሆነም ለአደጋው የቅርብ መንስኤ (proximate cause) ተሽከርካሪው ጭኖት የነበረው 50.78 ኩንታል ትርፍ ጭነት ስለመሆኑ የሙያተኞች ቃል ይሰማልን። ስለሆነም በመድን ፖሊሲው ክፍል ሁለት የማግለያ አንቀጽ 2.4 ተከላሽ በከላሽ ተሽከርካሪ ላይ ለደረሰው ጉዳት ካሳ የመክፈል ጋላሬነት የለበትም።

ከላሽ አላገራነት የለበትም እንጂ አለበት ቢባል እንኳን በከላሽ የቀረበው መጠን የተጋነነ ነው። በከላሽ ተሽከርካሪ ላይ የደረሰው የጉዳት መጠን ከብር 190,000.00 (አንድ መቶ ዘጠና ሺህ) የማይበልጥ ነው። ከላሽ የተቋረጠ ጥቅምን በተመለከተ ክስ የማቅረብ መብቱ ይጠበቅልኝ ያለውን በተመለከተ ከላሽ የተቋረጠ ጥቅም ይከፈሉኝ የማለት መብት የለውም እንጂ አለው ቢባል እንኳን ከላሽ አለኝ የሚለውን መብት ጠቅልሎ ለማቅረብ የሚያግደው አንዳች ምክንያት ሳይኖር ክሱን እያቆራረጠ በማቅረብ በተከላሽ ላይ ያልተገባ ኪሳራና ድካም ለማድረስ ሌላ ክስ ለማቅረብ ይፈቀድልኝ ሲል ያቀረበው ጥያቄ ተገቢነት የሌለው ነው እንዲባልን በማለት ተከራክሯል። እንደ መከላከያ መክሴ ሊያስረዱልኝ ይችላሉ ያላቸውን ልዩ ልዩ የሰነድና የሰው ማስረጃዎች አያይዟል። የምስክሮችንም ዝርዝር ጠቅሷል።

ፍርድ ቤቱ የግራ ቀኝን ክስን መጋቢት 06 ቀን 2010 ዓ.ም የሰማ ሲሆን ግራ ቀኝ ምስክሮቻቸውን እንዲያቀርቡ ቢታዘዝም ተከላሽ መከላከያ መልሱን በሬድስትራር ጽ/ቤት በኩል ጥር 24 ቀን 2010 ዓ.ም ካቀረበ ሶሃላ የክስ መስማቱን የቀጠሮ ቀን ጨምሮ በየትኛው ቀጠሮ ቀርቦ አያውቅም። በዚህ ምክንያት የተሰሙት የከላሽ ምስክሮች ብቻ ናቸው። የቃላቸውም አጭር ይዘት ከዚህ በታች የተመለከተ ነው።

1ኛ የከላሽ ምስክር ላጅን ሺመክት ንጋቱ የቴክኒክ ምርመራ ባለሙያ (ፖሊስ) የከላሽ ተሽከርካሪ ላይ ጉዳት በደረሰበ ወቅት ምርመራው ላይ የነበሩ መሆኑን ገልጸው የአደጋው መንስኤ ከላሽ የራሱን መስመር ጠብቆ ባለመንዳቱ ወይም ከመስመሩ በቆሎ ጣቱ የተፈጠረ መሆኑን ሌላ የአደጋ መንስኤ አለመኖሩን መስክረዋል።





**የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የፌዴራል ከፍተኛ ፍርድ ቤት**

የፌ/ክ/ፍ/ቤት 5ኛ ፍ/ሰ/ቸሎት  
የኮ/መ/ቁ 199746  
የካቲት 22 ቀን 2013 ዓ.ም

2ኛ የክላሽ ምስክር አቶ መስፍን ተስፋዬ አደጋው በተከሰተበ ዝዬ የክላሽ ተሽከርካሪ ላይ ተጭኖ የነበረው አሸዋ የተሸጠበት የብሩህ ተስፋ ማህበር አመራር ሲሆን አሸዋ ለክላሽ ተሽከርካሪ መጫናቸውን፤ የአሸዋ መጠነ-ም በግምት ከ9 ሜ.ኪ እና 10 ሜ.ኪ እንደማይበልጥ፤ አደጋው ከተከሰተበት ቀን በኋላ የሆኑ ሰዎች ከአንሹራንስ የመጣን ነን፤ የክላሽ ሾፌርን መርዳት ፈልገን ነው፤ ስለዚህ የተጫነው የአሸዋ መጠን 14 ሜ.ኪ ነው ብለህ ቀኑን ወደኋላ አድርገህ ደረሰኝ ፅፈህ “በቫይበር” ላክልን ብለውኝ ሾፌሩን ለመርዳት ስል ቀንኑ ወደኋላ አድርጌ የአሸዋውንም መጠን 14 ሜ.ኪ ብዬ ጥልቼ “በቫይበር” ልክላቸዋለሁ። እኛ አሸዋ የምንሞላው በግምት እንጂ መለኪያ የለንም በማለት መስከረዋል።

3ኛ የክላሽ ምስክር አቶ ታምራት ኅላ አደጋው በደረሰ ወቅት በክላሽ ድርጅት ውስጥ ተቀጥሮ ይለራ የነበረ ሲሆን ተክላሽ ጉዳት የደረሰበትን የክላሽን ተሽከርካሪ “ሪክሽ” ውስጥ አስገብቶና የዋጋ ዝርዝር አውጥቶ ከ3 ወራት ቆይታ በኋላ ጉዳቱ የደረሰው ተሽከርካሪው ከአቅም በላይ ስለጫነ በመሆኑ ካሳ አልከፍልም ማለቱን፤ ነገር ግን የትራፊክ ፖሊስ ሪፖርቱ የሚያሳየው የተጫነው የአሸዋ መጠን በህግ የተገለፀውን ያህል መሆኑን ያሳይ እንደነበረ በመጥቀስ የምስክርነት ቃላቸውን ሰጥተዋል። የክላሽን ምስክሮች ቃል የመስማት ሒደት በዚህ ተጠናቋል።

ፍርድ ቤቱም ጉዳዩን መርምሯል። በዚህም መሰረት በግራ ቀኝ ክርክር መፍትሔ ማግኘት ያለባቸው አከራካሪ ጭብጦች፡-

1. ተክላሽ ጉዳት የደረሰበትን የክላሽን ተሽከርካሪ አስጠግኖ የማስረከብ ወይም የማስጠገኛውን ዋጋ የመክፈል ኃላፊነት አለበት ወይስ የለበትም?
2. ተክላሽ ካሳ የመክፈል ኃላፊነት አለበት የሚባል ከሆነ የጉዳት ካሳ መጠነ ምን ያህል ነው?
3. ተክላሽ ኃላፊነት አለበት የሚባል ከሆነ የተቋረጠ ጥቅምን አስመልክቶ ክላሽ በሌላ ዳኝነት የመጠየቅ መብቱ ሊጠበቅለት ይገባል አይገባም?

የሚሉት ሲሆኑ ከግራ ቀኝ አጠቃላይ ክርክር አንጻር እንደሚከተለው እልባት ሰጥቷቸዋል። በቅድሚያ የመጀመሪያውን ጭብጥ እንመለከታለን።

ተክላሽ ጉዳት ለደረሰበት የክላሽ ተሽከርካሪ የመድን ሽፋን መስጠቱን ሳይክድ የክላሽ ተሽከርካሪ አስጠግኜ ለማስረከብ አላፊነት የለብኝም በማለት የማይከታተል ጭብጥ ምክንያት አደጋው የደረሰው የክላሽ ተሽከርካሪ አቅሙ በላይ በመጫኑ ነው በማለት መሆኑን ፍርድ ቤቱ ግንዛቤ ወስዷል። ተክላሽ ይህንኑ ፍሬ ነገር ለማስረዳት ያቀረበው የሰነድ ማስረጃ ደብዳቤ እና በግልፅ የማይታይ ከመሆኑም በላይ የክላሽ





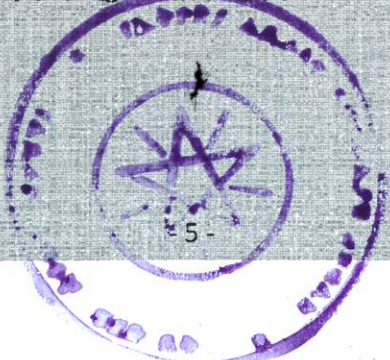
# የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የፌዴራል ከፍተኛ ፍርድ ቤት

