

The Legal and Institutional Framework for Compulsory Third Party Motor Vehicle Insurance in Ethiopia



By: Assamen Mekonnen
Advisor: Tilahun Teshome
(Associate Professor)

Addis Ababa University,
Faculty of Law,
School of Graduate Studies
March 2009

The Legal and Institutional Framework for Compulsory Third Party Motor Vehicle Insurance in Ethiopia



By: Assamen Mekonnen
Advisor: Tilahun Teshome
(Associate Professor)

Submitted in Partial Fulfillment of the Requirements for the Master
of Laws Degree (LL.M) at the Faculty of Law, Addis Ababa
University

Addis Ababa University
Faculty of Law,
School of Graduate Studies
March 2009

Approval sheet by the Board of Examiners

The Legal and Institutional Framework for Compulsory Third Party Motor Vehicle Insurance in Ethiopia

**I hereby certify that this is my original work. Works of
others included in this paper are properly cited.**

Assamen Mekonnen _____ 

Advisor:
Tilahun Teshome _____ 

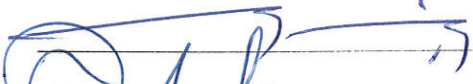
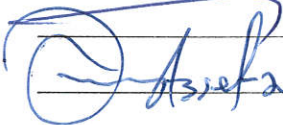


Examiners

Name

1. Wondwossen D.
2. Aman Assefa

Signature

Addis Ababa, Ethiopia

TABLE OF CONTENTS

	<u>Page</u>
Acknowledgment	i
Abstract	ii
Introduction	iii
Chapter One: Proposal of the Paper	1
1.1 Background	1
1.2 Statement of the Problem	6
1.2.1. Issues on the Legal Regime	6
1.2.2. Issues on the Institutional Framework	7
1.3. Objectives of the Study	8
1.4. Significance of the Study	9
1.5. Research Methodology	9
1.6. Limitations of the Study	9
Chapter Two: General Overview on the Law of Insurance and Extra-contractual Liability	10
2.1 Introduction	10
2.1.1 Insurance	11
2.1.1.1. Definition	11
2.1.1.2. Brief Historical Overview of Insurance	16
2.1.1.3. Benefits of Insurance	19
2.1.1.4. Fundamental Principles of the Law of Insurance	22
2.1.1.5. The Regulation of Insurance Business	27
2.1.2. General Overview of Ethiopian Extra-contractual Liability	30
2.1.2.1. Tripartite Sources of Tort Liability	30
2.1.2.2. Compensation	33
2.1.3. Legal and Practical Problems of the Law of Insurance and Extra-contractual Liability	35
2.1.3.1. Introduction	35

2.1.3.2. Insurance Law and Practice	35
2.1.3.3. Tort Law and Practice	39

Chapter Three: Compulsory Third Party Motor

Vehicle Insurance: The Legal Regime	44
3.1. Introduction	44
3.2. Meaning	44
3.3. The Need to Make Insurance Compulsory	48
3.4. Experience of Some Countries	55
3.5. Ethiopia's Experience	61
3.5.1. Historical Background	61
3.5.2. The New Legal Regime on Compulsory Motor Vehicle Insurance in Ethiopia	64
3.5.2.1. Legislative History and Introduction	64
3.5.2.2. The Rationale Behind and Objectives of the Law	67
3.5.2.3. Requirements of the Law	74
3.5.2.4. Scope of Application	78
3.5.2.5. Insurance Policy	86
3.5.2.6. Obligations of the Parties	87
3.5.2.7. Extent of Liability	95
3.5.2.8. Emergency Medical Treatment	103
3.5.2.9. The Yellow Card System	105

**Chapter Four: Compulsory Third Party Motor Vehicle Insurance:
Institutional Framework**

107	107
4.1. Introduction.....	107
4.2. Implementation Procedures	107
4.3. Implementation Institutions	112
4.3.1. The Insurance Fund and its Organs	112
4.3.1.1. The Insurance Fund	112
4.3.1.1.1. Sources of the Fund	115
4.3.1.2. Organs of the Fund	117



4.3.1.2.1. Board of the Insurance Fund	117
4.3.1.2.2. The Office of the Fund	122
4.3.1.2.3. The Director General	124
4.3.2. Ministry of Transport and Communications	125
4.3.3. The Council of Ministers	126
4.3.4. The National Bank of the Ethiopia	126
4.3.5. The Police	127
4.4. Problems Associated with Enforcement Mechanisms And Institutions	128
Chapter Five: Effects of Third Party Motor Vehicle Insurance Law	131
5.1. Introduction	131
5.2. Effects on	131
5.2.1. Basic Insurance Law and Regulatory Framework	131
5.2.2. Insurers	133
5.2.3. Owners of Motor Vehicles	135
5.2.4. Victims of Accident	137
5.2.5. Traffic Accident Prevention	137
Conclusion and Recommendations.....	140
Attachments	



Acknowledgment

First and for most I would like to thank the Almighty God, my father and St. George as they are always by my side.

I would like to express my deepest gratitude to my advisor Tilahun Teshome. His fatherly and scholarly approach to me can not be told and quantified. His advice and constructive comment are most novel and exemplary. He scarified his precious time to review my paper and made it what it is now. God bless you, sir!

I do not have words to express my feelings towards my mother, Habtam. In fact, I would rather burst into tears when I think of her. She is behind all my modest academic achievements. She gave me her life in bringing me up. I know that I cannot do the same to her. Only God can do that.

I am greatly indebted to my friends, my interviwees and my family in general Yosef Kebede, Nigussie Tamrat (Sanjaw!) Gedion Sisay, Mesfin Mammo (esclament), Aschalew Ashagrie, Tesfaye Abate Biset Beyene, Aaron Degol, Bogale Zeleke, Bathlehem Asrat, Nigussie Tadesse, Hailu Burayu, Tegete Shiferaw and Mollalign Abebe in particular.

Last, but not the least, I would like to thank Wro. Meselu Sarko, who patiently typed this paper.

Abstract

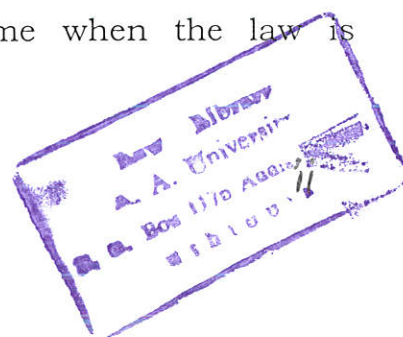
Financial responsibility laws in general and compulsory motor vehicle insurance in particular have basically one major objective--to make motorists financially capable of meeting accident liabilities and hence to guarantee compensation to the accident victim. Unlike other countries, Ethiopia recently promulgated Vehicle Insurance against Third Party Risks, procl.559/2008 in January 2008, a compulsory insurance scheme with the same objective.

The legal regime of this law includes the requirement of the law, indicating its obligatory nature, its scope of application including any person even pedestrians except the insured person, member of his family, the driver or any person employed on the vehicle, and insurance policies. Besides, the duties of the insurer and the insured, the provision of emergency medical care and the recognition of the yellow card system of the COMESA and SADC are basic substantive characteristics of the law.

Turing to its institutional framework, the law makes motor vehicle insurance against third party risks involuntary. Any vehicle except those exempted, are expected to display stickers on their wind screens the failure of which entails a civil and criminal liability on the driver/owner. The police shall detain the vehicle until insurance certificate is presented.

An insurance fund for faults committed by uninsured and untraced vehicle is established. Institutions which are believed to effectively enforce the law are indicated in the law even though, to the dismay of many, to this date enforcement of the law is not begun.

This new law in its application would certainly have its own positive and/or negative effects on insurers, accident prevention and owners of motor vehicles. With less cost in relatively speedy procedures, victims of car accidents will get compensation at the time when the law is implemented.



Introduction

Motor vehicle, starting from its invention up to now, has been serving man. At the same time, it has added his suffering and dying. Vehicle accident gives rise to a cause of action, which deserves serious regulation.

Thus, the legislature in different parts of the world establishes legal and institutional framework to successfully regulate it. The two earlier laws designed to achieve this objective were the law of torts and insurance. In the former, one who commits a fault or owns a vehicle is civilly responsible to another who sustained damage or his beneficiaries for accidents caused by the motor vehicle. In the latter, motor vehicle owners would insure risks surrounding their vehicles. The insurer would compensate a person upon whom an injury is inflicted in case the risk materializes. Even though these laws are set to achieve this purpose, i.e., guaranteeing compensation, what is actually seen is on the otherwise for a number of reasons.

Another area of law which guarantees compensation to the victim had to be set, therefore. The Americans in the late 1920s, the British in the beginning of 1930s and even the Tanzanians and Kenyans in 1940s pioneered compulsory third party motor vehicle insurance law or other financial responsibility legislations. High regarded in these laws were given to ascertaining compensation to those who sustained damage or their respective beneficiaries.

Unlike other countries, in Ethiopia, however, this form of the law was promulgated in January 2008. The main objective of this paper, therefore, is to discuss the legal regime and institutional framework of the new law together with its impact on parties involved on vehicle accidents.

Chapter one of this paper will discuss about the proposal of the paper in general. Thus, background of the paper, statement of the problem

particularly issues to be worked on the legal regime and institutional framework would be indicated. Besides, objectives, significance, research methodology and limitations of the study would also be highlighted.

Chapter two of this thesis is designed to help the reader to better understand the substance and implementation rules and institutions of the new law, Vehicle Insurance against Third Party Risks, procl.559/2008. In the first part of this chapter, the defining elements of insurance, brief historical overview, the benefits, fundamental principles and the reasons behind regulation of insurance would be elucidated. The second part pertains to the law of torts. Regard would be had on therefore, the tripartite sources of Tort liability in Ethiopia and compensation rules of the Ethiopian Civil Code of 1960. Lastly, legal and practical problems of these two segments of the law would be shown. This chapter, therefore, aims at showing the defects of these two laws on actual guaranteeing of compensation to victims of vehicle accidents or others.

The third chapter will deal with the legal regime on Ethiopian compulsory motor vehicle insurance law, procl.559/2008. In this part of the paper, the writer would begin discussion by defining the basic substantive components of this new law. The objectives, the requirements, scope of application, insurance policy and duties of the insurer and the insured would be exhaustively treated as far as possible. On top of this, the extent of liability that insurers would pay together with pertinent issues, the provision of emergency medical treatment and the recognition by the law of the yellow card system of COMESA or SADC will be separately treated.

Chapter four is devoted to the institutional framework of the law. Special emphasis here will be given to implementation procedures and institutions included in the proclamation. Besides, discussion would be made on the establishment of the insurance fund, its objectives, legal and practical issues associated with this permanent financial source.

Problems in connection with the enforcement mechanisms that can create their own shadow on the adequate enforcement of the law would also be indicated.

Chapter five assesses, and sometimes predicts, the effects of vehicle insurance against third party risks proclamation on basic insurance law and its regulatory framework, insurers, owner of vehicles, victims of accidents and its over all impact on traffic accident prevention and/or reduction.

CHAPTER ONE

PROPOSAL OF THE PAPER

1.1. Background

"The modern man may be thought of as a new type of centaur, half human and half car, apparently prepared without serious resistance to pay the ever increasing financial price that car ownership entails and more strangely still, willing to suffer the pain and sorrow that accidents bring, the pollution by fumes and noise...."(Kenneth Cannar)

It is clear that a certain invention may have its own pros and cons. In the history of mankind, the creation of mechanical motors eased man's living. At the same time, it has posed certain risks. One of the inventions that help man sustain nature, not to overemphasize, is the motor vehicles.

Starting from its invention up to now, motor vehicle has benefited man much. In the words of Alfred F. Conard¹ the contribution of vehicles in the Americans' life is great:

The Automobile has changed more than Americans ways of transportation. It has changed their ways of housing, of working and playing, of eating, diving and loving. It has also added to their ways of suffering and dying.

Although Conard's argument is territorial in that it only speaks of the American scenario, as is presented before, vehicles' contribution towards development, be it economic or social, is immense. Sadly enough, however, motor vehicles came up with problems which have a

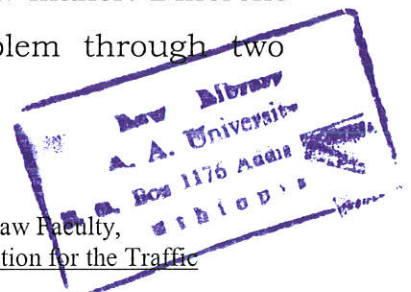
¹ Alfred F. Conard, The Economic Treatment of Automobile Injuries, Dollars, Delay and the Automobile Victim, 1964, P. 413

devastating impact upon the soul of a human person and his property. Making the person permanently incapable up to death, from minor crashes up to disastrous harms inflicted on property and others have become the news of a day. Such irreparable damage against the human person and destruction against the property has been the centre of discussion in history. Some argue that the risks these instruments are posing are so personal giving little attention from law makers. Others otherwise opine that the risk is public and hence has to be remedied seriously. Once in history the automobile accident was compared with the fall of the person in his bath room. The writer concluded that:

A fall in a bath-tub is an isolated event. It is not a social problem. It is not a product of fast moving society which leaves thousands of victims without means of support and sustenance. The automobile accident victim on the other hand is a very marked social problem, both because of its number and because of the source of its injury.²

In the modern world, whether vehicles create social problem or not is an issue no more. It is not debatable because given the number of cars in any country and the risk they are posing is not targeted against a particular person (as no one knows who is going to be the next victim, for example) coupled with the driving behavior of chauffeurs and others factors, the problem has been elevated to risks that can disturb the society as a whole.³

Societal problem as it stands; the law maker has to intervene. Intervention may be effected in the form of law making and seeing it that it is implemented as per the wills and whims of the law maker. Different countries have been seen trying to avoid the problem through two



² Quoted in Getachew Sharew, Compulsory Motor Insurance in Ethiopia, (AAU, Law Faculty, unpublished), 1972, P. 24 from Robert E. Keeton and J. O'Connell, Basic Protection for the Traffic Victim: A Blue Print for Reform in Automobile Insurance 1965, P. 140

³ In Ethiopia, for example, according to paragraph two of the preamble of Procl. 559/2008 loss of lives bodily injuries and damages to properties caused by vehicle accidents are creating social problem. Hence, the risk at stake is public.

important laws: namely, the law of extra contractual liability or torts and the law of insurance.

The law of torts,⁴ though to be discussed later, is a regime of law which governs the relationship between a victim of a car accident and the person at fault, sometimes called the tortfeasor, and the owner of a vehicle if the driver and the owner of the car are two different persons. In this part of the law, the most important principle is one who creates accident must compensate the victim. In other words, because the driver is at fault in the majority of cases, he has to redress it in the form of damages. Generous as the law seems, for a particular incident, it makes the owner of a vehicle liable to accidents created by this motor vehicle. The general belief here is that the source of the accident is his own property and it is believed that he is financially strong. As a financially responsible person, he has to compensate a victim, whose fault is totally absent. In history, almost all countries, especially in the USA⁵ the law of torts has been hailed as the legal guard to victims of motor vehicles.

Another regime to safeguard the interest of these victims is insurance laws. Insurance⁶ simply is a contract, concluded between two persons, called the insurer and the insured, whereby the latter pays certain amount of money, called premium, and the former pays compensation if a risk foreseen materializes. It is a way of shifting losses from a particular individual to an insurer and the policy-buying segments of the society⁷. In away, it shows the financial responsibility of owners and/or drivers of cars. A person who has insured his vehicle is believed to be financially responsible. If an accident occurred, he would go nowhere but

⁴ See for example Arts. 2031 and 2081 of the 1960 Ethiopian Civil Code.

⁵ Robert E. Keeton and Jeffrey O'Connell, Basic Protection for the Traffic Victim: A Blue Print for Reforming Automobile Insurance, 1964, P. 307

⁶ See art. 654 of the 1960 Ethiopian Commercial Code

⁷ Kenneth S. Abraham, Distributing Risk, Insurance, Legal Theory and the Public Policy, Yale University Press, 1986, P.1

to his insurer. He would not risk himself seeing to the extent that his vehicle is sold to satisfy judgments secured by victims.

These legal regimes have been set by legislatures to guard against motor vehicle accidents in many countries. Historically, sooner or later, however, their drawbacks are clearly seen from distance. The major intention of the legislature in the USA⁸ for example, is to ascertain that the victim of the fault is adequately compensated through these laws. The same holds true in the Ethiopian legal system. However, this has not been ascertained as research prove. In the first place, in the law of torts, although the tortfeasor or the owner of the vehicle is expected and able to compensate the victim gets much support, the result may not achieve the objective. It does not because on the one hand all owners are not financially strong to redress the harm inflicted upon the victim and on the other burden of proof, court stringent procedure; congestion of courts and other problems associated with courts stretch their own shadow against a victim's right. Secondly, in the law of insurance, the guiding principle included is the contractual nature of the business as a whole. As a contract, the coverage has to be done through the consent of both parties. Conversely speaking, an owner of a motor vehicle is not duty bound to get his property insured. This may lead to the conclusion that there may be vehicles which are not insured. It is easy to imagine how financially irresponsible these owners or drivers are. They are irresponsible because they may not have money to compensate the victim. Therefore, these legal regimes may not guarantee compensation to the victim.

As the laws, which are believed to safeguard the interest of an innocent victim, are proved inadequate, a number of countries resorted to other legislations such as compulsory motor vehicle insurance or some other financial responsibility legislations.

⁸ Cited at note 8

Thorough time the compulsory motor insurance has been crystallized and changed into third party compulsory motor insurance. The idea here is to make insurance compulsory for harms inflicted against the third party in general and a pedestrian in particular. The implication is that gone are the days when insurance becomes contractual for traffic victims. The law maker imposes certain duty upon automobile owners to insure their cars against accident targeting third parties.

In Ethiopia, the legal regime governing automobile accident, as is true in other countries, rests in the law of extra contractual liability and insurance. Clear in these laws that an innocent victim of a motor vehicle must be compensated. However, the problems that we discussed before are equally applicable in that both laws do not guarantee compensation to the victim. However clear the problem is, beginning from the 1960s up to January 2008, the law maker has been trying to govern the relationship between the tortfeasor and the victim by these laws.

In January 2008, however, the House of People's Representatives came up with a proclamation which provides for Vehicles Insurance Against Third Party Risks, Procl. No 559/2008. It may be a pity to stay until this time⁹ to come up with a proclamation in country like Ethiopia where the traffic accident is escalating from time to time leading innocent victims uncompensated. Surprisingly enough, more than one year passed without the law being implemented. Car accidents are increasing at an alarming rate. This results in changing the able to disability. Because of the economic status of victims, they may not be able to afford medical bills and cannot successfully meet other economic costs.

One step is forwarded. The legal and institutional framework has been in place since January 2008. In this law, though would be clearly seen in the subsequent chapters, the legal regime governing compulsory motor insurance is established. Art. 3 of the Proclamation for example, states

⁹ See for example paragraph 1 of preamble of Procl. 559/2008

that no person shall drive or cause or permit any other person to drive a vehicle on a road unless he has a valid vehicle insurance coverage against third party risks in relation to such vehicle. Arts. 5-7 are stipulated to show the scope of application of the law and Arts. 15-18 are talking about liabilities to be covered by insurance. An insurance fund as a permanent financial source (Art.19) is established to provide compensation to a third party victim of an accident inflicted by uninsured or unidentified vehicle (Art. 20(2)). The enforcement mechanism is also clearly indicated in many provisions of the proclamation.

1.2. Statement of the problem

As the topic of the paper is “the Legal and Institutional Framework for Compulsory Third Party Motor Vehicle Insurance in Ethiopia”,¹⁰ the following legal and institutional problems will be raised and resolved as much as possible.

1. 2.1 Issues on the Leal Regime

In this part of the paper, the issues which deserve special mention include:

1. What are the objectives of this law?
2. What is the scope of application of the law in general?
3. Does the fault of the victim of a car accident exonerate (or at least reduce) the amount of compensation to be awarded? Is the fault of the victim to be disregarded?

¹⁰ Of course the title of the proclamation states that it may be cited as the “Vehicle Insurance Against third Party Risks Procl. No. 559/2008. It does not clearly say compulsory third party motor vehicle insurance. In the existence of this fact one may ask me why I make the title of this paper as “legal and institutional framework for compulsory third party motor vehicle insurance. Three reasons are available, firstly, when Art. 1 of the Procl. States “the proclamation may be cited...” it does not limit itself to this naming only, secondly, the title is, alternatively used in art. 3(2) of the same proclamation and third the law is better known compulsory third party motor insurance than vehicle insurance against third party risks in literatures.

4. In Art. 16 of the proclamation, the amount of compensation is limited to a certain sum. Why limited? Does the amount of compensation strike the conflicting interest of insurers and insured's? Does it have some problems?
5. Whether the amount of premium to be paid by drivers or owners of motor vehicle is to be dependent on good or bad driving records is not clear. What is the impact on insurers?
6. The Emergency medical treatment for any person who has sustained injury caused by a vehicle is to cost up to 1000 birr (art.34). This amount is fully determined and is not subject to revision. Given the increasing costs of medical treatment and medicines, is this form of legislating right? What is its impact on medical institutions?
7. What is the general impact of this law on the law of torts, insurance, insurers, regulatory framework, reduction of traffic accidents and others?

1. 2.2. Issues on the Institutional Framework:

1. As is indicated in the background part of the proposal, an insurance fund as a permanent financial source to provide compensation to a third party accident victim inflicted by uninsured or unidentified vehicle is established.

1.1. The amount of insurance fund is to be collected from the proceeds of insurance tariff (Art. 23(I)). Is it not preferable to collect it from contributions of insurance companies, uninsured or insufficiently insured motorists or uninsured motorists' Fines (punitive damage) given the occurrence of car accidents is increasing and owners are financially irresponsible in Ethiopia?

1.2. Appeal mechanism is not indicated in the law if the board of insurance fund refused to award damages to the victim of uninsured or unidentifiable motor vehicles. What is the impact on innocent victims? Does this go with the objective of the law as a whole?

2. Is it enough to implement the law through insurance certificate and sticker?

3. No duty is included in the law to return back stickers and the insurance certificate once it has expired despite the existence of Art. 8 and 10? What are the problems? Its consequences?

4. Who could be taken as implementing institutions? Generally, is the institutional machinery adequate enough to administer and implement the law?

1.3. Objectives of the Study

Proclamation 559/2008, a Proclamation to Provide for Vehicle Insurance Against Third Party Risks, as discussed before, is issued in January 2008. There is no research work done so far with respect to the legal regime and institutional framework. The major objective of this thesis is to exhaustively analyze and study the law in general. Regard here would be had on fundamental issues included in the law and the writer is intending to indicate the gaps or defects surrounding the legal regime. Moreover, for the sake of clarity and completeness, experience of foreign countries would be observed. The paper is not simply a theoretical analysis. To this end, another objective is devised. It tries to assess the institutional machinery designed to implement the law and their adequacy. Lastly, possible recommendations would be forwarded on the findings of the study as a whole.

1.4. Significance of the Study

As this thesis is the first one in the area under consideration, the writer believes that the paper may provide significant amount of information for stakeholders. It will contribute to enrich the literature of compulsory motor insurance in Ethiopia. It is believed that this paper will be an addition to the legal system in general and to future researchers in particular.

1.5. Research Methodology

The research methodology will make use of both primary and secondary sources. Primary sources to be studied are laws in general and Procl. 559/2008 in particular, where as secondary sources includes interviews, and other methods and will contain policy documents, reports, books, journals, newspapers, and bulletins.

The writer will try to present challenges and prospects of the law; and to this end, regard would be had on interviewing concerned federal government and other officials, insurers, victims and others.

1.6. Limitations of the Study

The law is not put into practice even in March 2009. Thus, it is not tested by regular courts and other stakeholders. Hence, the absence of case analysis is one limitation of this paper. I am very glad if my opinions win the hearts of readers, if not, take them as my defects.



CHAPTER TWO

General Overview on the Law of Insurance and Extra Contractual Liability

2.1 Introduction

In this chapter, special emphasis would be given to the law of insurance and extra-contractual liability. Firstly, the writer will try to present relevant issues of insurance in connection with the subject matter under consideration. Thus, the defining elements of insurance, brief historical overview, its purposes, principles included in it and the need for its regulation would be given separate treatment. The writer is also intending to say a few points on another regime of the law that has direct connection with motor vehicle accident; the law of torts.

Liability may arise either from criminal law or civil law. Criminal liability primarily carries punishment of wrongdoers. In civil liabilities, however, the major objective is compensation of victims of harm. Civil liability may either emanate from contractual commitments or tortious ones. While the liability in the former is coming from a non-performance of a legally binding contract, the latter arises because of the occurrence of certain facts apart from any breach of contractual promise. In other words, extra-contractual liability arises from a civil wrong, other than breach of contract, for which a remedy may be obtained. Tort simply means a breach of duty that the law imposes on persons who stand in a particular relation to one another. From the very outset one can discern the fact that tortious liability may arise from the relationship of the owner of a vehicle, driver and pedestrian.

Besides, whether or not these laws guarantee compensation to the victim of vehicle accident merit separate consideration. Here, first legal problems of the law of insurance and tort would be highlighted and then will follow the author's evaluation. The writer believes that this chapter helps the reader to better understand the next chapters.

2.1.1 Insurance

2.1.1.1 Definition

There are a number of definitions for insurance. But, treating the following definitions, I believe, suffices to understand the indispensable elements included in it. John Birds defines insurance using the term insurance contract. It reads:

“...a contract of insurance is any contract whereby one party assumes the risk of an uncertain event, which is not within his control, happening at a future time, in which event the other party has an interest, and under which contract the first party is bound to pay money or provide its equivalent if the uncertain event occurs”.¹

Included in this definition are at least five elements. First, there must be a binding contract and the insurer must be legally bound to compensate the insured and consequently there is legal entitlement. Second, the uncertainty element, necessary feature of insurance, is given express recognition. Third, the insured must have an insurable interest, still basic component. Of course brief discussion will be made on this point later on. The fourth one may go with the uncertainty element. The control aspect of the risk merit closer attention. It is essential that the risk insured against must be outside the control of the insured. It is clear in insurance that had the risk been known to materialize, insurers would not have been in a position to assume. The fifth discernible fact may be the mode of compensation that the insurer undertakes to pay. Clear in the definition that the type of compensation to be awarded in case the risk materializes is either money or its equivalent. “There seems no reason in principle why it should be necessary for the insurer to have to undertake to pay money on the occurrence of the uncertain event, and

¹ John Birds, Modern Insurance Law, 4th edi., 2003, P.13

there is clear authority that the provision of something other than money is enough, provided that it is of money's worth."²

Observing this definition, however, reveals certain defects. For example, one of the duties of the insured in insurance contract, of course to be discussed later, is the duty to pay premium, periodic payment required to keep insurance contracts. The second crucial point in insurance is insurance policy does not get express reference. Aside from this the above definition includes important elements.

Black's Law Dictionary has the following to say:

Insurance, or Assurance is a contract by which one party, for consideration, which is usually paid in money either in one sum or at different times during the continuance of the risk, promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.³

One can conclude that this definition has not introduced new points when compared with the first definition. However, the following could be its additions. First, insurance contract is a consideration contract as opposed to a gratuitous one and second the compensation to be given to the insured may be effected either in a lump sum or in the form of annuities. Like the first definition, however, the type of indemnity to be awarded to the insured in this definition may not be limited to money only. Up to now, the definitions are about insurance contract. But, let me say a few points on what insurance itself is all about.

“insurance in law and economics, is a form of risk management primarily used to hedge against the risk of a contingent loss... it is the equitable

² Ibid, p. 16

³Bryan A. Garner, Black's law dictionary, 8th edition, P. 814

transfer of the risk of a loss, from one entity to another, in exchange of a premium, and can be thought of a guaranteed small loss to prevent a large, possibly devastating loss.”⁴

This definition clearly describes the nature of insurance in general. Insurance is primarily aimed at managing risks or perils. Besides, it transfers loss from one insured to others who buy insurance policies in exchange of a premium. In short, it distributes risk. That is why many authorities in the field argue that insurance helps distribute justice.⁵

Next is the definition of insurance in the Ethiopian legal system. Even though insurance provisions are stipulated in a number of laws in our legal system, the Commercial Code of 1960 (Arts. 654-712) and Procl. 86/1994 treat insurance in a comprehensive and detailed manner. The definition for insurance contract is stipulated under the first article of the Commercial Code dealing with insurance.

Art. 654 reads:

An insurance policy is a contract whereby a person, called the insurer, undertakes against payment of one or more premiums to pay to a person, called the beneficiary, a sum of money where a specified risk materializes.

The Commercial Code uses insurance policy instead of insurance contract. The question is: what is a policy? Policy in Black’s Law Dictionary is defined as a document containing a contract of insurance.⁶

⁴ Insurance – Wikipedia, the free encyclopedia, <file:///H:/motorinsurance.htm>, visited on October 17, 2008

⁵ W.G. Friedmann, Social Insurance and The Principles of Tort Liability, Harvard Law Review ,1964,p.239

⁶ cited at note 3, P. 1196

From this one can understand that policy is simply a written instrument that contains the insurance contract as could be discerned from Art. 657 of the Commercial Code.

Article 654 of the Commercial Code contains certain elements that deserve special attention. Firstly, insurance policy is a contract. Needless to say, as a contract, general provisions of the law of contract included in the Civil Code are applicable. The essential elements of a legally binding contract, causes vitiating consent, formalities required by the law and others are equally applicable in insurance contract. Whether insurance policy is exactly identical with insurance contract has been the subject of controversy in Ethiopian courts.⁷ However controversial it may seem, the fact that insurance policy is a contract is clear. Secondly, as a contract, at least two persons are involved; namely the insurer and the insured. The insurer or the underwriter is the person who promises to award damages when the risk assumed occurs. The insured or sometimes the beneficiary is a person who is protected by the insurance policy. Third, the major duties of the insurer and the insured are envisaged. The duty of the insured being the duty to pay premium and the insurer's to give monetary damage. It is good to take note here that the mode of payment envisaged in Art. 654 of the Commercial Code is only limited to payment in terms of money. In this case one may conclude that the scope of mode of insurance payment is narrow when compared with the experience of

⁷ Some argue that insurance policy and insurance contract are different basing themselves on Arts. 654(1) and 657(1) of the Commercial Code. They say that according to Art. 654(1) for an insurance contract to be a policy, it has to satisfy elements included in this article, and they go on arguing that had insurance policy and insurance contract been the same, Art. 657(1) would not have said "the contract of insurance shall be supported by a document called insurance policy". But others say that as Art. 654(1) says insurance policy is a contract, they are one and the same.

other countries. Hopefully the to-be amended Commercial Code will have its own ruling on this issue. Another point is the risk element. Risk in insurance is simply the chance or degree of probability of loss to the subject matter of an insurance policy; or simply put it is a peril. The idea in insurance is sometimes unpleasant or unexpected loss may occur to a property, life or body of a person. The person may at least reduce or totally avoid the effects of this loss through insurance.

To attain such purposes, it is widely practiced that any risk that can be quantified can potentially be insured leading to many types of insurance policies. Though the listing is non-exhaustive the following can be subject to insurance policy; namely, health, disability, casualty (accidents), property, liability, credit, collateral, nuclear incident, pollution, travel and others. "Probably the most common form of insurance is automobile insurance, known in the UK as motor insurance."⁸ This is also true in Ethiopia.⁹

In Auto or automobile or motor vehicle insurance the contracting parties are under normal cases the owner of the vehicle and the insurer. As is attempted above to discuss insurance policy in general, parties in a motor insurance have their own rights and duties. The duty to pay premium rests in the insured and the duty to compensate in case the risk insured materializes is imposed on the insurer. Besides, motor vehicle insurance policies may take different forms. In other words risks caused by motor vehicle may all be insured. These include the vehicle itself, drivers, property damaged by the vehicle, passengers, pedestrians and others. In Ethiopia, for example as could be seen later Nib, Nyala and

⁸ Cited at note 4, p. 8

⁹ Interview with Ato Wondimagegne Kelemie, Inspector, Insurance Supervision, National Bank of Ethiopia, October 20, 2008.

United Insurance Companies extend insurance coverage to private and commercial motor vehicles. Ready to be sold insurance policies in these insurance companies in connection with motor vehicles are passenger insurance, property damage insurance, liability insurance, third party insurance and others.

2.1.1.2 Brief Historical Overview of Insurance

Though not in its modern sense insurance is not a recent phenomenon. It has been written that "...In some sense we can say that insurance appears simultaneously with the appearance of human society...."¹⁰ The general historical overview of insurance may be treated in two ways; namely early phase of insurance and its modern counterpart.

In ancient times,

"Persons who sustained harm to the body or goods did look for protection. This protection was fulfilled by the extended family or church. A person could look to his/her relatives for support. Relatives were morally duty bound to support each other at the time a risk materializes. In the absence of a prosperous relative, a person could go to church or mosques for alms."¹¹

In Ancient economy and community, we can see insurance in the form of people helping each other. For example:

"If a house burns down, the members of the community help build a new one should the same thing happen to one's neighbor, the other neighbor must help. Otherwise neighbors will not receive help in the future. This type of insurance has survived to the present day in some countries..."¹²

¹⁰ Cited at note 4, p. 5

¹¹ The Chartered Insurance Institute, Elements of Insurance, tuition service, pp.15-43.

¹² Cited at note 4, p.5

In the early times, therefore, insurance was not used as we know it today. Though not in a crystallized form, however, one can not conclude that insurance was wholly absent in primitive societies.

Turning to see insurance later, the Chinese and the Babylonian traders as long as the 3rd and 2nd millennia BC practiced early method of transferring or distributing risks. The Code of Hammurabi, C. 1750 BC, recorded the system of insurance. The Greeks and Romans introduced the origins of health and life insurance around 600 AD when they organized guilds called “benevolent societies” which cared for the families and paid funeral expenses of members up on death.¹³

In the United Kingdom, the first form of insurance was marine insurance. It was increasingly transacted at a Coffee House in the city of London owned by a man called Edward Lloyd. There developed the practice that:

“The merchant wishing insurance would pass round to the people willing to provide it, who were gathered there, a slip of paper on which he had written the details of the ship, voyage, cargo etc. The slip was initialed by those willing to accept a proportion of the risk when the total amount of insurance required was under written, the contract was complete.”¹⁴

Following this practice, other forms of insurance developed in the United Kingdom. The first of these was fire insurance instigated by the great fire of London of 1666 which devoured 13,200 houses. This was followed by life and personal accident insurance, the latter growing rapidly as the railway and industrialization spread rapidly in the Nineteenth Century.¹⁵ It is good here to take note that motor insurance arrived late when compared with marine insurance in the United Kingdom.

¹³ Ibid, pp. 5-6

¹⁴ Cited at note 1, p. 2

¹⁵ Ibid, P. 3

In the United States of America, the first insurance company underwrote fire insurance. And it was formed in Charles Town (modern day Charleston), South Carolina in 1732. Benjamin Franklin helped to popularize and make standard the practice of insurance, particularly against fire in the form of perpetual insurance. Property and casualty insurers currently make the most money from their auto insurance line of business¹⁶ despite the fact that anything that involves risk can be insured in the United States of America.

Coming to Ethiopia's history, when compared with the experience of other countries such as the UK and USA, it seems that insurance business is a recent phenomenon. In its modern sense, insurance business is believed to have been started in the early 1920's. The then Bank of Abyssinia, as an agent to a foreign company, began to underwrite Marine and Fire insurance. In 1923, an Australian person named Muzinger, as an agent of a foreign fire insurance company, established the first insurance company in Ethiopia and in 1929 the company made effective payment of compensation for a client enterprise, which had lost a warehouse as a result of fire.¹⁷

During the era of Haile Selassie (the First), following the coming into effect of the Commercial Code, which regulates the insurance business generally, a number of insurance companies entered into the market. But, the eruption of the Ethiopian Revolution led to the nationalization of insurance companies in January 1975.¹⁸ Thus, the Ethiopian insurance corporation, a Public Enterprise responsible for developing and

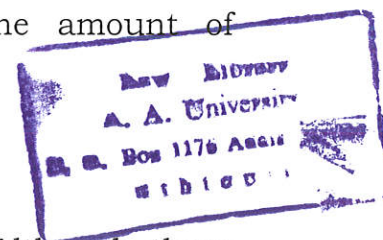
¹⁶ Cited at note 4, p. 6

¹⁷ Tesfaye Abate, Insurance law, Alpha University College, Teaching Distance Module, 2007, p. 15

¹⁸ Ibid

expanding insurance business in line with the socialist ideology was established.

After the downfall of the Dergue, the EPRDF came up with a new economic policy.¹⁹As seen in the preamble, to guide the country's economic development direction and the greater desire for the involvement of the private sector in the economy, Licensing and Supervision of Insurance Business Proclamation, Procl. no. 86/1994, put into practice in 1994. According to Art. 2(3) a share company whose capital is wholly owned by Ethiopian nationals and/or organizations wholly owned by Ethiopian nationals and registered pursuant to Ethiopian laws and having its head office in Ethiopia can carry on insurance business. Following this, 11 insurance companies are established in Ethiopia up to December 2008. All insurance companies extend motor vehicle insurance to their customers although the risk assumed may differ from the type of vehicle to the amount of compensation.



2.1.1.3 Benefits of Insurance

Insurance law has its own justifications and benefits. Although these benefits sometimes overlap, the following are some of the non-exhaustive universally agreed ones.

1. Insurance increases economic efficiency²⁰

As it is discussed before insurance is simply a management scheme that can hedge against risks. It is the process of transferring risks from one who actually suffered either proprietary or bodily damage to the policy

¹⁹ See the first Preambular paragraph of Procl. 86/1994, Licencing and Supervision of Insurance Business Proclamation.

²⁰ Kenneth S. Abraham, *Distributing Risk: Insurance, Legal Theory and Public Policy*, Yale University Press, 1986, p. 10. For more information, see C.G. A. Dickson, Insurance Practice (Cambridge; the Bath Press, 1993), p. 24

buying mass. It can be said that the major purposes of insurance differs in property, life or accident forms. While the objective of insurance in property damage is to reinstate the insured to his former position, its purpose in life, or accident ones is not. Thus, in property damage insurance, reinstatement indicates that the insured will never receive an amount beyond the amount of loss. Simply put, seen from the perspective side of the insured, insurance is not about profit making. If individuals who suffer property damage are reinstated to their former economic position, they will not sit idle. Rather they will continue to contribute theirs in the market and sustain their employees in office, if any. Besides, if insureds are of the opinion that they can be put in their former economic condition, they will continue investing their assets. Naturally, this will increase economic efficiency. In motor vehicle insurance, the above economic analysis works. Motor owners do have worries. Human life is full of risks. There is a fear of financial losses which owners cannot predict. One benefit of insurance is naturally to reduce, if not to eliminate, worries and miseries of financial loss. By transferring the risk, motor vehicle owners will be encouraged to engage in a relatively less risky business than depositing their own cash in banks. This will in return promote investment, an engine for economic development. The premium collected from the public would also help insurers invest as per the regulation set by regulators.

2. Insurance contributes to conserve life and property: clear that once insurance industries assume the risk, and the risk materializes, they will pay the agreed amount of compensation. Besides modern practices show also that insurance industries aim at preventing and reducing the occurrence of risk and contribute their own in conserving human life. In order to achieve this, underwriters operate various services in every line of insurance business. One of the often used modes in motor vehicle insurance in Ethiopia, for example is educating drivers, owners or others working on the vehicle. The Addis Ababa Traffic Office,

occupation itself, which may result in disability or death from accidents or occupational diseases. There are also other risks such as disability due to old age and non-industrial illness. Social security is, therefore, a governmental establishment that can be done either via a tax transfer system or compulsory insurance policy with the view of transferring financial resources from the working generation to those who can not work because of age, disability or dependency status.²² As part of social security scheme, the principles of private insurance such as large numbers of units in the risk assessment, a wide distribution of risks and the presence of a real risk, etc are applied to social security insurance. The objectives of insurance and the social security scheme are both social and economical. It is societal in that it seriously takes into consideration the interest of those who are in a disadvantaged position and economical as it at least minds the profit making interest of insurers.

There are a number of social security schemes in different countries such as criminal insurance scheme, where the victim of a crime can be civilly compensated, tort insurance scheme, where the victim of a tort is helped to mitigate the loss and others. In Ethiopia, recently, for example, compulsory third party motor vehicle insurance proclamation, though to be discussed later, established an insurance fund with the objective of compensating victims of hit and run vehicles.

2.1.14. Fundamental Principles of the Law of Insurance

²² For more information see: Tesfaye Riste, Insurance and Social Security as Social Schemes: Comparatively Dealt With (unpublished, AAU, law faculty, 1978) pp. 12-19; Frank P.Grand, Recent Developments in Automobile Accident Compensation, Columbia Law Review, Vol.50,1950,p.325

Many principles are included in insurance law. But, the following discussion will reveal a few points on basic principles of insurance that have direct relevance to motor vehicle insurance; namely insurable interest, utmost good faith, indemnity and subrogation. Let me treat them briefly.