የፌ/ክ/ፍ/ቤት 5ኛ ፍ/ብ/ችሎት  
የክ/መ/ቁ 199746  
የካቲት 22 ቀን 2013 ዓ.ም

2ኛ ምስክር አደጋው በተከሰተበት ጊዜ የከላሽ ተሽከርካሪ ላይ ተቋኖ የነበረው አሸዋ የተሸጠበት የብሩህ ተስፋ ማህበር አመራር ሲሆን አሸዋ ለከላሽ ተሽከርካሪ መጫናቸውን፣ የአሸዋ መጠንም በግምት ከ9 ሜ.ኪ እና 10 ሜ.ኪ እንደማይበልጥ፣ አደጋው ከተከሰተበት ቀን በኋላ የሆኑ ሰዎች "ከኢንሹራንስ የመጣን ነን የከላሽ ሾፊርን መርዳት ፈልገን ነው፣ ስለዚህ የተጫነው የአሸዋ መጠን 14 ሜ.ኪ ነው ብለህ ቀጥን ወደኋላ አድርገህ ደረሰኝ ፅፈህ "በቫይበር" ላክልን" ብለውኝ ሾፊርን ለመርዳት ስል ቀንኩ ወደኋላ አድርጌ የአሸዋውንም መጠን 14 ሜ.ኪ ብዬ ሞልቼ "በቫይበር" ልኬላቸዋለሁ በማለት ከሰጡት የምስክርነት ቃል መገንዘብ የሚቻለው ተከላሽ ያቀረበው ደረሰኝ የተሳሳተ መረጃ የተሞላበት መሆኑን ነው። ተከላሽ በዚህ መልክ በተሳሳተ ሁኔታ የተገኘን ደረሰኝ መሰረት በማድረግ አላፊነት የለብኝም በማለት ያቀረበው ክርክር የህግም ሆነ የፍሬ ነገር ድጋፍ ያለው ባለመሆኑ ተቀባይነት ያለው አይደለም።

በሌላ በኩል አደጋው የደረሰበት ቦታ ያለው የወረዳ የትራፊክ ፖሊስ ጽ/ቤት (የደ/ብ/ብ/ሕ/ ክልል የትራፊክ ዞን የሶዶ ወረዳ ፖሊስ ጽ/ቤት) ሪፖርት የአደጋው መንስኤ የከላሽ ተሽከርካሪ ከመስመሩ ወጪ ሲጓዝ የነበረ በመሆኑ ምክንያት ነው ሲል ድምዳሜ ላይ መድረሱን ግራ ቀኝ ያልተካካዱበት ነጥብ (በሪፖርቱ ይዘት ላይ ልዩነት የላቸውም) ነው። ተከላሽ በዚህ ረገድ አጥብቆ የሚከራከረው የትራፊክ ፖሊስ ሪፖርቱ በልማድ የተሰራ፣ ምናልባትም ከላሽን ለመጥቀም የቋሰጠ ነው በማለት ነው። ነገር ግን የወረዳው ፖሊስ የትራፊክ ሪፖርት ስልጣን ባለው የበላይ አካል (ለምሳሌ በዞን ትራፊክ ፖሊስ...ወ.ዘ.ተ) እንዲከለስ ጠይቆ የወረዳው የፖሊስ የአደጋ ሪፖርት አግባብ አለመሆኑን የሚያሳይ የተሻለ አሳማኝነት ያለው ምንም አይነት ማስረጃ አላቀረበም። ተከላሽ ማስረጃው ምናልባትም ከላሽን ለመጥቀም የተሰጠ ነው ሲል ያቀረበውም በማስረጃ ያልተደገፈ ይልቁንም "ምናልባት ይህኛል" በሚል መከራከሪያ የቀረበበት እንጂ እርገጠኛ አይደለም። ስለሆነም ተከላሽ በደፈናው የትራፊክ ፖሊስ ሪፖርቱ "በልማድ" የተሰራ ነው ሲል ያቀረበውን ክርክር ፍርድ ቤቱ አልተቀበለውም።

ይህ በእንዲህ እንዳለ ከላሽ ህዳር 30 ቀን 2008 ዓ.ም አደጋ የደረሰበትን የከላሽ ተሽከርካሪ ተረክቦ የማቆያ ስፍራ ማስገባቱ፣ ታህሳስ 7 ቀን 2008 ዓ.ም የከላሽ ተሽከርካሪ ላይ የተፈጠረውን አደጋ ተቀብሎ ለጥገና ከውጭ ጋራገሮች የዋጋ መጠየቂያ መጠየቁ፣ ጋራዥም የዋጋ ዝርዝር መስጠቱ፣ የመለዋወጫ እቃን ከተሽከርካሪው አስመጪ መጠየቁ ተከላሽ አላፊነት እንዳለበት አምኖ የከላሽን ተሽከርካሪ የማስጠገን ሒደት መጀመሩን የሚያመለክቱ ናቸው።





# የኢትዮጵያ ሬገራላዊ ዲፕሎሞሲያዊ ሪፐብሊክ የሬገራላ ክፍተኛ ፍርድ ቤት

የፌ/ክ/ፍ/ቤት 5ኛ ፍ/ብ/ችሎት  
የክ/መ/ቁ 199746  
የካቲት 22 ቀን 2013 ዓ.ም

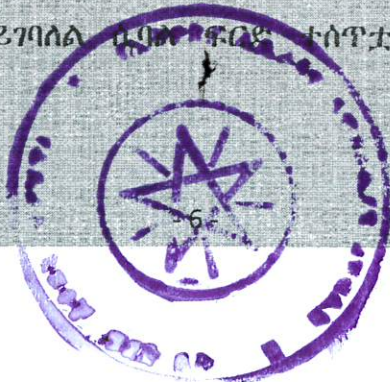
በአጠቃላይ በተከላከለ ከቀረበው ማስረጃ ይልቅ በከላከለ በኩል የቀረቡት ማስረጃዎች በከላከለ ተሽከርካሪ ላይ ለደረሰው አደጋው መንስኤ የሆነው የከላከለ የከላከለ አሽከርካሪ የትራፊክ ደንብን በመጣስ መስመሩን ባለመጠበቁና መስመር ደርቦ መግባቱ እንጂ ተከላከለ እንደሚለው የከላከለ ተሽከርካሪ ከአቅም በላይ በመጫኑ አይደለም።

በመሆኑም ተከላከለ ለከላከለ ተሽከርካሪ በሰጠው የመድን ሽፋን መሰረት ጉዳት የደረሰበትን ተሽከርካሪ አስጠግኖ የማስረከብ ወይም የማስጠገኛውን ዋጋ የመክፈል ኃላፊነት አለበት ሲባል ፍርድ ተሰጥቷል። በመቀጠል ሁለተኛውን ጭብጥ አንመለከታለን።

በከላከለ በኩል የቀረበው የሰነድ ማስረጃ እንደሚያሳየው ተከላከለ በሰበሰበው የዋጋ መጠየቂያ ቅፅ መሰረት ተሽከርካሪውን ለመጠገን በጠቅላላ ብር 751,789.37 (ሰባት መቶ ሀምሳ አንድ ሺህ ሰባት መቶ ለማንያ ዘጠኝ ብር ከሰላሳ ሰባት ሳንቲም) እንደሚያስፈልግ ያሳያል። በሌላ በኩል ተከላከለ በራሱ ሰርቪየር ባዘጋጀው ሪፖርት የጥገናው ዋጋ በጠቅላላው ብር 190,000 (አንድ መቶ ዘጠና ሺህ) መሆኑን የሚያሳይ ማስረጃ አያይዟል።

በከላከለና ተከላከለ የቀረቡት ጉዳት የደረሰበት ተሽከርካሪ የማስጠገኛ ዋጋ መካከል ያለው ልዩነት ከፍተኛ ያለ በመሆኑ ፍርድ ቤቱ ታህሳስ 17 ቀን 2012 ዓ.ም የማስጠገኛ ዋጋውን ትክክለኛውን ዋጋ ለማወቅ ገለልተኛ የጉዳት ጥገና ግምት ሪፖርት እንዲቀርብ ታዟል። በዚሁም መሰረት E.A (አ.ኤ) የተባለ ገለልተኛ የጉዳት ገማች በቁጥር EA/017/2020 ጥቀምት 17 ቀን 2013 ዓ.ም ባቀረበው ሪፖርት ተሽከርካሪው ለረጅም ጊዜ በመቆሙ ሲወጣ የሚችል ተጨማሪ ወጪ ሊኖር እንደሚችል ከግምት ውስጥ በማስገባት የተሽከርካሪው የጉዳት መጠን ብር 429,122.50 (አራት መቶ ሀያ ዘጠኝ ሺህ አንድ መቶ ሀያ ሁለት ብር ከሀምሳ ሳንቲም) ነው ሲል አቅርቧል። በሪፖርቱ ላይ ግራ ቀኑ አስተያየታቸውን እንዲያቀርቡ ታዘዉ አላቀረቡም።