A. Insurable Interest

It is true that in many countries the insured must have an insurable interest in the property, life, or liability insured. But, what is an insurable interest? For Kenneth Cannar:

“...in essence it [insurable interest] means that the policy holder bears such a relationship to the vehicle for which he obtains cover as to benefit from its continued undamaged existence and suffer prejudice from the operation of it upon any of the insured perils...”²³

In effect, it means that the party to the insurance contract who is the insured or policy holder must have a particular relationship with the subject matter of the insurance whether that is a life or property or liability to which he/she might be exposed. In motor vehicle insurance, therefore, the party demanding to avail himself of the insurance compensation must have an insurable interest in the vehicle to be insured. The a contrario stand is that a person who does not have an interest in the vehicle is incompetent to enter in the contract. Thus one requirement, among others, for the valid motor vehicle insurance is the existence of a significant relationship that the owner has against the vehicle.

²³ Kenneth Cannar, Motor Insurance: Theory and Practice, 1979 p. 13

In the Ethiopian Commercial Code, as is not the case in many other countries, insurable interest, as one fundamental element of insurance contracts, does not receive detailed express recognition despite the fact that its absence does not create problems in practice. But it is plain knowledge that the owner of a vehicle must have an insurable interest at least at the materialization of the risk to get compensation.

B. Utmost Good Faith

One of the duties of the insured in the insurance contract, as is indicated above is the duty to pay premium. Besides, insurance contracts or the very nature of the insurance business imposes a duty upon the insured to disclose material facts associated with property, life or other subject matter of insurance. The requirement to disclose all material facts is called the duty of utmost good faith. This duty:

“recognizes that the facts about an individual insurance risk are much more likely to be well known to a proposed insured but not at all to the underwriter, and so it has imposed a duty of full disclosure of all material facts, in order that the minds of the parties could truly meet on the reality of a proposed risk.”²⁴

From the foregoing it can be said that this duty is not an ordinary duty of good faith as seen in many commercial or civil contracts. Rather, it is something more than that. It is also clear that the special facts upon which the insurer to compute the contingent chances lie more commonly in the insured, and hence the law imposes the duty of utmost good faith.

In the Ethiopian Commercial Code, the duty of utmost good faith is stipulated under Arts. 667-668. The implication is that if the insured has intentionally concealed the material facts of the case to the insurer the insurance contract shall be of no effect but the insurer shall retain the

²⁴ Ibid, p. 20

premium paid; if, however, the concealment is caused by negligence, and concealment is discovered before the materialization of the risk, the insurer may terminate or maintain the policy. If it is discovered after materialization of the risk, the sum to be paid by the insurer will not be equal to the amount of loss suffered by the insured.

In motor insurance in Ethiopia, this duty is done by a declaration of the proposal form in which the proposed insured signifies his agreement that his proposal shall form the basis of the contract to be entered into, all the answers to the various questions being deemed to be material and to be incorporated into the contract. This naturally gives the insurer the right to treat the contract as void or voidable.²⁵

C. Indemnity

The technical definition of indemnity means to make whole again, and this fundamental principle states that "...a man should not recover more than he had lost."²⁶ The quoted writer goes on to state that "insurance is considered as an indemnity only in the case of a loss and therefore the satisfaction ought not to exceed the loss." This principle of insurance has one objective: to prevent fraud lest the temptation of gain may occasion unfair and willful losses.

Indemnity was a well established principle long before motor vehicle insurance in England as it could be discerned from *Castelain V. Preston*, 1883, case. Brett L.J. said in this case that:

"the very foundation, in my opinion, of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in

²⁵ See commercial or private motor vehicle insurance contracts of Nib, United and Nyala Insurance Companies (Attached at the back of this paper-attachment No.1). Please take note also that insurance contracts of all insurance companies in Ethiopia have striking similarities that one can dare to conclude that they may be copied from a single source.

²⁶ Cited at note 23, p. 16

marine or fire insurance is a contract of indemnity, and an indemnity only, and that this contract means that the insured, in case of loss against which the policy has been made, shall be fully indemnified but shall never be more than fully indemnified...”²⁷

This fundamental principle in Ethiopia is recognized under Art. 678 of the Commercial Code. It is crystal clear that the insured in a motor vehicle policy would never receive compensation beyond loss as its main objective is to reinstate the insured to his former economic position. The implication is that the insurer cannot, subject to policy limits, pay less than the monetary value of that loss. The principle of indemnity cannot in life and personal accident insurance entitle the insured to be reinstated to the same position as he/she occupied the moment before his/her loss.

D. Subrogation

The word subrogation roughly means substitution. Kenneth Cannar in relation to this fundamental principle states that:

“By subrogation, an insurer, after he had paid a loss, is entitled to exercise in his policy holder’s name the benefit of every legal right of the insured which might operate to diminish the loss.”²⁸

Subrogation stems directly from indemnity. An insurer who has paid the indemnity is dictated at least by equity that he is entitled to be recouped by having that amount paid back. Art. 683 of the Commercial Code of Ethiopia expressly entitles the insurer who has paid the benefits of the policy to subrogate the insured and claim such amount and others from a person who has committed a fault.

²⁷ Ibid, p. 17

²⁸ Ibid, p. 19

2.1.1.5 The Regulation of Insurance Business

Insurance is not a simple contract nor is an ordinary one. In insurance business, it may be said, the interest of the insured and the insurer are not the only points to be considered; insurance rather is also a matter of public concern. As a contract, parties to insurance are expected to respect their own commitments. But, history, however, shows that unless state intervention is in place, private individuals in insurance may not play their own roles as aspired. State intervention is to be carried out by regulation. The question, therefore, are: what is regulation? What are the needs for regulation?

Black's Law Dictionary defines regulation as the act or process of controlling by rule or restriction; a rule or order having legal force usually issued by an administrative agency.²⁹ In regulation, therefore, there are two parties; namely, the regulator and the one that is to be regulated. The regulator in majority of cases is an administrative agency or organ of the government.

The regulator may have either a supervisory or rule making power. In the former, the agency mandated to regulate the business is given the law and ascertains whether that is implemented in accord with the intention of the legislature. This could be done either by on-sight investigation or through off-sight one. The regulator in many cases is also empowered to come up with certain basic rules that would ascertain the well functioning of the business desired to be regulated.

Insurance, as a business, in many, if not all, countries is one area that the government has a stake in its regulation. But, why almost all governments are interested to regulate the business, besides insurance law provisions and the legally binding insurance contracts concluded

²⁹ Cited at note 3, p. 1311

between private parties? The non-exhaustive reasons justifying insurance business regulation are the following:

1. Protection of Public Interest³⁰

This reason justifying regulation of the insurance business indicates that, although principally the parties to insurance contract are directly benefited from the well functioning of the business, and harmed, if not, this business does also highly affect the public. In other words, insurance is one of the types of businesses that are considered matters of public concern which makes it subject to strict forms of regulation by the state. Simply put, the main objective of state control is obviously to protect the public. But, at this point it is important to raise another issue: what are the mechanisms of safeguarding the interest of the public? It can be done in many ways, inter alia:

A. Preservation of Insurer's Solvency

Just to repeat, insurers duty is to pay the agreed sum in the form of compensation to the insured incase the risk assumed materializes. To effectively discharge this traditional duty, it is a condition precedent that insurers must be financially competent and able to fulfill their obligations. In short, the insured obtains the security as long as the insurer is economically sound. Thus, one mode of protecting the interest of the public is to see to it that insurers remain economically stable via regulation. In Ethiopia, in an attempt to make insurers financially sound, Procl.86/1994, Licensing and Supervision of Insurance Business Proclamation, set certain requirements which are believed to preserve insurers financially solvent. Among others, the minimum capital requirement (Art.4 of the same), the statutory deposit to be maintained in the National Bank of Ethiopia (Art.12), the regulator, and the solvency margins (Art.16 and 20).

³⁰ For more details see; Belay Ababayehu, The Control to Insurance Business Under Procl.86/1994 (AAU, Law Faculty, unpublished), 1996, pp.8-13.

B. Making Insurance Contracts Fair to the Insured

Insurance contracts are not ordinary contracts that we always make. They are grouped in a category called adhesive contracts. These are contracts where parties are not in equal bargaining power. The implication is that the insured may not negotiate in the amount of premium or other terms in the insurance contract. In short, it is a “take it or leave it” form of a contract calling the intervention of the state through regulation.³¹ A relatively best way to make insurance contracts fair to the insured may be to check the soundness of the policy terms of the contract. Procl. 86/1994 entitles the National Bank of Ethiopia to check the fairness of policy terms and premium rate³² and to make them reasonable.

C. Monitoring the Behaviors of Insurance Intermediaries

Intermediaries or auxiliaries, parties who facilitate insurance business, may affect the interest of the public. In order to safeguard public interest, controlling agents, actuaries, loss assessors and others is important. One way of achieving this is to allow competent person to act as auxiliaries in insurance business. This would have the effect of avoiding those incompetent intermediaries from the business. Art. 25 of procl.86/1994 has this objective in view.

2. Economic Promotion

This is the second reason justifying insurance business regulation. Insurers collect a great deal of money from the public. Their main obligation is to pay an agreed sum to the insured. But, all this large amount of money may not, in fact will not, be paid to the policyholders. In effect, insurers do have large sum of money that can easily be

³¹ As to the discussion on the problems of insurance contracts and the timely need of state intervention through regulation, see: Edwin W. Patterson, Administrative Control of Insurance Policy forms, *Columbia Law Review*, vol. xxv, No.3, March 1975.pp.253-276.

³² . . . Art 6(2), *procl. 86/1994*

converted into investment. There are two interests as far as this reason is concerned. The interest to see that insurers are solvent to confer both psychological and physical security on the insured or beneficiaries and the interest to indulge this large sum of money collected from the policyholders into investment. The general belief is to allow insurers to engage themselves in investment giving high emphasis to their solvency. Allowing insurers to invest insurance funds has multidimensional purposes. Naturally, it will help insurers because it assists them to meet their commitments thereby creating a guaranteed environment to pay the claims of policyholders. Investment also plays a significant role for economic development of the country. Insurance business, regulation, therefore, has such objectives. Taking into consideration the importance of investment of insurance funds has on economic efficiency, Procl.86/1994 (Art. 42(e) and (f) and Directive no.25/2004 allow insurers to invest in some sectors of the economy with limited assets.

2.1.2 General Overview of Ethiopian Extra contractual Liability

2.1.2.1. Tripartite Sources of Tort Liability

In the Ethiopian Civil Code, according to Art.2027, sources of extra-contractual liability are exhaustively enumerated. These are fault liability, irrespective of fault and vicarious liability.³³

A fault is simply failure to maintain standard of conduct committed either intentionally or negligently that can result in inflicting harm upon another person. As a rule, a person is liable if the damage caused by him is due to his fault. In other words, a person who inflicts harm upon another is duty bound to redress it.³⁴ Fault liability represents ordinary law of extra contractual liability in Ethiopia as it is not restricted to cases provided by law while strict and vicarious liabilities exist only “where the

³³ For more information see: George Krzeczunowicz, The Ethiopian Law of Extra Contractual Liability, Haile Sellasie University, 1970, pp.31 and the following.

³⁴ See art. 2028 of the Ethiopian Civil Code



law so provides.”³⁵ It is clearly stipulated that faults giving rise to tort liability which are not enshrined in Arts. 2028 to 2065, section 1 of fault based liability of the Civil Code, can be a source of liability per Art.2035 of the same.

Liability of a vehicle driver can come from art.2031 of the Civil Code. Per Art.2031(1) of the Civil Code, what constitutes professional fault and its scope of application are clearly stated. A person who practices a certain profession or who pursues a specific activity can be regarded as a professional. Driving can be easily conceived as a specific activity, if it is not a profession. As a specific activity or a profession, the driver must observe the rules governing this practice: namely for example traffic rules. If however, the driver fails to respect such rules either intentionally or negligently or ignores his duties and inflicts harm upon pedestrians, or generally third parties, he shall be civilly liable. Whether the driver ignored the rules governing driving is to be evaluated based on a reasonable man standard As Art.2030 (2) provides. Thus, in Ethiopia one mode of making drivers reasonable for third parties is fault-based tort liability. In other modes, the defendant must show that he has suffered damage and was caused by the fact for which the defendant is responsible.

The second distinct type of liability is liability irrespective of fault or strict liability as stipulated in articles 2066-2089 of the Civil Code. In this form of liability, the defendant is not expected to prove that the plaintiff is at fault; rather he must prove that he has sustained damage and its causation. As Art. 2027(2) says” where the law so provides,” activities which may make one liable irrespective of fault are exhaustively listed. Among others, Art.2081 is a relevant provision to the subject under consideration. Sub art. 1 of this article states that the owner of a motor vehicle shall be liable for any damage caused by the vehicle not with

³⁵ Cited at note 33, p.63.

standing that the damage caused by a person who was not authorized to operate, handle or drive the vehicle.

It is clear from this provision that just because a person is the owner of a vehicle, even though the person who drives the car does not have driving license or generally is not allowed driving, he is accountable for the damage that his car caused. This clearly indicates that the owner is civilly liable without his fault. It is a plain fact that car accident is increasing at an alarming rate in Ethiopia causing death, bodily injury, and property damage not to speak of the psychological effect it has on the victim. The legislature's attitude in safeguarding the interests of victims by enlarging the scope of strict liability is to be applauded.

But, there are some exceptions that can exempt, at least reduce, the civil liability of the owner of the vehicle. Firstly, if the owner successfully proves that at the time when the damage occurred the vehicle was stolen he may be totally exempted from liability (Art.2081(2) of the Civil Code). Secondly, the owner shall be relieved of his liability, entirely or in part, where the damage is due solely or partly to the fault of the victim (Art.2086(2) of the same). Therefore, the system followed here is a fault-system. Does this guarantee compensation to the victim of vehicle accidents? is, however, a big question that I am going to treat in the subsequent discussions.

The third mode of liability is liability for actions of others or commonly known as vicarious liability regulated under Arts.2124-2136 of the Civil Code. The guiding principle, however, for vicarious liability is stipulated under Art.2027(3) of the same and states that a person shall be liable where a third party for whom he is answerable in law incurs a liability arising out of an offence or resulting from law. Here, the person who has committed a fault is accountable, though not in its strict sense, to the person who is supposed to be regarded as liable. The source of liability comes either from a person fault or the law. One of the activities that can give rise to vicarious liability is employer-employee relationship expressly

enshrined in Art.2130 of the Civil Code. It is clearly indicated that the employer shall be liable where one of his employees incurs a liability in the discharge of his duties. While the employee is at work and commits a fault, the employer is civilly liable. In short, in the employee's functional duty that the liability of the employer arises. The employer, therefore, is liable while the employee, the driver, is causing harm on the pedestrians.

2.1.2.2. Compensation

In the Ethiopian Civil Code, the principle of compensation for torts arises from Art. 2028. It reads.

Whosoever causes damage to another by an offence shall make it good.

It indicates everybody, including those incapables such as minors and judicially interdicted persons. If any person causes damage and the damage suffered by another one is successfully proved in the court that he incurred loss and caused by this particular person, the victim has a right to receive compensation. Compensation, therefore, is a redress that the tortfeasor pays to a victim of the fatal accident and to the beneficiaries if death is involved.

The main objective of compensation is to put the claimant, i.e., the victim as far as money or other can do so, in the position as if the tort had not happened. If it is in the form of punitive damage, it may have the effect of deterring those who are intending to commit fault.

Damage may be of two types, namely; material damage and moral damage. Material damage relates to pecuniary damage of a person such as financial loss that can include loss of profit, expenses of medical treatment or generally losses that affect the pocket of the victim. In vehicle accidents, material damage includes in the case of fatal accident the victim's expense to get him medicated, loss of profit in the business before the accident and others.

Material damage may also be either present or future. The former is the victim's loss now, the latter, however, tries to predict what will the victim face in the near future. Under Ethiopian law, both present and future damages may be assessed in determining the extent of damages to be awarded to the victim (Arts.2090 and 2092 of the Civil Code) although doing so is not an easy task.

In determining the extent of compensation for the victim or beneficiaries of torts, Art. 2091 is clear enough in saying that compensation shall be equal to the damage suffered by the victim. In other words, the tortfeasor is expected to make good all the damage suffered by the victim. This will, the legislature believes, restore the victim in his former position.

The compensation principle of the law of torts, however, has certain exceptions. Firstly, as Art. 2098(1) stipulates, if the victim is at fault, he/she may be entitled to partial compensation only. This clearly reveals that the law of compensation hinges on the issue whether or not the plaintiff is at fault. Secondly, if the injured party fails to minimize the consequences of the harm suffered, still he/she may be entitled less amount of compensation (Art.2097(2)). Third, in the case of vehicle accident ones, if the driver was not in a state to appreciate the wrongful nature of the contract, the court may where equity so requires reduce the compensation (Art.2101 (1)) of the Civil Code. These exceptions may leave the victim of the vehicle accident less compensated. This will have its own negative repercussions as to the economic or social status of the individual who has sustained damage.

As to mode of compensation, the principle is monetary compensation and the exception is other modes of compensation. Art.2090 indicates that other appropriate measures (Arts.2118-2123 of the Civil Code), in addition to or alternatively with monetary compensation, can be ordered. Compensation may be effected in the form of lump sum or maintenance

allowance. In the case of fatal accidents, as Art. 2095(2) indicates, compensation shall be in the form of maintenance allowance.

Another form of damage is moral injury regulated under Arts.2105-2117 of the Ethiopian Civil Code. In majority of cases, the victims of car accidents if death is not involved have moral injury in addition to their material damage sustained. In order to heal the moral injury, the legislature came up with certain provisions that the victim can avail himself/herself of. Even though the legislature under Art.2105(2) is of the opinion that unless expressly provided by the law, moral harm may not be made good by way of damages, the fact that fair compensation for moral injury may not exceed 1000 Ethiopian Birr (Art.2116(3) is laughable.

2.1.3 Legal and Practical Problems of the Law of Insurance and Extra-Contractual Liability

2.1.3.1 Introduction

Previously, this writer tried to discuss about the remedies that a third party victim of motor vehicle accident can claim based him/her self on the law of insurance and extra-contractual liability. Simply put, the victim may claim compensation from the insurer by resorting to insurance law and from the tortfeasor using the law of torts. But, the point that merits special consideration at this time is to see whether these laws are adequate enough to guarantee compensation to the victim. What problems are there in these legal regimes and in practice preventing victims from securing equivalent compensation to the harm they sustained?

2.1.3.2 Insurance Law and Practice

A closer look at the law of insurance and its implementation in practice reveals a number of problems up on the compensation claim of the victim of a car accident. Some, among others, problems are the following.

1. Insurance via-a vis- Financial Irresponsibility:

In general it is safe to conclude that insurance as a contract, except in few public policy matters, is universally acceptable. As a contract, it is only when two or more parties in the insurance contract give their consent to that a legally binding insurance contract is considered as concluded.

Driving, unless done cautiously, is a risky business. However cautious a driver may be, risk is an integral part of humans life. Thus, insuring motor vehicles manifests the financial responsibility of the owner of the motor vehicle or its driver. But, the question however, is: do all owners insure their vehicles?

In Ethiopia, as discussed before, insurance policies are contracts, coming from the free consent of the insurer and the insured (the owner of the motor vehicle). In effect, the owner is at liberty to derive his/her car without insuring it. Even though there is no central statistical data as to the number of cars and whether or not they are insured, it is plain that there are many motor vehicles in roads that are not insured. This naturally indicates the financial irresponsibility of owners or drivers. This will have its own severe economic implication on the victims of fatal accidents or beneficiaries if death is involved.

This will go from the extent of totally not getting compensation to partial or still less amount of compensation. This itself will call another legal regime for victims that would guarantee equivalent or equal compensation with the harm suffered.

2. Problems of Insurance Companies in Relation to Compensating Victims

Some people believe that:

“Modern insurance companies are money-making businesses which have little interest in insurance. They argue that the purpose of insurance is

to spread risk. So the reluctance of insurance companies to take on high risk cases runs counter to the principle of insurance”³⁶

The business of insurance is so central in the economy because insurers guarantee risk. If they do not give much attention to their old age objective, this is against the rationale of their foundation. Unless and otherwise they are willing and capable to do that, the victims, especially third parties, of motor vehicles are placed in a position where they can not get appropriate medical payment let alone the required monetary compensation. In Ethiopia, cursory looks at insurers reveal the following. All insurance companies insure vehicles, be it private or commercial. But as far as risky motor vehicles are concerned, the practice differs in some types of vehicles such as Isuzu (NPR) trucks. For some insurance companies, these trucks are regarded as hazardous vehicles. Some even call them as “Al Quada” with the notion that these drivers usually do not take good care of neither the public nor even themselves.

The corollary is that some insurers, such as United Insurance S.Co.,³⁷ deny coverage altogether, where as Nib Insurance S.Co.³⁸ increases the amount of premium unexpectedly. If these vehicles are not insured, coupled with the financial irresponsibility of owners, victims may not have adequate legal redress. Besides, if the amount of premium to be paid is exorbitantly high, this naturally discourages owners to enter into insurance contracts thereby increasing the number of judgment proof owners of vehicles.

The following two reasons may not work in Ethiopia now but they have their own implications. The first one is that in the United States of America tax law, most owners of variable annuities and variable life insurance can invest their premium payments in the stock market and defer or eliminate paying any taxes on their investments until withdrawals are made. And many critics opine that insurers are

³⁶ Cited at note 4, p.17

³⁷ Interview with Eskender W/Maria, United Insurance S.Co, claims department, on 12/07/08

³⁸ Interview with Yared Legesse, Manager, Nib Lideta Branch, on 15/07/08

interested in the business primarily because of legal benefits as opposed to providing protection against risks.³⁹ This rent seeking tendency naturally influences the amount of compensation to be awarded to victims. Second, is what is called as “redlining.” It is the practice of denying insurance coverage in specific geographic areas, supposedly because of high likelihood of loss, while the alleged motivation is unlawful discrimination based on color, age, gender, occupation, marital status, educational level and others.⁴⁰ If this happens in Ethiopia, it is easy to assess its negative financial implications on those who suffer damage.

3. Complexity of Insurance Policy Contracts

Insurance policies can be complex and buyers cannot easily understand them. As adhesive contracts, they are prepared by insurers containing too many exception clauses. As a result, premium buying individuals may buy them on unfavorable terms. To avoid such problem and to ease the business as a whole, regulatory frameworks are set. To highlight the Ethiopian experience for example, as discussed before, a would be insurance industry would submit its insurance policy to the regulator, the National Bank of Ethiopia, so that the latter ascertains the fairness of the policies.

Even though the contract is concluded with the consent of the parties and regulatory framework is set to safeguard the interest of the insured, insurance policies remain technical, detailed consisting of too many exceptions. In short, policies are designed in such a way that can mitigate insurers’ liability.

The commercial and private vehicle policies of Nyala, Nib and United Insurance Companies reveal the same fact. Firstly, the English version of these contracts is not easily graspable; sometimes go to the extent of being vague to a lawyer let alone to the policyholders who are lay persons

³⁹ Cited at note 4, p.17

⁴⁰ Ibid

in law. Secondly, policies are full of exceptions leading to the conclusion that there are only few opportunities for the insured to base his/her claim to get compensation. To reduce their own financial exposure and to avoid the moral hazard of insureds, insurers may use contractual clauses to mitigate their liability, but letting them use unregulated and unjustifiable, sometimes absurd, policies, however, is against the purpose of insurance law in general and the right of the victims in particular. All the above problems contribute their share not to effectively compensate the accident victim.

2.1.3.3 Tort Law and Practice

In this section, too, there are certain factors that impede the victim of the motor vehicle from manipulating the available remedies. Some of these problems are coming from the legal regime governing torts and others from its practice. The commonest problems⁴¹ in connection with this, among others, are the following:

1. Many Exceptions Leaving the Victim With out, or With Less, Compensation:

If we critically see exceptions in the law of torts and evaluate their implications on the amount of compensation to be awarded to the victim, it seems that, despite the fact that the legislature's intention is to strike the balance of interests of motorists and their own victims, it seems that the victim is unfairly treated. For example, under Art.2081(2), the owner of the motor vehicle shall not be liable where he proves that at the time when the damage was caused, the vehicle had been stolen from him. The implication is that the victim is only entitled to sue the tortfeasor only; and hence he/she cannot sue the owner of the vehicle. Simply put, the

⁴¹ Martha Belete, Mechanism of Compensating Automobile Accident Victims: A case of Third Party Motor Insurance, (Faculty of law, AAU, unpublished, 2003) pp.33-42. This writer acknowledges that many of problems discussed in this section of the paper are generally taken from the and the following sources.F.P.Grad,Recent Developments in Automobile Accident Compensation, Columbia Law review,vol.50,1950.pp.300-330.

victim can not avail himself/herself of the strict liability provisions of the Civil Code. At this time, the central point could be the victim may be left without any compensation if the driver is financially irresponsible, unable to pay the judgment. Why should an innocent victim be compelled to remain in such situation? Secondly, Art. 2086(2) states that the motorists shall be relieved of their liability, entirely or in part, only when the damage is due solely or partly to the fault of the victim. This sub article comprises two important points. Firstly, if the sole reason of the fault is the victim, the latter will be totally denied of compensation. If the person who sustains damage commits contributory negligence, he/she will be awarded partial compensation. These will also have negative implication on the victim. There are also other exceptions such as Arts. 2082, 2095 and others of the Civil Code. The idea behind strict liability is the owners will have the requisite money to meet the damage caused through the operation of their car. Taking into account the above exceptions, however, even though the victim is the sole reason for the event, the legislature should have always considered mechanisms of compensating the victim.

2. Difficulty in Assessment of Damages

The law of extra-contractual liability is a very cumbersome subject matter. On the one hand, ascertaining liability is difficult and on the other determining the amount of compensation to be awarded to victim is unpredictable, time-consuming and problematic.

Many provisions of the Ethiopian Civil Code on assessment of damages simply set certain factors that the judge must consider in his/her attempt to apply the damage is equal damages principle. But, this is not a simple task because the plaintiff and the defendant in majority of cases have clear contradictory statements which warrant due consideration. In effect, fixing the amount of compensation may be subjective or

dependent on the societal, moral or economic background of the judge. On top of that the amount of compensation hinges on the particular use the lost body part gives to the victim. A lost finger for a pianist and secretary operating computers may cost much when compared with a runner, for example. Even though the assessment of compensation is done in collaboration with the medical science, this is not an easy subject, too, as many medical practitioners argue. Thus, the difficulty of assessing damages contributes its own problem on victim's compensation.

3. Legal Inadequacy on Hit and Run Victims

Just as in other suits, a tort case must indicate the defendant from whom compensation is claimed. In other words, the defendant must first be known before the plaintiff institutes a civil claim. But, many times, drivers run down victims increasing their speed leaving behind only their dust and the victim. If the fact is committed in the night, this will be the best opportunity for drivers to escape from liability. A victim whose defendant is not known is commonly known as a hit and run victim. There are many recorded hit and run deaths and injuries in Addis Ababa. For example, from 1987 to 1994 E.C, there was 332 deaths and 4747 injuries in which the responsible parties have never been known.⁴² The law of torts, it seems, does not anticipate, let alone regulate, these tortious incidents leaving the victims without any sort of compensation. The legislature should have at least established a scheme to help award compensation to these particularly affected victims.

4. Congestion of Courts and Delay

Congestion is simply a situation in which a court is crowded with too many cases. Not only here in Ethiopia but also in other developed

⁴² Ibid, p.41

countries,⁴³ congestion still survived every legal systems. In other words even though “Hammurabi denounced it, Shakespeare immortalized it; Hamlet, in compiling his dolorous list of the burdens of man, sandwiched the “law’s delay” between the “pangs of dispriz’d love” the insolence of office,”⁴⁴ it is still in every legal system.

In Ethiopia, the litigious nature of the society coupled with the small number of court divisions, courts confront ever flourishing number of cases. Even if attempts have been done to help reduce congestion, though not statistically proved, it is a plain knowledge that a single case may take at least two or more years. This time consuming trend of courts is equally applicable to all types of cases whether these cases involve simple or difficult issues. Unlike other cases such as breach of contract or others, tort claims, as pointed out before, are difficult to entertain. Difficult from establishing liability up to assessment of damages. The difficulty may also be extended in the appellate court. It may also be caused to the judge as things may be based on the personal appreciation of facts by the judge seeing the case.

Congestion of courts has negative multiword implications on the victim of vehicle. It encompasses delay. Delay in oversimplified terms can be viewed as the products of two many cases and too few judges, and it.

“Causes hardship. Delay brings over courts in to disrepute. Delay results in deterioration of evidence through loss of witness, forgetful memories and death of parties and makes it less likely that justice will be done when a case is reached for trial... Excessive delay may result in the denial of reparation for wrongs. It may force parties into unjust settlements...”⁴⁵

⁴³ For more information see: P.C. Rao and William Sheffield, Alternative Dispute Resolution: What it is and how it works, 2005, pp.58 and the following.

⁴⁴ Walter E. Meyer, Dollars, Delay and the Automobile Victim, Studies in Reparation for Highway Injuries and Related Court Problems, 1965. p. 151.

⁴⁵ Ibid, p.153

Congestion firstly gives birth to delay. On the one hand delay can create hardship on the other it has a negative impact on evidence and the administration of justice. Hardship may be seen in terms of economic, social, psychological inconvenience of the plaintiff.

Taking these problems to the victims of vehicles, it is really frustrating in Ethiopia. Even though the constitution in its Article 19(4) is clear enough in stating the right to speedy trial and justice, it is safe to conclude that they are not treated as aspired by the legislature. The increasing in number of cases, the inproportionate appointment of judges through a seemingly-conservative procedure, the involvement of dilatory lawyers in the process and others compelled the victims of cars to be under the mercy hands of tort feasons.

CHAPTER THREE

Compulsory Third Party Motor Vehicle Insurance:

The Legal Regime

3.1 Introduction

In this part of the paper, this writer is going to discuss issues such as the meaning, the need for compulsory vehicle insurance, the experience of foreign countries in compensating traffic victims, the historical foundations of this claim system in Ethiopia and the present law regulating compulsory insurance for traffic victims in general.

Regard would, therefore, be had on the objectives, requirements, scope of application, insurance policy, the rights and duties of parties under the insurance contract, the fixed amount of compensation and emergency medical care. Controversial issues that have direct relevance in this legal regime would at least be indicated to the reader, if not properly remedied. In other words, along with presenting the legal regime under consideration, attempts would be made to pinpoint the legal defects together with the possible gap closing recommendations.

3.2 Meaning

As far as the meaning for compulsory third party motor vehicle insurance is concerned, one may come across two important points. Firstly, getting a universally applicable definition may be so difficult because authorities define it in terms of their convictions obtained from their own legal system. The implication here is that in some countries this form of insurance law may include any type of liabilities that may arise from a motor vehicle accident totally opposing some other legal systems. Secondly, the naming itself of this part of the law differs. For example, the name of this part of the legal regime in Ethiopia is termed as “Vehicle Insurance against Third Party Risks.”¹

¹ See art. 1 of Procl.559/2008, Vehicle Insurance Against Third Party Risks Proclamation

Against this background, in the opinion of this writer, strictly definition oriented treatment of this topic may not work. Instead, putting certain descriptions and analyzing elements included in it together with deducting the problems may be pedagogical in understanding this regime of the law.

In Australia, compulsory third party insurance is described as “...an insurance that covers personal injury costs for people injured in motor vehicle accidents, including drivers, passengers and pedestrians.”² Included here are firstly, compulsory third party insurance is part of the legal regime of insurance calling the application of general principles of the law of insurance on the subject matter under consideration. Secondly, even though it is termed as “Third party” insurance, it covers, however, drivers and passengers, who are regarded by some as not third parties. Besides, only injury costs, and not proprietary damages, are to be reimbursed, and this form of insurance would be in place if the accident giving rise to the liability is caused by motor vehicles. Incidentally, one may discern the fact that in Australia, compulsory third party insurance scheme takes into consideration the interest of not only third parties and pedestrians but also others such as drivers.

In the words of Henry Black, “compulsory insurance is described in terms of motor vehicle liability coverage which is required in most states as a condition to registration of such vehicle.” In this dictionary, the word compulsory is defined as “involuntary; forced; coerced by legal process or by force or statute.”³ Clearly indicated in this description is the idea that sometimes in most countries insurance coverage for particular harms would be forced by the law maker. In other words, taking into consideration the public interest at stake, the legislature may impose by legal process certain duties the citizens may comply with. One of such

² <http://www.ncc.gov.au>, visited on 10/17/2008

³ Henry Campbell Black, *Black's Law Dictionary*, 6thedi, p.287

involuntary activities expected from citizens is to insure their motor vehicles for specifically to be covered liabilities. Included in this dictionary terms is also the implementation aspect. In most states registration of vehicles is dependent on whether or not this vehicle seizes compulsory insurance. The idea is buying compulsory insurance coverage is a condition precedent for registration of vehicles.

Compulsory motor insurance may also refer to “a public scheme whereby the government makes it a requirement for all motorists operating upon the roads of its jurisdiction to secure, by means of insurance, a guaranty that they would meet losses to life, body and/or property resulting from motor accidents.”⁴ This type of insurance is considered in the first place as a public scheme. Secondly, entering into such contract is obligatory as it is a requirement for all motorists. Third, the obligatory nature works upon all motorists in a certain specified jurisdiction controlled by the government that issues the obligation itself. The motorists operating the vehicles must guarantee, through insurance, that they would meet their compensation duty against life, bodily or property losses arising from their own vehicle accidents.

Defects of this description may, be that compulsory motor insurance is limited to public scheme. However, the scheme, as is shown in foreign jurisdictions, can be carried on by private institutions. The second defect may be the above description does not show the scope of compulsory motor insurance. Whether third parties or pedestrians or other parties are entitled is not indicated at all.

When we say compulsory third party motor vehicle insurance, in the opinion of this writer it includes the following. In the first place, this legal regime pertains much to insurance than others. It is to be clear that the definition, brief historical overview, benefits, fundamental principles and

⁴ Getachew Sharew, Compulsory Motor Insurance in Ethiopia (AAU, Law Faculty, Unpublished), 1972,P.1

regulation aspect of insurance are briefly discussed in the second chapter of this paper. As an insurance, therefore, the discussion in chapter two, *ceteris paribus*, would be applicable in this particular form of insurance. It is also indicated in chapter two that all risks or perils under normal circumstances and in majority of cases are capable of being insured.

...motor vehicle...

One of the most commonly insured risks is the risk associated with the motor vehicle. Needless to say, vehicles are dangerous objects. They will have their own disastrous effects upon the human life and/or body and his proprietary interests. The experience of other countries shows that their respective laws do not take into consideration whether the vehicle is for personal or commercial use in so long as it is a motor vehicle. Although to be discussed later, the intention of the Ethiopian legislature is to include almost all vehicles.

...third party....

The other element may be the term "third party." In Black's Law Dictionary, third party is defined as "one not a party to an agreement, a transaction or an action but who may have rights therein."⁵ Taking this definition to what is under consideration; an insurance contract is concluded by the insurer and the insured for the benefit of third parties. The latter, therefore, do not have a certain contract with one of the contracting parties. But, they may have rights from this contract once the accident caused by the insured has inflicted harm upon them. In short, third parties may have rights therein once an accident occurred. The experience of many countries, of course to be discussed later, shows that third parties, preferably called as pedestrians, have been given legal protection against motor vehicle accident despite the fact that the scope of the legal protection accorded to them differs. The *a contrario* reading

⁵ Cited at note 3, P.1479

here is that generally passengers in the motor vehicle or other persons, such as drivers, who concluded a contract with the owner of the vehicle are excluded from the ambit of this law.

...It is compulsory...

The other point to take note of is that this insurance scheme that guards the interest of third parties is compulsorily imposed upon motorists or owners. Compulsory obviously indicates the obligatory nature of the law which denies the discretion of vehicle owners. It is clear that insurance is a contract where consent is the main element. That is, it is through the free and full consent of the owner of the vehicle that insurance contract is to be concluded. But, if there are public policy reasons, the legislature may deny the consent element of certain contracts. One thing that involves the interest of the public is insurance pertaining to motor vehicle as there are good reasons compelling its purchase.

It has been written that:

*“In general our society favors arrangements providing freedom of choice for each individual, it imposes restraints only when they are a reasonable price to pay for some significant advantage to the community or to individuals within it.”*⁶

In many countries, some would be discussed latter; the legislatures have already imposed some restraint on the motorist’s freedom of choice about insurance. “Thus, the critical issue today is not whether to impose such restraint but what degree of restraint to impose.”⁷

3.3 The Need to Make Insurance Compulsory

This is, I believe, the philosophy of many, if not all, legal principles. Parties at a certain transaction do have certain freedom to agree up on. Put in another way, as far as contract literature is concerned, parties are at liberty to conclude any type of contract. But, naturally, this is subject

⁶ Robert E-Keeton and Jeffrey O’Connell, Basic protection for the Traffic victim: a Blueprint for Reforming Automobile Insurance, 1965, P.341

⁷ Ibid

to the mandatory provisions of the law of contract. Such mandatory provisions, that the parties do not have to agree otherwise, are stipulated to serve the public at large. In other words, the legislature denies the freedom of contract of parties just for public policy reasons.

The idea behind making insurance compulsory may not have a different reason to what is described above specifically speaking and from the very outset, one can safely conclude that making insurance compulsory is aimed at doing justice for all. But, how does compulsory third party motor vehicle insurance render justice to the public in general and to the victim of accident in particular? To answer this basic question, I believe, we have to be very specific. Specifically speaking the idea of making automobile insurance compulsory emanates from the following objectives even though sometimes these objectives overlap each other. Though the justifications are manifold, indicating the following in my belief suffices.

1. To make Motorists Financially Capable of Meeting Accident Liabilities:

In the second chapter of this paper, we were in a position to discuss that there are two legal regimes that can make the motorists liable to accidents caused by motor vehicles. These are the law of torts and insurance. Clearly indicated in the Ethiopian Civil Code and in almost all other legal systems that the owner of the motor vehicle is responsible to accidents caused by his, her or its vehicles either based on fault, strict liability or others. In the law of insurance, too, it is crystal clear that if the owner enters an insurance contract with the insurer to the risks that can be caused by a certain vehicle, the insurer is duly expected to compensate the victim of the accident. In this chapter, it is also disclosed that even though these two legal regimes are destined to safeguard the interest of accident victims, i.e., although they are there to guarantee compensation to victim, the guarantee, one may conclude, is theoretical than practical. Theoretical or “not more than a paper remedy” for a number of problems that these two legal regimes exhibit. If we take

insurance: that it is voluntary, the problem of insurance companies, the complexity of insurance contracts in spite of the fact that they are regulated, and others would have its own negative and severe repercussions upon the amount of compensation to be awarded to the victim. The existence of too many exceptions in the law of torts, the difficulty in assessment of damages, the legal gap on hit and run accidents, the ever flourishing number of cases in ordinary courts and delay or generally the specific difficulties involved in handling the large number of motor accidents would certainly have its own problem on the amount of compensation to be awarded to the victim. The problem would go from bad to worse by the fact that the victim is expected to effect payments on medical treatments, he/she has to be able to eat good food, there may be persons who are dependent on him or her. Having all these needs, he may be, in most situations, unable to work.⁸

With all these evils on a victim, to repeat, the system of tort and/or insurance is very much characterized by unsatisfactory and uncertain method of claims.⁹ Therefore, the first reason of compulsory motor vehicle insurance is on the one hand to make motor vehicle insurance obligatory so that such unsatisfactory and uncertain claim system would be eliminated, and on the other to ensure that motorists discharge their fiduciary duty.¹⁰ It has been written that:

“The motorist who is prone to be subject to the hazards of motor accidents and who is, therefore, to be either contractually or extra contractually liable for compensation towards claimants, must, at all times, remain solvent and financially responsible. The introduction of compulsory motor

⁸ Martha Belete, Mechanisms of Compensating Automobile Accident Victims: A Case of Third Party Motor Insurance (AAU, Faculty of Law, Unpublished) 2003, P.

⁹ Frank P. Grad, Recent Developments in Automobile Accident Compensation, Columbia Law Review, Vol.50, 1950, P.317

¹⁰ Cited at not 6, PP.250-252

vehicle insurance will guaranty that the motorist will stand on a strong fiduciary base to the benefit of the accident victim".¹¹

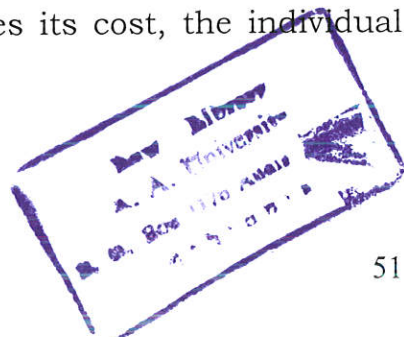
The corollary issue may be: why do we insist on making owners of vehicle solvent? Or, why do we shift loss so that motoring is required to pay its way in the society? There may be many justifications, but, some of them are the following. In the first place, when we make insurance compulsory, we give much emphasis to the fault committed by the motorist. If fault is committed, shifting loss must be the legal consequence attached to it. This naturally comes from the idea that the loss is to be shifted from one who has innocently suffered it to another whose fault has caused it. Second, "other ground of support for such a requirement is an unabashed appeal to one's sense of fairness."¹² The quoted writer goes on to state that:

"...No one can know where or when any particular accident will occur, but we do know that there will be unavoidable accidents if we permit motoring to continue. The cost of compensating losses from such accidents can be allocated to motoring....(Generally through compulsory insurance...) In cases of this type, the imposition of this relatively slight burden on many motorists seems much fairer than causing some particular motorists... to bear the burden."

Another justification may come from the allocation of resources. This economic argument requires motorist to pay its own way so as to help both individuals and the community so that they can make informed choices among different uses to which limited resources may be put. If this obligation is not imposed, individuals may unwittingly engage in motoring more than they would choose to do. The implication is that if motoring is obliged to pay its way or to compensate the victim involuntarily in a manner that clearly indicates its cost, the individual

¹¹ Cited at not 4, p.7

¹² Cited at note 6, P.257



can see this when deciding, for example, whether to buy a second or third car, hence his opportunity to make a wise choice is improved.

It could, therefore, be concluded that making insurance compulsory and strictly administering it assures the financial responsibility of motorists, which in the majority of cases does not exist in the absence of legal regime that makes insurance to certain risks involuntary.

2. to Guarantee Minimum Compensation to the Accident Victim

Another justification to make insurance contracts obligatory is, because the law of torts and insurance in many cases are theoretical, there has to come another segment of the law that actually guarantees at least minimum compensation of those who have sustained damage by the acts of others. The questions are: How does this law actually guarantee compensation? Why does in some countries this part of the law stipulate minimum compensation?

The minimum compensation to be awarded to the accident victim is to take place for sure because auto insurance is obligatory. Despite the fact that the obligation is imposed across the whole owners of vehicles, some vehicles may be driven without complying with this duty. Save to some exceptional circumstances in certain legal systems (or exclusions) and in some exceptions justified by public policy reasons, one cannot drive his/her vehicle without securing minimum compulsory insurance. Thus, almost all motorists would buy insurance policies and if what is clearly stipulated risk materializes, the insurer would automatically pay the minimum amount of compensation to the accident victim. Not only the payment is automatic, but also, as would be discussed later on, it is not dependent generally on the fault of the victim, which clearly avoids specific difficulties involved in handing a motor accident cases.

Another fact guaranteeing payment to the accident victim emanates from the idea that sometimes motorists may not buy the type of insurance imposed by law. In such cases, as it is shown in many compulsory

insurance laws of foreign countries,¹³ of course to be discussed in the next chapter of this paper, this particular type of law introduces another mechanism of pulling certain funds which could be maintained by the state to compensate what is commonly called as hit-and run victims.

Compulsory motor vehicle insurance provides minimum compensation to the victim as the experience of foreign systems exhibits.¹⁴ Minimum because on the one hand it takes into consideration the pecuniary interests of accident victims and on the other the profit making objectives of insurers. It is clear that if the law stipulates an extended amount of compensation, naturally this would disturb the insurance business. Thus, the idea behind compulsory insurance is not to make the accident victim very rich. To the extent that money can undo the physical and psychological impact of the accident that compulsory insurance law comes into existence. It must be for this reason that authorities in the field, Robert E-Keeton and Jeffrey O'Connell, write the following:

"We propose, first, that the burden of minimum level of protection against measurable loss-let us call it basic protection- be treated as a cost of motoring. The cost of providing this minimum level of compensation for traffic victims would be distributed generally among the persons who benefit from motoring. ...we propose to distribute cost through a form of compulsory motor vehicle insurance..."¹⁵

Thus, there are basically two ideas commonly assumed to underline the automobile system in each state of the United States. Of course, this is true in other countries in general and Ethiopia in particular:

¹³ See the experience of UK: ኃይለሚካኤል ከምባታ፣ አስገዳጅ የሥነ-ምግባር ወገን መድን ዋስትና ምንነትና አስፈላጊነት፣ የኢትዮጵያ መድን ድርጅት መጽሔት፣ ጥር 1983 ገጽ 37 As to French experience; see Paul Esmien, Liability in French Law for Damages Caused by Motor Vehicle Accidents, *American Journal of Comparative Law*, vol. 2 no.1 (1953), P.163, As to the experience of Ireland and South Africa, See: Wikipedia, visited on December 2,2008

¹⁴ Cited at note 2,

¹⁵ Cited at note 6, P.268

“The idea that the main objective [Of compulsory third party motor vehicle insurance] is to compensate for loss suffered and the idea that the best way to do this is to impose up on a motorist the burden of compensating the victim.”¹⁶

3. Other Justifications:

These justifications may be less compelling when compared with the above ones. But, these also have their own influence as far as compulsory third party insurance is concerned. The first subsidiary justification, one may name, of this legal regime relates to the idea of commercial transport efficiency. It was written that:

“Commercial transport efficiency requires the availability of insurance protection to various contingencies, i.e., commercial public service vehicles, passengers, goods drivers and coverages benefiting third parties.”¹⁷

Thus, it ensures driving remains affordable.

Second point that one may raise in connection to this is that it is crystal clear that in both developed, and developing countries,¹⁸ given the number of cases coming to ordinary courts and the relatively limited number of courts, delay is rampant. Delay in automobile accident cases is the common experience of courts because the court of jury is expected to arrive at the issue who was at fault. If the defendant is at fault, it will assess the amount of compensation to be awarded to the accident victim. This really demands time, expertise in the field and other technicalities. The issuance of compulsory insurance avoids such problems because in majority of cases it is dependent on the no-fault system and in some countries the law itself sets the maximum ceiling that can bar further litigation as to the amount of compensation.¹⁹ Another justification of

¹⁶ Ibid, P.24

¹⁷ Cited at not 4, P.7

¹⁸ See the discussions in Chapter Two of this paper on sub title “Court Congestion and Delay”.

¹⁹ Cited at note 1, Art. 16

this law may be to reduce further litigations, even though the judiciary is not totally ousted, and to save court's time and labour.

3.4 Experiences of Some Countries

Considering the experience of other countries, I believe, may be important on the one hand discovering the time of issuing such laws would show the historical legislative fault that our law makers committed as far as this type of law is concerned and on the other we can study the implementation mechanisms included in their respective laws together with the problems encountered and the remedies forwarded so that we can learn from their experience. As far as possible, the writer tries to make such countries representatives of their continents: United kingdom from Europe, the United States of America from America, some COMESA members from Africa and others. Let me begin from Europe.

1. The United Kingdom

Perhaps one of the oldest laws on compulsory third party motor vehicle insurance is the compulsory insurance of the United Kingdom. The Road Traffic Act of 1930 was put into practice from 1st January of 1931²⁰. Of course, before this law, however, Denmark and Norway issued their own law in 1918 and 1927 respectively.²¹

One writer has briefly described the need as follows:

“After the First World War the number of vehicles on the road has increased and with them the accidents, whilst running-down litigation began to assume the important role it has played for the last half-century in our (UK) courts. A number of motorists remained uninsured and in consequence sometimes the victims of their accidents obtained judgments but could not get them satisfied. This pricked the social conscience, and

²⁰ Kenneth Cannar, Motor Insurance: Theory and Practice, 1979, P.5

²¹ ኃይለማህ.ካኤል cited at note 13, P.36

eventually parliament passed the Road Traffic Act of 1930, which required from the 1st January, 1931 compulsory third party insurance against personal injury, subject to certain exceptions.”²²

It is very easy to assume that it is the failure of other laws particularly the law of torts and insurance that triggered the coming into existence of this law in the beginning of the 1930s. This law introduced a duty upon all motorists to have at least third party personal injury insurance.²³

Today UK compulsory law is defined by the Road Traffic Act 1988, modified in 1991, which requires that motorists either be insured, have a security, or have made a specified deposit (£500,000 as of 1991) with the accountant general of the supreme court, against their liabilities for injuries to others (including passengers) and for damage to other persons' property resulting from use of a vehicle on a public road or in other public places. However, such legislation does not apply to private land. Third party insurance has a far greater limit for third party property damage and will cover emergency treatment fees. It is an offence to drive a car, or allow others to drive it, without at least third party insurance whilst on the public high way.²⁴

All vehicles may not be compulsorily insured in the United Kingdom. For example, vehicles which are excepted by the act include those owned by certain councils and local authorities, national park authorities, education authorities, police authorities, fire authorities, health service bodies and security services.²⁵

As to its implementation, the insurance certificate or cover note constitutes legal evidence that the vehicle specified on the documents is insured. It is written that:

²² Cited at note 20

²³ Wikipedia, visited on November 15,2008

²⁴ Ibid

²⁵ Ibid, 26.

*“The law says that an authorized person, such as the police may require a driver to produce an insurance certificate for inspection. If the driver cannot show the document immediately on request, then the driver will usually be issued a HORT/1 with seven days to take a valid insurance certificate to a police station of the driver’s choice. Failure to produce an insurance certificate is an offence.”*²⁶

In addition to requiring motorists to prominently display a vehicle licence (tax disc) on their vehicle, this law establishes, the Motors Insurers Bureau to compensate victims of road accidents caused by uninsured and untraced motorists. This office also operates the motor insurance database, which contains details of every insured vehicle in the country.²⁷

2. The United States of America

Following 1920s, some states in the United States of America introduced compulsory tort liability insurance. The pioneer was Massachusetts. Its legislation became effective in 1927.²⁸ In this federating state, no car can be registered unless it is covered by tort liability insurance or a substitute form of security. But there were some exceptions such as motor vehicles owned by the common wealth or any political subdivision, motor vehicles or trainers owned by a street railway under public control, ambulances owned and operated by a hospital wholly or in part supported by public or private donations for charitable purposes, vehicles used by the fire or police department and other vehicles specifically exempted from registration.²⁹ Other exceptions not covered by this law were property damage of third parties, injury to guest passengers, the operation of a vehicle when it is driven without the

²⁶ Cited at note 23

²⁷ Ibid

²⁸ Cited at not 6, P.76

²⁹ Ibid

owner's consent, express or implied and others.³⁰ It is, thus, easy to understand that there were many exceptions to this compulsory form of insurance leading to the conclusion that all victims of a car accident may not get the compensation proportional to their damage. As to the enforcement of this law, "an applicant for a motor vehicle registration must present a certificate to the registrar to prove that he has complied with the law and has procured a statutory policy."³¹

Following Massachusetts, New York and North Carolina enacted compulsory automobile tort liability in 1956 and 1957 respectively.³² In general, their statutes are similar to Massachusetts but few differences are worth noting such as the latter two states covered, in addition to personal injury, property damage up to a certain limit, injury to a guest and these two states coverage was also extended to accidents occurring in any part of the USA or Canada, unlike Massachusetts, where the coverage was limited to public highways in its jurisdiction only. Another contrast is that New York and North Carolina had, in addition to compulsory liability insurance gap-closing devices tending to provide a financially responsible source for paying damages for bodily injury caused by negligent hit-and-run drivers or negligent uninsured motorists.³³ Thus, the scope of application of the law of these two states was better when compared with the Massachusetts.

Coming to the present situation, auto-insurance coverage in the USA for injuries and property damage done to others is compulsory in most states. For example, in 47 of the 50 states of United States, it is illegal to take a car on to the road without auto insurance.³⁴ One has to take note of two facts as far as the experience of the USA in this part of the law is concerned. Firstly, there is a minimum compulsory insurance and it

³⁰ Cited at note 9, P.313

³¹ Ibid

³² Cited at note 6

³³ Cited at note 6, P.84

³⁴ <http://ezinearticles.com/?> Auto-Insurance, visited on 12/4/2008

varies from state to state and secondly, its enforcement differs although it involves a substantial fine, licence and/or registration suspension or revocation as well as possible jail time in some states.³⁵

3. Some COMESA Members

COMESA, which stands for Common Market for Eastern and Southern Africa, was established by a number of countries such as Burundi, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Uganda, Malawi, Swaziland, Tanzania, Zambia, and Zimbabwe.³⁶ As the agreement of COMESA under chapter 3, Art.4 (2) clearly indicates members, in the field of transport and communications are expected, among others, to adopt a third party motor vehicle insurance scheme. In other words, this is a duty expected of participating member states to issue domestic laws that would safeguard the interest of third party victims. Besides, COMESA established a Yellow Card System (as opposed to Green Card in the UK and Blue Card in Asia), a Regional Insurance card system recognized by member countries as evidence of guarantee in compliance with the national laws covering the liability in respect of motor vehicle accident. This yellow card system is an extension of the statutory third party cover for vehicles that cross borders into the neighboring countries.³⁷

Covers provided by this scheme are minimum compulsory third party insurance cover, as those required by laws in force in each member state, third party motor vehicle property damage in those countries where such cover is not included in the minimum compulsory cover like in Uganda and emergency medical treatment expenses for drivers and passengers not exceeding maximum seating capacity for a limited sum of indemnity of a maximum of \$ 150. This cover is a statutory requirement

³⁵ Ibid

³⁶ ኃይለ ማህላኤ cited at note 13, P.38

³⁷ Ibid

and, therefore, obligatory.³⁸ In the opinion of Sindiso Ngweya, Assistant General Secretary for Programs, COMESA, this insurance scheme “facilitates smooth movement of motor vehicles in the region, encourages freer movement of people and goods, promotes the development of trade and tourism between member states and establishes a common system for the settlement of claims arising from inter-state motor vehicle accidents.”³⁹

The yellow card system operates among participating member states.⁴⁰ All member countries, including, Ethiopia, provide third party motor vehicle insurance scheme in their domestic legislation and the yellow card system.⁴¹

4. Others

Other countries have also issued compulsory third party motor vehicle insurance. In **Australia**, for example, all state governments impose this law and agree that compulsory nature of third party motor vehicle insurance provides important benefits to the community. The difference in this country is the scope of this law and its implementation. As to the scope, some states give protection to third party personal insurance and others include third party property insurance.⁴²

In **France**, principally a civil law country, all vehicles must be insured even if they are not in use. Vehicle insurances are either third party (au tiers), or the legal minimum and others.⁴³ In **Canada**, basic auto insurance is mandatory with each province’s government determining which benefits are included as minimum required auto insurance coverage and which benefits are options available for those seeking

³⁸ Ibid

³⁹ Africa, Recovery, Department of Public Information, United Nations, visited on, December 30, 2008

⁴⁰ Cited at note 37,

⁴¹ <http://www.addisfortune.com>, visited on 12/25/2008

⁴² Cited at note 2

⁴³ [File://H:/french motor insurance.htm](File://H:/french%20motor%20insurance.htm), visited on 10/17/2008

additional coverage.⁴⁴ In **Ireland**, the Road Traffic Act, 1933, and its amending law of 1961 (which is currently in force) require all drivers of mechanically propelled vehicles in public places to have at least third party insurance, or to have obtained exemption generally by depositing a large sum of money as a guarantee against claims.⁴⁵

3.5 Ethiopia's Experience

3.5.1 Historical Background

In spite of the fact that its implementation is easily characterized by historical legislative neglect, assessing the historical background of compulsory third party insurance reveals that there were earlier attempts to introduce this law in Ethiopia.

The Ministry of Public Works and Communication pursuant to the 1943 Transport Proclamation (procl. No. 35) attempted to introduce a system of compulsory commercial motor vehicle insurance.⁴⁶

Pursuant to the Transport Board constituted in this Ministry, the Board's minute around 1957 G.C revealed that this Board was exchanging information with the then insurance companies to submit their insurance policies, premium tariff, liability ceiling against third party coverage and others to issue compulsory commercial vehicle insurance directive.⁴⁷ After deliberation, the transport Board adopted a standard minimum compensation scheme for third party liability coverage ordering insurance industries to make necessary alternations to their scale of liability. The response of the insurance industries was positive. The mode of implementation was the licensing of commercial vehicles pre conditioned by the prior submission, to the Transport Board, of insurance certificates satisfying the transport Board's directive.⁴⁸ Two

⁴⁴ Cited at note 23

⁴⁵ Ibid

⁴⁶ Cited at 4, P.4

⁴⁷ Ibid, P.5

⁴⁸ Ibid

important points may be raised here. Firstly, the scope of application of this draft law was limited to commercial vehicles. It means that other vehicles might not be demanded to have compulsory insurance. Secondly, as to the risk insured, only liability for death or personal injury to third parties would be given legal protection.⁴⁹ Obvious here is that the driver or employees of the owner of the vehicle, passengers or property belonging to third parties or passengers were out of the legal framework. For reasons unknown, subsequent practice of the Board revealed that the scheme was out of implementation.⁵⁰

In the early 1960s G.C., another attempt to introduce compulsory motor vehicle insurance revived. Even though the source of this draft law was not known, the full text of this law was submitted to the office of the then Prime Minister for comments.⁵¹ But the problem that time was the absence of a comprehensive legal insurance framework. It was written that:

“It (the draft) was neither prefer (sic) nor feasible to consider such a proposal in the absence of a basic insurance law setting up general rules for the conduct of the insurance business”⁵²

Just like its predecessor, it seems that no one for sure knows why this draft was not implemented.

Another attempt was made in 1966. In this draft proclamation, it was clearly indicated that no person can drive or cause any other person to drive a vehicle on a road unless there is a valid vehicle insurance. But this draft proclamation had one exception in that vehicles belonging to the Imperial Government, Ministries or other Administrative Authorities,

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid, this writer was fortunate enough in that he has consulted unpublished archives in the ten prime Minister's office. In fact, I have simply quoted his findings

and if there is a guarantee that the claim of victims could be timely satisfied by these institutions may be exempted from buying compulsory insurance.⁵³ As to the amount of liability, Birr 10,000 (ten thousand) in the case of death, personal injury or property damage to third parties amounting to Birr 20,000 (twenty thousand) without affecting the former amount, and the maximum ceiling Birr 100,000 (one hundred thousand).⁵⁴

Another attempt was:

“...the 1970 insurance proclamation constitutes the earliest effort to introduce vehicle insurance for third party risks to the country. Mr. K-Friedman and Mr.C. Enhagen, an American and Swedish, were responsible for drafting the then compulsory motor third party insurance (CMTPI), which was intended to facilitate quick medical treatment for road accident victims. The subsequent coup that put the Derg regime in power, however, hindered the realization of the draft law, which was altogether neglected for the duration of the regime. In the same manner, the incumbent government had been reluctant during its first years in power to deal with the issue.”⁵⁵

Still another attempt was made by the Ethiopian Insurance Corporation in November, 1983 E.C. This draft was almost similar with the 1966 one except that the amount of liability to a passenger or a third party was elevated to birr 40,000 (forty thousand) where the maximum ceiling is 200,000 (two hundred thousand) and in case of third party damage to property, the maximum amount of liability was 200,000 (two hundred

⁵³ ኃይለ ማኅኤል ,cited at note 13, P.42. Let the reader know that this article is written in the Amharic language and translated by me.

⁵⁴ Ibid, P. 43

⁵⁵ Cited at note 41

thousand).⁵⁶ In the 1966 and 1970 drafts, victims of hit and run vehicles were not protected. The two drafts did not, however, get the status of the law.⁵⁷

3.5.2. The New Legal Regime on Compulsory Motor Vehicle Insurance in Ethiopia

3.5.2.1 Legislative History and Introduction

Before presenting the substance of the law, I believe, mention must be made on the legislative history of this new law. Once the attempts made in the Imperial and Military Regime failed, a draft law was prepared by the Transport Authority after discussion with Regional Transport Bureaus, insurers, university law lecturers, judges, persons coming from private institutions and other government offices.⁵⁸

After including constructive comments, the Transport Authority in October 16, 2007 referred the draft proclamation to the concerned standing committee of the House of People's Representatives, Infrastructural Affairs Standing Committee, to make recommendations and suggestions.⁵⁹ The draft was submitted to the House of People's Representatives and after deliberation the House submitted the draft principally to Infrastructural and to Legal and Administrative and Trade and Industry Affairs Standing Committees on Tikmit (October) 5, 2000 E.C in particular so that detailed public hearing would be made.⁶⁰ Following this at least two discussions were made. The first one was convened on Tikmit (November) 27, 2000 E.C. In this discussion, many questions were raised by the Infrastructural Affairs standing committee against the presenters. The respondents were the drafter, Transport Authority, headed by Ato Kassahun H/Mariam, Director of the Authority

⁵⁶ Cited at note 13, P.43

⁵⁷ Ibid

⁵⁸ A document showing the objectives of this new law, annexed (attachment 2) at the end of this paper indicates this fact.

⁵⁹ Cited at note 41,

⁶⁰ Document annexed at the end of this paper (attachment 3) is a minute which reveals the fact described above.

and Ato Fissiha G/Wahd, Legal Head of the Authority. There were 51 participants from Infrastructural Affairs Standing Committee, Legal and Administrative Standing Committee and others were from the House of People's Representatives.⁶¹ The participants of this discussion were all from House of People's Representatives.

Another discussion on the draft was conducted on Hidar (November) 6, 2000 E.C. This discussion is different from the above one in that participants came from different institutions. It was attended by 81 participants: 18 from the different Standing Committees of the National Parliament (HPR), 4 presenters, 63 persons from stakeholders, out of these 36 were from Transport Associations and 17 from insurance industries.⁶² A closer look at this minute indicates that there were a number of amendments proposed and accepted by the presenters. Generally after the draft proclamation was reviewed for over two months by the standing committees with the stakeholders, the parliament, after holding a brief discussion, passed it with a majority vote.⁶³ The vehicle insurance against third party risks, Proclamation. No.559/2008, was put into practice on the 9th day of January 2008.

But at least two questions may be raised here. Firstly, making insurance compulsory for third parties began in the United States of America in 1927, in the United Kingdom in 1930, in Kenya and Tanzania in the 1940's.⁶⁴ And other African Countries issued their own respective laws earlier before us.⁶⁵ Why did the Ethiopian legislature fail to listen the cry of the public in general and victims of vehicle accidents in particular?

⁶¹ Minute of Infrastructural Affairs Standing Committee, Legal and Administrative Affairs Standing Committee, and Trade and Industry Affairs Standing Committee, Conducted on Tikmit 27,2000 E.C (attached at the end of this paper -attachment no.4)

⁶² Minute of discussion by Transport Authority presenters to stakeholders, conducted on Hider 6,2000 E.C. (attached at the end of this paper -attachment no.5)

⁶³ Cited at note 41

⁶⁴ As to the experience of Kenya and Tanganyika, now Tanzania, See J.L. Kanyawayi, Compulsory Motor Insurance Scheme in Tanzania: The Need for a New Approach, East Africa Law Review Vol. 4, No. 1 Faculty of Law, Dares Salqam, P. 46.

⁶⁵ For details see, ተፈራ ደግሰ፣ ስለአስገዳጅ የተሽከርካሪ መድን አንዳንድ መሠረታዊ ነጥቦች፣ መድን፣ ቁጥር 6፣ 1985 ዓ.ም

“Gezahegne Bilew, 33, is a victim of a hit and run traffic accident four and a half years ago around Gerji, (Addis Ababa) that left him with a fractured bone in his left leg and a slew of unpaid hospital bills. He was an unemployed university student at the time, and his family was too poor to help. “It still horrifies me when I think about how the hospitals where I was taken were reluctant to take care of my wounds because they were afraid that I would not be able to pay the bill... I later got medical treatment after students at my campus and friends raised some money...for example like Gazahegne, however, the [new] law has arrived too late. “Forget my case, but it will benefit others who will become victims of traffic accident in the years to come... looking at his left leg.”⁶⁶

Well, the problem, as would be revealed later on, is not private. It rather is public. There is suspicion that the earlier government did not give attention because imposing obligatory insurance may increase liabilities of owners and hence there was a fear that this would be transferred to the public. Or there is also another suspicion that the strength or influence of insurers might substantially weaken the compulsory insurance regime. However challenging the case was, we should have issued compulsory third party motor vehicle insurance. To be frank, this is a fault we all committed and can never be redressed.

Though theoretical, the second issue pertains to the naming of the new law: Vehicle Insurance against Third Party Risks Proclamation. The experience of other countries indicates that the naming is Compulsory Third Party Motor Vehicle Insurance. The latter from the very outset indicates that the type of insurance is obligatory. Whether Procl.559/2008 is obligatory or not can not be understood from the

⁶⁶ Cited at note 4

caption itself. It is after reading the whole provisions of this law that one can arrive at to the conclusion that it is really involuntary. The legislature uses these terms may be because the COMESA treaty is designed in such a way. But, important in this treaty, I believe, is not the terminology but to domestically legislate the law. My point is: it should have been better had the words mandatory, obligatory or involuntary been inserted in the title of the proclamation. It is in this way that laymen, majority motorists, may easily understand the law.

3.5.2.2. The Rationale behind and Objectives of the Law

Needles to say, every law has its own objectives to accomplish. Third party motor vehicle insurance law, Proclamation 559/2008, cannot be an exception. As are clearly indicated in the preambular paragraphs of this proclamation and others, there are four rationales and objectives of this proclamation; namely,

1. The increase of vehicle accidents from time to time
2. The social problem of these accidents
3. The desire to establish a system for provision of emergency medical care, and hence
4. The demand to require vehicle owners to have third party insurance coverage.

Let me briefly discuss them turn by turn in spite of the fact that matters considered under one subheading might fall under another.

1. The Increase in Vehicle Accidents

One reason compelling the legislature to issue this new law is the escalation of vehicles accidents in Ethiopia. Of course, this reason was the compelling reason in the United Kingdom in 1930. In this regard, it was written that:

“The fact that special legislation concerning compulsory third party risks motor insurance was passed in the 1930’s in Britain was a reflection of some objective conditions which

gave rise to the need for such legislation. One of these objectives conditions was that both public and private motor transport had increased considerably by 1930 and that the risks to life and limb had proved to be quite considerable...⁶⁷

The above excerpt vividly indicates that the increase in a number of vehicles would escalate the accident. In Ethiopia, “according to the information disseminated during discussing for this new law, in the parliament, the number of cars has increased by 108 percent during the past ten years leading inevitably to more traffic accidents.” Pursuant to the latest statistics, 3000 (three thousand) people are killed every year in Ethiopia due to such accidents.⁶⁸ The property damage would be more than 500 million Ethiopian birr per year.⁶⁹

When we see the situation in Addis Ababa, the following statistics has something to say with regard to the point under consideration.



⁶⁷ Cited at note 64, P.43

⁶⁸ Cited at note 41

⁶⁹ ብሔራዊ የመንገድ ደህንነት ማስተባበሪያ ጽ/ቤት፣ ከ1995-1999 ዓ.ም የመንገድ ደህንነት እንቅስቃሴ ገፅታና የወደፊት የትኩረት አቅጣጫ፣ ታህሳስ 2000 ዓ.ም አዲስ አበባ፣ መግቢያ

Number of accidents causing death, serious or simple injuries and the amount of property damage from 1990-1999 E.C:

No	Year	Death	Injuries serious	Simple	Property damage	Total	Property damage in monetary terms
1	1990	283	487	1527	6284	8581	11,685,154
2	1991	280	470	1409	5186	7345	12,019,031
3	1992	300	515	1358	5120	7293	11,765,441
4	1993	268	499	1347	5089	7203	14,948,650
5	1994	269	532	1309	5512	7622	15,677,142
6	1995	319	528	1360	6429	8636	20,365,227
7	1996	305	563	1482	7839	10189	22,436,120
8	1997	320	731	1351	8111	10543	26,268,564
9	1998	363	833	1261	8557	11014	27,300,115
10	1999	347	640	850	7112	8949	23,049,667
	Total	3054	5798	13275	65239	87375	185,515,111

(Taken from Addis Ababa City Traffic Accident Prevention and Investigation Department)

If we see the number of deaths and injuries and the amount of property damage in Addis instead of getting reduced the traffic accidents is going worse from bad. From 1990 up to 1999 E.C., 3054 people died. The number of injuries reaches 19073 and 185,515,111 Birr of property damage. In 2000 E.C., too, the number of death is 395, serious injuries 727 and simple injuries 949. The amount of property damage is Birr 12,9603,014.⁷⁰ This statistic talks only about the situation in Addis Ababa. One can imagine the accident rate in others parts of this country. WHO claims that eight out of every ten people who lose their lives in Ethiopia by road traffic accidents are pedestrians and cyclists.⁷¹ Another point worth mentioning is the fact that a closer look at statistics at the Federal level in general and Addis Ababa in particular shows that the accident rate is increasing at an alarming rate proving true the first preambular paragraph of Procl.559/2008. Thus, the increase in the

⁷⁰ Addis Ababa City Traffic Accident Prevention and Investigation Department. The office can not give even the photocopy of the statistics saying unconvincingly that this is the rule of the office.

⁷¹ Cited at note 41

number of accidents is one cause for the coming into picture of this proclamation.

One last point to be raised here is the first preambular paragraph of the proclamation may be said defective. It simply says “whereas the occurrence of accidents caused by vehicle is escalating from time to time.” It does not say any other thing. Even the sole drafter, Ato Fisiha G/wahd, was surprised when this writer shows him the problem of this paragraph. But, it would be full if phrases such as the need to reduce it or others may be inserted, because another hidden objective of this proclamation is to reduce traffic accidents.⁷² That is why it was drafted by an authority whose responsibility is in the Transport Sector of the economy.

2. The Social Problem of Accidents

History has shown us that there was a controversy as to whether traffic accidents were part of public or private concerns. This time, however, this controversy does not exist. Simply put, the public nature of these accidents is unquestionable. In connection with this:

“if victims of motor vehicles were few, say, two or even ten a year, the issue of protecting such victims might seem too insignificant to attract public attention and concerted action. But the unfortunate fact is that the number of motor vehicle accident victims since the appearance of motor vehicles on highways has generally tended to be considerably high in all countries...”⁷³

When the second preambular paragraph says “whereas loss of lives, bodily injuries and damages to properties caused by vehicle accidents are creating social problem,” it elevates the problem affecting the Ethiopian population in general. The problem under consideration endangers all of

⁷² Interview with Ato Fisiha G/Wahd, Legal Department Head, Transport Authority, 29-12-2008

⁷³ Cited at note 64, P.38

us because we may not know who would suffer the injury, the amount of property to be damaged or who will inflict such damage, but we can be sure that it will definitely occur in reality. The alarming increase in traffic accidents, in short, is a social problem that needs to be curbed by the law.

Besides if a person dies of traffic accidents, and if he/she is a bread earner, it is simple to understand the economic impact on his/her dependents. If he/she suffers serious injuries, he/she is confronted with many economic and psychological problems. If the damage is on property, a relatively rich family may automatically be changed into a poor one. Really, taking into account the statistics above the legislature is correct in stating that this is a social problem that needs to be correctly remedied, if not totally controlled.

3. Provision of Emergency Medical Treatment

Any person who sustains bodily injury must be provided with emergency medical treatment. This is one of the medical ethics expected of doctors, pedestrians and other members of health institution.⁷⁴ As to the necessity of provision of medical treatment to everybody, it was beautifully written that:

*Wounds should be healed, bones set, prostheses supplied, psychic readjustment achieved... These things should be done, it seems to me, for every victim regardless of whether or not the victim was himself careless, whether or not the quality driver can be found, and whether or not he can pay or has purchased adequate insurance. Medical services should be supplied for humanitarian reasons-because the modern conscience demands that no one unnecessarily be left physically impaired.*⁷⁵

⁷⁴ Interview with Dr. Wuletaw Chane, Generalist, Ras Desta Memorial Hospital, 20-10-2008

⁷⁵ Alfred F. Conard, the Economic Treatment of Automobile Injuries, Dollars Delay and the Automobile victim, 1968, p.431

While the ethics is this one and humanitarian considerations dictate, in Ethiopia, the problem of provision of emergency medical treatment to persons who sustain damage as a result of car accident is still worrisome. The private health institutions, rumor is abundant, are very much interested in profit making than helping those who badly demand help. The sad story about this is even government established hospitals and others are also reluctant to discharge what is expected of them for a number of different reasons. In the presence of this bitter fact, the duty imposed on medical institutions, of course to be discussed later, to give emergency treatment is one reason for the coming into picture of the proclamation.

Another fact showing the necessity of this scheme is what is written in Amharic by the Federal transport authority.⁷⁶ The English translation is as follows:

“Emergency medical treatment is not a cause for traffic accident [...it rather is the effect]. But, adequate provision of medical treatment could greatly reduce the seriousness of the accident for a person who was about to die may be saved, a victim who may remain with serious injury may be placed in a position to sustain minor injuries. The accident statistics shows that out of 5 persons injured by vehicles, 1 will die in Ethiopia. According to WHO out of 30 persons, however, 1 will die in the world. This indicates that provision of emergency medical treatment in Ethiopia is worrisome. [Translation mine].

Thus, provision of an emergency medical treatment to accident victims is one of the objectives to be achieved by the legislature.

⁷⁶ Cited at note 69, P.5

4. The Desire to Make Insurance Compulsory

Another objective of Procl.559/2008 is the strong desire of the legislature to make motor vehicle insurance for third party risks obligatory. The law maker demands it for the following reasons. Firstly, even though there is a legal framework in torts and insurance that make the owner or driver of the vehicle to compensate the victim, it is widely understood that such protection is theoretical. Secondly, the occurrence of vehicle accidents is increasing progressively in Ethiopia and definitely disturbing the public. Hence, by making insurance obligatory, the law maker guarantees compensation to third parties. Third, as is discussed before, the COMESA Treaty imposes a duty up on member states to issue obligatory insurance law to remedy third party risks (or generally, the Yellow Card System). Even though Ethiopia is a forerunner of the COMESA agreement, it is the only country that did not issue such law until January 9, 2008.⁷⁷

Before this particular law was issued, firstly “Ethiopian registered vehicles without the yellow card have had a difficult time moving through the COMESA and other regions.”⁷⁸ Secondly, foreign registered vehicles having the Yellow Card may run down an Ethiopian or others in Ethiopia but the enforcement mechanism for the claim remained weak. The non promulgation of such law may not also facilitate the transport network that is going to be established as between and among COMESA members. It is, therefore, to satisfy this international duty that Ethiopia issued the law.⁷⁹

Whether these objectives could be achieved is dependent on whether they are actually reflected in the substantive provisions of this law and still whether the enforcement mechanism is effective and adequate. These will be evaluated in the next sub-titles and chapters.

⁷⁷ Cited at note 41

⁷⁸ Ibid

⁷⁹ Cited at note 58

3.5.2.3 Requirements of the Law

It was indicated that one of the objectives of Procl.559/2008, indicated in the third preambular paragraph of the same, is to require owners of vehicles to have third party insurance coverage against third party risks. This objective is actually reflected in Art. 3(1) of the proclamation. It reads as follows:

No person shall drive or cause or permit any other person to drive a vehicle on a road unless he has a valid vehicle insurance coverage against third party risks in relation to such vehicle.

This stipulation of the law is directly taken from Art. 5 of the Model Legislation (or commonly referred as Protocol) prepared by SADC and COMESA Countries.⁸⁰ Part VI of the Road Traffic Act 1988 (United Kingdom) section 143 is similar to the above article.⁸¹ The Ontario legislation has much similarity, too.⁸²

Art. 3(1) vividly indicates at least six basic elements of this law. Firstly, when it begins by saying “no person,” it includes both physical and artificial persons (Art. 2(14) of the Procl.) as it is obvious that both can own motor vehicles. Secondly, “No person... shall drive or cause or permit any other persons to drive...” The prohibition is not limited to the owner of the vehicle, rather that non-owners are also prohibited from driving. The major problem would be the meaning of driving, causing or permitting to drive. To drive must include the leaving of a car on a road even though it is incapable at present of being mechanically propelled.⁸³ It may also include a case of someone who left his/her car because it had run out of fuel and caused an accident when they crossed the road for help.⁸⁴ “Causing” or “permitting” to drive a vehicle is a matter of fact. The

⁸⁰ Cited at note 58.

⁸¹ John Birds, *Modern Insurance Law*, 4thedi., 2008 P.357-358

⁸² <http://www.e-laws.gov.on.ca/html>, visited on 12/11/2008

⁸³ Cited at note 81

⁸⁴ Ibid

word “cause” involves an express or positive mandate to use a car in a particular way, whereas “permit” is looser, and merely denotes an express or implied licence to use a vehicle.”⁸⁵ A garage owner was driving a car back from the garage after repair, at the request of the car’s owner. It was held in the United Kingdom that the latter had caused or permitted the use of the car.⁸⁶

The third element relates to the word “vehicle.” Vehicle is defined under Art.2 (5) and 2(6) of the proclamation. The latter article indicates motor vehicle means any vehicle moving on a road by mechanical or electrical power. It indicates that even an electric bus is envisaged in this Proclamation. Taking the reality into consideration, envisaging this may be laughable. But we have to know that the legislature must be wise enough to predict and regulate future activities. Where as Art. 2(6) begins by saying motor vehicle as any vehicle, Art.2(5) tries to narrow the scope by saying that “vehicle means any wheeled motor vehicle, semi trailer or trailer (as defined in 2(7)) for use on the road with the exception of wheel chair, implement of husbandry and bicycle”. This sub-article shows the inclusions and exclusions of Procl.559/2008. Included vehicles are trailer or semi-trailer or generally any wheeled motor vehicle and excluded are three; namely, wheelchair, bicycle and implement of husbandry. The exclusion of the first one is easily understandable. Bicycles may include, I think, both motor bicycles and the ordinary ones even though in Ethiopia, motor bicycles have become the source of vehicle accidents.⁸⁷ In France, motorbikes are treated similarly to cars.⁸⁸ It could be very absurd to require bicycle owners to have compulsory third party insurance in Ethiopia because this will obviously discourage their use for their expense may be higher than their value. Coming to another exception “implement of husbandry”, it is really difficult to

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Cited at note, 69, P.1-4

⁸⁸ Cited at note 43

understand why it is excluded. This exception becomes strange when one learns the Model legislation (under paragraph 3) issued by SADC and COMESA includes it in the definition. In short this is not an exception in this legislation. As the Amharic counterpart is “የእርሻ መሣሪያ” one may even dare to conclude that a tractor used for ploughing may be excluded from the ambit of this law.

The fourth element in Art.3 (1) is the word “road.” Road is also defined in article 2(9) of proclamation”). It reads:

Road means any highway, urban or rural, street, parking or terminal, bridge or any other passage customarily open for vehicles.

This definition is also in line with the Model Legislation. Under Art.3 of this Model Legislation, road means any highway, street, or other road to which the public or any section thereof has access. However, road is defined in the United Kingdom's law as “any highway and other road to which the public has access. It means that a car park is not included in such definition, and insurance is required when part of a vehicle is on a public road after being driven from private property.⁸⁹In this new law the first draft excluded the word “rural” and in the public discussion, conducted on Tikmit 16, 2000 E.C., participants strongly demanded its inclusion and the recommendation was accepted.⁹⁰ The definition of the law under Art.2 (9) is broad as it is illustrative in nature. This should be, I believe, warmly welcomed.

Another element pertains to “...unless a valid vehicle insurance converge...” Coupled with the word “shall”, this element of the law makes mandatory a certain insurance coverage. What constitutes this insurance coverage and others would be discussed later on. Besides, not only the coverage is obligatory, but also it must be valid. Once issued by

⁸⁹ Cited at note 81, P.360

⁹⁰ Cited at note 61, P.4-5

insurers, it must be renewed and satisfy the legal requirements imposed by the law.

The last, but not the least could be discerned from "...against third party risks in relation to such vehicle." As to who are third parties and the risks envisaged, I am going to discuss it soon. But at this juncture the reader must aware that the whole idea of the Proclamation is to cover third party risks.

Before winding up this section, a brief discussion must be made on Article 3(2) of the proclamation which reads:

Notwithstanding of sub Article 1 of this article, the Ministry may determine vehicles to operate on the road without requiring compulsory motor vehicle insurance coverage.

This sub article is an exception to Art.3 (1), which requires obligatory motor vehicle insurance against third party risks. The Ministry (Ministry of Transport and Communications according to Art.2 (12) of the proclamation) may exempt vehicles from buying this form of insurance. The issue, however, is: which vehicles could be exempted from this requirement? Before directly commenting on this issue, let me briefly present the experience from abroad.

The exception of this kind was the earliest experience of Massachusetts (1927) in the United States of America. If there is a substitute form of security such as a deposit with a state treasurer of \$5000 in cash or stocks and bonds,⁹¹ the requirement of compulsory motor vehicle insurance would not be imposed. In the present day England, vehicles owned by public bodies, vehicles owned by a person who has deposited Σ 500,000 in court may be relieved from the requirement.⁹² Coming back to Art.3(2) of the proclamation, participants or generally stakeholders asked the presenter, Transport Authority Director, Ato Kassahun Hailemariam, as to what is envisaged by this particular provision.

⁹¹ Cited at note 6, P.76-77

⁹² Cited at note 81,

He responded that if the country is in a war, for emergency reasons, only vehicles under the ownership of the Ministry of Defense may be relieved from the requirement. It was also indicated that even vehicles belonging to the Ministry of Defense may be required to have compulsory third party vehicle insurance in the time of peace.⁹³ The implication is that firstly unless another trend comes in the future via the Regulation, even government owned vehicles are treated just like privately owned ones, legally requested to buy this scheme. This requirement is again against the Model Legislation in Paragraph 6(3). Secondly unlike other countries, maintaining and guaranteeing payment in case of an accident against third party cannot exempt one from buying compulsory third party motor vehicle insurance. It seems that the legislature is strict in guaranteeing compensation.

3.5.2.4 Scope of Application

The idea under this sub-title is what is regulated by Procl.559/2008. In other words, which activities or transactions of a motor vehicle owner giving rise to liability are subject of the Proclamation.

As the title of the proclamation is clear enough and the provisions of the proclamation here and there dictate, the proclamation minds the interest of third parties in connection with motor vehicle accidents. The question is: what do we mean when we say “third party.” Thanks to the drafters of the proclamation, third party is defined under the Art.2(1) which goes:

Third party means any person other than the insured person, member of the insured person’s family, the driver or any person employed on a vehicle to which an insurance policy applies at the time when an accident occurred giving liability under such insurance policy.