ፍርድ ቤቱም በዚህ ረገድ ጉዳዩን የመረመረ ሲሆን ገለልተኛ ጉዳት ገማቹ ያቀረበው የከላከለ ተሽከርካሪ የጥገና ወጪ እንደሆነ የጠቀሰው የገንዘብ መጠን ያልተጋነነና ይህ ፍርድ በሚሰጥበት ጊዜ ያለውን የማስጠገኛ ዋጋ ያገናዘበ መሆኑን ፍርድ ቤቱ አምኖበታል። ስለሆነም ተከላከለ የከላከለ ተሽከርካሪ ላይ ለደረሰው ጉዳት የማስጠገኛ ዋጋ ብር 429,122.50 (አራት መቶ ሀያ ዘጠኝ ሺህ አንድ መቶ ሀያ ሁለት ብር ከሀምሳ ሳንቲም) ሊከፍል ይገባል ብሎ ጥቅም ተሰጥቷል። በጨረሻ ሦስተኛውን ጭብጥ አንመለከታለን።





**የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ**  
**የፌዴራል ከፍተኛ ፍርድ ቤት**

የፌ/ከ/ፍ/ቤት 5ኛ ፍ/ብ/ችሎት  
 የክ/መ/ቁ 199746  
 የካቲት 22 ቀን 2013 ዓ.ም

ከፍ ሲል በተራ ቁጥር 1 ላይ በተያዘው ጭብጥ እንደተጠቀሰው ተከላሽ የከላሽን ተሽከርካሪ ሳይስጠን የቀረው ያለአግባብ ባገኘው ደረሰኝ በመሆኑ ተሽከርካሪው ሳይጠገን ለቆየበት ጊዜ ተከላሽ ለደረሰበት ጉዳት (consequential loss) አላፈነት አለበት። በመሆኑም ተከላሽ ባጠፋው ጥፋት ምክንያት በከላሽ ላይ የደረሰ የተቋረጠ ጥቅም ካለ ከላሽ ይህንኑ አጣርቶ ክስ የመመስረት መብት ሊፈቀድለት ይገባል ሲባል ፍርድ ተሰጥቷል።

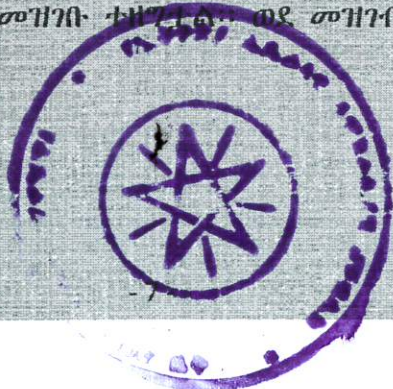
ከላይ በተሰጠው የፍርድ ቃል መሰረት ተከታዩ ተወስኗል።

**ው ሳ ኔ ።**

1. ተከላሽ ጉዳት የደረሰበትን የከላሽ የሰሌዳ ቁጥሩ 03-26294 ኢ.ት የሆነውን ተሽከርካሪ አስጠግኖ ለከላሽ እንዲያስረክብ፤ በማንኛውም ሁኔታ ሊያስጠገን ካልቻለ ወልደም ፍቃደኛ ካልሆነ ተሽከርካሪው ላይ ለደረሰው ጉዳት የማስጠገኛ ዋጋ ብር 429,122.50 (አራት መቶ ሀያ ዘጠኝ ሺህ አንድ መቶ ሀያ ሁለት ብር ከሀምሳ ሳንቲም) እንዲከፍል ተወስኗል።
2. ተከላሽ ተሽከርካሪውን አስጠግኖ ለከላሽ ባለማስረከቡ ምክንያት ከላሽ የደረሰበት ጉዳት (consequential loss) ካለ ተከላሽን የመጠየቅ መብቱ በፍ/ሥ/ሥ/ሀ/ቁ 216 (4) መሰረት ተጠብቋል።
3. በዚህ ክስ ምክንያት ከላሽ ያወጣውን ወጪና ኪሳራ በተመለከተ ለከላሽ በተወሰነው ገንዘብ ልክ የዳኝነት ብር 7,141.22 (ሰባት ሺህ አንድ መቶ አርባ አንድ ብር ከሐያ ሁለት ሳንቲም)፣ የጠበቃ አበል ለከላሽ የተወሰነውን አጠቃላይ ገንዘብ 10% ማለትም ብር 42,912.25 (አርባ ሁለት ሺህ ዘጠኝ መቶ አስራ ሁለት ብር ከሐያ አምስት ሳንቲም)፣ እንዲሁም ከላሽ ለጉዳት ገማቹ ሊከፍል የሚችለውን እና ለልዩ ልዩ ወጪዎች ብር 10,000.00 (አስር ሺህ) በድምሩ ብር 60,053.47 (ስልሳ ሺህ አምሳ ያስት ብር ከአርባ ሰባት ሳንቲም) ተከላሽ ከዛሬ ጀምሮ ተከፍሎ እስከሚጠናቀቅ ድረስ ከሚታሰብ 9% ዓመታዊ ወለድ ጋር ለከላሽ እንዲከፍል ተወስኗል።

**ት ዕ ዛ ዝ ።**

1. የፍርዱ ተክክለኛ ግልባጭ ለግራ ቀኝ ለማስረጃነት ይሰጥ።
2. ክርክሩ በፍርድ መቋጫ ስላገኘ መዘገቡ ተዘግቶ፣ ወደ መዘገብ ቤት ይመለስ።



ዳኞች፡- መንበረፀሐይ ታደሰ  
ዳኛ መላኩ  
ጌታቸው ምህረቱ

ይግባኝ ባይ፡- ስመሃር የዩብስ ትራንስፖርትና ጠቅላላ ንግድ ኃ.የተ.የግል ማህበር  
ጠበቃ ረዳኢ ባራኪ ቀረበ

መልስ ሰጭ፡- ብሄራዊ የኢትዮጵያ ኢንሹራንስ ኩባንያ አ.ማህበር  
ነገረፈጅ ዳኛቸው ወ/ማርያም

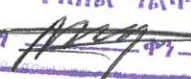
መዝገቡን መርምረን የሚከተለውን ውሳኔ ሰጥተናል፡፡

ው ሳ ኔ፣

ይህ ይግባኝ የቀረበው ይግባኝ ባይና መልስ ሰጭ ሐምሌ 10 ቀን 1989 ዓ.ም. በተፃፈ ሰነድ ያቋቋሙት የግልግል ጉባኤ ግንቦት 3 ቀን 1992 ዓ.ም. የሰጠውን ውሳኔ በመቃወም ነው፡፡=====//

ለይግባኙ መነሻ የሆነው ክርክር የተጀመረው፡- ይግባኝ ባይ ለግልግል ጉባኤው ባቀረበው ማመልከቻ ሲሆን ጉዳዩም የመድን ካሳን የሚመለከት ነው፡፡ የማመልከቻው ፍሬ ነገርም እንደሚከተለው ነው፡፡ ይግባኝ ባይ የሰሌዳ ቁጥሩ አ.አ. 3-32938 ለሆነ ተሽከርካሪው ከመልስ ሰጪ ቁጥሩ ኤ.ም.ኤ.ኤ.ም 0367/95 የሆነ ከ18/07/96 እስከ 17/07/97 ፀንቶ የሚቆይ የመድን ዋስትና የገዛ መሆኑን፡፡ የተጠቀሰው ተሽከርካሪ ነሃሴ 25 ቀን በአፋር ብሄራዊ ክልላዊ መንግስት በኤልዳር ወረዳ የግጭትና የመገልበጥ አደጋ የደረሰበት መሆኑን፡፡ ይህንንም ጉዳት በወቅቱ በፖሊስ ሪፖርት በማስደገፍ ለመልስ ሰጪ መግለጫ መስጠቱንና መልስ ሰጪም ጉዳት የደረሰበትን ተሽከርካሪ ተረክቦ ለጠጋኝ ማስረከቡን፡፡ ይህንን ካደረገ በኋላ ግን የጥገናውን ወጪ ለመሸፈን ፈቃደኛ ስላልሆነ፡- መኪናው የተሰራበት 521,071.38 ብር፣ ሐምሌ 10 ቀን በተደረገው ውል መሰረት የተከፈለው ብር 121,321.4 እንዲከፍል ከጥገና በኋላ የተቀየሩ ዕቃዎች መልስ ሰጭ እንዲመልስ እንዲወሰንልኝ በማለት ጥያቄውን አቅርቧል፡፡=====//