⁹³ Cited at note 61, P.6

For the time being at least two important points merit special consideration. Firstly, the law defines third party as constituting any person; everybody. In principle, therefore, everybody may be the subject of the protection granted by this law. But, this principle, just like the majority of principles in the legal profession, has certain exceptions. The second point, exceptions to third parties, is exhaustively listed in Art.2 (10) of the proclamation. As to who is the insured person is easy to comprehend: it is the person who owns and has an insurable interest on a vehicle. The same holds true to the driver because he/she is a person who operates, or actually drives the vehicle. Simply put, he/she physically controls the vehicle. "Any person employed on a vehicle is a little bit different from the former in the sense that it may include more than one person. This will naturally include a person who assists the driver, who collects money if the vehicle is a commercial one or a repairer employed to repair the vehicle in case it gets mechanical problem.

Relatively unclear in this provision is the phrase "...member of the insured person's family..." Because the legislature in the first place anticipates the controversy as to the meaning of this phrase, it gives another definition under Art.2 (13) of the proclamation.

Family means husband, wife, child or any person who cohabits with the insured.

Well, who is the husband, wife or child would be proved by legal provisions in the family code or other facts, and hence this relatively does not have controversy. One area of disagreement between litigants may relate to "...who cohabits with the insured..." criterion. In short, who are envisaged in this terminology? In his response to questions raised by participant, the Director of Transport Authority responded that envisaged in a phrase. "... Who cohabits with the insured..." are only guards and servants.⁹⁴ Evaluating the response with the Amharic version of this

⁹⁴ Ibid, P.7

phrase (አብሮ የሚኖር ማንኛውም ሰው) I think, has one basic difference. While the drafter's intention is to limit the scope of application of this phrase only to guards and servants, what is actually legislated incorporates persons other than guards and servants. The implication is that in the opinion of the drafter grand parents or parents of the insured who cohabit with him/her may be considered as third parties and the legal protection is accorded to them, where as strictly considering the Amharic version of the phrase reveals that they are not considered as third parties and are excluded from the legal protection. To be precise, the latter position is right.

Another important point showing the scope of application is the type of risks covered. Clearly indicated under Art.4(2) of the Proclamation and in other provisions, the risks envisaged in the Proclamation are termed as third party risks and include loss of life, bodily injury, damages to property and emergency medical treatment. Death and injury, be it serious or simple, are given legal protection. The damage to movable or immovable property of a third party automatically entitles the latter to claim compensation. As it is one of the objectives of this new law, not only is the insurer expected to compensate loss of life, bodily injury or damages to property, but also cover the expenses of emergency medical treatment. The latter one may be included in the former two, but the legislature has expressly referred it because of the reluctance of medical institutions to give emergency treatment for fear that the expense may not be paid. In fact this goes with the very objectives of the Model Legislation.⁹⁵

Another provision of the law showing its scope of application is indicated in Art.7: It reads:

⁹⁵ The Model legislation on motor vehicle insurance is a protocol incorporated by the Southern African Development Community such as Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland Tanzania, Zambia and Zimbabwe, and the COMESA 22 members.

The following shall be excluded from the coverage of any insurance policy against third party risks:

1. Death or bodily injury to the insured person or member of the insured person's liability.
2. Liability in respect of death or bodily injury caused to a person hired by the insured person and occurred in the course of such employment.
3. Damage to the insured vehicle
4. liability in respect of damage to goods carried on basis of rent or payment on the insured vehicle; and
5. Damage to any property owned by or is under the custody of the insured person.

Coming back to the first sub Article of Art.7, it states that death or bodily injury of the insured person or his/her family is excluded from this law. They are also excluded in Art.2 (10) of the proclamation.

The insured or his/her family are out of the scope of the law because in the first place the major objective of this law is to guarantee compensation to third parties, and not other parties, and second, as is indicated in the public discussion before the proclamation was promulgated,⁹⁶ to cover risks materialized on a person(insured) or his family must remain as choice, and hence a right, and there is no public concern to make it obligatory. Another point worth mentioning in this sub Article 1, it seems that the exclusion only relates to death or bodily injury to the insured person or his/her family. Does this mean for example that property damage of the insured or his/her family is included in the law? The answer is in the negative because the cumulative reading of Art.2 (10) and 4(2) reveals that all risks of the insured or his/her family are totally excluded from the scope of the proclamation.

The second sub article of Art. 7 limits itself to the contractual or employment relationship between the insured person and others. Important to understand here is that death or bodily injury to a person employed by the insured which occurred in the course of such

⁹⁶ Cited at note 61, P.7

employment is not given legal protection. The points that merit special consideration here are: who could be hired or employed by the insured person and what does occurrence in the course of employment mean? Does this mean also that these persons do not have legal remedies? Considering the first issue, persons, of course briefly touched before, who could be hired by the insured may include the driver, the keeper (assistant), ticketer, or repairer or any other person, dependent on the type of vehicle. These persons may not be entitled to the legal protection of Procl.559/2008 when they encountered personal risks while they are doing their jobs on the vehicle. In other words, in their functional duty they may not be eligible to the protection accorded in the law. The a contrario reading is that even though these persons are employed by the insured, if there arises an accident inflicting harm upon the body of these persons while they are not in discharging their employment duty, for example, while they were walking around, they would fall in the scope of the law. The same holds true on their property not carried on the vehicle.

Just to repeat, in their occupational accident, these persons are excluded from the scope of this law although they suffer personal damage. The reason behind this exclusion is that there are other legal regimes governing this situation. One of these legal regimes may be the labour law, Procl.377/2003. In this proclamation, there are certain obligations of the employer. For example, the employer, among others, shall comply with the occupational health and safety requirements of the law and ensure that the work place and premises do not cause danger to the health and safety of the workers.⁹⁷ Besides, the employer shall be liable, irrespective of fault, for employment injuries sustained by his worker. But the employer would not be held liable for any injury intentionally

⁹⁷ Procl.377/2003, Labour Proclamation, Art. 92

caused.⁹⁸ When a worker sustains employment injury, the employer shall cover general and specialized medical and surgical care, hospital and pharmaceutical care and any necessary prosthetic or orthopedic applications.⁹⁹ The point, I believe, is not about legislating provisions of such kind, rather whether these provisions actually guarantee compensation to the worker. In fact, provisions of such kind were stipulated in the law of torts and insurance for third parties. The fact, however, was employees were not actually guaranteed their right to compensation. While the law excludes drivers, keepers and others in their occupational duty from its scope, regard was not had on whether there is effective cover in the employment law. And this may be really one of the problems of this new law. If we are determined to avoid the cry and grief of citizens, at least using money as an instrument, we should have extended the legal protection to everybody who sustains damage by motor vehicles.

The third exclusion included in Art. 7 is damage to the insured vehicle. This exclusion, I believe, is right when seen from two perspectives. Firstly, if we include a duty up on the insurer to pay damage to the insured vehicle, naturally this will increase the amount of premium to be paid to them. Conversely speaking, when protection extended by this law widens, the amount of premium required from the insured will also be high. Seen from the insured and insurers side, this will have a negative effect on the public. Secondly, this problem would be rectified if insuring the vehicle itself is open to choice of owners than making it obligatory.

The fourth exception relates to damage to goods carried on the basis of rent or payment on the insured vehicle. This has two points to be considered. The goods were carried on either through rent or payment. In the first instance, i.e., rent, the property may be useful to the owner of the vehicle and he/she does not buy it and hence it is not under his/her

⁹⁸ Ibid ,Art. 96

⁹⁹ Ibid, Art 105

ownership. It is used based on a rent contract. In the second one, goods are carried on the vehicle for reward or payment. In short, there is a contract of carriage. This is excluded from this law, because the contract of carriage is regulated in the Commercial Code of 1960. Articles 561-603 of the Commercial Code regulate carriage of goods and passengers by land. Particularly pursuant to Art.583 (1), the carrier shall, within the agreed time, convey the goods to the agreed place with all customary care and deliver them to the addressee. The carrier shall be liable for the loss, whether total or partial, of goods for any damage thereto or delay in the conveyance thereof.¹⁰⁰ Another point here, however, is when Art.7 (4) speaks of the exclusion on damage to goods carried on, it does not talk about whether passengers are excluded from the law. It will be discussed soon.

The fifth and last exclusion, because Art.7 is exhaustive, is damage to any property owned by or is under the custody of the insured person. The idea of this sub Article is what is discussed under sub article 1 of the same Article. The owner of the vehicle must not be compelled to enter into an insurance contract for properties belonging to him/her. It is up to him/her to do that.

One last point that deserves separate treatment as far as scope of the law is concerned is: Are passengers excluded from the scope of application of the law? One may argue that because passengers are not third parties, they cannot base their claim of compensation on Procl.559/2000. Alternatively, they may base their own claim on contract of carriage in the Commercial Code of 1960.¹⁰¹ But, the closer look at certain provisions of the law and the way Art. 7 are stipulated compelled this writer to arrive at a different conclusion. When one observes Art 2(10) of this proclamation, third party is defined in the form of any person

¹⁰⁰ Art 590 of the Commercial Code of 1960

¹⁰¹ During the discussions the drafters were of this opinion although the final version of the law does not indicate this.

excluding the insured person, his/her family, the driver or any person employed on a vehicle. Passenger who is the insured or his/her family may not qualify the definition of third party, and hence would be excluded from the scope of the law. If a person is employed on the vehicle, he is not a passenger and still is out of the scope. The implication is that passengers who are neither the insured nor his/her family can be covered under the “any person” phrase and hence can be regarded as third parties. Another point justifying this position could be gathered from Art. 7(4) of the Proclamation. It talks about the exclusion of liability in respect to damage to goods carried on basis of payment. It means that the carrier would not be answerable to property damages carried for reward. It does not expressly say that the death or personal injuries of passengers are out of the ambit of the law. Simply put no clear indication to that effect. In effect contractual personal injury relationship of the carrier and passengers are included but contractual liability of damage to property is clearly excluded. In short, impliedly speaking, liability in respect of death or bodily injury caused to passengers is given protection by Procl.559/2008, but not their property damage. Thus, as far as the passengers’ property damage is concerned they have to resort to other laws. Another point corroborating this argument may be to see the experience of other countries such as United Kingdom. This country is selected because there is a striking similarity between Art.7 of the proclamation and section 145 of their Road Traffic Act of 1988. The latter, after enumerating the exceptions of Art.7 of our law, finishes by saying that compulsory third party motor vehicle insurance has no business to any contractual liability. The latter terminology obviously includes passengers.¹⁰²

¹⁰² For more information: See cited at note 81, PP.358-360

The Ethiopian law, however, does not have a stipulation of such kind leading to a conclusion that Procl.559/2008 may include passengers as one of its subject.

3.5.2.4. Insurance Policy

Another way of showing the substance of this new law is to see the contents of insurance policy. Art.4 (1) of the Proclamation states that:

Vehicle insurance policy against third party risks shall only be issued by insurance companies.

Two points need to be considered here. The first one is insurance policy and second insurance companies. Thanks to Art.2(8) of the Proclamation, insurance policy is defined as a contract whereby an insurer undertakes to pay compensation to any third party for death, bodily injury or damage to property caused by the vehicle of an insured person. Insurance policy, per. Art. 654(1) of the Commercial Code, is also defined as a contract. The difference between these two definitions is that concluding an insurance contract in the Commercial Code is voluntary, i.e., it is done through the free and full consent of the parties. No one or no law forces the person who has an insurable interest to go to insure his/her vehicle. But for third party risks, Procl.559/2008 obliges the person to approach the insurer and conclude an insurance contract. Once obliged, however, the insured person may choose an insurer to buy the insurance policy.

Considering the second point, insurance company, it is defined under Art. 2(2) of the Proclamation in that it is a company licenced to undertake an insurance business in accordance with the relevant laws. One relevant law, of course the main one, is Proclamation 86/1994, Supervision and Licensing of Insurance Business Proclamation. Presenting the details of this proclamation may put the writer in the irrelevance, but basic requirements for a certain entity to carry on insurance business are the following. The company has to be a share

company, its capital must be between ETB 3-7 million (of course this is currently under amendment), its principal officers (including the board members) must be approved by the National Bank of Ethiopia and it must get a licence.¹⁰³ It is only through satisfying these basic elements that a company is licenced to undertake insurance business. So long as it satisfies the aforementioned requirements both government and public insurance companies could issue vehicle insurance policy against third parties risks. In this case, the Ethiopian system is different, for example, from the Australian one in that in some states this business is monopolized by state's insurance companies only.¹⁰⁴

When Procl.559/2008 says the policy is to be issued only by insurance companies, it becomes consistent with procl.86/1994 amending Art.656 of the Commercial Code.¹⁰⁵ Because reference under Art.35 is made by Procl.559/2008, the general provisions of the law of insurance concerning insurance policy would be applicable to this new law. It is only when these general provisions are in conflict with the provisions of this new law that we must exclude their application.

3.5.2.6. Obligations of the parties

Let us discuss the duties of the parties, namely: the insured, the third party who sustains damage and the insurer. As indicated before the general provisions of the Commercial Code are applicable hand in hand with this new proclamation unless they are inconsistent. Thus, the duties of the insured would be collected from these two laws.

The first, of course the obvious, duty expected of the insured is the duty to pay premium. Premium, pursuant to Art.2 (15) of the Proclamation, is defined as the amount paid for an insurance policy. In spite of the fact

¹⁰³ Art 4 of procl.86/1994

¹⁰⁴ Cited at note 2

¹⁰⁵ This Article states that the conditions on which physical persons or business organizations may carry on insurance business shall be provided by law. This indicates that the 6 business organizations recognized by the Commercial Code and even physical persons could be given the capacity to carry on insurance business by law, although Procl.86/1994 and Procl. 359/2008 limit the business only to share companies.

that this duty is not clearly indicated in this new proclamation,¹⁰⁶ the cumulative reading of Articles 654 and 666(1) of the Commercial code, however, imposes a duty upon the motor vehicle owner to pay the amount of premium. The amount of premium to be paid in compulsory motor vehicle insurance is not to be agreed by the insured and the insurer, it rather is to be decided by the government.¹⁰⁷ The factors to be considered and the process of determining the amount of premium and other issues would be discussed in the next chapter. Thus, here one has to understand the fact that the premium amount to be paid either in one or more installments is not to be negotiated as between the contracting parties.

Another duty is the duty to provide information as per Art.11 of the proclamation. This Article states that:

Any person insured shall, where requested by or on behalf of a person entitled to compensation, provide information on:

- 1) Whether the vehicle is insured; and
- 2) The conditions to which the insurance policy is subjected as specified in the certificate of insurance pursuant to Art. 9 of the proclamation.

The request to be given information may come from either the beneficiary of the insurance contract or from another person on behalf of the beneficiary. The law has entitled the latter to request information because either the beneficiary has been seriously injured and hence cannot physically approach the insured person or if death is involved in the accident, it gives right for the beneficiary to claim it.¹⁰⁸ The information to be given includes whether the vehicle is insured. Although insuring vehicles for third party risks is mandatory, sometimes the insurer may not insure it for a number of reasons. However adequate the

¹⁰⁶ One may, however, discern this duty from Art.27(b) of procl.559/2008

¹⁰⁷ Ibid

¹⁰⁸ Art 705 of the Commercial Code states that where no beneficiary has been specified or he has been revoked or is not alive, the capital to be paid by the insurer shall be paid into the subscriber's estate. This indicates that unless such conditions are included, the compensation has become the estate of the deceased allowing heirs, therefore, to request information to claim the compensation

enforcement mechanism of this law is, naturally, as the experience of other countries show,¹⁰⁹ there may be some individuals who would not discharge their legal obligation. If a person entitled to compensation or other on behalf of the former requests information from the owner of the vehicle and responded to the effect that the vehicle is not insured, the remedies available to persons entitled to compensation are included, of course these are to be discussed later, under Arts. 20, 24 and 37 of the Proclamation.

If the response of the owner is that it is insured, then he/she has to again comply with Art. 11(2) of the Proclamation. In this case, he/she is expected to disclose facts included under Art. 9(2). These facts include name and address of the insured, identification plate, chassis and motor numbers of the vehicle, the time of commencement and expiry of the insurance policy, conditions subject to which the policy is issued, persons or classes of persons entitled and name and address of the insurer. The disclosure of these facts to the person entitled to get compensation or his/her agent is duly imposed on the insured because in the absence of this duty, the third party cannot claim compensation based on Art. 17(2) of the proclamation. It is stated under Art.17(2) that:

Any third party entitled to compensation may submit his claim, together with supporting evidence, directly to the insurer.

In this provision there are basic rights of the third party who sustains damage as a result of vehicle accident. Firstly, any third party is entitled to compensation; secondly, he/she has the right to claim compensation directly from the insurer.

This indicates that in principle the third party on whom damage is inflicted may not go to the court having jurisdiction to claim compensation. In this case, all the problems that were discussed in

¹⁰⁹ In many countries, there is a fund for victims of uninsured vehicles despite the fact that insuring is obligatory. For details see: cited at note 81, P.379 and the following.

chapter two of this paper, may not affect the interest of the party who claims compensation. All expected from the latter, therefore, is to corroborate his claim by evidence. The evidence may be taken from the insured as it has the duty to provide it. It may also be taken from the relevant Traffic Office or it may be proved before the insurer by witnesses. One of the introductions of this new law is to entitle the accident victim or his heirs, if there is death, to directly go to the insurer so that compensation is to be awarded without passing through straight jacket rules of courts. The two party system will naturally simplify the three party claims system commonly seen in courts. But, the beneficiary is expected to bring his claim within two years from the occurrence of the accident giving rise to the claim or from the day when the parties knew of the occurrence.¹¹⁰

Another duty of the insured in relation to disclosure of information relates to the duty to exactly state all the circumstances within his knowledge that have direct effect on the risk to insurer undertaking to insure.¹¹¹ In the discussion conducted on Tikimit (November) 27,2000 E.C. the drafters of Procl.559/2008 clearly indicated that, in spite of the fact that the amount of premium is to be determined by the government, the premium amount will definitely be different basing itself on the value or the physical characteristics of the vehicle. Thus, whether a vehicle is efficiently conditioned will be taken into consideration. This indicates that before the policy is issued, the insured must exactly state all material facts of the vehicle.

Another is the duty to notify the occurrence of accident pursuant to Art.17(1) of the Proclamation. Any insured person shall, unless prevented by the existence of force majeure, give to the insurer notice of an accident caused by the insured vehicle immediately or at the latest within ten days from the date of the occurrence of such accident. This

¹¹⁰ Cited at note 100, Art. 674 (1)

¹¹¹ Ibid, Art. 667

duty is not a newly introduced one by Procl.559/2008 because this was also imposed as a duty by the Commercial Code in its Article 670. The difference of these two laws is the maximum number of days given to the insured to notify the existence of the accident. While the Commercial Code says the insured has to notify the insurer as soon as he knows of such occurrence or within not more than five days, the new one states immediately or at the latest within ten days from the date of the occurrence of the accident. The legislature in the new law gives extra five days for notification. This indicates that on the one hand the 5 days requirement of the Commercial Code was not taken to be adequate by this legislature and on the other the legislature wants to simplify the claim system with the intention of guaranteeing payment to third party victims.

Another duty of the insured is the duty to secure insurances coverage for liabilities arising out of collision, roll, fire or explosion caused by the insured vehicle and the fall of objects carried by the vehicle, its accessories or tools being used in connection with the vehicle.¹¹² Previously, we discussed that liabilities arising from a vehicle, trailer or semi-trailer could give rise to liability in the Proclamation.

Besides, under Art.15 (2), the legislature goes to the extent of regulating even accessories and equipment that can connect the vehicle with its trailer or semi-trailer. The duty of the insured is to insure liabilities coming from the fall of the object carried by the vehicle and tools used on the vehicle. This indicates that the scope of insurance coverage guaranteeing compensation is understandably broad.

Now the question is what are the duties of the insurer? There are many duties of the insurer as can be collected from this new law. The basic duties of the insurer would be discussed now. Others, however, would be touched in due course.

¹¹² Cited at note 97, Art 15

The first basic duty of insurers, defined as companies issuing vehicle insurance against third party risk pursuant to Art.2(4) of the Proclamation, is to accept the request of owners of vehicle insurance against third party risks. Before the coming into existence of this new law, insurers have discretionary power as to what kind of vehicle they insure. In other words, an insurance company may not, for example, insure a minibus taxi or an Isuzu truck for fear that these vehicles would cause very serious accidents repeatedly. Nor are they compelled to insure vehicles that are not efficiently conditioned or technically good. But, now insurance companies are duty bound to accept insurance contracts against third party risks. Just like the insured person, Procl.559/2008 does not clearly indicate this duty. But in the discussion held on this new law, this duty was clearly indicated that insurers would not have the right to reject the request of the owner against third party risks.¹¹³ But this duty would raise certain issues to be considered.

Firstly, are insurers expected to insure vehicles which are not technically fit? If so, do they have some rights against the owners of these vehicles? Although not well researched, rumors are abundant that the majority of vehicles driven in Ethiopia are either second hand or have been serving for many years. This implies that these vehicles are not technically fit compared with the new ones. If they are not in a good technical position, the possibility that would cause accident is very high indicating that the scope of the liability of insurers widens. This naturally would go against their objective of profit making. In the opinion of the Transport Authority,¹¹⁴ the rights of insurers may be safeguarded in either of the following two cases. Firstly, whether a vehicle is technically fit or not is to be decided by the Authority and other relevant authorities. The point is if the annual technical fitness of a vehicle is such that it cannot be driven, then the vehicle would be said of no use and its plate number would be

¹¹³ Cited at note 61, P.8

¹¹⁴ Ibid, PP. 8-9

revoked. The questions to be raised here, however, are: does the Authority have the required skilled man power to do so? Taking in to consideration the reality now, is it that much serious in prohibiting such vehicles from being driven? Could the technical fitness be done with in shorter period of time? These questions would have their own negative economic repercussions on insurers. Secondly, if the vehicle is not that much technically fit or has served for many years, insurers would be given the opportunity to require increased amount of premium. This would not make technically unfit and old vehicles road worthy, an important step in reducing traffic accidents.

Another issue may be: Can insurers depend on bad or good driving capacity of the driver/owner in their duty to accept this form of insurance? Let us briefly discuss the experience of other countries. In the Compulsory Motor Vehicle Insurance Law of Massachusetts,¹¹⁵ there were three tiers of drivers; the first one are the normal, voluntarily insured motorists. These do not have problem because insurers are voluntary to insure them as they have good driving capacity and many of them are very careful in driving. The second one are the assigned risks in the sense that insurers prefer not to accept them as a policy holder because they have bad driving capacity. In this case, a driver, who is refused insurance, or received the notice that this existing policy would not be renewed, must show that his application is rejected. In this case, the person would be put in the assigned risk plan, where all insurance companies are required to participate in the plan. The assigned risks are assigned to each company in proportion to the volume of compulsory insurance written.

The third one are those other than the assigned risks who are ordered to be insured, but failed because of, for example, conviction for reckless driving or cancellation of liability policy. The difference between the latter

¹¹⁵ Cited at note 6, PP.76-83

from the former one is that the latter are less dangerous in driving. In this case, they may appeal to the Board of Appeal saying that it is improper and unreasonable to refuse the policy. The Board will decide on the matter.

In France,¹¹⁶ too, insurance companies ask the party who demands coverage to come up with his/her record from previous insurers; otherwise, the amount of premium would be high. Unless, hopefully, in the forthcoming Regulation emerges the idea that the amount of premium is to be dependent on the good/bad driving behavior of motorists, this is not indicated in Procl.559/2008. If this factor is to be taken into consideration in the Regulation, the fact that we do not have a data base on good/bad driving capacity would be a problem leading. This is unfair to insurers as they carry an economic burden of compensating victims of such drivers.

Another duty easily discernible in the Proclamation is the obligation of insurers to issue insurance policy, certificate and stickers.¹¹⁷ Once insurance companies and the insured concluded the contract of insurance, they would issue the policy showing that the vehicle is insured, certificate of insurance comprising Art.9 (2) of the proclamation. Besides, as Art. 9(3) indicates that insurer shall endorse on the certificate a declaration that the policy to which the certificate issued complies with the law. Otherwise, insurers may be subject to the penalty stipulated under Art.37 of the Proclamation. The certificate issued by the insurer shall be valid for not less than one year from the date of issuance.¹¹⁸ This reveals that parties in the insurance policy may agree any period of time for which the policy is valid, but they can not have the right to lower it below 1 year. The law maker, in our view, imposes such duty upon parties in the first place in that concluding insurance policies have

¹¹⁶ Cited at note 34

¹¹⁷ See Arts. 4(1), 9(1) and 12 of Procl.559/2008

¹¹⁸ Ibid, Art.10

administrative expenses and this has to be reduced by stipulating a requirement of such kind and secondly, if the time could be lower than 1 year, this will open a door for fraud to be committed against third party victims.

3.5.2.4 Extent of Liability

Another obligation imposed on the insurer is the duty to pay compensation to risks covered in the insurance policy. Because issues surrounding it are numerous and controversial in their nature, it has been given separate treatment.

Art. 16(1) of the proclamation states that:

The amount of compensation due to damage caused by an insured vehicle shall not exceed:

- a) Birr 40,000 (forty thousand) in the case of death*
- b) Birr 15,000 (fifteen thousand) in the case of bodily injury and*
- c) Birr 100,000 (one hundred thousand) in the case of damages to property.*

One way of understanding this provision may be by posing issues.

The first issue is: is this in accordance with the Model Legislation of SADC and COMESA to which Ethiopia is a party? This Model Legislation in its Art.7 clearly indicates that the amount of compensation that the insured is to enter, and hence the insurer to pay, may be decided by the member states taking into consideration the economy and other factors. Thus, Ethiopia will not violate its international duty by stipulating Art.16 of the proclamation. Second issue may be: is the extent of liability arbitrarily set? The answer is in the negative in the sense that before the final version of Art.16 of the proclamation, the extent of liability was 30,000 (thirty thousand) in the case of death, 12 (twelve thousand) in the case of bodily injury and 100,000 (one hundred thousand) in the case of damages to property.¹¹⁹ The base of calculating this latter extent of liability, as was revealed in the discussion, was not dependent on the

¹¹⁹ Cited at note 61, P.16

macro and micro economy of the country. It was rather based on the amount of compensation decided by courts for traffic accident victims.¹²⁰ In the discussion, however, in spite of the fact that insurers opine on the otherwise, participants, however, strongly recommended to set the amount of liability as stipulated in the Commercial Code.¹²¹

Against this background, let me discuss the extent of liability. As is clearly indicated under the aforementioned Article, the legislature stipulates the maximum ceiling of amount of liability that the insurer is to pay. The point that deserves discussion is that unlike the experience of other countries, why does the legislature fix the maximum amount of liability for each type of risks? There are two main factors as presented by the drafters;¹²² namely, firstly, the interest of insurers in particular and the public in general. The argument is that if the amount of compensation to be awarded to third parties is greater than this one, the amount of premium that the insurers would require and the government will set increases. Needless to say, the amount of premium increases when the risk involved is highly probable.

If the amount of premium is high, this will be cumbersome for the public. If still the coverage is broadened without increasing the premium, this is dangerous for insurers. It is dangerous because they may be expected to pay a great deal of money disproportionate to the amount of premium they collected. This will have its own repercussions on the economy and the public in general. The second reason is that if a party is of the opinion that the damage he sustains is greater than what is included under Art.16(1), he may resort to Art.16(2) to claim greater amount of compensation. It follows from this that what is included under Art.16(1), therefore, is what could be claimed by the victim directly going to the insurer. If the injured party feels that the extent of liability

¹²⁰ Ibid, P.9

¹²¹ Cited at note 62, P.7, see also Art.597 and 598 of The Commercial Code

¹²² Cited at note 61, P.9-17

included in Art.16(1) of the proclamation is unfairly estimated, he may resort to the court having jurisdiction, naturally this is dependent on the amount of claim and the place where the accident occurred to claim against the insured person, and not the insurer, in accordance with the law of torts of the Civil Code.

Another point is whether or not Art.16 regards the fault of the victim as one factor. The closer look at this provision and the intention of the legislature indicate that whether the victim was at fault was not to be considered as a factor. Had this been envisaged, the legislature would have indicated. But one must, however, be fair to the insurers that intentionally committed fault must not be compensated. Taking into consideration Art.16(2), we can conclude that the amount of liability included in Art.16 (1) of Procl.559/2008, is an emergency one which could be claimed directly from the insurer. Any amount greater than this may be claimed from the insured in the formally established court of law through tort action.

The closer look at Art.16 (1) of the Proclamation may have certain problems. Firstly, the Amharic version and the English version of Art.16 (1) (a-c) do not convey the same message. Whether the amount of compensation stipulated from a-c would be paid for each and every victim or for the whole victims in the accident is not clearly indicted in the English version. The Amharic version, however, is clear as the amount of compensation is to be paid per person who sustains damage in the accident. In the presence of the fact that the Amharic version is superior to the English one, this problem of the law may be purely academic.

The second problem of this law may be the type of payment that the insurer is expected to discharge. Nowhere in the Proclamation is included as to whether or not the amount of compensation to be paid is effected in the form of arrears or lump sum. One may say that this is not a problem of the law, but one can be sure that this could be one cause

for litigation. As a source of litigation it may delay the payment of compensation to be effected immediately after the occurrence of the risk. This naturally is against the very objective of Procl.559/2008.

The other problem of the law could be discovered when the amount of compensation stipulated in this provision is compared with the Framework for Regional Model Motor Vehicle Insurance Legislature (or shortly the Protocol) adopted by SADC and COMESA countries. It has been clearly indicated under Art.7(2) that the amount of compensation decided by each member states may be reviewed at least annually by the relevant government organ of states after taking into consideration the cost of living in the country. Art.16 (1) of the Proclamation is not designed in such a way. Surprising, however, is Art 27(6) of the Proclamation in that the Board has the power to study on policy matters relating to premium amount and submit the same to the government so that it could be adjusted. Does this mean that the amount of premium would be adjusted without adjusting the amount of compensation? This, I believe, is against basic insurance principles and rights of persons who sustain damages.

Another problem is the concern of insurers. In the letter dated Sene (June) 19, 1998 E.C., Association of Ethiopian Insurers,¹²³ sent a letter to the Transport Authority, the drafter of this new law, saying that this new draft law does not take into consideration generally the economic interest of insurers. One point of controversy raised by them was that the draft law (the final version is the same as the draft) in its extent of liability does not take into consideration the age, educational status, physical characteristics and other factors of third parties. This would make the obligation of insurers onerous and will put in the position that the insurer may not be interested to control the whole transaction. But, this worry of insurers has been given a “deaf ear.” This is not, however,

¹²³ Association of Ethiopia Insurers, letter written under its temporary General Secretary Tefera Demes, ኢ.መ.ሰ.ግ/008/98, Sene 19,1998 E.C. Addis Ababa, Ethiopia

that much surprising in the presence of the fact that much, if not all, compulsory motor vehicle insurances interfere with the contractual rights of insurers for the benefit of third parties.

Connected to the duty to compensate the third party are restrictions, conditions or warranties that the parties stipulate in their insurance policy or contract. Procl.559/2008 has come up with a different trend of insurance policies. Let me discuss the restrictions or conditions of insurance policies stipulated in the law; namely Art.5 and 6.

Art. 5 of the proclamation states that:

A certificate issued in accordance with this proclamation shall not make restrictions on the obligations of the insurer to pay compensation on grounds of:

1. *The age, physical or mental conditions of the person driving the vehicle*
2. *The conditions, horse power, cylinder capacity or value of the vehicle.*
3. *the number of persons, the carrying of any particular apparatus, weight or physical characteristics of the goods that the vehicle carries; or*
4. *the time at which or the area within which the vehicle is used*

At the time of the accident, whether the car was driven by a minor, a disabled one, such as visually impaired, or an insane person does not exempt the insurer from his duty of paying compensation. Whether the vehicle is technically good or bad or generally whether it is efficiently conditioned or whether the market value of the vehicle is great or not is irrelevant as far as compensation is concerned. If, at the time of the accident, the motorist carry persons or weight with out observing the vehicle's capacity, these cannot be defenses to be invoked by the insurer against third parties. The same holds true to the physical characteristics of goods carried such as inflammables or explosives. Whether the road is unsafe does not matter. This naturally shows the uncompromised

determination of the legislature to guarantee compensation to third party victims. The legislature's determination could also be read from Art.6 of the Proclamation which states that:

Any condition in a vehicle insurance policy providing:

- a) No liability shall arise under such policy; or*
- b) Any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy shall be of no effect.*

This article widens the scope of application of Art.5 in that while the latter is exhaustive in its list, Art.6 makes it illustrative in that any condition attached in the compensation duty of the insurer is void as far as direct compensation is concerned. While considering this strict part of the law, there are two interests; namely, the interest of third parties and the interest of insurers. The reading of Articles 5 and 6 easily indicate that the interest of third parties is given higher priority. The very objective of the proclamation guaranteeing compensation to third parties as could be read from its preamble is reflected in the substantive part of the law. The idea to compensate third parties by any means is to be warmly welcome but, at least out of curiosity, let us indicate the following issues. Why should an insurer be liable to a third party if, for example, the insured has failed in the most deliberate and dangerous" way to keep his vehicle roadworthy? Why should the insurer pay compensation just because the insured deliberately violates traffic rules such as not observing the carrying capacity of the vehicle? Is the insurer expected to compensate the victim if the latter does not mitigate the damage?

These questions will have their own economic repercussions up on the insurers. But, this new law, in spite of the fact that the rights of third parties is given priority, tries to take into consideration the economic condition of insurers. Art.6 (2) of the proclamation stipulates:

Nothing in sub Article (1) of this Article shall be deemed to render void any provision in any such policy requiring the person insured to repay to the insurer any sum which the latter may have become liable to pay under the policy, and which have been applied to the satisfaction of the claims of third parties.

The idea in this sub Article is that the insurer and the insured in their policy may stipulate a condition to the effect that once the insurer paid the compensation to a third party who sustains damage, he may resort to the insured to claim it. In effect, after the compensation is effected its exact amount may be claimed by the insurer from the insured. One way of avoiding the seriousness of this new law by insurers may be, thus, to stipulate a condition of such kind in the policy. This right of the insurers may, however, be affected firstly by the financial irresponsibility of motorists and if the insured person is unable or reluctant to pay, they may go to the court confronting all its problems. Seen from the fairness angle, however, it is fair if insurers litigate than the person who sustains harm.

Another provision of the law that imposes, a duty up on insurers is the duty to satisfy judgments even when the insurers could legally avoid or cancel the policy. Art.18 (1) of the proclamation states:

Where a judgment is rendered against an insured person in respect of any liability covered by a vehicle insurance policy, pay to the judgment creditors any sum payable under the judgment including costs and interests.

One question may be raised here. In the presence of Art.17(2) of the Proclamation that entitles any injured third party to go directly to the insurer to claim compensation, why a case involving a claim for compensation be instituted in the court having jurisdiction? If this is the case, does this law guarantee compensation? Despite the existence of Art.17(2), it could be argued that the claim of compensation of third

parties against insurers may not always be settled as aspired by the legislature. In the process of claiming, many issues leading even to court litigation may come. The insurer, basing itself on the policy or others may be of the view that it does not have the duty to pay compensation. In this case once the insured third party exhausted all the administrative remedies, resorting to the judiciary may be a must. Well, the injured person in this case will be confronted with rampant problems of the court.

Coming back to the elements of the aforementioned provision, it tells us that once a policy, and hence a certificate is issued and delivered to the insured and a third party has obtained judgment against the insured, even though the insurer can cancel the contract or have already avoided or cancelled it, it is expected to pay the required amount that can not exceed maximum amount of compensation indicated under Art.16 of the Proclamation. In the opinion of insurers, however, this is against their economic interest.¹²⁴ In the first place, why, they questioned, insurers are to pay compensation under a policy concluded but is capable of being cancelled? Well, this question does not hold water in that, as Art. 6 of the Proclamation is clear, conditions stipulated in the policy that can exempt the insurer from its duty of compensation shall be of not effect. As far as fairness is concerned, in the opinion of this writer, a stipulation of such kind must be put in place. The problem, however, is when one considers the second alinea-may have avoided or cancelled. Despite its greater care to victims, imposing a duty up on the insurers to a policy which is already cancelled or avoided may be unfair. It is illogical because the provision does not clearly specify the legal consequences when the accident occurs. In other words, what if the policy was cancelled before the accident? What about if it was cancelled after the accident? It could be good if Art. 18 of the proclamation limits itself in the latter condition.

¹²⁴ These questions are collected from an informal interview conducted with insurers

If, however, the legislature is of the view that the insurer is also expected to compensate accidents, which occur after the cancellation of the policy, may be for the expiry of the period of policy, this is really imposing illogical and cumbersome duties up on insurers. If this is the case, what is the role of the insurance fund that will be discussed in the next chapter?

Then strict duty to satisfy judgments may be lessened in the policy by insurers. That is insurers may stipulate a term in the policy that once they pay the required amount of money, they may resort claiming same from the insured, however problematic this remedy may be.

Although Art.18 of the Proclamation is the same as section 151 of the Road Traffic Act of UK,¹²⁵ our law disregards conditions given recognition in the latter law. The failure of regarding such conditions, however, makes the law unclear in relation to the following issues. Whether the right in Art.16 of the Proclamation can be exercised where the insurer was not given notice as to the legal proceeding instituted against the insured by the victim. Given Art.18 (2) of the proclamation- the court that renders judgment shall issue execution order accordingly, whether this right is exercisable where execution of a given judgment has been stayed pending an appeal.

3.5.2.8 Emergency Medical treatment

Art. 34 of Procl.559/2008 stipulates the emergency medical treatment that a person who sustains damage will be provided. Pursuant to this legal provision any person who has sustained injury caused by a vehicle accident shall be entitled to emergency medical care costing up to Birr 1000 (one thousand) whether he is a third party or not as defined under the Proclamation.

Two points merit separate discussion here. Firstly, emergency medical treatment is to be given not only to third parties but also others such as

¹²⁵ Cited at note 81, P. 376

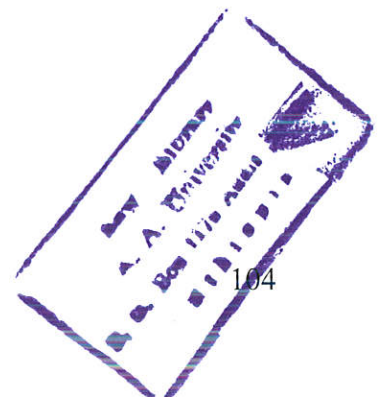
the insured, the drivers, persons employed on the vehicle or the insured's family. As discussed in the objective part of the law in this chapter, providing emergency medical care to victims of vehicles accidents must not discriminate third parties from others. When a person is about to die, let him first get emergency medical treatment without considering his status in the accident. In short, humanitarian consideration demands non-discrimination. Thus, the legislature's decision to include non-third parties in its emergency medical treatment regime excluding them from other rights is to be applauded.

The second point relates to the amount to be paid for medical treatment. The maximum payment is 1000 Birr. In the COMESA's Yellow Card system, however, it costs up to 150 USD (almost 1500 Birr now). In the discussion for the promulgation of this new law, participants strongly recommended the increase of this amount of money given that the costs of medical treatment are increasing from time to time. But, the respondents were not ready to accept the recommendation by giving the following reason.

“Of course the accident involves more than 1000 birr. The idea of this 1000 birr is not to cover all medical bills.

This amount would be in the first place paid by the parents or the injured person, and latter to be claimed from the insurer or the fund. But, until such time that parents of the injured person arrived in the hospital or generally medical institutions, experience in Ethiopia shows that these institutions are very reluctant leading to the death of persons, who could have been saved had the treatment been given immediately, the 1000 birr would guarantee emergency medical care.¹²⁶ (Translation mine)

¹²⁶ Cited at note 61, PP.10, 13, 17



The reason forwarded seems logical, but still, in our brief, it does not take into consideration the cost of living. It would have been better had the maximum amount been subject to revision by the relevant government organ. As one of the objectives of the law, in order to guarantee emergency medical treatment, Art.34(2) of the proclamation imposes a duty up on them to provide emergency medical treatment to the victim when approached by such victim. But they are entitled, pursuant to Art.34 (3) of the same, to claim this payment directly, and without first going to the court, from the insurer or the fund.

3.5.2.9 The Yellow Card System

Though not clearly indicated in Procl.559/2008, one of the objectives of this law is to give recognition to the yellow card system put into practice in SADC and COMESA member countries.¹²⁷ As a member of COMESA, Ethiopia is expected to incorporate this system in its domestic legislation. Art.33 of the Proclamation recognizes the yellow card system. Sub Art.1 of this article states:

The driver of any foreign registered vehicle permitted to be driven on the roads of Ethiopia shall possess a valid certificate of insurance and insurance sticker or, where the insurance policy is not issued by a local insurance company, he shall produce a yellow card or an equivalent proof of insurance coverage.

Two points, among others, may be briefly treated here. In other words, a foreign registered vehicle to be driven here has two options as far as insurance coverage is concerned. The first one is to approach Ethiopian insurers and conclude an insurance policy and hold the certificate of insurance and sticker guaranteeing insurance coverage for third party risks, or second, the driver should produce a yellow card or its equivalent as a proof for its coverage. While the first one is to be done in Ethiopia,

¹²⁷ Ibid, P.11

the second one is issued by a country where the vehicle is registered. "...Its equivalent..." used in this sub Article shows that in as long as the compensation to third parties is guaranteed, vehicles registered outside the COMESA or SADC countries may be driven in Ethiopia. This approach would facilitate the road transport of COMESA, SADC or other economic communities.