መልስ ሰጭ ባቀረበው መልስ ደግሞ፡- በግራ ቀኙ የተደረገው የመድን ዋስትና ውል አምና፤ ከይግባኝ ባይ በተሰጠው መግለጫ መሰረትም ጉዳትም የደረሰበትን ተሽከርካሪ ለጠጋኝ መስጠቱን በመቀበል፡፡ ነገር ግን ጉዳት የደረሰበት ተሽከርካሪ አደጋው በደረሰ ጊዜ የሰሌዳ ቁጥር አ.አ.3-04773 ተሳቢ ይገቡት የነበረ መሆኑን ከኤሌደር ወረዳ ፖሊስ ከተፃፈ ተጨማሪ የፖሊስ ሪፖርት ማረጋገጡንና ይህም ድርጊት ለመድን ዋስትና ውል

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልባጭ  
ፊርማ 

የማግለያ አንቀጽ ክፍል ሦስት መሰረት ከሃላፊነት ነፃ ስለሚያደርገኝ መኪናውን የማስጠገን ግዴታ የሉብኝም በማለት ክርክሩን ሲያቀርብ። በተጨማሪም ሐምሌ 10 ቀን 1989 በተደረገው ስምምነት የከፈለው የማስጠገኛ 70% ብር 495,017.81 እንዲከፈለው፣ ይግባኝ ባይ መክፈል የነበረበት 106,321.41 መክፈያ የሰጣቸው ሁለት ቼኮች በቂ ስንቅ የላቸውም ስለተባሉ ከግልግሉ በፊት እንዲከፍል፣ መኪናው ከአደጋ ቦታ ለማስገባት በአደጋው ቦታ በቆየበት ጊዜ ለጥበቃ እንዲሁም መኪናው ለሦስተኛ ሰው ንብረት ላይ ላደረሰው ጉዳት በካሳነት የተከፈለው ብር 12,588 እንዲከፍል ተሸከርካሪው ተጠግኖ ከወጣበት ጀምሮ የሚያስገኘው ገቢ እንዲያስይዝና በየወሩ ሂሳብ እያቀረበ በዝግ ሂሳብ እንዲቀመጥ እንዲወሰንበት ለጠበቃና ለግልግል ዳኝነት የተከፈለው ወጪ እንዲመልስ በይግባኝ ባይ ላይ እንዲወሰንበት በማለት ጠይቃል።=====//

ይግባኝ ባይ ባቀረበው የመልስ መልስ በበኩሉ፡- የኤ.ሊ.ዳር ወረዳ ፖሊስ አደጋው በደረሰ ወቅት በፃፈው ሪፖርት ስለተሳቢ የጠቀሰው ነገር ባለመኖርና ተጨማሪ የፖሊስ ሪፖርት የሚባለውም ከ6 ወር በኋላ በአደጋው ጊዜ ለአካባቢው ባልነበረ የፖሊስ አዛዥ የተፃፈ አደጋው ለሚመለከቱ ሌሎች ሰነዶች ያልተደገፈ በመሆኑ ተቀባይነት ሊኖረው አይገባም። ተቀባይነት ያለው ነገር እንኳ ቢሆን ተሳቢው ለይግባኝ ባይ ተቀጣሪ በሆነ ሾፌር የተቀጠለ ሊሆን ስለሚችልና በዚህ ሁኔታ የይግባኝ ባይ እውቀት ስለመኖሩ ማስረጃ ሳያቀርብ በንግድ ህግ ቁጥር 664/1/ መሰረት መድን ሰጪው ለመድን ገዢው ተቀጣሪ በሆነ ሾፌር በፈፀመው ጥፋት ከሃላፊነት አይደንም። ስለዚህ መልስ ሰጭ በተሳቢው ጉዳይ የይግባኝ ባይ ይሁንታ ቀወይም ችልተኝነት የሚያረጋግጥ ማስረጃ ባለማቅረቡ ይግባኝ ባይን የመካስ ግዴታው እንደተጠበቀ ነው። የቼኩ ጉዳይም ቼኩ ለሌላ በመተላለፉ ተጠያቂው የመጀመሪያው ፈራሚው ነው። ለዚያውም ይህ ጭብጥ በዚህ መዝገብ ሊነሳ አይችልም። የጉባኤው ስልጣን ካሳውን ብቻ የሚመለከት እንጂ ሌሎች ጉዳዮችን አይጨምርም በማለት ክርክሩን አጠናክሮ ተከራክሯል።=====//

የግልግል ጉባኤውም የግራ ቀኙን ክርክር መርምሮ በመድን ዋስትና ውል የተገባለት ተሸከርካሪ አደጋ በደረሰበት ጊዜ የሰሌዳ ቁጥር ኢ.አ. 3-04773 ተሳቢ ይገትት የነበረ ስለመሆኑ ትዕዛዝ በመስጠት ከኤ.ሊ.ዳር ወረዳ ፖሊስ በተፃፈ ሪፖርት ለመረዳት መቻሉን፤ ይህንንም ሪፖርት ተሸከርካሪው ተሳቢ ይገትት ነበር የሚለውን የመልስ ሰጪ አቀራረብ የሚያረጋግጥ ሆኖ ማግኘቱን በመዘርዘር ይግባኝ ባይ ያቀረበውን ተሳቢ አልነበረም የሚለው ክርክር ሳይቀበለው ቀርቷል። በሌላ በኩል ይግባኝ ባይ በንግድ ህግ 664/1/ መሰረት ያቀረበው ክርክር “ይህ አንቀፅ ውሉ ያስቀራቸውን ማግለያ አንቀጾች የሚሸር ወይም የሚያስቀር ሳይሆን በውሉ ውስጥ የተካተቱ አደጋዎች ኢንሹራንስ የገባው ሰው ሃላፊ በሆነላቸው ሰዎች ጥፋት ምክንያት በመድረሳቸው ብቻ ኢንሹራንስ ሰጪው ኃላፊነት የሉብኝም እንዳይል ለመገደብ” ነው። በማለት ለቀረበው ጭብጥ የሚያገለግል አይደለም ሲል

ኢ.ሊ.ዳር ጠቅላይ ፍርድ ቤት  
ትክክል ግልጽ  
ፊርማ \_\_\_\_\_ ቀን \_\_\_\_\_

ሳይቀበለው ቀርቷል። በዚህ መሰረትም የተጠቀሰው ተሽከርካሪ በአደጋው ጊዜ ተሳቢ ይጉትት እንደነበረ ስለተረጋገጠና ይህ ድርጊትም በመድን ውሉ የሃላፊነት ማግለያ ሆኖ ስለተጠቀሰና መድን ሰጪውም ድርጊቱ መከሰቱን ከማረጋገጥ ውጭ ሌላ ከማይጠበቅበት ይግባኝ ባይ ያቀረበውን መከራ-ክሪያ ባለመቀበል መልስ ሰጭ መኪናውን ለማሰራት የውል ግዴታ የለበትም በማለት በአብላጫ ድምፅ ሲወሰን። መልስ ሰጭ እንዲተካለት ስለጠየቀው ገንዘብ በሚመለከትም ይግባኝ ባይ የማስተባበያ መልስ ባለማቅረቡ እንዳመነ በመቁጠር አደጋ በደረሰበት ተሽከርካሪ ምክንያት የወጣውን የጥገና የጥበቃ፣ የማንጓጓዣና የሦስተኛ ወገን ተሽከርካሪ ጉዳት ወጭዎች ይግባኝ ባይ እንዲተካልኝ በማለት በአብላጫ ድምፅ ወስኗል።//

ይግባኝ የቀረበውም ይህንን የአብላጫ ድምጽ ውሳኔ ለማስለወጥ ነው።==//

ይግባኝ ባይ ሰኔ 1 ቀን 1992 ዓ.ም. ፅፎ ባቀረበው የይግባኝ ቅሬታ፡- ለተነሳው አለመግባባት ዋነኛ መሠረት የሆነው ከ6 ወር በኋላ የተፃፈው ሪፖርት የመጀመሪያው ሪፖርት ከተፃፈ በኋላ በተደረገ ምርመራ የተገኘ ነው እንዳይባል እንኳ አደጋ ከደረሰ በኋላ የተካሄደ የምርመራ መዝገብ ባለመኖሩ ስለአደጋው በዕለቱም ሆነ ከዚያ በኋላ የተነሳ የትራፊክ ኘላን የሌለ ለመሆኑና ስለአደጋው በፖሊስ የዕለት ሁኔታ የተመዘገበ ሪፖርት ያለመኖሩን ስለተረጋገጠ ከመጀመሪያው ሪፖርት የበለጠ አሳማኝ ሊሆን አይችልም። ጉዳት የደረሰበት ተሽከርካሪ ተሳቢ ይጉትት ነበር የሚለው ክርክርም በበቂ ሁኔታ ስላልተረጋገጠ የግልግል ጉባኤው በዚህ ሪፖርት ተመሰረቶ የሰጠው ውሳኔም ስህተት ነው። ይህ ቢታለፍ እንኳን በአማራጭ የቀረበው በንግድ ህግ ቁጥር 664/1/ የተመሰረተው ክርክር ግልፅና ትርጉም የማያሻው ሆኖ እያለ የግልግል ጉባኤው የተከተለው አተረጓጎም ትክክለኛ አይደለም። መኪናውን ያሽከረክር የነበረ የይግባኝ ተቀጣሪ ሾፌር መሆኑ እየታወቀ፣ ተቀጣሪ ሾፌር ደግሞ በይግባኝ ባይ ሃላፊነት ስር መሆኑ ግልፅ ሆኖ እያለ ሾፌሩ ባጠፋው ጥፋትም መልስ ሰጭ ከሃላፊነቱ ነፃ እንዳማይሆን በህጉ የተደነገገ ግልፅ ድንጋጌ በመሆኑ ተቀባይነት አለመግኘቱ አግባብ አይደለም። የግልግል ጉባኤው በቼኩጉዳይና በሌሎችም ጉዳዮች የሰጠው ውሳኔ በተሰጠው ስልጣን ገደብ ውጪ ነው በማለት ፍርድ ቤቱ የአብላጫ ድምጽ ውሳኔውን በመሻር በጥያቄው መሰረት እንዲወሰንለት ጠይቋል።=====//

መልስ ሰጭ በበኩሉ ግንቦት 17 ቀን 1993 ዓ.ም. ፅፎ ባቀረበው መልስ፡-

ይግባኝ ባይ በፍ/ስ/ስ/ህግ 351 በተደነገገው መሰረት በግልግል ጉባኤ ከተወሰነ ውሳኔ መቃወሚያ ከተቀመጡት መመዘኛዎች ማሟላቱ ያሳየው ሁኔታ የለም። ጉዳት የደረሰበት ተሽከርካሪ ተሳቢ ይጉትት የነበረ ስለመሆኑ ያረጋገጠው ሪፖርት በመንግስት ማህተም፣ ከመንግስት አካል፣ ከ6 ወር በኋላ ድርጊቱን በተሟላ መልኩ ያቀረበ በመሆኑ ተቀባይነት ያለውና አስተማማኝ ነው። በንግድ ህግ 664/1/ የቀረበው ክርክርም ለይግባኝ ባይ የሚደግፍበት ህጋዊ መሰረት የለውም። ስለቼኩና ተያያዥ ጉዳዮች የግልግል ጉባኤው የሰጠው ውሳኔም ሁሉም ጉዳት ስለደረሰበት ተሽከርካሪ የሚመለከቱ በመሆናቸው ከስልጣኑ

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልግጥ  
469 97

አልወጣም። ስለዚህ የግልግል ጉባኤ የወሰነው ውሳኔ ትክክለኛ በመሆኑ ውሳኔውን እንዲያፀናልኝ በማለት ክርክሩን አቅርቧል።=====//

ይግባኝ ባይ ሐምሌ 6 ቀን 1993 ዓ.ም. ፅፎ ባቀረበው የመልስ መልስ በስር ማመልከቻውና በይ ግባኝ ቅሬታው ያነሳቸውን ክርክሮች በማጠናከር ተከራክሯል።=====//

ፍርድ ቤቱ በሁለቱም በኩል የቀረበውን ክርክር አግባብነት ካላቸው ሕጎችና በዚህ ጉዳይ ላይ በግልግል ጉባኤ ከተሰጠው ውሳኔ ጋር በማመዛዘን መርምሮአል። የቀረበውን ይግባኝ በአግባቡ ለመወሰንም፤=====//

1ኛ. የግልግል ጉባኤው ጉዳት የደረሰበት የይግባኝ ባይ መኪና ጉዳት በደረሰበት ቀን ተሳቢ መኪና ይጉትት ነበር የሚለውን ማስረጃ መቀበል በአግባቡ ነው አይደለም?=====//

2ኛ. መኪናው ተሳቢ እንደነበረው ቢረጋገጥ የአሁኑ መልስ ሰጪ በመድን ውለ መሠረት እንዳይገደድ ያደርገዋል ወይስ አያደርገውም?=====//

3ኛ. የግልግል ጉባኤው በመልስ ሰጪ በኩል የቀረበውን ጥያቄ/ቸኩን በሚመለከት/ ያስተናገደው ከስልጣኑ ውጭ ነው ወይስ አይደለም የሚሉትን ጭብጦች በቅደም ተከተል መመርመር አግባብ ነው ሆኖ አግኝቶታል።=====//

1. የማስረጃ መቀበልንና ምዘናን በተመለከተ፤

የግልግል ጉባኤው ቁጥሩ 3-32938 የሆነው የይግባኝ ባይ መኪና አደጋ በደረሰበት ወቅት ቁጥሩ 3-04773 የሆነ መኪና ተሳቢ መኪና እንደነበረው ተረጋግጦአል ብሏል። ይግባኝ ባይም የሚቃወመው ይህን የጉባኤውን መደምደሚያ ነው።=====//

ከመዝገቡ ለመረዳት እንደቻልነው አሁኑ በግራ ቀኙ መካከል የተፈጠረውን አደጋ አስመልክቶ በርካታ ሪፖርቶችና ደብዳቤዎች ለጉባኤው ቀርበዋል። ከነዚህም መካከል ከኤ.ዳር ወረዳ ፖሊስ የተላኩ ደብዳቤዎች ይገኝባቸዋል። የኤ.ዳር ወረዳ ፖሊስ በቁጥር 285/36/88 በ01/13/88 ሁለት ደብዳቤ በቁጥር 303/36/89 በ05/01/89 በቀ.912/36/89 በ28/06/89 የተለያዩ ደብዳቤዎችን ለኢንፎ-ራንስ ኩባንያው/ለአሁኑ መልስ ሰጪ/ የተለያዩ ደብዳቤዎች ፅፏል። ከእነዚህ ደብዳቤዎች መካከል በ28/06/89 በኤ.ዳር ወረዳ ፖሊስ አዛዥ የተፈረመው ደብዳቤ 24/12/89 በደረሰው አደጋ የሰሌዳ ቁጥሩ 3-32938 የሆነ የጭነት መኪና የሰሌዳ ቁጥሩ 3-04773 የሆነ ተሳቢ እንደነበረው ሆኖም በዚህ ተሳቢ ሆነ ተሸክሞት በነበረው ጭነት የደረሰ ጉዳት እንዳልነበረ ይገልጻል። ቀደም ሲል የተፃፉት ደብዳቤዎች ግን ስለተሳቢው የገለፁት ነገር አልነበርም።=====//

ፍርድ ቤቱ እንደተገነዘበው በነዚህ ደብዳቤዎች መካከል በመሰረቱ የሚጋጭ ፍሬ ነገር የለም ቀደም ሲል በተፃፉት ደብዳቤዎች ያልተገለፀ ፍሬ ነገር ኋላ በተፃፈው ደብዳቤ መገለፁ ብቻ እርስ በርሱ የሚጋጭ ማስረጃ ቀረበ የሚያሰኝ አይደለም። ስለዚህ ቀደም ብሎ የመኪና አደጋ መድረሱን የገለፀው የኤ.ዳር ወረዳ ፖሊስ ተጨማሪመጠይቅና ማጣሪያ ሲላክለት ግጭት በደረሰበት ወቅት ተሳቢ መኪናም እንደነበረ ማሳወቁ ቀደም የሰጠውን ማስረጃ

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልጻል  
ፊርማ

የሚያስተባብል ማስረጃ ሰጠ ሊያሰኘው አይችልም። ቀድሞ በነበሩት ደብዳቤዎች ተሳቢ አልነበረም የሚል ነገር አልተጻፈም ወይም ወደዚህ መደምደሚያ የሚወስድ ሌላ ጠንክር ያለ ፍሬነገርም የለም። ኋላ በተፃፈው ደብዳቤ እንደተገለጸው በተሳቢው መኪና ላይ የደረሰ ጉዳት አልነበረም። ይኸው ተሳቢ የመድን ዋስትና ሽፋን እንደነበረው የተገለጸ ነገርም የለም። ስለዚህ ለኢንሹራንስ ኩባንያ በተፃፈ ደብዳቤ ወይም ሪፖርት ፖሊስ የተሳቢ መኖርን አለመግለፁ ብቻ ሁለተኛው ማስረጃ ተቀባይነት እንዲያጣም ሆነ ክብደት እንዳይኖረው ምክንያት ሊሆን አይችልም። የመጨረሻው ደብዳቤ በፃፈበት ወቅት የፖሊስ የእለት ሁኔታ እንዳልነበረ መረጋገጥም ቢሆን ብቻውን ሰነዱ የማስረጃ ሚዛኑን እንዲያጣ ምክንያት ሊሆን አይችልም። በቁ.2/7መ9/1255 በ17/07/91 በተፃፈ ደብዳቤ በ24/12/88 ስለደረሰው አደጋ በፖሊስ የእለት ሁኔታ የተመዘገበ ነገር አለመኖሩ ተገልጿል። ይህ ማስረጃ ሁሉንም ከኤሌዳር ወረዳ ፖሊስ የመጡትን ደብዳቤዎች የሚመለከት በመሆኑ በ28/06/89 በተፃፈ ደብዳቤ ላይ ብቻ ሊያነጣጥር አይችልም።=====//