Sub Article (2) of Art.33 imposes another duty up on the drivers of foreign registered vehicles in that the amount of coverage against third party risks caused by any foreign registered vehicle shall not be less than the amount of compensation included in Art.16 of the proclamation. The a contrario reading of this provision is that any amount of liability beyond the amount specified in Art.16 of the proclamation may be indicated in the policy. In this case Ethiopian third party victims of vehicle accident may claim a greater amount of compensation from a foreign insurer themselves on the amount in the policy. This way of legislating is good since it takes into consideration the difference of legal systems in the COMESA or SADC countries and by doing so, third party victims in Ethiopia may avail themselves of the greater protection accorded there.

Considering Art.33 of the Proclamation has its own problems. It seems that this provision of the law regulates foreign registered vehicles vis-à-vis Ethiopian third party victims. In other words, only regulated is the accident that a foreign registered vehicle causes here in Ethiopia. It does not for example answer the following questions: who would issue the yellow card to Ethiopian vehicles to be driven in SADC and COMESA members? Is there a government organ to do so? Has this task been delegated to insurers? If these questions are not clearly answered, what is the fate of Ethiopian vehicles in member countries? This, I think, is one of the substantive defects of this new law.

CHAPTER FOUR

Compulsory Third Party Motor Vehicle Insurance: Institutional Framework

4.1 Introduction

Previously, this writer tried to discuss, at least posed for consideration, the theoretical background of laws relating to vehicle accident, their practical economic implications on the third parties who sustain damage, substantive issues relating to the new legal regime governing this transaction and others. In this chapter, the implementation procedures, the respective institutions and problems relating to the enforcement mechanisms of Ethiopian Compulsory Third Party Motor Vehicle Insurance will be given separate deliberation. From the very outset it must also be clear that connected to the enforcement mechanisms, substantive laws may also be discussed. In the meantime, particular attention will be exerted as to the issue whether or not the intended objectives of the law can be achieved by the institutions given implied or explicit reference. To do so, comparative analysis will also be made.

4.2 Implementation Procedures

The implementation procedures of this new law may be of two kinds; namely, those expressly included in the Proclamation and those that could be indicated in its Regulation, Directives and other laws. So far, while this paper is written, a regulation or directives for the proper implementation of this new law has not been officially prepared and issued.¹ Thus, owing to this reason, the writer, therefore, will restrict himself to discussing or analyzing procedures found in this new law.

A closer look at the Proclamation reveals that one way of implementing the law is by displaying insurance sticker on the wind screen of vehicles.² As discussed in chapter three of this paper, once a policy is concluded by

¹ Interview with Ato Fissihe G/Wahd, Head, Legal Department, Transport Authority and W/rt Tigist Assefa Lawyer, Ministry of Transport and Communication, interviewed on December 01, 2008

² Art. 12 of Procl.559/2008

the insured and the insurer, the latter is imposed with a duty to issue certificate of insurance to the former. Besides, as one obligation of the insurer, Art. 12(1) of the Proclamation states that any insurer shall provide insured persons with insurance stickers and if it is lost or mutilated, a copy of it would be given pursuant to Art.14 of the proclamation. As to what sticker is and its form have not been determined in the law. Sub Art. 2 of this article also stipulates that in case of a vehicle having windscreen, the sticker shall be displayed fully on the screen. If the vehicle does not have a wind screen, such as trailer or semi-trailor, the driver is expected to keep with him/her.³ One important point to note here is: what is the significance of insurance sticker in the Ethiopian compulsory motor vehicle insurance? The intention of the legislature in this matter could be collected from Art.13 of the Proclamation. It is stipulated that:

The absence of insurance sticker shall constitute a prima facie evidence that the vehicle has not been insured and the police shall have the power to detain such vehicle till the appropriate certificate of insurance is presented.

It is indicated hereinabove that the absence of insurance certificate is to be presumed as the vehicle is not insured. The implication is that the existence of insurance sticker either on the windscreen or otherwise shows that the vehicle is insured and its owner or the driver has complied with the duty of this new law. In fact, a similar presumption is taken in the United Kingdom, too, despite the fact that the naming differs.

“...The insurance certificate or cover note issued by the insurance company constitutes legal evidence that the vehicle specified on the document is insured.”⁴

³ Ibid, Art.12(3)

⁴ Wikipedia, visited on December 08,2008

As is indicated before, even though almost all states in the USA have compulsory third party motor vehicle insurance, their enforcement mechanism differs. A nearly similar enforcement mechanism for example is used in Ontario⁵ in that an operator of a motor vehicle on a high way shall have in the motor vehicle at all times first an insurance card for the motor vehicle and second an insurance card evidencing that the operator is insured under a contract of automobile contract. Insurers or their agents have the duty to issue an insurance card to a person with whom a contract of automobile insurance is made or whose contract of automobile is renewed.

Another point included in Art. 13 of the Proclamation is detention. If the vehicle does not have a sticker on its windscreen or if the driver cannot produce upon the request of the police, the police shall have the power to detain the vehicle. The same methodology is used in Ontario,⁶ and the UK.⁷ But, the difference relates to the details of the enforcement mechanism enshrined in these laws. The duty imposed upon the police to detain the vehicle in Ethiopia is not time bounded. It simply states "...till the appropriate certificate of insurance is presented." In Ontario, however, three months period is the maximum period.⁸ Other issues that could be deducted from Art.13 of the Proclamation includes the following. Under whose costs that the vehicle is to be detained? The police? The defaulter? Whose expense covers for the care of the motor vehicle? Let us assume that these costs are to be covered by the defaulting owner, do the police have a lien right upon the vehicle? What if, for a number of reasons, the owner does not timely produce the certificate? Is failure to produce a crime? Some of these questions and

⁵ Ontario, Compulsory Automobile Insurance Act, accessed at <http://www.e-laws.gov.on.ca> accessed, on 12/11/08- see section 3 and 6

⁶ Ibid, see Section 7

⁷ Cited at note 4,

⁸ Cited at note 5, section 7

others hopefully may be answered in the regulation or directives to be issued in the future.

Another procedure included in the law for its implementation is Art.37 of the Proclamation. This provision of the law at least impliedly compels vehicle owners to discharge their duties included in the new law under consideration. By punishing those who deviate from the law, it deters the wrong doers. It reads:

Unless otherwise a maximum penalty is incorporated in the Penal Code, any person who violates the provision of this proclamation or regulations issue pursuant to this proclamation shall be punished with a fine from 3000 (three thousand) up to 5000 (five thousand) or with imprisonment from one year up to two years.

Three elements of this law deserve separate treatment. Firstly, the phrases “unless otherwise a maximum penalty is incorporated in the Penal Code...” indicates that if the legislature of the Criminal Code of 2004 or others stipulates a punishment above that included in the aforementioned Article, the former would be applicable. This reference of the law may have contained two points. In the first place, the legislature believed that the law meant to regulate crimes is principally the Criminal Code and the second point may be the legislature of Procl.559/2008 is strict up on those who deviate from it and the best way to correct them is by imposing more punishment than included in the above Article. Secondly, for a person to be punished per Art.37, he/she must violate this Proclamation or Regulations issued pursuant to the Proclamation. Two things may be noted here. First, those Regulations issued which are consistent with the Proclamation that are capable of making the defaulter criminally liable. The second point, however, is an issue which is not taken into consideration by the legislature: what if a motorist violates Directives issued by the relevant government bodies issued pursuant to Procl.559/2008 and its Regulation? Does this failure carry

criminal punishment? I think it could be better if Art.37 should contain these points. But, through interpretation, we can arrive at the conclusion that this failure may carry criminal punishment.

The third basic element of Art.37 is the forms of punishment. There are two forms of punishment; namely, punitive damage and imprisonment. In the former, the amount is from ETB 3000-5000. This amount of money obviously is not an amount of money that is to be given to a third party victim. Rather, this is a punitive damage that is going to be paid to the state with the idea that it will deter future wrongdoers. The second one is imprisonment. As the number of years is from one year up to two years, the imprisonment may even include a rigorous imprisonment⁹ that the defaulter is strictly expected to be confined in prisons without any conditional release.

Just out of curiosity, the following issues may be forwarded against Art.37 of the Proclamation. Firstly, in addition to the forms of punishment recognized in above legal provision, why did the legislature not include suspension of licence of a driver for a certain period, unlike the experience of other countries?¹⁰ Is that because this is regulated by Procl.600/2008 and other Traffic laws? Second, whether the punishment in this legal provision is equally applicable to a motorist who commits the fault once and to another who repeatedly commits it is not clearly defined. If one argues that this is to be regulated by the Criminal Code, this could have been right had the legislature expressly referred it under Art.35 of procl.559/2008.

⁹ Art. 108(1) of the Criminal Code 2004 states that with out prejudice to conditional release, the sentence of rigorous imprisonment is normally for a period of one to twenty five years but where it is expressly laid down by law be for life.

¹⁰ Cited at note 5, section 3

4.3 Implementation Institutions

4.3.1 The Insurance Fund and its Organs

4.3.1.1 The Insurance Fund

One thing is sure. In spite of the fact that this new law has imposed a duty upon owners of vehicles to buy insurance policies for third parties, there may be owners who may not discharge this legal duty. In other words, the experience of other countries on this law from its inception to modern times witnesses that however effective the enforcement mechanism may be, there would be defaulters. Successfully achieving the intention of the legislature must therefore, be targeted at reducing the number of these defaulters. The earlier laws of compulsory motor vehicle insurance for third party risks show that there has to be a fund or other financial source that could close the inevitable gap of this law. For example, in Massachusetts, New York and North Carolina¹¹ in the USA, there have been Unsatisfied Judgment Fund acts and Uninsured Motorist Coverage as there is a substantial gap of the law on:

*Uninsured drivers, hit and run drivers, those driving stolen vehicles, registered vehicles which were somewhat not insured, unregistered vehicles and others.*¹²

In France, a guaranty fund was established by the French Parliament to award compensation to victims of accident who would otherwise be without relief. This fund is aimed at indemnifying traffic accident victims whose wrongdoers are either unknown or their vehicle uninsured.¹³

In England, it seems that such fund has a very extended historical development. Just to be brief, England had three agreements concluded between the insurers, motor insurer's Bureau (M.I.B) and the Minister of Transport. The first one is entitled "compensation of victims of uninsured

¹¹ Robert E. Keeton and Jeffrey O'Connell, Basic protection for the Traffic Victim: A Blue Print for Reforming Automobile Insurance, 1965, PP. 109-118

¹² Ibid

¹³ Suzanne Tune, Establishment of "funds De Grantia" to Compensate Victims of Motor Vehicle Accidents, American Journal of Comparative Law, Vol. 2, 1953, P.232

drivers,” the second “compensation of victims of untraced drivers,” and the third agreement provides for an accelerated procedure for claims in respect of the victims of hit and run drivers.¹⁴ The first two laws pertain to the substance and the second to procedure.

Coming to the first agreement, it states that:

*If a person injured or killed in a road accident, or whose property is damaged there in, obtains a judgment in respect of any liability required to be insured against, and if that judgment is not satisfied in full within seven days, the M.I.B will satisfy it. Thus, the cases of uninsured driver and the driver without effective insurance are covered.*¹⁵

There are certain condition precedents to the M.I.B.’s liability, such as it must be given notice before or seven days of the commencement of the relevant legal proceeding, it must be supplied with any information it reasonably requires and others.¹⁶

The second agreement serves victims of untraced or unidentified wrongdoers. But, before this agreement is put into implementation, the following conditions must be satisfied. Firstly, the applicant must be unable to trace the wrongdoer. Secondly, the death or injury on the third party must have been caused in circumstances such that on the balance of probabilities the untraced person would have been liable. Third, the liability must be one which is compulsorily to be insured. Fourth, the application must be made in writing and others.¹⁷ The third agreement, as said earlier, deals with, and provides for, a quicker procedure for settling such claims where no known motorist was involved.

Turing into Ethiopian Law, Procl.559/2008, an insurance fund and its objectives are clearly indicated in Arts.19 and 20 of the proclamation. At this juncture, the reader should know the fact that the idea of

¹⁴ John Birds, Modern Insurance Law, 4thedi 2003, PP. 379-387

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

establishing this fund does not have different reasons, and hence objectives when compared with the experience of the aforementioned countries. Art.19 of the proclamation reads:

An insurance fund (hereinafter the “fund”) is hereby established as a permanent financial source to be deposited in a special account to be opened in the National Bank of Ethiopia.

Three points are included here. First, the fund is a financial source; a source that would compensate certain victims, and second, it is permanent. If we say that even developed states cannot totally avoid car accidents, let alone undeveloped ones, or simply this is a fact that cannot totally be avoided, and hence-permanent, a non-temporary financial source should be established to guard against such accidents. The third one relates to the place where this account is to be maintained and its nature. In the discussion, participants were very curious why it should only be maintained in the account of the National Bank of Ethiopia although the respondents did not respond the question.¹⁸ The type of account is not an ordinary one; rather it is a special account.

Art 20 of the Proclamation is very clear as to the objectives of the fund. The objectives of the fund shall be to provide emergency medical treatment to any person injured by any vehicle accident and to provide compensation to a third party victim of an accident inflicted by uninsured or unidentified vehicle. When we consider the first objective, it provides emergency medical treatment to any person, including the driver, the insured, the insured’s family, others employed on the vehicle and third parties. The idea of entitling everybody who sustains injury as a result of automobile accident to the benefits accorded by the fund, as discussed before, may still be based on the idea that no body should be

¹⁸Minute of Infrastructural Affairs Standing Committee, Legal and Administrative Affairs Standing Committee, and Trade and Industry Affairs Standing Committee, Conducted on Tikmit 27,2000 E.C (attached at the end of this paper -attachment no.4),p.15

excluded from getting emergency medical care. The foregoing has to be qualified, however. It is only for hit and run victims that the fund is to pay the required emergency care. If the tortfeasor is known, the medical institution, as Art. 34(3) speaks of, shall claim its fees directly from the insurer. The idea that the fund is aimed at compensating uninsured or unidentified victims is clear. But, one may pose a number of questions on Art.20(2): could the fund office recover the amount of compensation paid to the victim if the tortfeasor is known? Does the fund to indemnify the victim in cases when the motorist does not have adequate insurance coverage? Is the fund office expected to pay if the victim has personal insurance such as health, death, and accident? Does this provision of the law have conditions just like in England? What if the vehicle was stolen at the time of committing the fault? Does this illegal transaction entitle the victim to resort to the fund if the owner, has raised this defence? These and other questions hopefully will be answered pursuant to Art.24 and 27(2) of the Proclamation, in the Procedures and directives that would be established by the Board.

4.3.1.1.1 Sources of the Fund

The other controversial issue of this new law may relate to its sources. Art.23 of the Proclamation states that the source of the fund shall be drawn from the proceeds of insurance tariff. In its sub-Article 2, the rate of the insurance tariff is to be determined by the government on the basis of studies conducted by the Board.

One point that demands special deliberation is the economic effect of this provision on insurers. In chapter three of this paper it has been indicated that insurers have been imposed with the duty to pay the amount of liability included under Art.16 of the Proclamation. This is an absolute duty since no condition or exception can be invoked so that the insurer would be exempted from this duty. Besides, even though the insurer does have the right to avoid or cancel the contract or have already

avoided or cancelled it, it will not be exempted from discharging its duty. One way or another these have their own negative influence on a business organization established to make profits.

Another strict provision of the new law also relates with the insurance fund. This particular fund shall be established by withdrawing proceeds from the insurance tariff. In other words, the government, on the recommendations of the Board, would decide the rate of this tariff. Incidentally, whether this tariff is to be drawn from automobile insurance proceeds or from all other forms of insurance is not clearly indicated here.

In other countries, unlike Ethiopia, the source of this fund is not exclusively levied on insurers. South Africa, for example,

*“allocates a percentage of the money from petrol into the road accidents fund which goes toward compensating third parties in accidents.”*¹⁹

In other countries, too, the money is to be withdrawn from punitive damage that is imposed up on defaulters, partly from the government and other sources.²⁰In Ethiopia, however, the legislature, I believe, does not seriously take into consideration the interest of insurers at least for two reasons. Firstly, the legislature should have included other additional sources for the fund. If we say that vehicle accidents in Ethiopia is increasing at an alarming rate, then this would create a very high possibility that the torfeasor may not either be traced or insured leading to the conclusion that many victims may claim compensation from the fund. This, however, is to be met solely by the insurers. This fact coupled with the small amount of profit that insurers make each calendar year when compared with Banks may make insurers in a financially depressing environment. This, I believe, is unfair. The second

¹⁹ Cited at note 4

²⁰ Cited at note 11, P. 522

reason is this new law does not say something if the amount of insurance tariff to be withdrawn decided by the government is unfairly determined. Can insurers appeal against the decision? Where? Those questions are not also answered in the Proclamation. A closer look at Art.23(2) also shows that the insurance tariff could be varied considering the reality from time to time. One could, however, get surprised why this is the case given the fact that the amount of compensation that the fund is to effect under Art.16 of the Proclamation can not be varied from time to time.

4.3.1.2 Organs of the Fund

Once the proclamation established a permanent financial source for hit and run victims, it has also established two principal organs which, the legislature believes, would enforce, and hence achieve, its objectives. Pursuant to Art.21 of the Proclamation, these two organs are a Board accountable to the Ministry (i.e., Ministry of Transport and Communications per Art. 2(12) of the same) and an autonomous office having its own juridical personality. Let me see them turn by turn.

4.3. 1.2.1 Board of the Insurance Fund

From the very outset, it should be clear that only a single board of the fund is to be established as Art. 21(1) clearly indicates. The issues following are: who are the members of this Board? What are the powers and duties of the board?

Turing to the first issue, Art.25 of the Proclamation governs it. In its sub Article 1, the Board shall have members consisting of the concerned government institutions and insurance industries. Which are the concerned government institutions are not indicated in the definition part of the Proclamation. But, even though it would be indicated in the regulation or directives to be issued in the future, the term concerned government offices may include the National Bank of Ethiopia, the

Ministry, the Traffic Offices, the Transport Authority or Regional Transport Bureaus. It is one of these governmental institutions that chairs the Board. The other member of the Board are insurance companies. Of course, it is indicated in Art. 26 of the Proclamation that any insurance company shall have the obligation to be represented in the fund's Board. This is a compulsory representation that the existing or the would be established insurers are to carry out. Thus, it is because of this that Art.25(1) of the Proclamation does not determine the number of members of the Board. As Art.25(3) stipulates, the presence of more than half of the members of the board constitutes a quorum. The presence of insurers in the Board's composition will naturally give an opportunity for them to safeguard their economic interest. They would propose decisions to be made in their favor and others. As it is clear that rules enshrined in the proclamation are not and must not be detailed enough, sub article 4 of Art. 25 entitles the Board to adopt its own rules of procedures with the intention of discharging its powers and duties enshrined in the Proclamation. In addition to this, any member of the Board shall be removed from his membership if he fails to properly discharge his responsibilities.²¹ This does not mean that once an institution compelled to be represented sent its respective agent and if the latter fails to properly discharge his/her duty, this is one ground that removes from his/her membership. The implication is that the institution whose agent is removed from the board is still expected to replace another.

The powers and duties of the Board include, among others, to administer the fund and submit annual reports to the Ministry on its activities, to issue Directives, to define the collection and disbursement procedures of the fund, to provide the necessary assistance to improve the quality of services of the office of the fund, cause the accounts of the fund to be

²¹ Cited at note 2, Art. 25(2)

audited and review audit reports and approve the budget of office of the fund.²²

Deserving special treatment are sub article 3 and 6 of the Proclamation. The former reads:

The board shall have the powers and duties to... investigate and give decisions regarding victims of vehicle accidents who could not get the proper compensation.

One may be curious as to who these victims are. The first category of persons envisaged in this legal provision may be those persons who sustained damage as a result of vehicle accident where the motorist is untraced but by the investigation of the Board, this untraced motorist was not at fault. Thus, whether the untraced vehicle has actually caused the damage is to be proved by the person who sustains damage or his/her heirs if death is involved. The same may sometime hold true if the uninsured motorist, in the opinion of the Board did not commit the fault. Generally, even though the fund is to effect payment to those persons entitled by the law, this does not mean that it is expected to pay it if the facts do not warrant it.

Another point is, unlike other countries,²³ this new law does not give an appeal right to those victims of vehicle accidents whose claims are rejected by the Board. One may justify this prohibition for question of fact, the Board is competent enough to discover through its investigation, whether the claimant is entitled to benefit from the legal protection. But, what if the controversy involves question of law such as the quantum of the award? I believe that this is a mistake committed by the legislature which could not be rectified even by the Regulation or Directive to be issued subsequently. The effect is that innocent victims would be given

²² Cited at note 2, Art. 27

²³ As to the experience, for example, of England: see cited at note 14, P. 384-385

the only choice to accept the decision of an administrative, and not a judicial organ.

When turning to sub Article 6 of Art 27, the Board shall have the duty to study matters relating to vehicle insurance against third party risks and premium amount and submit the same to the government. The Board, therefore, is expected to study and submit policy matters in general and premium amount in particular to the government. Interesting point in this provision is the amount of premium that the government is to determine so that the owners of vehicles are to pay. One point that could be raised in relation to this sub Article is why the government is to regulate the premium amount that the insured is to pay. Conversely speaking, why is determining the amount of premium not open for competition among insurers? There are at least three reasons²⁴ why governments resort to rating premium; firstly, the government must ascertain that the compensation to be paid by insurers must be adequate to cover losses and ancillary costs; secondly, that the premium rate to be paid must not be excessive, and lastly that it must ascertain that the rate structure must not be discriminatory. Sometimes the non regulation of this business has at times led to discrimination unduly favoring some insureds over others.

Taking into consideration the above reasons and others, countries vary the premium amount depending on many factors that are believed to have an impact on the expected cost of future claims. Those factors can include the physical characteristics of vehicles, the coverage selected, the profile of the driver (whether he/she is a teenage, married, or based on gender), the distance the vehicle covered or how much the car is used (odometer-based system) and others.²⁵

²⁴ Cited at note 11, PP. 522-524

²⁵ Cited at note 4

Against this background let me say a few points on the Ethiopian law. To be precise, determining the amount or rate of premium in Ethiopia, as is the case in other countries, is a very difficult work. Difficult because the conflicting interests of vehicle owners and the insurers are involved. This can be easily proved by the fact that before the promulgation of this new Proclamation, the Ethiopian Insurers' Association, as one stake holder, was requested to give its opinion on the draft. In its letter,²⁶ it has indicated certain factors that must be considered in the government's attempt to fix the premium rate.

Firstly, they are of the view that the rate of the premium to be paid by owners must be different for vehicles which usually cause accidents from others. Secondly, the amount of premium must be adequate enough to cover administrative costs, payment to additional employees (because the new law demands addition of the work force of insurers), payment to material costs and others. Thirdly, owners must be compelled to pay the premium amount in advance before the policy operates and fourth, the law has to differentiate the premium account of mandatory automobile insurance from other forms of insurance. In their view, therefore, insurers are to pay compensation not from premium amount collected from voluntary insurance but from the mandatory one. Whether these requests are accepted by the government is not clear from the Proclamation. Some of these worries would hopefully get acceptance in the regulation and directives to be issued in the future.

Which factors are to be considered in fixing the rate of premium in Ethiopia? As indicated above, these are some of the issues that the legislature must include them. But, the issue, still, is: must we impose heavier insurance costs on more dangerous drivers? Let me present

²⁶ Association of Ethiopian Insurers' Letter dated Sene 19, 1998 E.C., The letter was sent to the Ministry of Transport and Communication.

foreign experience. The earlier experience of the USA is Merit or involvement rating.²⁷

*“If emphasis is laid on lowering rates for good drivers, such a rating plan is generally referred to as merit rating. If emphasis is laid not so much upon judgments of personal freedom from fault in driving as upon more objective standards, such as freedom from involvement in accidents, such a rating plan is often referred to as involvement rating.”*²⁸

Those persons who are in favor of these rating procedures urge that in the absence of this rating system, good drivers subsidize bad drivers. They added that the threat of having to pay a higher insurance rate serve effectively as a deterrent to bad driving.²⁹

Opponents, however, opine that these ratings may not effectively deter those who deviate just like criminal sanctions and concern for one’s own safety adding another fact that few individual drivers accumulate enough accident experience.

Coming back to Ethiopia, if we opine that we are determined to reduce the alarming traffic accident, we must screen out those vehicles which are prone to accident and those dangerous drivers. Identifying them may be difficult and hence carries high administrative cost, but this is not a choice that we may find other alternatives for. Consequently the amount of premium must be dependent on the characteristics and types of vehicles, the behavior of drivers and other public policy reasons.

4.3.. 1.2.2 The Office of the Fund

Another office mandated to implement the law in general and the Insurance Fund in particular is the office of the fund which is accountable to the Board. As indicated in Art.28 of the Proclamation, the office has the Director General and the necessary staff. Besides, the fund

²⁷ Cited at note 11, P-525-526

²⁸ Ibid

²⁹ Ibid

office shall be located in Addis Ababa and may have branch offices elsewhere as may be necessary. Taking into account the Federal system of Ethiopia, regional third party victims of traffic accidents are not expected to come to Addis to claim compensation coupled with the high traffic accidents in regions, the idea that the fund may have branch offices is to be warmly welcomed. Art.29 of the Proclamation has indicated the powers and duties of the fund office. It has the power and the duty, among others, to undertake studies on the collection and disbursement of the fund, pay compensation to hit and run victims, follow up and ensure the proper implementation of the decisions of Board, maintain accounts and records of the fund, prepare and submit to the Board annual financial reports of the fund, own property, enter into contracts, sue and be sued in its own name and carry out other lawful activities as necessary to its function. Particularly the office shall collect data on deaths and bodily injuries caused by vehicle accidents and prepare and distribute regular publications on the collections and disbursements of the fund, vehicle insurance against third party risks, traffic safety and similar topics. As disclosed before, one of the objectives of this new law is to reduce the traffic accident rates of Ethiopia or conversely to attain traffic safety in spite of the fact that this is not clearly indicated in the preamble of the Proclamation. At least Art 29 (3) and (10), therefore, show the fact that one of the hidden objectives of this new law is attainment of traffic safety in this country.

Another incidental point in relation to this office is its budget and Audit. Pursuant to Art. 31 of the Proclamation, the budget of the office of the fund for a fiscal year, which shall commence Hamle 1 and shall end on Sene 30, shall be allocated by the government. This indicates that while the insurance fund is to be withdrawn from insurance tariff, the budget of the office is to be financed by the government. The latter seems to avoid its own contribution for the insurance fund but commits itself to establish, run and administer the insurance fund office. The accounts of

the fund, as Art.32 indicates, shall be audited not only by internal but also by external auditors. This, the legislature believes, creates transparency in the whole activities of the office.

4.3. 1.2.3 The Director General

The office of the fund shall have a Director General. He/she is to be appointed by the Prime Minister's office upon the recommendation of the Ministry of Transport and Communications.³⁰ One may get surprised when he/she thinks why the appointment of this person demands the blessing of the most powerful political leader or his office, the Prime Minister. To be frank, this is a new trend that most recently promulgated proclamations exhibit. Is this about making all appointments political? Let others treat this.

Generally, the powers and duties of the Director General include planning, directing, administering the activities of the office.³¹ Particularly, he/she shall, among others, exercise the powers and duties of the office, employ and administer personnel of the office, represent the office in its dealings with third parties, prepare the annual budget, submit and upon the Board approval effect expenditure in accordance with the approved budget and work program. To make his/her power and duties illustrative, he/she shall perform, per Art.30(2) (g), such other duties as may be given to him/her by the Board.

The Director General, accountable to the Board, may delegate part of his powers and duties to the employees of the office of the fund to the extent necessary to carry out these duties and powers. But, if he/she wants to delegate these powers and duties to an employee for more than 30 days, the Board's approval shall be required.³²

³⁰ Cited at note 2, Art. 28(2)

³¹ Ibid, Art. 30(1)

³² Ibid, Art. 30(3)

4.3.2 Ministry of Transport and Communications

Another organ of the government that is expected to enforce the law is the Ministry of Transport and Communications. Art.22 of the proclamation reads:

The Ministry shall have the powers and duties to:

- 1) Follow up the overall activities of the board with the view to implementing the objectives of this Proclamation and issue Directives as may be necessary; and
- 2) Evaluate, periodically, the performances of the Board.

It could be easy to discern from this that the Ministry of Transport and Communication does have two powers to see to it that this new law is implemented as aspired by the legislature. The first one relates to the rule making power of the Ministry. The latter has been given the mandate to issue directives which are believed to facilitate the implementation of the law. In other words, the Ministry is expected, while it issues directives, to ascertain that the rules are in accordance with the Proclamation and its subsequent regulation and must also ensure that the directives effectively implement the objectives of the law. The second power relates to its supervision. As is clearly indicated in Art.21(1) of the Proclamation, the Board is accountable to this Ministry. Thus, the latter is to follow up, or control and evaluate the former. Following up or controlling the Board involves supervising the overall activities of the board and ascertaining whether the latter has carried out those powers and duties imposed by the law. As to the mode and time of evaluation, the Ministry may issue its own directive. But, for the proper implementation of this law, the Ministry is expected to seriously follow up the Board and the office of the fund. If the management or functional structure of these institutions is disorganized, obviously this casts its cloud on the proper implementation of this new law.

4.3.3 The Council of Ministers

It is obvious that Proclamations, being general, are to be supplemented by regulation so that they could easily be implemented. Thus, the idea of issuing regulation and directives is aimed at properly enforcing their respective Proclamation. The implication is that regulations, directives, and other inferior laws do not have the capacity to introduce new rules which are not recognized, implied or express in the Proclamation.

It is with this understanding that Art. 36 of the Proclamation is devised. It reads:

The council of ministers may issue regulations necessary for the proper implementation of this proclamation.

The Council of Ministers, therefore, has rule making power and the supervision power whether these rules are enforced. Hence, this makes it one institution that executes third party motor vehicle insurance law.

4.3.4 The National Bank of Ethiopia

In Procl.559/2008, the National Bank of Ethiopia is not recognized as one organ mandated to implement the law. This and its participation in the draft naturally indicate that the National Bank of Ethiopia has been placed far as far as this law is concerned. The issue is: can we consider the National Bank of Ethiopia as one institution to enforce this new law? The answer is in the positive.

According to Art.5 of Procl.591/2008, Monetary and Banking Proclamation, the purpose of the National Bank of Ethiopia is to foster monetary stability, a sound financial system and such other credit and exchange conditions as are conducive to the balanced growth of the economy of Ethiopia. To do this, the bank shall licence, supervise and regulate banks, insurances and other financial institutions.³³ Besides, this bank is given a mandate to formulate policy on such other matters

³³ Art.5(7) cum 14 of Procl.591/2008

as may be conducive to the attainment of sound insurance business in Ethiopia.³⁴ To do so, the bank may issue Directives necessary for supervision of insurance business.³⁵

Even though it is drafted and promulgated by the initiation of the Transport Authority, Procl.559/2008 is also part of insurance law. Because it pertains to the insurance business, the National Bank of Ethiopia naturally will issue certain directives to see to it that this new law is properly implemented. This indicates that the National Bank of Ethiopia falls in the institutional framework of this law. As one institutional organ, it should make its own contribution to make this business healthy, timely and responsive to the cry of third party victims of vehicles.

4.3.5 The Police

One organ of the government responsible to implement the law is the police in general and the Traffic Police in particular. The police may resort to two enforcement mechanisms of this law. Firstly, as Art.13 of Procl.559/2008 indicates, of course this is discussed in this chapter before; the police have the obligation to detain a vehicle, unless exempted from compulsory third party vehicle, if an insurance sticker is not posted on the windscreen of the vehicle or if this is not the case, if it is not possessed by the motorist. So, detention of the vehicle is one way of enforcing the law. The second mechanism is to cause the institution of criminal suits against defaulters so that they would be punished per Art.37 of the Proclamation. This has to be done without any delay if we aspire that the objectives included in this new law are to be properly executed. This demands, I believe, a rigorous commitment from the police and other stakeholders.

³⁴ Ibid,Art.4

³⁵ Ibid,Art.27

4.4 Problems Associated with Enforcement Mechanisms and Institutions

I believe that in this chapter some problems relating to the institutional framework have been at least brought before the attention of the reader. The problems that would be indicated here in under are fundamental problems because unless rectified they would cast their own shadow up on the proper implementation of this new law.

The first problem relates to the insurance certificate and sticker. It has been indicated in the previous chapter that once an insurance policy is concluded between the insured and the insurer, a certificate of insurance and sticker are to be given to the insured and a sticker is to be displayed on the windscreen of the vehicle or to be possessed by the motorist if the vehicle is without windscreen. The point is that the presence of a sticker has a presumption that the vehicle has an insurance coverage for third party accidents. The absence of it has, conversely speaking, the presumption that the vehicle has not been insured. The problem, however, is: what if the insured fails to renew the insurance policy? Is he expected to return the certificate and the sticker? The law is silent on these issues. In other words, once the sticker is displayed on the windscreen of the vehicle or possessed by the motorist, as this new law is silent as to those issues, motorists may not renew the policy displaying or possessing the sticker. In these cases, the police may not detain the vehicles because the sticker may either be displayed on the windscreen or possessed by the motorist. Even though the certificate of insurance indicates the time of commencement and expiry of the insurance policy, the duty is not imposed up on the motorists to keep with them. Hence, the police or other authorities may not request the motorist to produce the certificate so that they can ascertain whether the insurance policy to which the sticker is issued expires or not. The effect is that third parties who sustained damage may not be guaranteed their right of compensation which is indicated under Art.16 of Procl.559/2008. Thus,

the legislature should have included this fundamental duty in this law. Still, this problem may be rectified in the Regulation that is going to be issued in the future.

Before the promulgation of Procl.559/2008, in the discussion among stakeholders³⁶ it was indicated that vehicles have been given yearly certificate indicating that they are fit to be driven. Before this certificate is issued, the authorities shall have regard to whether the vehicle secures compulsory third party motor vehicle insurance. The implication is that vehicles that do not have such a policy may not be given the certificate barring them from being driven. The second problem, however, is whether the vehicle has compulsory motor vehicle insurance to be considered as one factor in the process of issuing the yearly certificate is not clearly indicated in the Proclamation. In other words whether this is coterminous with the yearly fitness test or registration of vehicle or not is not indicated in the Proclamation. This would have its own severe economic effect upon the third party victims of vehicles.

The third problem is a problem of implementation in general. According to Art.38 of the Proclamation, it shall enter into force upon publication in the Federal Negarit Gazeta. The Negarit Gazeta was published on January 9th, 2008. Obvious that it should be entered into force beginning from this day. Frustrating, however, is up to this time (March 2009), it has never entered in force. For more than a year, even though the law is published in the Negarit Gazeta, the government does not begin its implementation let alone its full and proper execution. Surprising still is when one gathers why this happens. The writer tries to find why the binding force of the law is unlawfully taken away. The lawyer³⁷ in the Ministry of Transport and Communications told the writer that up to now

³⁶ Minute of discussion by Transport Authority presenters to stakeholders, conducted on Hider 6,2000 E.C. (attached at the end of this paper -attachment no.5)

³⁷ W/rt Tigist Assefa, Lawyer, Minsitry of Transport and Communications, Interviewed on December 14, 2008

preparations have not been made to effectively implement the new Proclamation. In her opinion its full enforcement may take a number of years. The Legal Services Head, who claims as the sole drafter of the Proclamation, in the Transport Authority said that “as to why the law is not entered into force... I do not know... really this is beyond my control.”³⁸ The lawyer and supervisor³⁹ in the National Bank of Ethiopia ascertained the fact that the National Bank of Ethiopia does not issue a single directive that can facilitate the proper implementation of the law. Whether the government is giving a transition period for insurers is not clear because this is not also indicated in the Proclamation.

Well, the coming into picture of this new law was, I remember, warmly welcomed by the public, including insurers although they strongly urged to safeguard their interests. It has been praised by many that the historical faults that our ascendants committed have been rectified by this new law. It is really very pleasant to see that third party victims of car accidents get timely compensation that was not accorded in the law of torts and insurance. But firstly the expectations of many, including this writer, are not fulfilled at least this time. I think we have to listen the cry of those innocent third parties. Secondly, Ethiopia has an international duty to issue and put into force third party motor vehicle insurance against third party risks. This duty can never be discharged by simply promulgating the law without properly and timely implementing it.

³⁸ Ato Fissiha G/Wahd, Head, Legal Services, Transport Authority, Interviewed on December 10, 2008.

³⁹ The Lawyer and inspectors wants to be anonymous

CHAPTER FIVE

Effects of Compulsory Third Party Motor Vehicle Insurance Law

5.1 Introduction

In the previous chapters this writer tried to discuss about the legal regime and institutional framework of Ethiopia's new law on compulsory third party motor vehicle insurance. In this chapter, special emphasis would be given to the legal effects that this law has on the basic insurance law, regulatory framework, insurers, owners of vehicle, victims of accidents and traffic accident prevention. The challenges and prospects, as the law is not put into practice, on these stakeholders would also be predicted.

5.2 Effects On:

5.2.1 Basic Insurance Law and Regulatory Framework

As discussed before, in majority of cases and under normal circumstances, insurance has been one of the voluntary activities or engagements of citizens. As voluntary, it is via the free and full consent of the owners of vehicles and insurers that the contract of insurance is to be concluded and entered into force. It is with this conviction that Arts.654 in general and 711 in particular of the Commercial Code of 1960 state respectively that an insurance policy and an insurance policy against accidents as contracts.

Devised by a number of reasons discussed in previous chapters, if the interest at stake pertains to public, however, as the experience of other countries show, the law maker may intervene in the private affairs of citizens and impose duties the non-observance of which entails certain sanctions. One area endangering the public in general is the motor industry, particularly motor vehicles. It is with the idea of safeguarding the interest of the Ethiopian public and others that the legislature has issued vehicle insurance against third party risks in 2008. Even though it is not implemented automatically, the law has its own effect on the

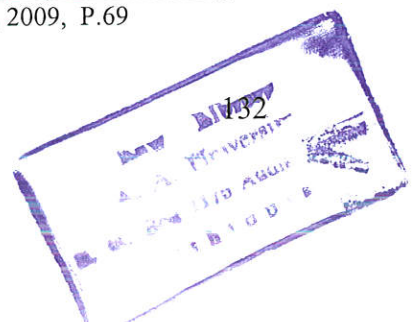
basic legal regime governing insurance. As far as accident insurance is concerned, it does not hinge on the consent of the owner of the motor vehicle as insuring vehicles for third party risks is not open for the discretion of owners of vehicles. This part of insurance law, therefore, has been taken out of the insureds' freedom of contract. In short, it becomes obligatory. Thus, as far as accident insurance of basic substantive law in the Commercial Code is concerned, provisions which are inconsistent with this Proclamation, are repealed.

Given the obligatory nature of the Proclamation, a certain writer was very much surprised by Art.2(8) of this Proclamation which states "insurance policy as a contract whereby the insurer undertakes to pay compensation..." He stated that:

"The proclamation refers insurance policy as a contract. A contract basically requires, as per the Civil Code of Ethiopia, the fulfillment of three (sic) elements. These are consent, object and form. As far as consent is concerned, the parties involved in the contract are at liberty to create, vary or extinguish obligations of a proprietary nature... Under this circumstance, can the policy be termed as a reciprocal contract concluded between the insurer and the insured?"¹

It is clear that out of the four fundamental elements of contract, consent must be there to say that a contract is lawfully concluded. Obviously, consent means the willingness to enter into a certain juridical act with the view to be bound by it. Thus, there must be voluntary intention to be bound by a certain contract. When we say accident contract has become obligatory, it means that the consent element of this contract has been denied by the law maker leaving intact those other elements. The owner of a vehicle will also enjoy the contractual nature of this form of

¹ Tefera Wondimu, Society of Insurance Professionals, , The Law Governing Obligatory Motor Liability Insurance, , 5th Anniversary and 11th Workshop, Addis Ababa, Ethiopia, January 3, 2009, P.69



insurance by going to any insurer which he thinks is financially sound. He is also expected to conclude an insurance policy with the insurer. In the existence of these facts, therefore, is it that much surprising if the law maker defines “insurance policy as a contract?”

Turning into regulatory framework, this law may have its own effect on the supervision and administration of insurance business. As discussed before, even though the National Bank of Ethiopia, was supposed to play an active role in the preparation of the draft up to promulgation of this new law, the reality is otherwise. But, this does not mean that it is totally out of the implementation of this new law. As it has the duty to supervise and control the insurance business, it may come up with its own regulatory rules so that the financial soundness of insurers would be maintained. In this regard, Ato Yewondwossen Etefa² said that this new law has two dimensions, namely, social and economic. Its social aspect would be managed by those stakeholders in the transport sector such as the Ministry of Transport and Communications, Transport Authority and the police. The economic aspect of the proclamation, in his view, may be to maintain the financial adequacy of insurers. This is the major business of the regulator, and hence the National Bank of Ethiopia may issue certain directives that would guarantee financial responsibility of insurers. Thus, a new regulatory framework may be issued taking into consideration the reality when the law is implemented.

5.2.2 Insurers

From the very outset, one may conclude that vehicle insurance against third party risks proclamation has its own positive and negative impacts on insurers. Let me begin from its positive side.

² Interview with Yewondwossen Etefa, Head, Insurance Supervision, , National Bank of Ethiopia, on 13/02/2009.