ከስድስትና ከሰባት ወር በኋላ የተፃፈ ደብዳቤ በመሆኑ ተቀባይነት የለውም የተባለውም ቢሆን አሳማኝ ክርክር ሆኖ አላገኘነውም ይህ ከጊዜ በኋላ የተፃፈው ደብዳቤ የያዘው ፍጆ ነገር ትክክል አለመሆኑን ማስረዳት የሚችለው ይበልጥ ተቀባይነትና አሳማኝነት ያለውን ማስረጃ በማቅረብ ብቻ ነው። የአሁን ይግባኝ ባዮች በ28/06/89 የተፃፈውና ቁጥሩ 3-04773 የሆነ ተሳቢ መኪና አደጋ በደረሰበት ጊዜ እንደነበረ የሚገልፀው ማስረጃ ውድቅ ይደረገልን የሚሉት ቀደም ሲል ከተፃፉት ደብዳቤዎች ያነሰ ታማኝነት አለው በማለት ብቻ ነው። ከዚህ ውጪ ይኸው ተሳቢ የመድን ዋስትና ከተደረገለት መኪና ጋር በአደጋው ወቅት እንዳልነበረ ለማስረጃ ያቀረቡት አንድም ማስረጃ የለም።=====//

ከዚህ አንፃር በሁለቱም የነበረውን የማስረጃ አቀራረብና ሚዛን ግምት ውስጥ በማስገባት የግልግል ጉባኤው አደጋ በደረሰበት ቀን ኢንሹራንስ የተገባለት የይግባኝ ባይ ኩባንያ መኪና የሰሌዳ ቁጥሩ 3-04773 የሆነ መኪና ይጉትት እንደነበረ መቀበሉ የሚነቀፍ ሆኖ አላገኘነውም።=====//

2. የሕግ ኃላፊነትን በተመለከተ፣ የይግባኝ ባይ ሁለተኛው ክርክር አደጋ በደረሰበት ቀን የይግባኝ ባይ መኪና ተሳቢ ነበረው የሚባል እንኳ ቢሆን ተሳቢውን የቀጠለው የይግባኝ ባይ ተቀጣሪ ሾፌር በመሆኑ በንግድ ሕግ 664 መሰረት የመድን ኩባንያው ሃላፊ ሊሆን ይገባል በማለት ነው።=====//

በመሰረቱ በይግባኝ ባይና በመልስ ሰጪ መካከል የተፈረመው ውል ግልፅ የሆኑት የማግለያ ሁኔታዎችን አስቀምጧል። ከነዚህም መካከል አንዱ ተሽከርካሪው ተሳቢ በሚጉትትበት ጊዜ የሚደርስ አደጋ እንዱ ነው። ከዚሁ ለመረዳት እንደሚቻለው መልስ ሰጪ ኩባንያ የይግባኝ ባይ ተሽከርካሪ ተሳቢ ሲጉትት የሚደርስበትን አደጋ እንደማይሸፍን አስቀድሞ በውሉ ላይ አስፍሮአል። ይግባኝ ባይም በዚህ ተስማምቶአል። በማግለያው አንቀፅ

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልጽ  
ፊርማ \_\_\_\_\_

ተጠቃሚ ለመሆን መልስ ሰጪ በይግባኝ ሆነ በተቀጣሪው ሾፌር ጥፋት መኖር አለመኖሩን ማስረዳት አያሻውም። ይግባኝ ባይ ተሳቢው የተቀጠለው በሾፌር ጥፋት መሆኑን በመግለፅም የማግለያውን አንቀፅ ተፈፃሚነት ሊያስቀር አይችልም። ይግባኝ ባይ የማግለያውን አንቀፅ ተፈፃሚነት ሊያስቀር የሚችለው የመድን ዋስትና የተገባለት መኪና ተሳቢ እንዳይጉትት በመጠበቅ ብቻ ነው። ይግባኝ ባይ የንግድ ህግ 664 ድንጋጌ የጠቀሰውም ያለቦታው ነው። የዚህ ድንጋጌ ዓላማ የመድን ሽፋን የተገባለት የአደጋ አይነት ለመድን ገቢው ተጠሪ የሆነ ሰዎችም ቢያደርሱት መድን ኩባንያው ኃላፊ መሆኑ ለመግለፅ ነው። በያዝነው ጉዳይ ሽፋን የተገባለት ዋናው መኪና አደጋ የደረሰበት በሾፌር ጥፋት እንኳን ቢሆን መድን ኩባንያው ኃላፊነት ይኖርበታል። ከዚህ ውጪ የማግለያው አንቀፅ ላይ የሰፈረውን ድርጊት የፈፀመው የመድን ገቢው ተጠሪ የሆነ ሰው የሆነ እንደሆነ መድን ሰጪው ኃላፊ ስለመሆኑ የሚገልፀው ነገር የለም። የህግ ጥያቄው እንኳን ቢታለፍ ይግባኝ ባይ ተሳቢው ከእርሱ እውቀት በተሸከርካሪው እንደተቀጠለ ለማስረዳት ያቀረበው ማስረጃም የለም። የማግለያው ድንጋጌ ተጠቃሚ ኢንሹራንስ ኩባንያው ነው። እሱ ደግሞ ተሳቢ እንደተቀጠለበት አረጋግጦአል። ይኸው ድርጊት እኔ አላውቅም ወይም የሌላ ሰው ጥፋት ነው የሚል ቢሆን ይግባኝ ባይ አለኝ የሚለውን ማስገጃ ማቅረብ ይጠበቅበታል።==//

ስለዚህ የግልግል ጉባኤው ኃላፊነትም አስመልክቶ የሰጠው ውሳኔ የሚነቀፍ ሆኖ አላገኘነውም።==//

3ኛ. የሥልጣን ጥያቄን በተመለከተ፣ ይግባኝ ባይ የግልግል ጉባኤ በቼክ ጉዳይ የተነሳውን ክርክርና በይግባኝ ባይ መኪና አደጋ ደርሶበታል ለተባለው የታርጋ ቁጥር 3-18535 መኪና ባለቤት ተጠሪው የከፈለውን ብር 6550 አመልካች እንዲተካ መወሰኑ ከስልጣኑ ውጭ የሆነ ተግባር መፈፀሙን ያመለክታል ብሏል።==//

የግልግል ጉባኤው በቼክ ክርክር ላይ ውሳኔ ሰጥቷል። ይህም ሊሆን የቻለው መልስ ሰጪ ለግልግል ጉባኤ ባቀረበው የዳኝነት ጥያቄ አደጋ ለደረሰበት ተሸከርካሪ ጥገና ከአመልካች ጋር ባደረጉት ስምምነት መሠረት ይግባኝ ባይ ለጥገናው ማዋጣት ለነበረበት ብር 106,321.41(አንድ መቶ ስድስት ሺህ ሦስት መቶ ሃያ አንድ ብር ከአርባ አንድ ሳንትም) የሰጣቸው ሁለት ቼኮች ይግባኝ ለተጠሪ እንዲከፍል እንዲወሰን በመጠየቁ ነው።==//

ይግባኝ ባይና መልስ ሰጭ ሐምሌ 10 ቀን 1989 ዓ.ም. የፈፀሙት ስምምነት መግቢያ፣ ማጠቃለያው ላይ፡- ተጠግኖ ያለሥራ በቆመው የሠሌዳ ቁጥር 3-32938 መኪና ከቆመበት ጋራሻ ወጥቶ ሥራ በሚጀምርበትና በሁለቱ ወገኖች የተነሳው አለመግባባት የሚታይበት ሁኔታ ላይ ሁለቱም ወገኖች የሚከተለውን ስምምነት አድርገዋል ይላል። ከዚህ ድንጋጌ ለመገንዘብ የሚቻለው የግልግል ጉባኤ የተቋቋመው ይግባኝ ባይ እንደሚለው አደጋ በደረሰበት መኪና የካማ ጥያቄ ብቻ ሳይሆን በሁለቱ ወገኖች የተነሳውን አለመግባባት በማየትም ጭምር መልስ ሰጪ እንዲከፈለው የጠየቀው ደግሞ በስምምነቱ