To list some of the positive aspects, firstly, because almost all vehicles are to be insured, the volume of insurance business in Ethiopia would increase³ and secondly the very fact that insurance gives relief to the public has been effectively delivered to motor vehicle owners.⁴ Thirdly, because all vehicles are expected to buy accident insurance, and the amount of compensation is to be paid in principle without going to courts, insurers may claim and receive compensation from other insurers that are liable to pay. This would speed up the claims settlement of insurers that was very sluggish and controversial before.⁵ Another prospect for insurers is they may get a great deal of profit as motor insurance has cash flow.⁶ In short, it is an opportunity for them to make profit. It is clear that the more insurers are financially sound, the better it gets. Fourth, it clearly shows that the insurance business is really cognizant of and intended to avoid the social problem. By compensating those victims, insurers contribute their own share on the social problem to be reduced, if not eradicated.

Coming back to the challenges it carries on insurers, generally this law demands a number of factors to be considered. Firstly, are our insurers ready to entertain this form of insurance product? Do they have the necessary experts, staff, information technology and time to make this form of business? In the opinion of interviewees⁷ implementing this law would impose work load on insurers. Secondly, administering this insurance product would have its own cost or operational expenses that insurers are expected to pay. Of course this is dependent on the adequacy of the amount of premium that is going to be determined by the government. Third, if the amount of premium to be determined by the government is not adequate, the financial soundness of insurers

³ Interview with Ato Fasil Asnake, Head Legal Department , United Insurance S.Co, 18/02/09

⁴ Ibid

⁵ Ibid

⁶ Cited at not 2

⁷ Cited at note 1,2,3

would be endangered. This naturally entails high risk of bankruptcy.⁸ Fourth, in countries such as Ethiopia where there is almost no exchange of information as between the transport authorities and insurers, bad motor vehicle drivers may not be screened out. Insurers may carry, therefore, an unfair burden of compensating victims. Fifth, the coming into application of this new law would cause insurers to prepare two types of insurance policies. One destined to entertain the voluntary insurance business and the other to conduct the involuntary one. To be precise, in the later case the insurers' contractual upper hand in preparing adhesive contracts is almost taken away by this new law. The sixth challenge on insurers may be the adequacy of premium amount to be decided by the government. This would, we believe be one of the controversial issues between the general public buying insurance or government and insurers at the time of implementation of this law. Another challenge may be as the experience of other countries show, obligatory insurance works good to the expectation of the legislature if there is firm cooperation between insurers themselves. In the opinion of one interviewee, this is lacking in Ethiopia.⁹ Last but not the least is, because everyone generally irrespective of fault is legible to protections given by the law, this would increase claims consciousness on citizens.¹⁰ This would have its own negative effect upon insurers, which are established principally to make profit.

5.2.3 Owners of Motor Vehicles

This law also has its own negative and positive effects on owners. Beginning from its negative impacts on these persons, they are basically two. The first relates to the idea that as far as third party liability in connection with motor vehicle accident is concerned, insuring vehicles is

⁸ Cited at note 2

⁹ Cited at note 2

¹⁰ Interview with Ato Tefera Demes, Lawyer, Society of Insurance Professionals, on 20/2/09

not a voluntary one. Simply put, owners are legally compelled to buy this insurance product the failure of which entails criminal and civil liability. This will naturally reduce the pockets of owners. The second point relates to what is commonly called as “moral hazard”. Some argue that compulsory insurance directs insureds toward an alleged tendency to increase accidents since the fear of personal liability no longer operates as a restraining influence.¹¹

Interviewees to this paper are of this opinion. Others, however, opine otherwise. The latter said that in countries where third party motor vehicle insurance is obligatory, the accident rate was not increasing and in fact it has become one of the top safety records of the states of the United States of America which implemented the law.¹²

In our belief, the issue of moral hazard has to be critically seen in Ethiopia. If drivers/owners become careless, this would naturally increase traffic accident rates. This is against the very objective of this new law. Of course, whether this law contributes to carelessness of drivers would be seen in the future when it is implemented. In our view, however, there is a mechanism in this law that would reduce, if not avoid, the moral hazard of drivers. As is stipulated in Art.6 of the proclamation, any condition in the insurance policy that exempts the insurer from its duty of compensation shall be of no effect. But the insurer may include a provision in the policy requiring the person insured to repay the insurer any sum that is paid to third parties. If we say that insureds develop moral hazards or carelessness because they have insurers to cover their liability, insurers, by claiming the amount of money paid to third parties, avoid this problem. This point will also be briefly touched later.

¹¹ Frank P. Grad, Recent Developments in Accident Compensation, Columbia Law Review, Vol. 50 (1950), P. 314

¹² Ibid

When we come to its positive impacts on owners generally they have a relief be it economic or psychological as far as their liability is concerned. Before, all forms of insurance were voluntary. Because of a number of factors discussed in this paper, the majority owners were not insuring their motor vehicles. If an accident occurs, therefore, it is the duty of the owner to pay the amount of compensation decided by the court. Executing judgments of such kind may be done by either selling the vehicle involved in the accident or resorting to other personal properties of the owner. These have their own impact on the insured and his/her dependents. Now, because the liability is covered by insurers, the economic impact on the insured and his/her dependents may not be there.

5.2.4 Victims of Accident

The very objective of introducing this law is to establish a system for facilitating the provision of emergency medical treatments and awarding compensation to victims of vehicle accidents. As for as the latter is concerned, we cannot say that before the coming into picture of Procl.559/2008, there were no laws that award compensation to victims of car accidents. But, these laws were theoretical that do not guarantee compensation to these victims. This law, therefore, aims principally at safeguarding the very economic interests of victims with less cost in relatively speedy procedures. Thus, we can conclude that victims of vehicle accidents have been accorded with effective legal protection the non-existence of which in the past has been taken by many as the fault of the legislature.

5.2.5 Traffic Accident Prevention

One indirect objective to be discerned from the avant projet and even from the law is the legislature is serious in reducing if not totally

eliminating vehicle accidents in Ethiopia. The controversial issue is: does this law have its impact on traffic accidents?

Some argue that this law does have nothing to do with traffic accident prevention. The majority of interviewees¹³ are of the view that, instead of decreasing the traffic accident rate, the law might increase it. Their line of argument revolves around the moral hazard of drivers. Berhanu Tadesse, Head of Legal Department of the Africa Insurance Share Company, is of the opinion that vehicle owners and drivers may become reckless if they think that the compulsory insurance will cover any damages they may cause.¹⁴

Others on the other hand argue that the law would reduce traffic accidents. For Ato Fissiha G/Wahd,¹⁵ the law has an indirect effect on accident prevention. In his opinion:

“mechanically unfit or road unworthy vehicles may not be driven on the roads. Because these vehicles’ risk is high, the premium which the insured has to pay will also be high. Under some circumstances, therefore, the owner of the vehicle may be better off without the car than paying the increased amount of premium plus its repairing costs.”

Thus, removing these road unworthy vehicles will have its own positive effect on accident prevention.

For Alemseged Abraham, Managing Director of the Ethiopian Insurance Company (ETC),¹⁶ the law will have its positive impact on traffic accident prevention. Besides, the avant projets¹⁷ of the law indicate that traffic accident prevention could be maintained by the following two reasons. The first reason is one that is exactly spelled by Ato Fissiha G/Wahd

¹³ Interviewees cited at note 1,3,10 unanimously agreed that because owners or drivers are legally guaranteed that insurers are to pay compensation to victims, they may be reckless or they would not be that much prudent.

¹⁴ <http://www.addisfortune.com>, visited on 12/25/2008

¹⁵ Ato Fissiha G/Wahd, Head, legal Department, Transport Authority, interviewed on 12/02/09

¹⁶ Cited at note 14

¹⁷ See for example, the three minutes attached at the end of this paper

above. The second relates to the idea that insurers inspect the insured vehicles annually. Following the implementation of this law, they may exert much of their time and labour so that the vehicle is strictly inspected. Otherwise, their profit making desire would be in jeopardy. Thus, this would ascertain the road worthiness of motor vehicles, a condition precedent for road traffic accident prevention.

Whether this new law increases the recklessness of drivers or owners is briefly highlighted before. But, let us add other facts to be seen while the issue of moral hazard is considered. Firstly, accident may not necessarily be caused by the negligence or recklessness of drivers; it is rather the cumulative effect of the quality of roads, the mechanical fitness of vehicles and the competence of drivers and "the careful person is one who insures and it is hard to believe that insurance policy changes his nature."¹⁸

¹⁸ Martha Belete, Mechanisms of Compensating Automobile Accident victims: A Case of Third Party Motor Insurance (AAU, Faculty of Law, 2003), PP. 74-79

Conclusion and Recommendations

Conclusion

Beginning from its invention up to now, motor vehicle, replacing horses and others, has eased human living. At the same time, it has posed certain risks. It is obvious that vehicles may injure or kill the human person and damage his property. Because accident gives rise to an issue that is to be regulated by the law, the legislature has established a legal regime and institutional framework that guarantee compensation to victims. The major objective of this type of the law is, therefore, to compensate those who sustain damage or their respective beneficiaries.

In Ethiopia too, the 1960 Civil and Commercial Codes have provided basic legal regimes with the view to compensate victims of motor vehicle accidents or their beneficiaries. In the Civil Code, the law of Torts or Extra-contractual liability stipulates three sources of civil liabilities.

In the law of insurance, too, the owner of the vehicle may insure the vehicle for third party risks. In this case, one who sustains damage for which an insurance policy is concluded will have the right to claim compensation from the insurer. Thus, in Ethiopia, the laws of torts and insurance which aim at compensating victims of motor vehicle have been recognized and enforced beginning from 1960.

The point, however, is not about recognizing or putting into practice such laws. Rather, it is about evaluating whether these laws do actually guarantee compensation to those who sustain damage. The experiences of many countries and that of Ethiopia show that unless another legal regime is introduced, victims may be left uncompensated just because of the following problems that these laws have. If we take insurance law and practice in Ethiopia, to list some, firstly, insurance is voluntary, and hence it is a contract. Thus, it is left for choice. Only those who are

financially responsible would insure their vehicles. Uninsured vehicles' owners might not pay victims the amount of compensation decided by courts. Secondly, insurance policies, being adhesive, are complex and contain many restrictions and conditions that exempt insurers from their duty of compensation and third, some insurers in Ethiopia are not willing or are reluctant to insure certain vehicles. In the law of torts, too, there are many exceptions in the Ethiopian Civil Code leaving the victim without or with less compensation. There is also difficulty in assessment of damages. Besides, there exists legal gap on hit and run victims. True in both tort and insurance laws, congestion of courts and delay will have to cast their own cloud on compensation of victims.

The experience of other countries shows that another legal regime has to be in place so that victims must be compensated effectively. The law of compulsory third party motor vehicle insurance is debated, and being implemented to principally and successfully achieve this objective. Even though the degree of protection accorded by this law to victims differs from country to country, the objectives behind this law remain the same. To make motorists financially capable of meeting accident liabilities, guarantee minimum compensation, promote commercial transport efficiency and others are the very objectives of this law.

In Ethiopia, until January 2008, the legislature has not recognized and enforced compulsory third party motor vehicle insurance even though there were a number of attempts by the government and others. We are really late when we compare ourselves with the Americans, British and even Tanzania, who first implemented their respective laws in 1927, 1930, and 1940s respectively. The Ethiopian law, called Vehicle Insurance against Third Party Risks, Procl.559/2008, came into existence on January 9, 2008. The rationale behind and objectives of the law can be generally summarized on the hand as the increase of vehicle accidents from time to time, the social impact of these accidents and on the other the desire to establish a system for provision of emergency

medical care and hence there exists a strong desire to require vehicle owners to have third party insurance coverage.

Turing into the legal regime, the law makes third party motor vehicle insurance compulsory. All vehicles, except those to be exempted by the Ministry of Transport and Communication, are expected to be insured for third party risks. Third party, which includes human and property risks, is defined in the law as any person other than the insured person, member of the insured's family, the driver or any person employed on a vehicle. Thus, pedestrians and even passengers are within the scope of application of the law. Out of the scope of the law, however, are those excluded and indicated above, damage to the insured vehicle, damage to goods carried on the basis of rent or payment and damage to any property owned by or under custody of the insured person.

In this new law and others, obligations of the insured and the insurer have been indicated. The insured, for example, has the duty to pay premium, provide information as to the mechanical fitness, power and others of the vehicle, notify the occurrence of the accident within 10 days, and to secure coverage for liabilities of third parties and liabilities arising out of collision, roll, fire or explosion caused by the vehicle and the fall of objects carried by the vehicle. The basic duties of the insurer, includes the duty to accept insurance request by the insured though not clearly indicated in the new law, to issue insurance policy, certificate and sticker, pay compensation and bills of emergency medical treatment.

One of the implied reasons behind promulgating this law by Ethiopia is to discharge its international duty assumed in the COMESA Treaty. Under this sub-regional economic integration, member states are expected to give recognition and enforce the Yellow Card system put into

practice in SADC and COMESA member states. Art. 33 of procl.559/2008 recognized this card system.

The institutional framework of this law generally contains the implementation procedures and institutions. A closer look at the proclamation reveals that one way of implementing the law is by displaying insurance sticker on the wind screen of vehicles or if the vehicle does not have a wind screen, the sticker to be possessed always by the driver. The presence of the sticker contains a prima facie evidence that the vehicle is insured. The second way is that the law gives mandate to the police to detain uninsured vehicle till the appropriate certificate of insurance is presented. The third way is to punish either civilly or criminally those vehicle owners who fail to insure their respective vehicles for third party risks.

Coming to implementation, institutions recognized by this law are The Council of Ministers, The Ministry of Transport and Communications, the Insurance Fund Board, the Office of the Fund and the Director General. Though not indicated by the law but which certainly has its own roles in the actual implementation of this law is the National Bank of Ethiopia.

The Council of Ministers will issue regulations, and the Ministry of Transport and Communications will come up with directives that can facilitate the implementation of the proclamation.

The law establishes the Insurance Fund. The Insurance Fund as a permanent financial source, to be drawn from the proceeds of insurance tariff, has the objective to provide emergency medical treatment to any person injured by any vehicle accident and to provide compensation to a third party victim of an accident inflicted by uninsured or unidentified vehicle. The director general of the insurance fund office and the board together with the aforementioned institutions are believed by the legislature to actually implement the law.

Recommendations

Based on the findings of this paper, this writer would like to recommend the following:

A. On the Legal Regime

1. As far as the **scope of application** of the law is concerned:
 - 1.1 "Implement of husbandry" is excluded from the scope of the law. Its Amharic counterpart indicates that farming vehicles such as tractors are out of the application of the law. In view of the fact that these vehicles could be the source of traffic accidents endangering third parties, the law should have included them.
 - 1.2 Third party is defined as any body except the insured person, members of the insured person's family, the driver or any person employed on a vehicle. According to the law, family means husband, wife, child or any person who cohabits with the insured. Any person who cohabits with the insured person is a vague phrase and it must not be interpreted widely. If we interpret it widely, we would exclude many persons from the scope of the law. This is against the rights of these individuals. The coming regulation or other subsidiary laws have to as far as possible exhaustively list those persons envisaged in this phrase.
 - 1.3 Whether passengers are in or out of the scope of application of this law is not expressly indicated. One may, however, through interpretation arrive at a conclusion that passengers are envisaged in the law. Those employed on the vehicle should have been included in the scope of the law as the employer (owner of the vehicle) may not adequately discharge his/her/its responsibilities included in the Labour Proclamation or other laws.

2. Under Art. 3(2) of the proclamation, the Ministry of Transport and Communications may exempt certain vehicles from buying compulsory motor vehicle insurance. Which vehicles are envisaged is not clear from the law. Of course, this could be indicated by subsidiary laws. But, this Ministry is expected to strictly ascertain the fact that those exempted institutions would responsibly honour the compensation requests of third party victims. Just because a certain institution is a government office must not automatically benefit from this exemption.
3. One controversy to emerge in connection with the implementation of this new law is the amount of premium that is going to be decided by the government. It is controversial because it involves the conflicting interests of the insurance policy buying public and insurers. If much amount of premium is fixed, this is against the interest of the public. If it is less, this contravenes the very establishment of insurers. In fixing the amount of premium, therefore, the government has to strike a balance between these conflicting interests. Doing this is not an easy subject. But, certain factors such as the age, physical characteristics, educational status, bad/good driving behavior of drivers and the physical characteristics of the vehicles should be considered.
4. Even though insuring vehicles for third party risks has become obligatory on owners of vehicles, the duty has not been imposed on insurers. What if insurers disregard the request of motor vehicle owners? Particularly, what if an insurer, for example is reluctant to insure minibus taxi and Isuzu saying that these vehicles are very risky? Where do owners go? In the belief of this writer, the law should have answered these questions. This point should be included in the amendment of this new law.

5. On the **extent of liability**:

5.1 The Amharic and English versions of Art. 16 do not convey the same message. In the English version, whether the amount compensation indicated under Art. 16 (a-c) would be paid for each victims or all

victims is not clear. This is naturally a problem of translation. In view of the fact that the Amharic version is superior, this problem of the law may be academic. But, this has to be reconsidered when the law is amended.

- 5.2. The maximum amount of compensation included in this article is not fixed based on the micro and macro economic reality of the country; it was rather partly on the Commercial Code. Given the cost of living is not the same as it was in the 1960s, the extent of liability that insurers would pay should be based on the current macro and micro economic analysis of Ethiopia.
- 5.3. What is more, this extent of liability is not subject to revision unless there is formal amendment of the law. Given the ever increasing cost of living and other factors, Art.16 of the proclamation should be designed in such a way that one of the enforcement institutions may vary it. Besides, while the amount of premium can be changed from time to time, the amount of compensation cannot go beyond the amount stipulated in Art. 16. Generally these may not go together unless revision is made.
6. The maximum amount of fees for medical treatment is birr 1000. The law does not take into consideration the increasing cost of medicines and medical treatment. The law would have been better had this amount been adjusted in time.

B. On the Institutional Framework

1. No duty is imposed upon the insured person to return insurance stickers once the insurance policy lapses and not renewed. Insurance stickers are prima facie evidence that the vehicle is insured. Thus, there may be a possibility that stickers would be displayed on the screen of the vehicle or possessed by the driver even in the absence of an insurance policy. This gap, therefore,

would cast its own shadow on the effective implementation of the law. This has to be rectified.

2. Once vehicles are detained by the police till the appropriate certificate of insurance is presented, the law does not answer the following questions:
 - Who is expected to cover the cost of detention? The police? The defaulter?
 - Whose expenses cover for the care of motor vehicle until a certificate of insurance is presented?

These and other laws must be answered in the subsidiary laws at the time when the law is implemented.

3. The insurance fund is to be collected from the proceeds of insurance tariff in Ethiopia. The experiences of other countries show that the source of the fund does not solely rest on insurers. The fact that the fund is to be drawn only from insurers is unfair and illogical. The punitive damage that is going to be levied on defaulters as per Art. 37 of the proclamation and others should be seen as a source to the fund. Otherwise, given that insurers are paying much tax, they are expected to have a reserve as per the regulatory framework and the shareholders' strong desire to get dividend, their financial adequacy and hence their existence would be endangered. This will have its own impact on the economy.
4. Per Article 27(3) of the Proclamation, the Board of the Insurance Fund shall investigate and give decisions regarding victims of vehicle accident who could not get proper compensation. This administrative decision, however, is not subject to appeal by those who are denied compensation. The appeal right of these individuals have to be respected.
5. Once the Insurance Fund Office has paid compensation to faults committed by untraced vehicles, the proclamation does not entitle

it to claim back the amount paid to the victim if the tortfeasor is later known. The law should have included this.

6. Even though the law was promulgated on January 9, 2008, it has not been implemented for more than a year (even up to March 2009). It is surprising when one gathers why the law is not implemented. Authorities at the Ministry of Transport and Communications, Transport Authority and even the National Bank of Ethiopia do not know why this is so. It seems to me that the law has no body to implement it. Stakeholders must join themselves together to adequately implement the law.

Bibliography

A. Books

1. Abraham S. Kenneth, Distributing Risk, Insurance, Legal Theory and Public Policy, (Yale University Press, 1961)
2. Birds John, Modern Insurance Law, 4th edi.,(Universal Law Publishing Co, 2003)
3. Cannar Kenneth, Motor Insurance: Theory and practice, (Wither by and Co. Ltd, 1979)
4. (The) Chartered Insurance Institute, Elements of Insurance, (Willmer Brothers Ltd, England)
5. Conard F. Alfred, the Economic Treatment of Injuries; Dollars, Delay, and the Automobile Victim, (Walter E. Meyer Research Institute, 1968)
6. Dickson C.G.A, Insurance Practice, (Cambridge; the Bath Press, 1993)
7. Garner Bryan A, Black's Law Dictionary, 8th edi., (Thomson West, 2004)
8. Krzeczunowicz George, the Ethiopian Law of Extra-Contractual Liability, (Haile Sellassie I University, 1970)
9. Meyer Walter E., Dollars, Delay and the Automobile Victim: Studies in Reparation: for Highway Injuries and Related Court Problems, (Walter E. Meyer Institute, 1965)
10. O'Connell Jeffrey and Keeton Robert E., Basic Protection for the Traffic Victim: A Blue Print for Reforming Automobile Insurance, (Harvard Law School, Little Brown and company, 1965)
11. Sheffield William and Rao P.C., Alternative Dispute Resolution: What It Is and How It Works, (Universal Law Publishing Co. Ltd., 2005)

B. Journals

1. Foreign

1. Esmien Paul, Liability in French Law for Damages Caused by Motor Vehicle Accidents, American Journal of Comparative Law, Vol. 2 No. 1, 1953.
2. Friedmann, W.G., Social Insurance and the Principles of Tort Liability, Harvard Law Review, 1964.
3. Grad Frank P., Recent Developments in Automobile Accident Compensation, Columbia Law Review, Vol. 50 1950.
4. Kanywawyi, J.L., Compulsory Motor Insurance Scheme in Tanzania: The Need for a New Approach, East Africa Law Review, Vol. 4 No.1, 1971.
5. Patterson Edwin W., Administrative Control of Insurance Policy Forms, Columbia Law Review, Vol. 25, No.3, 1925.
6. Tune Suzanne, Establishment of "Funds De Gratia" to Compensate Victims of Motor Vehicle Accidents, American Journal of Comparative Law, Vol. 2, 1953.

2. Domestic

1. ኃይለሚካኤል ከምባታ፣ አስገዳጅ የሥነ-ጥናት ወገን መድን ዋስትና ምንነትና አስፈላጊነት፣ መድን፣ ጥር 1983
2. ተፈራ ደምስ፣ ስለአስገዳጅ የተሽከርካሪ መድን አንዳንድ መሠረታዊ ነጥቦች፣ መድን ቁጥር 6፣ 1985 ዓ.ም
3. Tefera Wondimu, The Law Governing obligatory Motor Liability Insurance, Society of Insurance Professionals, 5th Anniversary and 11th Workshop, Addis Ababa, 2009.

C. Senior Papers and Others

1. Belay Abebayehu, The Control of Insurance Business under Procl. 86/1994, (Addis Ababa University, Law Faculty, unpublished, 1996)
2. Getachew Sharew, Compulsory Motor Insurance in Ethiopia, (Addis Ababa University, Law Faculty, unpublished, 1972)

3. Martha Belete, Mechanisms of Compensating Automobile Accidents Victims: A Case of Third Party Motor Vehicle Insurance, (Addis Ababa University, Law Faculty, unpublished, 2003)
4. Tesfaye Abate, Insurance Law, (Alpha University College, Teaching Distance Module, 2007)
5. Tesfaye Riste, Insurance and Social Security as a Social Schemes: Comparatively Dealt With, (Addis Ababa University, Law Faculty unpublished, 1978)

D. Others

1. Addis Ababa City Traffic Accident Prevention and Investigation Department Reports of 1990-2000.
2. African Recovery (on COMESA), Department of Public Information, United Nations Publications, United Nations.
3. Association of Ethiopian Insurers, Letter Written to the Ministry of Transport and Communications, dated Sene 19, 1998 E.C.
4. Model Legislation or the protocol on Vehicle Insurance Against Third Party Risks of COMESA and SADC.

E. Minutes and Other Policy Documents

1. A Minute submitting the draft law to Infrastructural, legal and Administrative, trade and Industry Affairs Standing Committees (Tikmit 5, 2000 E.C.)- translated into English.
2. Minute of Infrastructural, Legal and Administrative and Trade and Industry Affairs Standing Committees (Tikmit 27, 2000 E.C.)- translated into English.
3. Minute of discussion by Transport Authority Presenters to stakeholders (Hidar 6, 2000 E.C.)- translated into English.

4. A document showing the objectives of Procl.559/2008, Written by Ministry of Transport and Communications.

F. Interviews

1. Eskender W/Mariam, Lawyer, United Insurance S.CO., on 12/07/08
2. Fasil Asnake, Head, Legal Department, United Insurance S.CO., on 18/02/2009
3. Fissiha G/Wahd, Head, Legal Department, Transport Authority, on 01/12/08 and 10/12/2008
4. Tefera Wondimu, Head, Claims Division, United Insurance S.CO., on 18/02/2009
5. Tigist Assefa, Lawyer, Ministry of Transport and Communications, on 01/12/08 and 14/12/08
6. Wondimagegne Kelemie, Inspector, Insurance Supervision, National Bank of Ethiopia, on 20/10/2008
7. Wuletaw Chane (Dr.), Generalist, Ras Desta Memorial Hospital, on 23/01/2009
8. Yared Legesse, Manager, NIB Lideta Branch, on 15/07/08
9. Yewendwossen Etafa, Department Head, Insurance Supervision, National Bank of Ethiopia, on 13/02/2009

G. Websites

1. [File: // H:/motorinsurance.htm](file:///H:/motorinsurance.htm), accessed on 17/10/2008.
2. <http://www.ncc.gov.au>, accessed on 10/17/2008
3. <http://ezinearticles.Com/?Auto-insurance>, accessed on 12/4/2008
4. <http://www.addisfortune.com>, accessed on 25/12/2008
5. [File://H:/frenchmotorinsurance.htm](file:///H:/frenchmotorinsurance.htm), accessed on 17/10/2008
6. <http://www.e-laws.gov.on.ca/html>, accessed on 12/11.2008

H. Laws

1. Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, Neg.Gaz., Gazette Extraordinary, 19th Year, No.2.
2. Commercial Code of the Empire of Ethiopia, Proclamation No. 166 of 1960, Neg.Gaz., Extraordinary Issue, No.3.
3. Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414 of 2004.
4. Vehicle Insurance against Third Party Risks, Proclamation no. 559/2008, Neg.Gaz., 14th year, No.7.
5. Licensing and Supervision of Insurance Business Proclamation, Procl.86/1994, Neg.Gaz., 53rd year, No.46.
6. The National Bank of Ethiopia Establishment Proclamation (as amended), Procl.591/2008, Neg.Gaz. 14th year, No.50.
7. Banking Business Proclamation, Procl.592/2008, Neg.Gaz., 14th year, No.57.
8. Labour Proclamation, Procl.377/2003, Neg.Gaz., 10th year, No.12.



ከብረት ኢንሹራንስ ኮሚ

THE UNITED INSURANCE COMPANY S.C.

Alpaulo Building, Debrezeit Road

P.O. Box 1156 • Addis Ababa, Ethiopia

Tel. 251-11-465 56 56 • Fax. 251-11-465 32 58

COMMERCIAL VEHICLE POLICY

Whereas The Insured designated in the Schedule hereto has applied to THE UNITED INSURANCE COMPANY SC (hereinafter called "the Company" by a proposal which the Insured has agreed shall be deemed to be of a promissory nature and effect and the basis of this Contract and which is deemed to be incorporated herein and has paid or agreed to pay the premium stated in the Schedule hereto as consideration for the Indemnity hereinafter contained;

Now This Policy Witnesseth that:-

SPECIMEN

I. The Company will subject to the Terms, Provisions and Conditions contained herein or endorsed hereon Indemnify the Insured against loss damage and/or liability as hereunder mentioned actually occurring or arising during the period stated in the Schedule hereto or during any subsequent period for which the Company may accept payment for the renewal of this policy that is to say:-

1. Loss of or Damage to any Vehicle described in the Schedule hereto and Accessories whilst thereon resulting from an Accidental Collision or Overturning consequent upon Mechanical Breakdown or consequent upon Wear and Tear but excluding accidental damage to Tires unless such Vehicle is damaged at the same time, and excluding loss or damage to canvas and batteries;
2. Loss of or Damage to any Vehicle described in the Schedule hereto and Accessories whilst thereon;-
 - (a) By Fire External Explosion Self Ignition Lightning or Burglary Housebreaking or Theft;
 - (b) By Malicious Act; and,
 - (c) Whilst in transit (including the processes of loading and unloading incidental to such transit) by Road Rail Inland Water Way Lift or Elevator but excluding damage to Tires unless such Vehicle is damaged at the same time;

Provided however that the term "Accessories" shall not include Rugs, Coats, Luggage, Wraps, Parcels, Personal Clothing and Effects;

3. The cost of protection and removal of any Vehicle described in the Schedule hereto to the nearest repairers in consequence of accident causing damage which is covered hereunder but not exceeding twenty percent of the agreed cost of repairs;

4. Liability at Ethiopian Law for compensation (including Law Costs of any claimant) for death of or bodily injury to any person caused by the lawful use of any Vehicle described in the Schedule hereto (including the loading and/or unloading of such Vehicle) but excluding liability for death of or bodily injury to:-
 - (a) any person in the employment of the Insured arising out of and in the course of such employment;
 - (b) any person being a member of the Insured's household; and,
 - (c) any person being carried in or upon or entering or getting on to or alighting from such Vehicle at the time of the occurrence of the event out of which any claim may arise;

Provided that the liability of the Company including such Law Costs is limited in respect of any one claim or series of claims arising out of one event to the sum stated in the Schedule hereto;

5. Liability at Ethiopia Law for compensation (including Law Costs of any claimant) for damage caused by the lawful use of any Vehicle described in the Schedule hereto property other than property belonging to held in trust by or in the custody or control of the Insured or a member of the Insured's household or being conveyed by such Vehicle. Provided that the liability of the Company including such Low Costs is limited in respect of any one claim or series of claims arising out of one event to the sum stated in the Schedule hereto;

SPECIMEN

3. No admission offer promise or payment shall be made by the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise against any third party and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
4. At any time after the happening of any event giving rise to a claim or series of claims under Section 6 of this policy the Company may pay to the Insured the full amount of the Company's liability under that section and relinquish the conduct of any defence settlement or proceedings and the Company shall not be responsible for any damage alleged to have been caused to the Insured in consequence of any alleged action or omission of the Company in connection with such defence settlement or proceedings or of the Company relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct.
5. ~~In the event of loss of or damage to any Vehicle described in the Schedule hereto Company may as its own option repair reinstate or replace such Vehicle or part thereof and/or its accessories or pay in cash the amount of the loss or damage and the liability of the Company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and in no case exceed the Insured's estimate of the value of such Vehicle (including Accessories thereon) as specified in the Schedule hereto or the value of such Vehicle (including Accessories thereon) at the time of the loss or damage whichever is the less.~~
6. The Insured shall take all reasonable steps to safeguard from loss or damage and to maintain in efficient condition any Vehicle described in the Schedule hereto and the Company shall have at all times free and full access to examine such Vehicle or any part thereof or any driver or employee of the Insured. In the event of an accident or breakdown such Vehicle shall not be left unattended without proper precautions being taken to prevent further damage or loss and if such Vehicle be driven before the necessary repairs are effected any extension of the damage or further accident arising shall be entirely at the Insured's own risk.
7. The Company may cancel this policy by sending fifteen day's notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium less the pro-rata portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on notice and (provided no claim has arisen during the then current period of insurance) the Insured shall be entitled to a return of the premium less premium at the Company's Short Period Rates for the time the Policy has been in force.
8. The Policy and the Schedule shall be read together as one contract and word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear.
9. If at the time any claim arises under this policy there is any other insurance covering the same loss, damage or liability the company shall not be liable to pay or contribute more than its rateable proportion of any loss, damage, compensation, costs or expenses.
10. All differences arising out of this Policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two disinterested persons as arbitrators, of whom one shall be appointed in writing by each of the parties within thirty days after having been required so to do in writing by the other party. In case either party shall refuse or fail to appoint an arbitrator within thirty days after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings. In the event of the death of an arbitrator or umpire, another shall in each case be appointed in his stead by the party or arbitrators (as the case may be) by whom the arbitrator or umpire so dying was appointed. It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage if disputed shall be first obtained.

Date 200

Examined

For and on behalf of
THE UNITED INSURANCE COMPANY SC



አብረት ኢንሹራንስ አማ

THE UNITED INSURANCE COMPANY SC

Alpaulo Building, Debrezeit Road

P.O. Box 1156 • Addis Ababa, ETHIOPIA

Tel. 251-11-465-56-56, 551-92-90 • Fax. 251-11-465-32-58

SPECIMEN

PRIVATE VEHICLE POLICY ~~No. 04-21-00004~~

Whereas The Insured designated in the Schedule hereto has applied to THE UNITED INSURANCE COMPANY SC (hereinafter called the "Company") by a proposal which the Insured has agreed shall be deemed to be of a promissory nature and effect and the basis of this Contract and which is deemed to be incorporated herein and has paid or organized to pay the premium stated in the Schedule hereto as consideration for the Indemnity hereinafter contained.

Now This Policy Witnesseth that the Company will subject to the Terms, Provisions and Conditions contained herein or endorsed hereon

Indemnify the Insured against loss damage and/or liability as hereunder mentioned actually occurring or arising during the period stated in the Schedule hereto or during any subsequent period for which the Company may accept payment for the renewal of this policy that is to say:-

1. Loss of or damage to any Vehicle described in the Schedule hereto and Accessories whilst thereon resulting from any Accidental Collision or Overturning consequent upon Mechanical Breakdown or Wear and Tear but excluding damage to Tires unless such Vehicle is damaged at the same time;
2. Loss of or Damage to any Vehicle described in the Schedule hereto and Accessories whilst thereon:-
 - (a) By Fire External Explosion Self Ignition or Lightning, Burglary Housebreaking or Theft;
 - (b) By Malicious Act; and,
 - (c) Whilst in transit (including the processes of loading and unloading incidental to such transit) by Road Rail Waterways Lift or Elevator but excluding damage to Tires unless such Motor Vehicle is damaged at the same time;

Provided however that the term "Accessories" shall not include Rugs, Coats, Luggage, Wraps, Parcels, personal Clothing and Effects;

3. The cost of protection and removal of any Vehicle described in the schedule hereto to the nearest repairers in consequence of accident causing damage which is covered hereunder but not exceeding twenty percent of the agreed cost of repairs;
4. Liability at Ethiopian Law for compensation (including Law Costs of any claimant) for death of or bodily injury to any person caused by the lawful use of any Vehicle described in the Schedule hereto except where such death or injury arises out of or in the course of the employment of such person by the Insured and excluding liability to any person being a member of the Insured's household provided that the liability of the Company including such Law Costs is limited in respect of any one claim or series of claims arising out of one event to the sum stated in the Schedule hereto;
5. Liability at Ethiopian Law for compensation (including Law Costs of any claimant) for damage caused by the lawful use of any Vehicle described in the Schedule hereto property other than property belonging to or held in trust by or in the custody or control of the Insured or a member of the Insured's household provided that the liability of the Company including such Law Costs is limited in respect of any one claim or series of claims arising out of one event to the sum stated in the Schedule hereto;
6. Liability at Ethiopian Law as defined in Article 1 (4) and (5) above arising whilst the Insured is personally driving a private Vehicle not belonging to him and not hired to him under a hire purchase agreement provided that:-
 - (a) one of the Cars described in the Schedule hereto is not in use at the time; and,
 - (b) the liability of the Company under this Clause shall not exceed the respective limits of indemnity under the

Attachment Three

የውሳኔ ሐሳብ ቁጥር 03/2000

የኢ.ፌ.ዲ.ሪ የህዝብ ተወካዮች ምክርቤት ስለተሸከርካሪ አደጋ የሶስተኛ ወገን መድን ዋስትና የወጣ ረቂቅ አዋጅን አስመልክቶ በመሠረተ ልማት ጉዳዮች፣ በሲ.ግ.ና አስተዳደር ጉዳዮች እና በንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴዎች የቀረበ ሪፖርትና የውሳኔ ሐሳብ

1. መግቢያ

የኢ.ፌ.ዲ.ሪ 3ኛው የህዝብ ተወካዮች ምክርቤት ጥቅምት 05/2000 ባካሂደው መደበኛ ስብሰባ ስለተሸከርካሪ አደጋ የሶስተኛ ወገን መድን ዋስትና የወጣ ረቂቅ አዋጅ ቁጥር 03/2000 ለዝርዝር እይታ በዋናነት ለመሠረተ ልማት ጉዳዮች ቋሚ ኮሚቴ እንዲሁም በተጨማሪ ለህግና አስተዳደር ጉዳዮች ቋሚ ኮሚቴ እና ለንግድና ኢንዱስትሪ ጉዳዮች ቋሚ ኮሚቴ መምራቱ ይታወቃል።

በዚህ መሠረት ረቂቅ አዋጁ የተመራላቸው ቋሚ ኮሚቴዎች አዋጁን ካዘጋጁት የመንግሥት አስፈጻሚ መ/ቤቶች ጋር የመጀመሪያ ወይይት ጥቅምት 27ቀን 2000 ዓ.ም አካሂደዋል። በመቀጠልም ተጨማሪ የህዝብ መድረክ በማዘጋጀት ጉዳዩ የሚመለከቱትን አጋር አካላትን በማካተት ህዳር 06 / 2000 ዓ.ም ሰፊ ወይይትና ክርክር አካሂደዋል። በዚህ ወይይት ከትራንስፖርት ማህበራት የተወከሉ 36 ፣ ከመድን ኩባንያዎች 17 ፣ ከአ/አ ከተማ ጊ/ባ/አስተዳደር ተገኝተዋል። በሁለቱ ዙር የተካሄዱ ወይይቶች ቃለ-ጉባኤ ተያይዞ ቀርቧል።

2. በውይይቱ የተገኙ አስረጃዎች :-

1. አቶ ካሳሁን ኃ/ማርያም -----የትራንስፖርት ባለሥ/ ዋና ዳይሬክተር
2. አቶ ፍስሐ ገብረዋህድ -----የትራንስፖርት ባለሥ/ የህግ አገ/ሃላፊ
3. አቶ ንጉሴ ከበደ -----የትራንስፖርት ባለሥ/ የተሸከርካሪ ባ/ማ/የሰራ ሃላፊ
4. ወ/ሮ ትዕስት አሰፋ -----የትራንስፖርት ባለሥ/ የህግ ኤክስፐርት ናቸው።

3. ከውይይቱ የተገኙ ዋና ዋና ጭብጦች :-

1. በሀገራችን ከጊዜ ወደ ጊዜ የበርካታ ዜጎች ህይወትን እየቀጠፈ የሚገኘውንና ለሀገር ልማት ከፍተኛ አስተዋፅኦ ማድረግ የሚችለው የንብረት ውድመት ለመቆጣጠርና ለመቀነስ ይህ አስገዳጅ የሦስተኛ ወገን መድን ዋስትና አዋጅ ትልቅ ጠቀሜታ ያለው መሆኑን ፤

benefit

2. ተሽከርካሪዎች በሦስተኛ ወገን ላይ ለሚያደርሱት አደጋ የመድን ሽፋን እንዲኖራቸው አስገዳጅ ህግ መውጣቱ መድን ሰጭ ኩባንያዎች ለሚሰጡት የመድን ዋስትና ለኪላራ እንዳይዳረጉ በተሽከርካሪዎች ላይ ጥብቅ የቴክኒክ ምርመራ በማድረግ ብቃት ያላቸው ተሽከርካሪዎች ብቻ በመንገድ ላይ እንዲንቀሳቀሱ ከማስቻሉም በላይ አደጋዎችን ለመቆጣጠር ትልቅ ሚና የሚጫወት መሆኑን ፤

benefit

3. በማንኛውም ተሽከርካሪ አደጋ የደረሰበት ሰው አስቸኳይ ጉዳይ ሆኖ አገልግሎት ያለምንም ቅድመ-ሁኔታ እንዲያገኝ ማስቻሉን ፤

purpose

4. ባልታወቀ ተሽከርካሪ ወይም የመድን ዋስትና የሌለው ተሽከርካሪ በሚያደርሰው አደጋ የተጎዳ ማንኛውም ሦስተኛ ወገን ከፈንድ ጽ/ቤት ካላ እንዲያገኝ የሚደረግ መሆኑን ፤

purpose

4. ማስተካከያ የተደረገባቸው :-

1. በአንቀጽ 2 ሥር ንዑስ አንቀጽ 9 " የከተማ" ከሚለው ቀጥሎ ወይም " የገጠር" የሚል ሐረግ ቢገባ ፣

- ምክንያቱም የገጠር መንገዶች ላይ ተሽከርካሪዎች በሦስተኛ ወገን ላይ ለሚያደርሱት አደጋ የመድን ሽፋን እንደሚኖራቸው በግልጽ ለማመልከት እንዲቻል ፣

7. በአንቀጽ 16 ሥር ንዑስ አንቀጽ 1/ሀ የሰው ሞት ያስከተለ አደጋ ሲሆን ብር 30,000 የሚል ተሰርዞ በምትኩ በአንድ ሰው ላይ ለሚደርስ የሞት አደጋ ከብር 40,000 /አርባ ሺ.ብር/ በሚል ቢተካ ነ

- ምክንያቱም አገላለፁ አሻሚ ሆኖ በመገኘቱ መድን የተገባለት ተሽከርካሪ በአንድ ሰው ላይ ለሚያደርሰው ጉዳት በመድን ዋስትናው የሚሸፈነውን የሃላፊነት መጠን በማያሻማ መልኩ ለመግለጽ እንዲሁም የተጠቀሰው የካሳ መጠን ከፍርድ ቤቶች አሠራርና ልምድ ከተገኘ ጥናት ከመሆኑ ይልቅ በንግድ ህጉ ላይ የተመለከተው የካሳ መጠን የበለጠ ተቀባይነትና ተግባብነት ስላለው ነ

8. በአንቀጽ 16 ሥር ንዑስ አንቀጽ 1/ለ/ " የአካል ጉዳት ያስከተለ አደጋ " ሲሆን ብር 12,000 የሚለው ተሰርዞ በምትኩ " በአንድ ሰው ላይ ለሚደርስ የአካል ጉዳት ከብር 15,000 /አስራ አምስት ሺ/ ወይም " በሚል ቢተካ ነ

9. በአንቀጽ 27 ሥር ንዑስ አንቀጽ 6 " ጉዳዮችን" ከሚለው ቀጥሎ እና "የአርቦን መጠን" / የመድን ዋስትና ሽፋን ክፍያ / የሚል ቢጨመር ነ

- ምክንያቱም የአርቦን መጠን አጥንቶ ለመንግሥት ማቅረብ የቦርድ ሥልጣንና ተግባር መሆን ስለሚገባ ነ

10. በአንቀጽ 37 ሥር " የወንጀልኛ መቅጫ ህጉ " አዲስ ንዑስ የሚለው "አዲስ የወንጀል ህግ " በሚል ቢተካ ነ

21.	የተከበሩ አቶ መሐመድ አሊ	የሕግና አስተዳደር ጉ/ቋ/ኮ/ አባል
22.	" " ከብረት ኃይሉ	" " " " "
23.	" " ብርሃኑ ተሰማ	" " " " "
24.	" " ሻላቃ መኮንን ገለታ	" " " " "
25.	" " ኃይሉ መሃሪ	" " " " "
26.	" ሻምበል ጀምበር አሰማማው	" " " " "
27.	" አቶ ማሪ ቆያቸው	" " " " "
28.	" " በፍቃዱ ወ/ሰንበት	የመንግስት ወጪ አስተዳደርና ቁጥጥር ጉ/ቋ/ኮ/አባል
29.	" " ሚጣ ሚቻ	" " " " " "
30.	" " ታሪኩ ጣሰው	" " " " " "
31.	" " መስፍን ነመራ	" " " " " "
32.	" " በቀለ ወ/ሚካኤል	" " " " " "
33.	" " ኃ/ሰላሴ ገ/ሚካኤል	" " " " " "
34.	" " ጌትነት አማረ	" " " " " "
35.	" ወ/ሮ ፋንታዬ ወንድም	የም/ቤት አባል
36.	" ወ/ሮ ቅድስት በቀለ	" "
37.	የተከበሩ ወ/ሮ አንጻች ደሣለኝ	" "
38.	" " አየጳት አሰፋ	" "
39.	" አቶ አረጋ በንቲ	" "
40.	" " ዳንኤል ፈረደ	" "
41.	የተከበሩ ወ/ሮ ካሣነሽ አዲስ	" "
42.	" " ሥነፀሐይ ብዙነሀ	" "
43.	" " እስከዳር አበባው	" "
44.	" " ካሳወይ መስፍን	" "
45.	የተከበሩ አቶ ዳንኤል ደሳለኝ	" "
46.	" " ገበያው አለሙ	" "
47.	" ወ/ሮ ማሚት ተስፋዬ	" "
48.	" " ሻሽዬ ሀ/ሰላሴ	" "
49.	" " አበባ ተገኝ	" "
50.	" " ሉላ ጅብሪል	" "
51.	" አቶ ሽመልስ አበባው	" "

Attachment FOUR

የመሠረተ ልማት ፣ የሀገር አስተዳደር እና የንግድና ኢንዱስትሪ

ጉዳዮች ቋሚ ኮሚቴዎች ስለተሸከርካሪ አደጋ የሦስተኛ ወገን

መድን ዋስትና ረቂቅ አዋጅ ላይ ከትራንስፖርት ባለሥልጣን

መ/ቤት የሥራ ኃላፊዎች ጋር ያካሄዱት ውይይት

ቃለ ጉባኤ

ስብሰባው የተካሄደበት ቦታ ፡- 52 ቁጥር አዳራሽ

ስብሰባው የተካሄደበት ቀን ፡- ጥቅምት 27 ቀን 2000 ዓ.ም

ስብሰባው የተካሄደበት ሰዓት፡- 3:30-5:35

በስብሰባው ላይ የተገኙ የኮሚቴ አባላት ፣

ቁጥር	የተከበሩ ሀጂ አለ	የመሠረተ ልማት ጉዳዮች ቋሚ ኮሚቴ አባልና የውይይት ሰብሳቢ
1.	የተከበሩ ሀጂ አለ	" " " " " አባል
2.	" አቶ አምላኩ ገላ	" " " " " "
3.	" " ደማ ኩማ	" " " " " "
4.	" " አህመድ መሐመድ	" " " " " "
5.	" ወ/ሮ አታለል መላኩ	" " " " " "
6.	" አቶ ከተማ አምዴ	" " " " " "
7.	" " አዳነ ለዳ	" " " " " "
8.	" ወ/ሮ ወርቅነሽ ወ/የሱስ	" " " " " "
9.	" አቶ ይብጌታ ወ/ማርያም	" " " " " "
10.	የተከበሩ አቶ አስፋው መኮንን	የመሠረተ ልማት ጉዳዮች ቋሚ ኮሚቴ አባል
11.	" " ሆነልኝ ሳህሉ	" " " " " "
12.	" " ላቀ ጥላይ	" " " " " "
13.	" " አብዲ መሐመድ	" " " " " "
14.	" " ዘነበ ከበደ	የሕግና አስተዳደር ጉ/ቋ/ኮ/ አባል
15.	" " ክፍሌ ጃጉባ	" " " " " "
16.	" መ/አ ጉለ ፋንታ	" " " " " "
17.	" አቶ ለገሠ ቤራቱ	" " " " " "
18.	" " ቀነላ ኩማ	" " " " " "
19.	" " ደነቀ ደስታ	" " " " " "
20.	" " መንግስቱ ቴፋ	" " " " " "

አስረጃዎች

1. አቶ ካሳሁን ኃ/ማርያምየትራንስፖርት ባለስልጣን ዋና ዳይሬክተር
2. አቶ ፍሰሃ ገ/ዋህድ.....የትራንስፖርት ባለሥልጣን የሀገር አ/ኃላፊ

በቅድሚያ የተከበሩ ሰብሳቢው ሀጂ አሊ እንግዶችን እንኳን ደህና መጣችሁ ካሉ ገንጠራ ረቂቅ አዋጁን አስመልክቶ ቋሚ ኮሚቴው ባዘጋጀው ጥያቄ ላይ አስረጃዎች ማብራሪያ የሚሰጡ መሆኑን አስታውቀው የመሠረተ ልማት ጉዳዮች ቋሚ ኮሚቴ ይዘጋጀውን ጥያቄ እንዲያቀርብ መድረኩን ክፍት ባደረጉት መሠረት የተከበሩ አቶ ሆነልኝ ላህሉ እንደሚከተለው በንባብ አቅርበዋል።

ስለተሸከርካሪ አደጋ የሦስተኛ ወገን መድሀን ዋስትና በተመለከተ ፡-

1. በዚህ አዋጅ አንቀጽ 3 ንዑስ አንቀጽ 2 ሚኒስቴር መ/ቤቱ የመድን ዋስትና ሽፋን ሳይኖራቸው በመንገድ ላይ ሊሸከረከሩ የሚችሉ ተሸከርካሪዎችን ሊወስን ይችላል ፡-
 - ◆ ይህ አንቀጽ ከአሠራር እና አደጋን ከመቀነስ አንፃር ለምን አስፈለገ?
 - ምን ዓይነት ተሸከርካሪ እንደሆነ አለመገለፁ ለአፈፃፀም ችግር አይፈጥርም ወይ?
 - ✓ ◆ የመድን ዋስትና ሳይኖረው አደጋ ቢያደርስ በምን ሁኔታ ሊጠየቅ ይችላል? የተ
2. አንቀጽ 7 በመድሀን ፖሊሲ ስለማይሸፈኑ ሁኔታዎች በሚለው ንዑስ አንቀጽ ሁራይ ከምን አንፃር እንደሆነ ማብራሪያ ቢሰጥበት?
3. በአዋጁ ላይ ስለ ተሸከርካሪ እና ስለ አሸከርካሪ ረዳት ተጠያቂነት የተቀመጠ ነገር የለም I በዚህ የተነሳ የአሸከርካሪ ግዴታ ለካተት ስለሚችል የአደጋው መጠን እየጨመረ ሊሄድ ይችላልና ለዚህ ነገር ምን የታሰበ ነገር አለ?
4. በአዋጁ ገጽ 6 አንቀጽ 15 ንዑስ አንቀጽ 1 መድን የተገባለት ተሸከርካሪ የሚያደርሰው ግጭት I የእሳት ቃጠሎ ወይም ፍንዳታ ይላል I የመገልበጥ አደጋ የሚል ለምን አልተካተተም I
5. ገጽ 2 ተራ ቁጥር 9 ላይ ስለ መንገድ የተሰጠ ትርጉም አውራጎዳና I የከተማ መንገድ I የተሸከርካሪዎች ማቆሚያ ወይም ማራገፊያና መጫኛ I ድልድይ ወይም በተለምዶ ለተሸከርካሪ አገልግሎት ክፍት የሆነ ማናቸውም ሌላ መተላለፊያ ነው ይላል I በአገራችን ተጨባጭ ሰፊው የህብረተሰብ ክፍል

13. በረቂቅ አዋጁ ላይ ብሔራዊ ባንክ አስተያየት ቢሰጥበት ጠቀሚታ የለውም ወይ?

14. በአዋጁ ገጽ 6 ክፍል አራት የመድን ዋስትና ይላል፤ በመቀጠልም ገጽ 7 ክፍል አምስት የመድን ፈንድ ይላል ፤ ሁለት የተለያዩ ነገሮች ይመስላሉና እንዴት በአንድ አዋጅ በአንድነት ይመራሉ?

15/10

በመቀጠልም የተከበሩ አቶ መሐመድ አሊ በህግና አስተዳደር ጉዳዮች ቋሚ ኮሚቴ የተዘጋጀውን ጥያቄ እንደሚከተለው አቅርቦታል።

◆ አንቀጽ 7 /4/ ላይ መድን በተገባለት ተሽከርካሪ በኪራይ ወይም በክፍያ በማንኛንም ንብረት ላይ የሚደርስ ጉዳት የሚያስከትለውን ኃላፊነት በተመለከተ የመድን ፖሊሲ አይሸፍንም ተብሎ የተቀመጠው እቃ በሚጭነውና በሚያስጭነው ላይ ጉዳት ቢደርስ ምንም ነገር አይከፈልም ማለቱ ከምን አንገር እንደሆነ ፤

◆ የቤተሰብ አባላትን በተመለከተ በጥቅል የተቀመጠ በመሆኑ የቤት ሠራተኞችና ዘበኞች እንደቤተሰብ ይቆጠራሉ ወይ ብለው ከጠየቁ በኋላ ባለመኪናው የቤት ሠራተኞችንና ዘበኞችን ወይም ራቅ ያለ ዘመድ ላይ ጉዳት ቢያደርስ የመድን ዋስትና ሊኖረው አይችልም ወይ? የሚል ጥያቄ ስለሚያስነሳ ከምን አቅጣጫ እንደታየ ፤

◆ ጉዳት የደረሰበት ሰው ከመድን ፈንድ ለህክምና የሚሆን ገንዘብ እስከ አንድ ሺህ ብር የሚደርስ ገንዘብ ለህክምና እንደሚሰጠው የተገለፀው ምናልባት አደጋው የሆነ ከአንድ ሺህ ብር በላይ የሚጠይቅ ህክምና ቢካሄድለት የቀረውን ገንዘብ ማን ሊሸፍነው እንደሚችል ፤

◆ ቢጫ ካርድ ሳይዝ ሲያሸከረከር የተገኘውን አሽከርካሪ ፖሊስ ይዞ ያቆያል የሚለው ፖሊሱ ለምን ያህል ጊዜ አስሮ እንደሚያቆይ የተገለፀ ባለመሆኑ ፖሊሱን ያለገደብ ስልጣን የመስጠት ነገር ስላለ ይህ እንዴት እንደሚታይ ፤

◆ የቦርዱ አወቃቀር በዝርዝር ሳይሆን በጥቅል የተቀመጠ በመሆኑ በደንብ ተብራርቶ መቀመጥ እንዳለበት ፤

8. Any loss damage or liability caused or arising whilst any Vehicle described in the Schedule hereto is let on hire or is being used for racing pacemaking reliability trial or speedtesting or any purposes in connection with the Motor Trade or for the transport of goods for the conveyance of passengers for monetary or equivalent consideration or is being driven by the Insured (or by any other person with the general knowledge and consent of the Insured) whilst not permitted by any Licensing Authority or other law or regulation to drive such Vehicle or whilst under the influence of intoxicating liquors or drugs;
9. Any liability directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with Flood Typhoon Hurricane Windstorm Volcanic Eruption Earthquake or other convulsion of nature War, Invasion, Act of Foreign Enemy, Hostilities or Warlike Operations (whether War be declared or not), Civil War, Mutiny, Riots, Strikes, Civil Commotions, Military or popular Rising, Insurrection, Rebellion, Revolution Military or Usurped Power, Martial Law or State of Siege or any of the events or causes which determine the proclamation or maintenance of Martial Law or State of Siege;
10. (a) Any loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- (b) Any legal Liability of whatsoever nature; directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of unclear fuel. For the purpose of this exception combustion shall include self sustaining process of nuclear fission; and,
- (c) Any loss-damage or liability directly or indirectly caused by or contributed to by or arising from Nuclear Weapons material;
11. Loss or damage directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

CONDITIONS

1. The due observance and fulfillment of the Terms, Provisions, Conditions and Endorsements of this Policy by the Insured insofar as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this policy. No waiver of any of the Terms, Provisions, Conditions and Endorsements of this policy shall be valid unless made in writing signed by an official of or Agent /Broker duly authorized/appointed by the Company.
2. Notice shall be given in writing to the Company immediately upon the occurrence of any accident or loss or damage and in the event of any claim every letter claim writ summons and/or process shall be forwarded to the Company immediately on receipt by the Insured. Notice shall also be given in writing to the Company immediately the Insured shall have knowledge of any impending prosecution in respect of any occurrence which may give rise to a claim under this Policy. In case of theft or other criminal act which may be the subject of a claim under this policy the Insured shall give immediate notice to the police and co-operate with the Company in securing the conviction of the offender.
3. No admission offer promise or payment shall be made by the Insured without the written consent of the Company which shall be entitled if it so desired to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damage or otherwise against any third party and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
4. In the event of loss of or damage to any Vehicle described in the Schedule hereto the Company may at its own option repair reinstate or replace such Vehicle or part thereof and/or its accessories or pay in cash the amount of the loss or damage and the liability of the Company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and in no case exceed the Insured's estimate of the value of such Vehicle (including Accessories thereon) as specified in the Schedule hereto or the value of such Vehicle (including Accessories thereon) at the time of the loss or damage whichever is the less.
5. The Insured shall take all reasonable steps to safeguard from loss or damage and to maintain in efficient condition any Vehicle described in the Schedule hereto and the Company shall have at all times free and full access to examine such



ተልዕካችን አለጃታዎን ማስከበር ነው።
YOUR PROTECTION IS GUARANTEED

Form No. MPC/PO/12.1/4

Yimam
713/2017/Manager
Bet branch (Nyala)
11/11/17

PRIVATE VEHICLE POLICY

WHEREAS THE INSURED designated in the Schedule hereto has applied to THE NYALA INSURANCE S.CO. (hereinafter called the Company) a written proposal and declaration containing certain particulars and statements which the insured has agreed shall the basis of contract and be considered as incorporated herein and has paid or agreed to pay the premium as consideration for the indemnity hereinafter contained.

NOW THIS POLICY WITNESSETH that during the period stated in the schedule hereto or during any subsequent period for which the company may accept payment for the renewal of the policy and subject to the terms, limitations, provisions, exceptions and conditions contained herein or hereon the Company will provide the Insurance hereinafter contained to the extent designated in the Schedule. That is to say:

I. Indemnify the Insured against loss damage and/or liability as hereunder mentioned actually occurring or arising during the period stated in the Schedule hereto or during any subsequent period for which the Company may accept payment for the renewal of this policy, that is to say:

1. Loss of or damage to any Motor vehicle described in the Schedule hereto and Accessories whilst thereon resulting from any accidental Collision or Overturning consequent upon Mechanical Breakdown or Wear and Tear but excluding damage to Tyres unless such Motor vehicle is damaged at the same time;
2. Loss of or damage to any Motor vehicle described in the Schedule hereto and accessories whilst thereon.
 - a) By Fire External Explosion/ Self-Ignition or Lightning or Burglary Housebreaking or Theft or
 - b) By Malicious Act or
 - c) Whilst in transit (including the processes of loading and unloading incidental to such transit) by Road, Rail, Waterways, Lift or Elevator but excluding damage to Tyres unless such Motor Vehicle is damaged at the same time;
provided however that the term "Accessories" shall not include Rugs, Coats, Luggage, Wraps, Parcels, Personal Clothing and Effects;
3. The cost of protection and removal of any Motor vehicle described in the Schedule hereto to the nearest repairers in consequence of accident causing damage which is covered hereunder but not exceeding twenty percent of the agreed cost of repairs;
4. Liability at Ethiopian Law for compensation (including Law Costs of any claimant) for death of or bodily injury to any person caused by the use of any Motor vehicle described in the Schedule hereto except where such death or injury arises out of or in the course of the employment of such person by the Insured's and excluding liability to any person being a member of the Insured household provided that the liability of the Company including such Law Costs is limited in respect of any one claim or series of claims arising out of one event to the sum stated in the Schedule hereto;
5. Liability at Ethiopian Law for compensation (including Law Costs of any claimant) for damage caused by the lawful use of any Motor vehicle described in the schedule hereto to property other than property belonging to or held in trust by or in the custody or control of the Insured or a member of the Insured's household provided that the liability of the Company including such Law Costs is limited in respect of any one claim or series of claims arising out of one event to the sum stated in the Schedule hereto;
6. Liability at Ethiopian Law as defined in article I (4) and (5) above arising whilst the Insured is personally driving a Private Motor Vehicle not belonging to him and not hired to him under a hired purchase agreement provided that (a) one of the Cars described in the Schedule hereto is not in use at the time and (b) the liability of the Company under this Clause shall not exceed the respective limits of indemnity under the aforesaid Article I (4) and (5);
7. All costs and expenses incurred with the written consent of the Company.

II. In the terms of and subject to the limitations of and for the purposes of Article I (4), (5) and (7) of this policy the company shall at the request of the Insured treat as though he were the Insured any relative or friend of the Insured whilst driving any Motor vehicle described in the Schedule hereto for social domestic or pleasure Purposes with the Insureds general knowledge and consent provided that:-

1. Such relative or friend is not entitled to indemnity under any other policy.
2. Such relative or friend shall as though he were the Insured observe, fulfill and be subject to the Terms, Provisions, Conditions and Endorsements of this policy insofar as they can apply.

ኒያላ ኢንሹራንስ ኢ.ማ.

NYALA INSURANCE S.C.
PROTECTION HOUSE
P.O. BOX 12753
ADDIS ABABA, ETHIOPIA

TEL. 251-11- 662 66 67
FAX. 251-11- 662 67 06

BRANCH
P.O. BOX _____
TEL. _____
FAX _____

ሊከፈለኝ ይገባል ካለ መጠየቅ እንደሚችልና ባለአሽከርካሪውም ኢንፎርሜሽን ሲገባ ለ3ኛው ወገን ኢንፎርሜሽን ለሚከፍለው ብቻ ሳይሆን ለሀብቱም ጭምር መግባት አለብኝ ካለ የበለጠ ኢንፎርሜሽን መግባት እንደሚችል ጠቁመው ይልቁንም የተቀመጠው አሀዝ ለመሃሻነት የሚያገለግል እንጂ ሆኑ ከዚህ በላይ ኢንፎርሜሽን መግባት የለብሁም የሚል አለመሆኑን አመልክተዋል።

ከዚያም የተከበሩ ሰብሰቢው ሀጂ አሊ ከተሰጠው ማብራሪያ በተጨማሪ ሊብራሪ የሚገባው ጥያቄ አለ የሚባል ከሆነ ጥያቄ እንዲቀርብ መድረኩን ለቤቱ ክፍት አድርገዋል።

በዚህ መሰረት የተከበሩ አቶ መሀመድ አሊ የተሰጠው ማብራሪያ ግልፅ ሆኖ ማብራሪያው ላይ ግን ቤተሰብ ማለት ምን ማለት ነው በሚለው ላይ ሚስት ልጅ የቤት ሰራተኛና ዘበኛም በአንድ ላይ የሚኖር የሚለው በአንድ አብሮ የሚኖር በምን ምክንያት እንደሆነና የሚገኘው ጥቅም ምን እንደሆነ በግልፅ የሚቀመጥ ካልሆነ በኋላ በህጉ አፈፃፀም ላይ ችግር ሊፈጥር ስለሚችል በአግባቡ ከወዲሁ መታየት ያለበት መሆኑን የመሲና አሽከርካሪውንና ረዳቱን ከ3ኛው ወገን ዋስትና ተቃዋሚ መሆን የለበትም የሚለው ምንም እንኳ ተዋውለው ቢገቡም የመኪናውን ቴክኒክ በተመለከተ ረዳቱ የሚያውቀው ነገር ስለሌለ አሮጌ መኪና ተገልብጦ ችግር ቢደርስባቸው ከ3ኛው ወገን መድሀን ሊያገኙ አይችሉም የሚለውን ፍትሃዊ እንደማይመለከታቸው በአደጋው የሚከፈለው ገንዘብ ማለትም ለሞት 30 ሺህ ለአካል ጉዳት 12 ሺህ እና ለንብረት 100 ሺህ ተብሎ የተቀመጠው መሃሻ እንጂ የመጨረሻው ጣሪያ አይደለም ተብሎ በማብራሪያ የተገለፀ ቢሆንም በህጉ ላይ ግን ኢንፎርሜሽን ኩባንያው ከተቀመጠው አሀዝ በላይ ሊከፍል አይችልም የሚል በመሆኑ በህጉ ላይ በግልፅ በሁለቱ መካከል ከተቀመጠው በላይ ሊዋዋሉ ይችላሉ የሚል መቀመጥ እንዳለበት እንዲሁም አደጋ ለደረሰባቸው ሰዎች የሚከፈለው ካላ ተመሳሳይ ከሚሆን ይልቅ ከትምህርት ደረጃ ገለጻቸው ገቢና ከዕድሜ አንፃር ለምሳሌ አንድ የ90 ዓመት አዛውንትና የ40 አመት ጎልማሳ በአደጋው ቢሞቱ እኩል መታየት ያለባቸው ስለማይሆን ህጉ ይህን ሁሉ ማየት ያለበት መሆኑን ገልፀዋል።



የጠየቀው ሰዎች

አያይዘውም የመከላከያ መኪናዎችም ሆኑ ሌሎች ኢንፎርሬሽን ባልገቡ መኪናዎች የተገጨ ሰው የሚያገኘው ክፍያ አለ ወይ ተብሎ ለቀረበው ጥያቄ ሲያብራሩ ኢንፎርሬሽን ባልገባ መኪና ሰው ተገጭቶ ቢገኝ የተገደቀው ሰው ዝም ብሎ መቅረት ስለሌለበት የሚቋቋመው የኢንፎርሬሽን ፈንድ ተገቢውን ካሳ የሚከፈለው መሆኑን አመላክተዋል።

found

አክለውም አንቀፅ 7 ላይ ስለመድሀን ዋስትና ስለማይሸፈኑ በሚል ለቀረበው ሲመልሱ አዋጁ ባለመኪናው በሌሎች ሰላማዊ ሰዎች ላይ የሚያደርሰውን የጉዳት ካሳ እንዲከፍል የግድ የመድሀን ዋስትና መግባት እንዳለበት የሚመለከት እንጂ መድሀን ውስጥ ለሚገባው መኪናም ሆነ ቤተሰቦቹ በሚያሸከረከረው መኪና አማካኝነት ለሚደርሰው አደጋ ክፍያ እንዲያገኝ ለማድረግ አለመሆኑን ፣ ምክንያቱም ባለመኪናው ለሚያደርሰው አደጋ ተገደ ለ3ኛው ወገን የመድሀን ዋስትና እንደሚገባው ሁሉ በራሱ ላይ ለሚደርሰውም አደጋ ኢንፎርሬሽን ውስጥ የመግባት ፍላጎት የራሱ በመሆኑ የግድ ግባ እንደማይባል ፣ ስለሆነም በእሱ ልጆች ማለት ፣ ሠራተኛና ዘበኛ እንዲሁም ቀጥሮ በሚያሰራቸው ሾፊርና ረዳት ላይ ለሚደርሰው አደጋ የ3ኛው ወገን መድሀን ክፍያ የማይመለከታቸው መሆኑን በግልፅ የተቀመጠ መሆኑን ፣ ይሁን እንጂ ተቀጣ፣ ሆነው ሲሰሩ የነበሩ አሽከርካሪዎችም ሆኑ ረዳቶች በሚደርስባቸው አደጋ በ3ኛው ወገን መድሀን ካሳ ማግኘት ባይችሉም በሌላ መንገድ ካሳ ማግኘት የሚችል መሆኑን አስታውቃል።

Justification for finding

ቀጥለውም አሽከርካሪውና ረዳቱ የሚያደርሱትን አደጋ አስመልክቶ የተቀመጠ ነገር የለም በሚለው ለቀረበው ጥያቄ ሲያስረዱ አሽከርካሪው በግዴላሽነት ጥፋት ቢያጠፋ የሚቀጣበት በትራፊክ ህጉም ሆነ በአዲሱ ወንጀለኛ መቅጫ ህግ ላይ የተቀመጠ በመሆኑ በዚህ ህግ መሰረት እንደ አደጋው ሁኔታ አስፈላጊው ቅጣት የሚሰጠው በመሆኑ ላይካተት የቀረ መሆኑን ፣ ይሁን እንጂ በአዋጁ ውስጥ መካተት አለበት የሚባል ከሆነ ማየት የሚቻል መሆኑን ጠቁመዋል።

በሌላ በኩል በአዋጁ ገፅ 6 አንቀፅ 15 /1/ ላይ መድሀን የተገባለት ተሽከርካሪ የሚያደርሰው ግጭት ፣ የእሳት ቃጠሎ ወይም ፍንዳታ ይላል ፣ የመገልበጥ አደጋ የሚል ለምን አልተካተተም ተብሎ ላቀረበላቸው ሲመልሱ ግጭት ከሚለው ውስጥ

ሊካተት ይችላል በሚል የታለፈ ቢሆንም እንደተገለጸው ለትርጉም ክፍተት የሚያጋልጥ በመሆኑ የሚስተካከል መሆኑን አስታውቀዋል።

ጨምረውም ስለመንገድ ለተነሳው ጥያቄ በሰጡት ምላሽ በመንገድ ትራንስፖርት በማይታወቁ መንገዶችም አሽከርካሪዎች ገብተው ሲያሸካክሩ አደጋ ቢያደርሱ የተጎዳው ሰው ከ3ኛ ወገን መድሀን ካላ ክፍያ ማግኘት አለበት ተብሎ የተቀመጠ በመሆኑ ከዚህ አንጻር ታይቶ የተሻለ ትርጉም ሊሰጠው ይገባል የሚባል ከሆነ በሚሰጠው አስተያየት መሰረት ማስተካከል እንደሚቻል አስገንዝበዋል።

አቶ ከሳሁን ኃ/ማርያም በመቀጠልም በረቂቅ አዋጁ ዝግጅት ላይ ብሔራዊ ባንክ ለምን እንዲሳተፍ አልተደረገም ለሚለው ጥያቄ ሲመልሱ የሙያዊ ቃላትን በተመለከተ የግድ ግንዛቤ መያዝ አስፈላጊ በመሆኑ ብሔራዊ ባንክ ፀረ-ኮሎንላይዎች የተለያዩ ተቋማትና አዲስ አበባ ዩኒቨርሲቲ ሁሉ እንዲጋበዙ ተደርጎ ሰፊ የሆነ ውይይት ተደርጎ የተዘጋጀ መሆኑን ጠቁመዋል።

አያይዘውም አንፋፅ 7 ላይ የተቀመጠውን በተመለከተ ውሳኔው ከኢንፎርሜሽን ቴክኖሎጂና ባለንብረት መካከል መሆን ሲገባው መንግስት ከመቆጣጠር ውጭ

ለምን ጣልቃ ይገባል የሚለው መንግሥት በሁለቱ ተዋዋዮች መካከል ጣልቃ እንዲገባ ለማድረግ ሳይሆን አደጋው ሲደርስ የሚመለከተውንና የማይመለከተውን በህጉ መሠረት ለመወሰን እንዲችል ለማድረግ እንደሆነና ኢንፎርሜሽን ለመግባት የሚፈልገው አካል በፈለገው መልኩ ከኢንፎርሜሽን ቴክኖሎጂ ጋር ተስማምቶ መግባት የሚችል መሆኑን፤ ህጉም ይህን መብት የሚገድብ አለመሆኑን አመላክተዋል።

አክለውም የ3ኛ ወገን መድሀን አዋጅ መውጣት አስፈላጊ ቢሆንም የቆዩና የአረጁ መኪናዎችን ከገበያ ውጭ የሚያደርጋቸው በመሆኑ የመዘጋጃ ጊዜ ሊሰጣቸው አይገባም ወይም በሚል ለተነሳው ሀሳብ ሲያብራሩ የመኪናዎችን ቴክኒካዊ ብቃት መንገድ ትራንስፖርት ፈትሾ መሥራት የሚችል ከሆነ ፈቃድ የሚሰጠው በመሆኑ ኢንፎርሜሽን ቴክኖሎጂው በራሳቸው ሥልጣን አንተን አንቀበልም የሚሉበት አሠራር እንደሌለ፤ ነገር ግን ለብዙ ጊዜ የሠራ መኪና በቀላሉ ሊበላሽና አደጋ ሊያደርስ

Handwritten note:
ይህ ስራ ለህዝብ ጥቅም ነው።
Social
Impact

የሚችል በመሆኑ ከአዲሱ መኪና በላይ የኢንፎርሜሽን ክፍያ ሊጠየቁ እንደሚችሉ ጠቁመው ከዚህ ውጭ ግን መኪናው ተፈትሾ መሥራት የማይችል ከሆነ በሰውና በንብረት ላይ የሚያደርሰው አደጋ ከፍተኛ በመሆኑ የግድ እንዲቆም የሚደረግ መሆኑን አስታውቀዋል።

ጤላ በኩል 3ኛ ወገን የሚለው እንዲብራራ ለተጠየቀ ሲመልሱ ኢንፎርሜሽን ከሚገባው እና ቤተሰቦቹ ውጭ ያለውን አካል የሚመለከት ማለት መሆኑን አስገንዝበዋል።

አንቀጽ 7/1/ላይ ያለው በደንብ ታይቷል ወይ ተብሎ ለቀረበው ጥያቄ ሲመልሱ በርግጥ በደንብ የታየ መሆኑን ገምገማታቸውን ባለንብረቱ በመኪናውም ሆነ በቤተሰቦቹ ለሚደርሰው አደጋ ኢንፎርሜሽን መግባት አለብህ ተብሎ ሲገደድ ስለማይችል እንደራሱ ፍላጎት ተወስኖ ለሚደርሰው አደጋ ግን ሊከፈለኝ የሚገባ ሀብት መኖር አለበት ብሎ የሚጠይቅ አካል ከመጣ በሌላ ህግ ከሶ ማግኘት የሚችል መሆኑን አውስተዋል።

ቂቅ አዋጁ ሲዘጋጅ ባለሙያዎች ብቻ የተሳተፉበት እንጂ ባለንብረቶች የተሳተፉበት አይመስልም በሚል የተነሳውን ሃሳብ ሲያስረዱ ባለሙያዎችም ሆኑ ባለንብረቶች፣ ኢንፎርሜሽን ኩባንያዎች የሚመለከታቸው አካላት ሁሉ እንዲሳተፉ ተደርጎ የተዘጋጀ መሆኑን አስታውቀዋል።

ይህን ይገልጻል

አደጋ በሚደርሰበት ጊዜ የሚሰጠውን የካሳ ክፍያ አስመልክቶ የተቀመጠው አሀዝ ከየት ሀገር ተሞክሮ የመጣ ነው ተብሎ የቀረበውን ጥያቄ ሲመልሱ ከሀገሪቱ ማይክሮና ማክሮ ኢኮኖሚ አንፃር ታይቶ የተገኘ ስሌት ሳይሆን ከአሁን በፊት በሚደርሱ አደጋዎች ላይ ፍ/ቤት ክርክር ተደርጎ የሚከፈሉትን ክፍያዎች ብቻ መነሻ ተደርጎ ለአንድ ሰው ሞት 30 ሺህ ለንብረት መውደም 100 ሺህ እና ለአካል መጉደል 12 ሺህ ተብሎ የተቀመጠ መሆኑን ሆኖም ግን እነዚህ አሀዞች አደጋ የደረሰበት ሰው ያለምንም ውጣ ውረድ እንዲያገኘው በህግ ይቀመጥለት በማለት እንጂ በቂ ገንዘብ ነው ተብሎ አለመሆኑን ይሁን እንጂ ለደረሰው አደጋ የሚሰጠው የ3ኛ ወገን መድሀን ክፍያ በቂ አይደለም ለሚል አካል በፈለገው ህግ ከሰሶ ተጨማሪ ገንዘብ ማግኘት

የሚችል መሆኑን ጥምክንያቱም ከተቀመጠው የካሣ ክፍያ በላይ ከፍ ብሎ እንዲቀመጥ ቢደረግ በኢንሹራንስ ኩባንያውና በሀገሪቱ ኢኮኖሚ ላይ ተፅዕኖ የሚያመጣ በመሆኑ በፍርድ ቤት በተደጋጋሚ የተወሰነውን መነሻ ለማድረግ የተሞከረ መሆኑን ሆኖም ግን ባለንብረቱ የሚገደድባቸው 30ሺ.፲12ሺ.ህ እና 100 ሺህ በላይ ኢንሹራንስ እገባለሁ ካለ መግባት የሚችል መሆኑን አስገንቷል።

ቀጥለውም የ3ኛ ወገን የመድን ዋስትና እና የመድን ፈንድ የሚባሉት ለምን በአንድ ላይ ሊመጡ እንደቻሉ ለቀረበው ጥያቄ ሲመልሱ ኢንሹራንስ የገባም ሆነ ያልገባ መኪና አደጋ አድርሶ ሊሰወር ስለሚችል አደጋ ለደረሰበት ሰው ከመድን ፈንድ ካሣ እንዲያገኝ በማድረግ የተቋቋመ ሲሆን ይህ የመድን ፈንድ ገንዘብ የሚያገኘው ኢንሹራንስ ኩባንያዎች ከሚያስገቡት ገንዘብ መሆኑን አስታውቀዋል።

ገንዘብ

አያይዘውም ለህክምና የሚሰጠውን 1000 ብር በተመለከተ ለተነሳው ጥያቄ ሲያሰረዱ የገጨው መኪና ኢንሹራንስ ቢኖረውም ባይኖረውም አደጋ የደረሰበት ሰው ወዲያው በአቅራቢያው ወደሚገኝ ሆስፒታል ገብቶ ፈጣን ሕክምና እንዲደረግለት ለማድረግ ሲባል ማንኛውም ሆስፒታል በመኪና አደጋ የተገጨን ሰው ተቀብለው ያለምንም ጥያቄ እስከ አንድ ሺህ ብር ድረስ ህክምና መስጠት አለባቸው የሚል ህግ የተቀመጠ መሆኑን ጥምክንያቱም ማን ሊከፍል ይችላል ብለው እስኪጠይቁ ድረስ የተገደቡ ሰው መዳን እየቻለ ደም ፈሶት እንዳይሞት ለማድረግ ሲባል እንደሆነ ጠቁመው ይህ አንድ ሺህ ብር በቂ ገንዘብ ነው ለማለት ሳይሆን ወገን እስኪደርስለት ድረስ የመጀመሪያ እርዳታ ህክምና እንዲያገኝ ሲባል እንጂ ጉዳቱ ከፍተኛ ሲሆን ስለሚችል ከአንድ ሺህ ብር በተጨማሪ ሊመጣ የሚችለውን ወጪ አደጋ አድራሹ ኢንሹራንስ ካለው ከኢንሹራንሱ ፣ ከኢንሹራንስ ከሌለውና አደጋ አድራሹ ገጭቶ ሳይታወቅ ቢጠፋ የህክምናውንም ሆነ በህግ የተቀመጠለትን የካሣ ዋስትና ከመድን ፈንድ ወጪ ተደርጎ ለተገደቡ የሚከፈል መሆኑን አመላክተዋል።

ገንዘብ
ወገን የሌለው?
Emile
Mekuria

በሚያንገዘው አካልና በባለዕቃው መካከል የሚኖረውን ስምምነት ህጉ ጣልቃ እንዲገባ አያደርገውም ወይ በሚል ለተነሳው ጥያቄ ሲመልሱ አንድ ሰው እቃውን ከውጭ ወደ ሀገር ውስጥ በሚያስገባበት ጊዜ ለእቃው ኢንሹራንስ የሚገባ ቢሆንም ይህ

ባለዕቃ ሰው የሚጭንለትን አካል እቃየን ለመጫን መጓጓዣያ ኢንፎርሬሽን የግድ መግባት አለበት ብሎ መጠየቅ የሚችል በመሆኑ ይህ ህግ አደጋ ለሚደርሰባቸው አካላት ደህንነት ሲባል የወጣ እንጅ በአጓጓዣና በባለንብረቱ መካከል የሚኖረውን ስምምነት የሚገድብ አለመሆኑን አስረድተዋል።

ቤተሰብን በተመለከተ ማብራሪያ እንዲሰጥበት ለቀረበው ሀሳብ ሲመልሱ ቤተሰብ ማለት ሚስት፣ገልጅ፣ገብጃ፣ገብጃ፣ ሠራተኛና የሩቅ ዘመድ ተብሎ የተቀመጠ በመሆኑ እና የሩቅ ዘመድ የሚለው አሻሚ እንዳይሆን ህጉ ላይ የተተረጎመ ሲሆን ቤተሰብ ከሚለው ከእናትና ከልጅ በተጨማሪ አብረው የሚኖሩት ዘቦኛና የቤት ሠራተኛ የሚለው አሻሚ ነው የሚባል ከሆነ አብሮ ማየት የሚቻል መሆኑን ገልፀዋል።

አክለውም የቢጫ ካርድን በተመለከተ ለቀረበላቸው ጥያቄ ሲያስረዱ በኢትዮጵያ ውስጥ ይህ የ3ኛ ወገን ዋስትና ህግ ፀድቆ ከወጣ በኋላ ማንኛውም መኪና የ3ኛ ወገን ዋስትና የምስክር ወረቀት ላይዝ ማሽከርከር እንደማይችለው ሁሉ የኮሚህ አባል ሀገራት ማለትም የምሥራቅና የደቡብ አፍሪካ ሀገራት ከአንዱ ሀገር ወደሌላው ሀገራት ድንበር አቋርጦ የሚሄደው ተሽከርካሪ ከሰው ሀገር ገብቶ አደጋ ቢያደርስ የሚከፍለው ካላ መኖር አለበት በሚል የ3ኛው ወገን ኢንፎርሬሽን መግባት አለበት በሚል ስምምነት በመደረሱ ድንበር አቋርጦ ወደ ሌላ ሀገር የሚገባው መኪና የግድ ቢጫ የምስክር ወረቀት መያዝ አለበት የሚል ህግ መሆኑን ጠቁመዋል።

Comme suit

የቦርዱ አወቃቀር ግልፅ አይደለም ለተባለው ሲያብራሩ ቦርዱ ውስጥ የሚወከሉት አባላት ማንኛውም ኢንፎርሬሽን ገንዘብ የሚያወጣበት እስከሆነ ድረስ ሁሉም የግድ አባል መሆን ያለበት ሲሆን ይህን ቦርድ የሚቆጣጠርና የሚመራ ደግሞ ከመንግስት መ/ቤት ውስጥ አባል መሆን አለበት የሚል መሆኑን አውስተዋል።

*በርድ
30/04*

አቶ ካሣሁን ኃ/ማርያም በመቀጠልም በአደጋ ምክንያት የሚከፈለውን ገንዘብ ህጉ ወስኖ አልገደበውም ወይ? በሚል ለቀረበው ጥያቄ ሲያስረዱ አደጋ የደረሰበት ሰው እንዲሁ ዝም ብሎ ከሚቀር ይልቅ ቢያንስ ለመነሻ የሚሆን ማግኘት ያለበትን እንዲያገኝ ሲባል የተቀመጠ አህዝ እንጂ ከዚህ ውጭ ለደረሰው አደጋ ከፍተኛ ገንዘብ

8. MALICIOUS INJURY AND/ OR DAMAGE RESTRICTION

It is hereby understood and agreed that this policy does not cover:-

- A) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss.
- B) Death injury or any legal liability of whatsoever nature.