ፌዴራል ጠቅላይ ፍርድ ቤት  
ትክክል ግልባጭ  
ፊርማ \_\_\_\_\_ ቀን \_\_\_\_\_



ዳኞች:- አልማው ወሌ

ዓሊ መሐመድ

አዳነ ንጉሴ

መኮንን ገ/አይወት

ሙስጠፋ አህመድ

አመልካች:- ኒያላ ኢንሹራንስ (አ.ማ) ነገረ ፈጅ አቶ ዮሴፍ ገብሬ ቀረቡ

ተጠሪዎች- 1. አዋሽ ኢንሹራንስ (አ.ማ) ነገረ ፈጅ አቶ አወል ማስረሻ

2. አቶ እንድሪስ አደም በሌሉበት ተወስኗል

**መዝገቡ ተመርምሮ የሚከተለው ፍርድ ተሰጥቷል**

**ፍርድ**

ጉዳዩ የቀረበው አመልካች የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤትና የፌዴራል ከፍተኛ ፍርድ ቤት የሰጡት ውሳኔ መሠረታዊ የህግ ስህተት ያለበት ስለሆነ በሰበር ታይቶ ይታረምልኝ በማለት ስላመለከተ ነው። ጉዳዩ በንብረት ላይ በደረሰ ጉዳት የኢንሹራንስ ሰጭው ያለበትን ኃላፊነት የሚመለከት ነው።

የክርክሩ መነሻ አንደኛ ተጠሪ በሁለተኛው ተጠሪ ላይ ያቀረበው የዳረንጉት ክስ ነው። አንደኛ ተጠሪ ቁጥር 3-16776 ኢት የሆነው የሁለተኛ ተጠሪ መኪና የመድን ሽፋን የሰጠሁትን የሰሌዳ ቁጥር 3-35774 /ኢት/ የሆነ መኪና ግንቦት 9 ቀን 2000 ዓ.ም በመግጨት ጉዳት አድርሶበታል መኪናውን ለማስጠገን ብር 30,556.52 /ሰላሳ ሺህ አምስት መቶ ሀምሳ ስድስት ብር ከሀምሳ ሁለት ሳንቲም/ አውጥቻለሁ። ስለዚህ ይህንን ገንዘብ ይተኩልኝ በማለት በሁለተኛ ተጠሪ ላይ ክስ አቅርቧል። ሁለተኛ ተጠሪ አመልካች ጉዳት የደረሰበት መኪና በሶስተኛ ወገኖች

የፍርድ ቤቱ ማህተም (Stamp) ላይ የተጻፈው፡  
ፍርድ ቤቱ ስም: የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት  
ቀን: 24/3/05  
ስም: መኪና

ላይ በሚያደርሰው ጉዳት የመድን ሽፋን ሰጥቷል። በክርክሩ የሶስተኛ ወገን ተከራካሪ ሆኖ ይጠራልኝ በማለት ተከራክሯል።

አመልካች በክርክሩ ሶስተኛ ወገን ተከራካሪ እንደሆነ ተጣርቶ ገብቶ ለጉዳቱ ኃላፊነት የሌለበት መሆኑንና ኃላፊነት አለብህ ከተባልኩም የምከፍለው ካሳ መጠን ክስ ከቀረበበት ገንዘብ ያነሰ ነው የሚል መከራከሪያ አቅርቧል ።

የስር ፍርድ ቤት ጉዳት ያደረሰው የሰሌዳ ቁጥር 3-16776 (ኢት) ያሽከረክር በነበረው በሁለተኛው ተጠሪ ሹፌር ጥፋት ነው በማለት አመልካች ክስ ያቀረበውትን ገንዘብ ለአንደኛ ተጠሪ እንዲከፍል በማለት ውሳኔ ሰጥቷል። አመልካች ይግባኝ ለፌዴራል ከፍተኛ ፍርድ ቤት አቅርቧል። የፌዴራል ከፍተኛ ፍ/ቤት ይግባኝና በፍ/ሥ/ሥ/ሕግ ቁጥር 337 መሠረት ሰርዞታል።

አመልካች የካቲት 13 ቀን 2004 ዓ.ም በተጻፈው የሰበር አቤቱታ አመልካች የመድን ሽፋን የሰጠው የሰሌዳ ቁጥር ኢት 3-16776 ለሆነው መኪናና የሰሌዳ ቁጥር 3-07520 ኢት ለሆነ ተሳቢ ነው። የአንደኛ ተጠሪ መኪና የተገኘው ተሸካርካሪውን የሚያንቀሳቅሰው ሞተር በተገጠመለት የሰሌዳ ቁጥር 3-16776/ኢት/ ሳይሆን ከዚህ መኪና ተገጥሞ ሲጎተት በነበረውና አመልካች የመድን ሽፋን ባልሰጠው የሰሌዳ ቁጥር 3-06469 (ኢት) በሆነው ተሳቢ ተገጭቶ ነው። ስለዚህ የቀረበውን ክርክርና የፅሁፍ ማስረጃ በአግባቡ ሳይመረምር አመልካችን በኃላፊነት ይጠይቃል በማለት የሰጠው ውሳኔ መሠረታዊ የህግ ስህተት ያለበት ስለሆነ በሰበር ታይቶ ይታረምልኝ በማለት አመልክቷል።

ተጠሪ በበኩሉ ሰኔ 10 ቀን 2004 ዓ.ም አመልካች የሰሌዳ ቁጥር 3-16776 ኢት ለሆነው መኪና ከተሳቢው የመድን ሽፋን እንደሰጠ አምኗል። የሰሌዳ ቁጥር 3-06469 የሆነ ተሳቢ መኪና ነው። ይህ ተሳቢ አመልካች የመድን ሽፋን የሰጠው መኪና እየተጎተተ ሲሄድ ጉዳት ማድረሱ ካልተለየ የመኪና ላይ የተጫነ እቃ ወይም የሚጎተት አካል የደረሰው ጉዳት ባለመኪናውና ለመኪናው የመድን ሽፋን የሰጠው ሰው በኃላፊነት መጠየቃቸው ተገቢ ነው በማለት ተከራክሯል። አመልካች የመድን ሽፋን በሰጠሁት የሰሌዳ ቁጥር 3-16776 (ኢት) እና ጉዳት በደረሰበት የሰሌዳ ቁጥር 3-35774 (ኢት) መካከል ምንም አይነት አካላዊ ንኪኪ የለም። ስለዚህ የመድን ሽፋን ባልሰጠሁት አካል ጋር ተገምቶ ለደረሰው ጉዳት በኃላፊነት የምንጠይቅ ምክንያት የለም በማለት ሐምሌ 5 ቀን 2004 ዓ.ም የተጻፈ የመልስ መልስ አቅርቧል።

በታላቋ ላይ የሚገኘው ስም ማህተም ላይ ስም ማህተም  
24/3/05  
በታላቋ ላይ ስም ማህተም

ከሥር የክርክሩ አመጣጥና በሰበር ያቀረበው ክርክር ከላይ የተገለጸው ሲሆን እኛም ጉዳዩን መርምረናል። ጉዳዩን እንደመረመርነው አመልካች የተሳቢ የሰሌዳ ቁጥር 3-06469(ኢት) በአንደኛ ተጠሪ ደንበኛ ላይ የደረሰው ጉዳት የመሸፈን ኃላፊነት አለበት በማለት የበታች ፍርድ ቤቶች የሰጡት ውሳኔ ተገቢ ነው ወይስ አይደለም? የሚለውን ጭብጥ በመያዝ መታየት ያለበት ሆኖ አግኝተነዋል።

1. ከላይ የተያዘውን ጭብጥ ለመወሰን ግራ ቀኙ ባደረጉት ክርክርና ባቀረቡት ማስረጃ የተረጋገጡትን ፍሬ ጉዳዮች መመልከት ተገቢ ነው። አመልካች የተጠሪ ንብረት ስለሆነው የሰሌዳ ቁጥር 3-16776 (ኢት) ለሆነ የጭነት መኪናና በዚህ መኪና ለሚጎተተው የተሳቢ ቁጥር 3-07520 (ኢት) ለሆነው ተጎታች ሀምሌ 2 ቀን 2000 ዓ.ም በተፈረመ የመድን ውል በሶስተኛ ወገን ላይ ለሚያደርሱት ጉዳት የመድን ሽፋን የሰጠ መሆኑ በግራ ቀኙ ክርክርና ማስረጃ የተረጋገጠ መሆኑን ተረድተናል። ከዚህ በተጨማሪ የአንደኛ ተጠሪ ደንበኛ መኪና በሆነው የሰሌዳ ቁጥር 3-35774 (ኢት) የሆነው መኪና የተጎዳው የሰሌዳ ቁጥር 3-16776 (ኢት) በሆነው መኪና ጋር ተገጥሞ ሲጎተት በነበረው የተሳቢ ቁጥር 3-06469 /ኢት/ ለሆነው ተጎታች የሌላ ክፍል ተገጭቶ መሆኑን በትራፊክ ፕላን መግለጫና በትራፊክ ፖሊስ በሰጠው የምስክርነት ቃል የተረጋገጠ መሆኑን የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት መዝገብ ቁጥር 169698 በማስቀረብ ተረድተናል። ይህም አመልካች የመድን ሽፋን የተሰጠውን የተሳቢ ቁጥር 3-07520 /ኢት/ የሆነው ተጎታች ሣይሆን የመድን ሽፋን ያልተሰጠውን የተሳቢ የሰሌዳ ቁጥር 3-06469 /ኢት/ የሆነው ተጎታች በማንቀሳቀስ ላይ እያለ፣ የተሳቢው በኋላ ክፍል የአንደኛ ተጠሪ መኪና በመግጨት ጉዳት ያደረሰበት መሆኑን የሚያሳይ ነው።

2. ከላይ የገለፅናቸው ፍሬጉዳዮች የሰሌዳ ቁጥር 3-16776 /ኢት/ በሆነው ባለሞተር ተሽከርካሪ ሲጎተት በነበረው የተሳቢ ቁጥር 3-66469 ኢት የሆነው ተጎታች ለደረሰው ጉዳት፣ የባለሞተሩ መኪና ባለሀብት የሆነው ሁለተኛ ተጠሪ በኃላፊነት የሚጠይቅ መሆኑን ከፍታሐብሔር ሕግ ቁጥር 2081/1/ ድንጋጌ ለመረዳት ይቻላል። ከዚህ በተጨማሪ አደጋው የደረሰው በሁለተኛው ሠራተኛ /ሹፌር/ ጥፋት መሆኑ ስለተረጋገጠ ሁለተኛ ተጠሪ በፍታሐብሔር ሕግ ቁጥር 2130 ድንጋጌ መሠረት ጉዳቱን የመሸፈን ኃላፊነት ይኖርበታል።

የብሔራዊ የግብርና ልማት ሚኒስቴር  
የግብርና ልማት ሚኒስቴር  
24/3/05  
የግብርና ልማት ሚኒስቴር

በሌላ በኩል አመልካች የሰሌዳ ቁጥር 3-16776/አ.ት/ የሆነው ባለሞተር ተሽከርካሪ፣ ሲንቀሳቀስ ለሚያደርሰው ጉዳትና፣ ይኸ መኪና ተጎታች በሚጎትትበት ጊዜ የተሳቢ ቁጥሩ 3-07520 /አ.ት/ የሆነውን ተጎታች ብቻ ሲያንቀሳቅስ በተጎታቹ ለሚደርሰው ጉዳት ኃላፊ በመሆን የመድን ውል ተዋውሏል። አመልካች የሰሌዳ ቁጥር 3-16776 /አ.ት/ የሆነው ባለሞተር ተሽከርካሪ፣ ማናቸውንም አይነት ተጎታች ሲያንቀሳቅስ፣ በተጎታቹ ለሚደርሰው ጉዳቱ ኃላፊነት ለመውሰድ አልተስማማም። ኢንሹራንስ ሰጭው በውሉ ለተመለከተው አደጋ ብቻ መድን ሰጭው በገባው ሰው መድን እንደሚሆን በንግድ ሕግ ቁጥር 663 ንዑስ አንቀጽ 1 ተደንግጓል። እንደዚሁም ኢንሹራንስ ሰጭው በውሉ ውስጥ የተመለከተው አደጋ በደረሰ ጊዜ ወይም በውሉ የተስማሙበት ቀን በደረሰ ጊዜ የተስማሙበትን ገንዘብ የመክፈል ግዴታ እንዳለበትና ይህ ግዴታው በውለታው ከተጠቀሰው ሲበልጥ እንደማይቻል “የኢንሹራንስ ሰጭው ግዴታ” በሚል ርዕስ ባለው በንግድ ሕግ ቁጥር 665 ተደንግጓል። አመልካች የሰሌዳ ቁጥሩ 3-16776 /አ.ት/ የሆነው ባለሞተር ተሽከርካሪ መኪና የተሳቢ ቁጥሩ 3-07520/አ.ት/ የሆነውን ተጎታች ሲጎትት፣ በተጎታቹ የሚደርሰውን ጉዳት የመድን ሽፋን የሰጠ ሲሆን፣ ከዚህ የመድን ሽፋን ከሰጠው ተጎታች ውጭ ሌላ ተሳቢ ሲጎትት፣ በተጎታች የሚደርስ ማናቸውንም ጉዳት ለመሸፈን የመድን ውል አልተዋዋለም። ይህ ከሆነ የአንደኛ ተጠሪ ደንበኛ መኪና ጉዳት የደረሰበት የሰሌዳ ቁጥሩ 3-16776/አ.ት/ በሆነው ባለሞተር ተሽከርካሪ ተገጭቶ ማይሆን፣ በዚህ ባለሞተር መኪና ሲጎትት የነበረውና አመልካች የመድን ሽፋን ያልሰጠው የሰሌዳ ቁጥር 3-06469 /አ.ት/ በሆነው ተሳቢ የኋላ ክፍል ተገጭቶ መሆኑ ፍሬ ጉዳይ የማጣራትና የመመዘን ሥልጣን ባላቸው ፍርድ ቤቶች ተረጋግጧል።

ስለሆነም አመልካች ከሁለተኛው ተጠሪ ጋር ሐምሌ 2 ቀን 2000 ዓ.ም ከገባው የመድን ውል ውጭ፣ የሁለተኛው ተጠሪ መኪና የመድን ሽፋን የሌለውን ቁጥሩ 3-06469/አ.ት/ የሆነውን ተሳቢ እየጎተተ ሲያንቀሳቅስ በተሳቢው ግጭት ላደረሰው ጉዳት አመልካች በኃላፊነት ይጠይቃል በማለት የበታች ፍርድ ቤቶች የሰጡት ውሳኔ የንግድ አንቀጽ 663 ንዑስ አንቀጽ 1 እና አንቀጽ 665 ድንጋጌዎች ይዘት መንፈስና ዓላማ ያላገናዘበና መሠረታዊ የሕግ ስህተት ያለበት ነው በማለት ወስነናል።

ፊርማ ጠቅላይ ግዴታ  
 ተክለ ገልጭ  
 24/3/05  
 Notary Public

ው ሣ ኔ

1. የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤትና የከፍተኛ ፍርድ ቤት የሰጡት ውሣኔ ተሻሽሏል።
2. በአንደኛው ተጠሪ ደንበኛ መኪና ላይ ለደረሰው ጉዳት አመልካች በኃላፊነት አይጠየቅም በማለት በንግድ ሕግ አንቀጽ 633/1/ እና አንቀጽ 665/1/ መሠረት ወስነናል።
3. በአንደኛው ተጠሪ መኪና ላይ የደረሰውን ጉዳት የመካከ ኃላፊነት ያለበት ሁለተኛው ተጠሪ ነው በማለት ወስነናል።
4. ሁለተኛው ተጠሪ አንደኛ ተጠሪ የደንበኛውን መኪና ለማስጠገን ያወጣውን ብር 30,556.62 /ሰላሣ ሺ አምስት መቶ ሀምሳ ስድስት ብር ከስልሳ ሁለት ሣንቲም/ ከጉዳር 3 ቀን 2003 ዓ.ም ጀምሮ ከሚታዘዝ ሕጋዊ ወለድ ጋር እና የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት ለዳኝነት፣ ለጠበቃ አበልና ኪሣራ የወሰነውን ብር 3,102 /ሦስት ሺ አንድ መቶ ሁለት ብር/ ከጥቅምት 10 ቀን 2004 ዓ.ም ጀምሮ ከሚታሰብ ዘጠኝ ፐርሰንት ወለድ ጋር ለአንደኛው ተጠሪ የመክፈል ኃላፊነት አለበት በማለት ወስነናል።
5. በዚህ ፍርድ ቤት ያወጡትን ወጭና ኪሣራ ግራ ቀኙ ለየራሳቸው ይቻቻሉ።

መዝገቡ ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የአምስት ዳኞች ፊርማ አለበት።

ቤ/መ

ፊርማ ገቢ ለገቢ ገቢ ለገቢ  
ገቢ ለገቢ ገቢ ለገቢ  
24/3/05  
ገቢ ለገቢ ገቢ ለገቢ