Directly or indirectly caused by or contributed to arising from or traceable to the action of any organization group or individual connected with or taking part in political or quasi political interference in the affairs of Ethiopia, armed or unarmed robbery, armed or unarmed shifta action, holdup or any act of banditry and in any claim action suit or other proceeding to enforce a claim for loss damage or liability under this policy the burden of proving the loss damage or liability does not fall within this clause shall be upon the Insured. All other terms provisions and conditions remain unaltered.

9. MORTGAGE CLAUSE

It is hereby declared and agreed that

..... (hereinafter referred to as the Mortgagee) are the mortgagee of the Motor Car described in the schedule to this policy and that the said Motor Car is the subject of a Mortgage Endorsement agreement made between the mortgagee on one part and the Insured on the other part and it is further declared and agreed the said mortgagee are interested in any monies which but for this endorsement would be payable to the Insured under this policy in respect of the loss of or damage to the said Motor Car (which loss or damage is not made good by repair reinstatement or replacement) and such monies shall be paid to the said mortgagee as long as they are the mortgagee of the car and their receipt shall be full and final discharge to the above mentioned Insurers in respect of such loss or damage.

Subject otherwise to the terms, conditions and exceptions of the Policy.

For and on behalf of
Nyala Insurance S.C.

Date _____



ንብ ኢንሹራንስ ኩባንያ (አ.ማ.)
Nib Insurance Company (S.Co.)

ዋና መሥሪያ ቤት-አዲስ አበባ
Head Office – Addis Ababa

የመ.ሣ.ቁ. 285
P. O. Box 285
 E-mail Address: nibinsgm@ethionet.et

የቴሌፎን ቁጥሮች 552 8194-6
Telephone Nos. 552 8194-6

የፋክስ ቁ. 0025 11 552 8193
Fax No. 0025 11 552 8193

ቅርንጫፍ _____
Branch _____

COMMERCIAL VEHICLE POLICY

Specimen

WHEREAS, the Insured by a written proposal and declaration which shall be the basis of this contract and incorporated herein as an integral part thereof and deemed to be of a promissory nature and effect has applied to Nib Insurance Company S.Co. (hereinafter called the Company) for the insurance hereinafter provided and has paid or agreed to pay the premium as consideration for such insurance:-

NOW THIS POLICY WITNESSETH THAT:-

The Company will subject to the terms, provisions, conditions, exceptions and endorsements contained, indemnify the Insured against loss, damage and/or liability as hereinafter mentioned occurring during the period stated in the schedule of this policy or during any subsequent period for which the company may agree to renew the policy.

SECTION 1: RISKS COVERED BY THIS POLICY

1.1 LOSS OR DAMAGE TO THE VEHICLE

The Company will indemnify the Insured as follows: -

- 1.1 loss or damage to any motor vehicle stated in the Schedule and its accessories whilst thereon resulting from an accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear but excluding accidental damage to tyres unless such vehicle is damaged at the same time, and excluding loss or damage to canvas and batteries;
- 1.2 loss of or damage to any motor Vehicle described in the schedule hereto and its accessories whilst thereon
 - (a) by fire, external explosion, self ignition, lightning, burglary, housebreaking or theft or
 - (b) by Malicious Act ;
- 1.3 loss of or damage to any motor vehicle described in the schedule hereto and its accessories whilst thereon by impact damage caused by falling objects provided no convulsion of nature is involved;
- 1.4 whilst the insured vehicle is in transit (including the processes of loading and unloading incidental to such transit) by road, rail, inland waterway, lift or elevator;
- 1.5 The cost of protection and removal of the motor vehicle to the nearest repairer in consequence of accident causing insured damage, but not exceeding twenty percent of the agreed cost of repairs;
- 1.6 The reasonable and necessary cost of repair authorized by the Insured of the motor vehicle necessitated by damage for which the Company may be liable under the Policy provided a detailed estimate of cost is forwarded to the Company and the estimated cost does not exceed the authorized repair limit stated in the Schedule.

EXCEPTIONS TO SECTION 1.1

The Company shall not be liable to make any payment in respect of the following:-

- a) consequential loss sustained by the Insured or loss of use of any insured vehicle;
- b) wear and tear and/or depreciation of the vehicle insured or any part of such vehicle;
- c) mechanical fracture or electronic and/or mechanical or electrical breakdown or failure of any part;
- d) loss of or damage to any communication equipment of any kind;
- d) loss of or damage in respect of any radio, record player, tape recorder fitted in the vehicle unless specifically declared and insured.

SECTION 3: EMERGENCY MEDICAL EXPENSES

The Company may pay the cost of medical treatment to the Insured or to any occupant of the insured vehicle in connection with any bodily injury caused by violent, accidental, external and visible means in direct connection with the Insured vehicle provided always that total liability of the Company under this section shall be limited to the amount stated in the Schedule.

SECTION 4: POLICY CONDITIONS

4.1 COMPLIANCE WITH CONDITIONS

The due observance, and fulfillment and compliance with the following conditions by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payments under this Policy.

4.2 CARE OF MOTOR VEHICLE

The Insured shall take all reasonable steps to safeguard the motor vehicle from loss or damage and to maintain the vehicle in efficient condition and the Company shall have at all times free and full access to examine the motor vehicle or investigate all circumstances of the loss or damage. In the event of any accident or breakdown, the motor vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the motor vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the motor vehicle shall be excluded from the scope of the indemnity granted by this Policy.

4.3 NOTIFICATION

In the event of any occurrence which may give rise to a claim under this Policy, the Insured shall, as soon as possible, give notice thereof to the Company with full particulars. Every letter, claim, writ, summons and process shall be notified or forwarded to the Company immediately upon receipt. Notice shall also be given in writing to the Company immediately the Insured shall have knowledge of any impending, prosecution, inquest or fatal inquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy, the Insured shall give immediate notice to the Police and cooperate with the Company in securing the conviction of the offender.

4.4 CLAIMS PROCEDURE AND SUBROGATION

No admission, offer, promise or payment shall be made by or on behalf of the Insured without the written consent of the Company. The Company shall be entitled if it so desires to take over and conduct in the name of the insured the defence or settlement of any claim, the Company is also entitled to prosecute in the name of the insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.

4.5 LIMITS OF LIABILITY

At any time after the happening of any event giving rise to a claim under Section 1.2 of this Policy the Company may at its option, pay to the Insured the full amount of the Company's liability and relinquish the conduct of any defence settlement or proceedings and the Company shall not be responsible for relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct.

4.6 APPLICATION OF INDEMNITY PRINCIPLE

- 4.6.1 In the event of loss or damage to any motor vehicle described in the Schedule hereto the Company may at its option repair, replace or pay in cash the amount of the loss or damage of such vehicle or part thereof and /or its accessories. The value of the vehicle shown in the Policy is not necessarily the amount payable by the Company in the event of total or partial loss, since the liability is limited to the market value immediately before the date of accident or the value shown in the Policy whichever is the lesser.
- 4.6.2 In the event of loss or damage of any parts or motor vehicle described in the Schedule thereto the Insured shall be liable to contribute for replacement of new parts on account of depreciation or wear and tear.
- 4.6.3 In the event of loss or damage to the motor vehicle described in the Schedule the estimate cost of repair is not less than 75% of the sum insured or the market value at the time of loss, then the insurer may opt to treat such vehicle as though it were a total loss and settle the claim accordingly.
- 4.6.4 In the event of loss or damage to the motor vehicle its parts accessories thereof the Insurer entitled to recover such salvaged and scrapped parts on settlement of the claim.

Attachment Two

የተሽከርካሪ አደጋ የሥራ ተቆይታ ወገን መድን ዋስትና ረቂቅ አዋጅ መግለጫ

የአዋጁ አስፈላጊነት

- ◆ በአገራችን በመንገድ በትራፊክ አደጋ ምክንያት በመድረስ ላይ ያለው የሞትና የአካል ጉዳት እንዲሁም የንብረት ውድመት በመጨመር ላይ ነው። በዚህም የተነሳ በሕብረተሰቡ ላይ የሚፈጠረው ስነልቦናዊ ፣ ማህበራዊና ኢኮኖሚያዊ ችግር እየከፋ በሄደ ቁጥር ማህበራዊና ፖለቲካዊ ቀውስ ማስከተሉ አይቀረውም።
- ◆ በማደግ ላይ ያሉትና ያደጉት አገሮች የመንገድ የትራፊክ አደጋ የሚያስከትለው ማህበራዊ ፣ ቀውስ ከወዲሁ ለመቆጣጠር የሚያስችላቸው ስርዓት ፈጥረው መንቀሳቀስ ከጀመሩ ቆይቷል።
- ◆ ባለፉት የአውሮፓ አገሮች ውስጥ ማንኛውም የባለሙያ ተሽከርካሪ ባለንብረት በሥራ ላይ ለሚያደርሰው አደጋ ተሽከርካሪውን የመድን ዋስትና እንዲኖረው ሳያደርግ በመንገድ ላይ ማንቀሳቀስ ወይም መንገድ እንደማይቸል የታወቀ ነው።
- ◆ የአፍሪካን አሕጉር ስንመለከትም አብዛኛዎቹ አገሮች ተሽከርካሪዎች በሥራ ላይ ወገን ለሚያደርሱት አደጋ አስገዳጅ የመድን ዋስትና ሳይኖራቸው በመንገድ ላይ እንዲያንቀሳቀሱ የሚችሉ ሕግ ወጥቶ በሥራ ላይ መዋል ከጀመሩ ቆይቷል።
- ◆ የምስራቅና የደቡብ አፍሪካ የጋራ ገበያ አባል አገሮችም የወሰድን እንደሆነ ቡሪንዲ ፣ ማላዊ ፣ ሮዋንዳ ፣ ስዋዚላንድ ፣ ታንዛኒያ ፣ ኡጋንዳ ፣ ዛምቢያ ፣ ዝምባቡዌ እና ሌሎችም አስገዳጅ የመድን ዋስትና አውጥተው እየሰሩበት ነው።
- ◆ የምስራቅና ደቡብ አፍሪካ የጋራ ገበያ አባል አገሮች በእያንዳንዱ አባል አገር የተመዘገበ ባለሙያ ተሽከርካሪ ሁሉንም አገር አደጋ ቢያደርስ ለደረሰው ጉዳት ለተገኘው ካሳ ለመክፈል የሚያስችል ባለሙያ ተሽከርካሪ በሥራ ላይ ወገን ለሚያደርሰው ጉዳት ካሳ ለመክፈል የሚያስችል ስርዓት መስርቷል። ይኸውም አባል አገሮች የብጫ ካርድ (yellow card) ፕሮቶኮል ስምምነት የተፈራረሙ ሲሆን ፣ ማንኛውም በአካል አገሮች የተመዘገበ ባለሙያ ተሽከርካሪ በሥራ ላይ ወገን ለሚያደርሰው ጉዳት ካሳ ለመክፈል የሚያስችል የመድን ዋስትና የሳባ ለመሆኑ ብጫ ካርድ መያዝ እንደሚገባው በስምምነቱ ላይ ተካቷል።
- ◆ አገራችን ስምምነቱን ካጸደቀች አገሮች ውስጥ አንዷ ብትሆንም ተሽከርካሪ በሥራ ላይ ወገን ለሚያደርሰው አደጋ የመድን ዋስትና እንዲኖረው የሚደነግግ ሕግ አስጠራጠራን ስራ ላይ ለመውጣትም ባለሙያ ተሽከርካሪዎች በሥራ ላይ ወገን ላይ ለሚያደርሱት ጉዳት ካሳ ለመክፈል የሚያስችል ስርዓት ማውጣት አስፈላጊ ሆኖ ተገኝቷል።
- ◆ በሌላ በኩል ማንኛውም ባለሙያ ተሽከርካሪ በ3ኛ ወገን ላይ ለሚያደርሰው አደጋ የመድን ሽፋን እንዲኖረው አስገዳጅ ህግ ካለ መድን ሰጭ ከባንዶች ለሚሰጡት የመድን ዋስትና ለኪሣራ እንዲይደረጉ በተሽከርካሪው ላይ ጥብቅ የተክኒክ ምርመራ ስለሚያደርጉ በተዘዋዋሪ የመጫን ብቃት ያላቸው ባለሙያ ተሽከርካሪዎች ብቻ በመንገድ ላይ እንዲቀሳቀሱ ወደፊት ይፈጥራል።



ሰለረቂቅ አዋጅ አቀራረብ

ረቂቅ የቀረበው በስድስት አበይት ክፍሎች ነው። የመጀመሪያው ክፍል የአዋጅ ርዕስ፣ ትርጉምና የሦስተኛ ወገን መድን ዋስትና አስፈላጊነትን ይደነግጋል።

- ♦ ትርጉም በሚለው ርዕስ ንዑስ አንቀጽና እኛ አስገዳጅ የመድን ዋስትና የሚደነግገው አንቀጽ 3 በአብዛኛው የምስራቅና የደቡብ አፍሪካ የጋራ ገበያ አባል አገሮች በሕግ አስፀድቀው እየሠሩበት ካለው ሕግ እና በአባል አገሮች ጽ/ቤት በኩል ከተዘጋጀው ሞዴል የሕግ ረቂቅ የተወሰደ ነው።
- ♦ ክፍል ሁለት በተመለከተ ከ4-8 ያሉት አንቀጾች የያዘ ሲሆን ስለመድን ፖሊሲ አስመልክቶ የተደነገጉ ናቸው። መሠረተ ሃሳቡ የተወሰደውም ከዚህ በላይ ከተጠቀሰው የሕግ ረቂቅ ሞዴል ነው።
- ♦ ክፍል ሦስት ከአንቀጽ 9-14 ያሉት ድንጋጌዎች የመድን ምስክር ወረቀትን አስመልክቶ የተደነገጉ ሲሆኑ ከዚህ በላይ ከተጠቀሰው ሰነድ የተወሰዱ ናቸው።
- ♦ ክፍል አራት በመድን ዋስትና የሚሸፈን ኃላፊነትን የሚመለከቱ ድንጋጌዎች የያዘ ሲሆን ከአንቀጽ 15-18 ያሉትን ይሸፍናል። እነዚህም በአብዛኛው ከሰነዱ የተወሰዱ ናቸው። የመድን ኃላፊነት መጠን በአሁኑ ለማስቀመጥ በሂሳብ ቀመር የኢኮኖሚክስ ትንተና (Analysis) ተጠንቶ መቅረብ የሚገባው መሠረታዊ ሃሳብ ሲሆን፣ የሂሳቡን ቀመር ለማግኘት የአገራችን የኢኮኖሚ ክሊላም አቀፍ ሁኔታ ጋር ተሳስሮ በሥራ በየጊዜው ተለዋዋጭ ሊሆን የሚችል ቢሆንም፣ የመድን ካሣ መጠን በአሁኑ ወቅት ፍ/ቤቶች በሚሰጡት ውሳኔ መሠረት በመድን ሰጭው ከባንዶች በመከፈል ያለው አማካኝ ከፍተኛ ጣሪያ የካሣ መጠን በአንቀጽ 16 ላይ ተካቶ ቀርቧል።
- ♦ ክፍል አምስት የመድን ፈንድ መቋቋምን፣ ዓላማውን እና አካላቱን አስመልክቶ የያዘት ድንጋጌዎች ከአንቀጽ 19-32 ተካቷል። እነዚህ አንቀጾች የተወሰዱት በአሁኑ ወቅት የተለያዩ ፈንዶችን ለማቋቋም ከጠብቆ የአገራችን አዋጆች እና የተለያዩ አገሮችን ልምድ በመውሰድ የመድን ፈንድን ለማቋቋም በሚጣጣም መልኩ እንደገና ታይቶ የቀረበ ነው።
- ♦ በመጨረሻም ክፍል ስድስት ልዩ ልዩ ድንጋጌዎችን የያዘ ሲሆን በውጭ አገር የተመዘገበ ተሸከርካሪ የመድን ሽፋን ያለው ለመሆኑ የሚያሳይ ብጫ ፣ ርድ ወይም ሌላ ሕጋዊ ተቀባይነት ያለው ማሰረጃ መያዝ እንዳለበት የሚገልፅ ድንጋጌ በአንቀጽ 33 ላይ የተካተተ ሲሆን በአንቀጽ 33 ደግሞ አስቸኳይ ስጦታ መስጠት የሚገባቸውን መሠረተ ሃሳብ የያዙ ሲሆን በተለይ ቅጣትን በተመለከተ በአንቀጽ 37 ላይ ለጥቅም ለሆነው ሥራ ላይ ለማግኘት የመድን ዋስትና ሰነድ ተሸከርካሪ በመንገድ ላይ ያንቀሳቀሰ ማናቸውም ሰው በከፍተኛ የገንዘብ ቅጣትና እሥራት ለመቅጣት በሚያስችል ሁኔታ ተቀርጿል።

ረቂቁ የክልል ትራንስፖርት ቢሮዎች፣ የመድን ሰጭ ከባንዶች፣ የዩኒቨርሲቲ የሕግ መምህራን፣ ክፍ/ቤቶች፣ ከተለያዩ የመንግሥት መ/ቤቶችና የግል ድርጅቶች የተወሰኑ ባለሙያዎችን ባሳተፈ መልኩ ጥር 9/1998 9/ም ውይይት ተካሂዶበት በሃሳብ እንዲዳብር ተደርጓል።



አያይዘውም ለመጀመሪያ ሕክምና ለሚደረገው ወጪ 1000 ብር ወገን እስኪደርስ ድረስ ሆስፒታሎች ማከም አለባቸው ተብሎ የተገለፀው ምናልባት ጎዳና ተዳዳሪዎች በአደጋው ሊጎዱ ቢችሉ የሚመጣላቸው ዘመድ ስለሌለ ሆስፒታሉ የአንድ ሺህ ብር ሕክምና ካደረገ በኋላ ተጨማሪ ክፍያ መክፈል ስለማይችሉ አላከምም ብሎ ቢያሳናብተው የተጎዱት እጣ ፈንታ ምን ሊሆን ይችላል ማለው ከሆነ አይቀር አብሮ በመኝብ መታየት አለበት፤ በሌላ በኩል ለሕክምና ተቋማት በመኪና አደጋ የደረሰበትን ሰው እስከ አንድ ሺህ ብር የሚደርስ ሕክምና መስጠት ግዴታ እንዳለበት የተገለፀ ቢሆንም በህጉ ላይ የተቀመጠ ባለመሆኑ ሊታይ እንደሚገባው እንዲሁም በእቃ በሚያጓጓዘው ኩባንያና እቃው እንዲጓጓዝለት የሚፈለገው አካል መካከል ምናልባት ከወደብ ማለትም ከጅቡቲ አዲስ አበባ ለሚደረገው የዕቃ ማጓጓዣ የኢንሹራንስ መግባትና አለመግባት ውል ሊደረግ የሚችል ቢሆንም ከአዲስ አበባ ወደየክልሉ የሚጓጓዙ እቃዎች መንገድ ላይ መኪና እየተገለበጠ ንብረት የሚወድምበት አጋጣሚ ስላለ ይህን የ3ኛ ወገን መድሀን ክፍያ ተጠቃሚ የሚሆንበት መንገድም አብሮ መታየት ያለበት መሆኑን ጠቁመዋል።

ተጨማሪ

በመቀጠልም የተከበሩ ሻለቃ መኮንን ገለታ ለሚደርሰው አደጋ የሚከፈለው ካሳ ያለምንም የሚያሻማ ትርጉም ይህ ይከፍለዋል ስለሚል ተጨማሪ ክፍያ ያስፈልገኛል ለሚል ሰው ፍ/ቤት ሂደት መከራከር ስለማያስችለው በህጉ ላይ በህጉ ከተቀመጠው ክፍያ በላይ የሚጠየቅ አካል ካለ በዚህ መልኩ መጠየቅ ይችላል የሚል አመላካች የሆነ ነገር በህጉ ውስጥ መካተት ያለበት መሆኑን ከዚህ በተጨማሪም በመኪና አደጋ ለደረሰበት ሰው ማንኛውም የሕክምና ተቋም እስከ አንድ ሺህ ብር ድረስ ማከም አለበት ተብሎ የተቀመጠው ምንም እንኳን የመንግስት ሆስፒታል ውስጥ ከባድ ጉዳት ካልሆነ በስተቀር ሳምንት ሊያላከም የሚችል ቢሆንም ከግል ሕክምና ተቋም ከገባ ግን በአንድ ቀን ብቻ እስከ 6መቶ ብር የሚጠይቅ በመሆኑ ፈንዱ አንድ ሺህ ብር ለሕክምና ይከፍላል የሚለው በአንድ በኩል አሁን ያለው ገበያ በደንብ ያልታየ እንደሆነና በሌላ በኩል ደግሞ የኢንሹራንስ ፈንዱ አንድ ሺህ ብር ብቻ ለመክፈል የተቋቋመ ከሆነ መቋቋሙ ትርጉም ስለማይሰጥ ከዚህ አንጻር ሊታይ እንደሚገባው አስገንዝበዋል።

ተጨማሪ



የተጨማሪ መረጃ

በማስከተልም የተከበሩ አቶ መስፍን ነመራ የትራንስፖርት ባለስልጣን ይህንን ህግ አዘጋጅቶ በማቅረቡ የሚመሰገን ቢሆንም በሌላ በኩል ሲታይ ግን ኢንፎርሜሽን ኩባንያዎችን በበላይነት የሚቆጣጠረው ብሔራዊ ባንክ እስከሆነ ድረስ በስብሰባ ላይ ተገኝቶ አስተያየት ከመስጠት ባሻገር ህጉን በባለቤትነት ሊይዘውና በቴክኒክ አጋዥነት ደግሞ የትራንስፖርት ባለስልጣን መሆን ይገባው እንደነበር፤ እንዲሁም የኢንፎርሜሽን ኩባንያዎች የትራንስፖርት ባለስልጣን ከላውዶ ያደረገውን መኪና አንቀበልም ማለት አይችልም ተብሎ የተገለፀው ምናልባት ይህ የመንግስትን እንቢተኝነት ለመግለፅ ካልሆነ በስተቀር እ.ኤ.አ ከ1980 በፊት የተመረቱ መኪናዎችን አልቀበልም ያለ ኢንፎርሜሽን ኩባንያ ስላለ ከዚህ አንፃር በግድ መቀበል አለብህ ተብሎ ቢገደድ እንኳን አንድ የቆየን ኢንትሪ 2 መቶ ሺህ ብር ኢንፎርሜሽን መግባት አለብህ ብሎ ቢጠይቅ ይህን ያህል ብር መጠየቅ የለብህም ብሎ የሚከለክለው ስለሌለ የመኪናውን ዋጋ የሚሸፍን ገንዘብ በመሆኑ ከገበያ ውጭ ስለሚደረገው ከዚህ ፅንሰ ሀሳብ በመነሳት አሮጌ መኪናዎች ላይ በሂደት እንዲኬድበት የታሰበው ነገር ምን እንደሆነና ኢንፎርሜሽን ኩባንያዎች ውይይቱ ላይ የትራንስፖርት ባለሥልጣን አይቶ መስራት እንደሚችል ማረጋገጫ የተሰጠውን አሮጌ መኪና አንቀበልም ማለት እንደማይችሉ ሲገለፅላቸው ተቀብለውት ወጡ ወይስ ተቃውመውት ወጡ የሚለው ላይ ማብራሪያ እንዲሰጥበት ጠይቀዋል።

የተከበሩ አቶ ቀንሊ ኩማ በበኩላቸው ለሚደርሰው አደጋ የሚከፈለው ካላ በህጉ ከተቀመጠው አህዝ በላይ ሌላ ተጨማሪ የሚጠይቅ አካል በሌላ ህግ መጠየቅ ይችላል የሚለው የህግ ግምትና ለዳኞች የትርጉም ክፍተት የሚፈጥር በመሆኑ ለምን በዚህ ህግ እንዲያልቅ እንደማይደረግ አስገንዝበዋል።

*Kegele
awre*

በሌላ በኩል የተከበሩ አቶ ክፍሌ ጃጉባ የመንገድ ትርጓሜ ላይ በአሁኑ ሰዓት መኪናዎች በከተማ ብቻ ሳይሆን በገጠሩም ገብተው እየሰሩ ያሉበት ሁኔታ ስላለ የከተማ የገጠር መንገዶች ተብሎ በትርጉሙ መካተት እንዳለባቸው፤ ቀደም ብሎ የቦርዱ አወቃቀር በጥቅል ተቀምጧል እንደተባለው ሁሉ የቦርዱ አባላት ቁጥር ስንት መሆን እንዳለበት ስላልተገለጸ ይህም ተወስኖ መገለጽ እንዳለበት፤ እንዲሁም በአደጋ ጊዜ የሚከፈለው የ 3ኛ ወገን የመድሀን ካላ ከተገለፀው አሁን መብለጥ የለበትም

◆ የካሣ ክፍያን ጣሪያ በተመለከተ የተቀመጠው በመድን ሰጭውና በመድን ተቀባይ መካከል ያለውን ግንኙነት የሚያጠባው እንደሚመስል ለምሳሌ መድሀን ሰጭ ካስከፈለው ከፍተኛ premium ውስጥ ላቅ ያለ ካሳ ለመክፈል ቢፈልግ ይህን ፍላጎቱን የሚገድብ አይሆንም ወይ ሲሉ ጠይቀዋል።

ከዚያም የተከበሩ ሰብሳቢው ሀጂ አሊ ለቀረቡት ጥያቄዎች መልስ እንዲሰጥባቸው መድረኩን ለአስረጃዎች ክፍት አድርገዋል።

በዚህ መሠረት የትራንስፖርት ባለስልጣን ዋና ዳይሬክተር አቶ ካሳሁን ኃ/ማርያም የቀረበውን አዋጅ በተመለከተ በርካታ ኢትዮጵያውን ቀደም ብሎ መውጣት እንደነበረበት ሲጠይቁት እንደነበርና በኢትዮጵያ ብቻ ሳይሆን ሌሎች ሀገሮችም የሚጠቀሙበት በመሆኑ ኢትዮጵያ ከፈረመቻቸው አለም አቀፍ ስምምነቶች አንፃር ይህን የ3ኛው ወገን የመድን ፖሊሲ አዋጅ ማውጣት የግድ በመሆኑ ረቂቅ አዋጅ ተዘጋጅቶ የቀረበ መሆኑን አመለክተው የሚኒስትሩ መ/ቤት የዋስትና ሽፋን ሳይኖራቸው መንገድ ላይ ስለሚሸከረከሩ ተሸከርካሪዎች ለወሰን ይችላል ወይ? በሚል ለቀረበው ጥያቄ ሲመልሱ መኪናዎች ተገቢው ምርመራ ተደርጎታቸው የማሸከርከር ፈቃድ እንደሚሰጣቸው ሁሉ የሚፈለገው የቴክኒክ ብቃት ባለማሟላታቸው መንገድ ላይ እንዳይሸከረከሩ የሚታገዱ መኪናዎችም ሊኖሩ እንደሚችሉ ፣ ይህን እንጂ እገዳ በሚጣልበት ጊዜ በልዩ ሁኔታ ለምሳሌ እንደመከላከያ መኪናዎች ያሉ ግንባር ድረስ የሚሄዱ በመሆናቸው እነዚህ መኪናዎች አስፈላጊውን የቴክኒክ ብቃት ስላላሟላችሁ በማንኛውም መንገድ ማሸከርከር አትችሉም ቢባል አስቸጋሪ በመሆኑ እንደነዚህ ያሉትን መኪናዎች በአዋጅ ውስጥ እንዲካተቱ ከማድረግ ይልቅ ሚኒስቴር መ/ቤቱ እንደሁኔታው እያየ ቢወሰነው ይሻላል በሚል የታለፈ መሆኑን አስታውቀዋል። ይህን እንጂ ሰዎች በሚበዙበትና ከተማ ውስጥ ያሉትን የመከላከያ መኪናዎች እንደሌላው መኪና ሁሉ በአዋጅ ተካተው አስፈላጊውን መስፈርት አሟልተው መንቀሳቀስ ያለባቸው ሲሆን ሚኒስቴር መ/ቤቱ እንደሁኔታው እያየ ቢወሰነው ይሻላል የተባለው ሰዎች በሌሉበትና በማይበዙበት አካባቢ በልዩ ሁኔታ ለሥራ የሚንቀሳቀሱ የመከላከያ መኪናዎችን ብቻ እንደሆነ ጠቁመዋል።

Handwritten notes and signatures in the right margin.

I. The price quoted in the latest catalogue or price list issued by the Manufacturer or his Agents for the country in which the Motor vehicle is held for repair or.

II. The price last obtained at the Manufacturer's Works if no such catalogue or price list exists plus the reasonable cost of transport otherwise than by air to the country in which the Motor Vehicle is held for repair and the amount of the relative import duty and the reasonable cost of fitting such part.

4. BATTERIES AND CANVAS EXCLUSION CLAUSE (TO APPLY TO COMMERCIAL VEHICLE POLICY ONLY).

It is hereby understood and agreed that this insurance does not cover any loss of or damage to the batteries or canvas covers of any vehicle hereby insured.

5. INDEMNITY TO MEMBERS, DIRECTORS OR EMPLOYEES

Notwithstanding anything contained herein to the contrary it is hereby understood and agreed that whilst any Motor Car described in the schedule hereto is being used by any Member Director or employees of the Insured, the Company will treat as though he were the Insured person using such Motor Car Provided always that:

- 1) Such person is not entitled to indemnity under any other policy.
- 2) Such person shall as though he were the insured observe fulfill and be subject to the terms provisions conditions and endorsements of this policy insofar as they can apply.
- 3) The person driving is at the time a duly licensed driver.

6. RADIOS, RECORD PLAYERS AND TAPE RECORDERS

No claim shall be payable under the policy in respect of any radio, record players or tape recorder fitted in the Vehicle(s) under the policy unless specially declared in the Policy Schedule.

7. LICENSE CLAUSE

"It is hereby understood and agreed that while any private car or vehicle described in the Schedule of this policy at the time of any accident is being driven by or is in the charge of any person"

(A) Under the age of year

(B) Who is the holder of a full driving license which has been in force for less than 12 month then the Company shall not be liable for the first Birr in respect of any such claim in addition to any deductible/ excess which is already imposed by this policy.

Policy No

Premium Birr

Period of Insurance From the _____ day of _____ 20
to midnight on the _____ day of _____ 20

Insured:

Address:

Business or Occupation:

Geographical Area:-

DESCRIPTION OF VEHICLES

Registered Letters and Nos.	Make of Vehicle (s)	Horse Power or C.C.	Type of Body	Year of Manufacture	Seating Capacity including Driver	Insured's estimate of value including access thereon

Limit of amount of the Company's liability under Article I (4) of the Policy with a limit of

Birr _____ Per event

Limit of amount of the Company's liability under Article I (5) of the Policy (i.e. liability for T/P property)

Birr _____ Per Person

Limit of amount of the Company's liability under Article V of the Policy (emergency medical treatment)

Birr _____ Per event

Maximum amount for which the Insured is permitted to authorise repairs under Article III (I)

Birr _____ Per event

Birr

IN THE EVENT OF ANY VEHICLE INSURED UNDER THIS POLICY IS SOLD THE COVER IN RESPECT OF THAT VEHICLE CEASES WITH IMMEDIATE EFFECT FROM THE TIME OF SUCH SALE

ENDORSEMENTS ATTACHED:

Date _____

For and on behalf of
NYALA INSURANCE S.C

EXAMINED _____

Policy No _____ Premium Birr _____

Period of Insurance From the _____ day of _____ 20
 to midnight on the _____ day of _____ 20

Insured:

Address:

Business or Occupation:

Geographical Area:-

DESCRIPTION OF VEHICLES

Registered Letters and Nos.	Make of Vehicle (s)	Horse Power or C.C.	Type of Body	Year of Manufacture	Seating Capacity including Driver	Insured's estimate of value including access thereon

Limit of amount of the Company's liability under Article I (4) of the Policy with a limit of	Birr _____ Per event
Limit of amount of the Company's liability under Article I (5) of the Policy (i.e. liability for T/P property)	Birr _____ Per Person
Limit of amount of the Company's liability under Article V of the Policy (emergency medical treatment)	Birr _____ Per event
Maximum amount for which the Insured is permitted to authorise repairs under Article III (I)	Birr _____ Per event
	Birr _____

IN THE EVENT OF ANY VEHICLE INSURED UNDER THIS POLICY IS SOLD THE COVER IN RESPECT OF THAT VEHICLE CEASES WITH IMMEDIATE EFFECT FROM THE TIME OF SUCH SALE

ENDORSEMENTS ATTACHED:

Date _____

For and on behalf of
 NYALA INSURANCE S.CO

EXAMINED _____

CONDITIONS

1. The due observance and fulfilment of the Terms, Provisions, Conditions and Endorsements of this Policy by the Insured insofar as they relate to anything to be done or complied with by the Insured and the truth or the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this policy. No waiver of any of the Terms, Provisions, Conditions and Endorsements of this policy shall be valid unless made in writing and signed by the officer of the Company.

The Insured shall as soon as practicable give to the Company notice in writing with full details of any event likely to give rise to any claim under this policy and shall supply such further information as may be reasonably necessary in case of Theft or other criminal act which may be the subject of a claim under this policy, the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender.

The Insured (or the Insured's agents) or any person claiming to be indemnified shall not make any admission of liability or offer or promise of payment but shall permit the Company to have the sole conduct of all negotiations or legal proceedings. The Company shall be entitled to use the name of the Insured or of the person claiming to be indemnified for the purpose of resisting or enforcing any claim and the Insured and the person claiming to be indemnified shall give the Company all reasonable assistance in connection therewith and shall act in all cases in the best interests of the Company. The Company shall have full power to settle any claim without reference to the Insured or to the person claiming to be indemnified and in any question between the Company and the Insured or between the Company and the person claiming to be indemnified such settlement shall have the effect for all purposes as if it was made with the concurrence of the insured or the person that such settlement may be declared to be ex-gratia or without admission of liability.

In the event of loss of or damage to any Motor vehicle described in the schedule hereto the Company may at its own option repair, reinstate or replace such Motor Vehicle or part thereof and or its Accessories or pay in cash the amount of the loss or damage and the liability of the Company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and in no case exceed the Insured's estimate of the value of such Motor Vehicle (including Accessories thereon) as specified in the Schedule hereto or the Value of such Motor Vehicle (including Accessories thereon) at the time of the loss or damage whichever is the less.

The Insured shall take all reasonable steps to safeguard vehicle against damage or loss, in the event of an accident or breakdown such motor vehicle shall not be left unattended to prevent further damage or loss and if such motor vehicle be driven before the necessary repairs are effected, any extension of the damage or further accident arising shall be entirely at the Insured's own risk.

The Company may cancel this policy by sending thirty days notice by registered letter to the Insured at his last known address and in such event will return to the insured the premium less the pro-rata portion thereof for the period the policy has been in force or the policy may be cancelled at any time by the Insured on notice and (provided no claim has arisen during the then current period of insurance) the Insured shall be entitled to a return of the premium less premium at the Company's Short Period Rates for the time the Policy has been in force.

The Policy and the schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this policy or the Schedule shall bear such specific meaning wherever it may appear.

All difference arising out of this policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two disinterested persons as arbitrators of whom one shall be appointed in writing by each of the parties within thirty days after having been required to do so in writing the other party. In case either party shall refuse or fail to appoint an arbitrator within thirty days after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole arbitrator and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings. In the event of the death of an arbitrator or umpire, another shall in each case be appointed in his stead by the party or arbitrators (as the case may be) by whom the arbitrator or umpire so dying was appointed.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage if disputed shall be first obtained.



ተልዕኳችን አለንታዎን ማስከበር ነው።
YOUR PROTECTION IS GUARANTEED

አ/አ/አ

FORM No. - EN/11.6/3

MOTOR INSURANCE ENDORSEMENTS

Branch _____
Policy Number _____
Endorsement No. _____
Insured _____

1. SUPPLEMENTARY CONDITIONS (MOTOR)

The sum insured hereunder being the Insured's estimate, is not necessarily accepted by the Company as being the true value of the property Insured. In the event of loss and/or damage for which indemnity is provided by this Insurance, the Company shall not be liable to pay any sum in excess of the market value of the property immediately before the loss and/or damage or in excess of the sum insured, whichever is the less, irrespective of the cost price of the property.

2. EXCESS-ACCIDENTAL DAMAGE

It is hereby understood and agreed that notwithstanding anything to the contrary contained in Clauses 1, 2, & 3 of this policy the Insured in respect of each and every event shall be responsible for the first Birr (or any less expenditure which may be incurred) of any expenditure for which provision is made under such clause and or any expenditure by the Company in the exercise of its discretion under Condition 3 of this policy.

If the expenditure incurred by the Company shall include the amount for which the Insured is responsible hereunder such amount shall be repaid by the Insured to the Company forthwith.

For the purpose of this endorsement the expression "event" shall mean an event or series of events arising out of one cause in connection with any one Motor Car in respect of which indemnity it guaranteed under this policy.

3. UNOBTAINABLE PARTS (SPARE PARTS ENDORSEMENT)

It is hereby understood and agreed notwithstanding anything to the contrary contained in this policy that in the event of loss or damage to the Motor vehicle or its accessories or spare parts necessitating the supply of a part not obtainable from stock held in the country in which the Motor vehicle is held for repair or in the event of the Company exercising the option under Condition 4 to pay in cash the amount of the loss or damage, the liability of the Company in respect of any such part shall be limited to:

- I. The price quoted in the latest catalogue or price list issued by the Manufacturer or his Agents for the country in which the Motor vehicle is held for repair or.
- II. The price last obtained at the Manufacturer's Works if no such catalogue or price list exists plus the reasonable cost of transport otherwise than by air to the country in which the Motor Vehicle is held for repair and the amount of the relative import duty and the reasonable cost of fitting such part.

4. BATTERIES AND CANVAS EXCLUSION CLAUSE (TO APPLY TO COMMERCIAL VEHICLE POLICY ONLY).

It is hereby understood and agreed that this insurance does not cover any loss of or damage to the batteries or canvas covers of any vehicle hereby insured.

5. INDEMNITY TO MEMBERS, DIRECTORS OR EMPLOYEES

Notwithstanding anything contained herein to the contrary it is hereby understood and agreed that whilst any Motor Car described in the schedule hereto is being used by any Member Director or employees of the Insured, the Company will treat as though he were the Insured person using such Motor Car Provided always that:

- 1) Such person is not entitled to indemnity under any other policy.
- 2) Such person shall as though he were the insured observe fulfill and be subject to the terms provisions conditions and endorsements of this policy insofar as they can apply.
- 3) The person driving is at the time a duly licensed driver.

6. RADIOS, RECORD PLAYERS AND TAPE RECORDERS

No claim shall be payable under the policy in respect of any radio, record players or tape recorder fitted in the Vehicle(s) under the policy unless specially declared in the Policy Schedule.

7. LICENSE CLAUSE

"It is hereby understood and agreed that while any private car or vehicle described in the Schedule of this policy at the time of any accident is being driven by or is in the charge of any person"

(A) Under the age of year

(B) Who is the holder of a full driving license which has been in force for less than 12 month then the Company shall not be liable for the first Birr in respect of any such claim in addition to any deductible/ excess which is already imposed by this policy.

አልቀበልም ማለት የሚችሉ ቢሆንም ይህ ረቂቅ አዋጅ ግን በሁለቱ ስምምነት መካከል የሚገባ ጣልቃ ገብነት ሳይሆን ምንም የማይመለከተውን ሰላማዊ ተጓዥ አደጋ አድርሰው ዝም ብለው መሄድ ሳይኖርባቸው ለነዚህ ተጎዲዎች የሚከፈል ክፍያ ለ3ኛ ወገን መድሀን ፖሊሲ ሁሉም መኪና ያለው መግባት አለበት በሚል ለሕዝብ ደህንነት የተቆመ አስገዳጅ ህግ በመሆኑ ኢንሽራንስ ኩባንያዎች የመኪናዎችን ደህንነት በሚያረጋግጠው አካል ተረጋግጦ ምስክር ወረቀት ከተሰጠ አንቀበልም የሚሉበት ሁኔታ ሊኖር እንደማይችል አንቀበልም ቢሉ እንኳ ሌላው ዜጋ እንደተገደደው ሁሉ እነሱም በሌላ ህግ የሚጠየቁ ሆኖ ይህ ጉዳይ በግልጽ ህጉ ላይ አልተቀመጠም የሚባል ከሆነ በማያሻማ መልኩ ማስቀመጡ የሚመረጥ በመሆኑ ጉዳዩን የተከበረው ም/ቤት አይቶ መወሰን ያለበት መሆኑን አስገንቦዋል።

አቶ ካሳሁን ኃ/ማርያም በመቀጠልም የመንገድ ትርጓሜ የከተማና የገጠር መባል አለበት ተብሎ የተሰጠው ሀሳብ በተባለው መልኩ በማያሻማ ሁኔታ የሚሰተካከል መሆኑን አውስተው የቦርድ አባላት ቁጥር ስንት እንደሆነ መገለጽ አለበት ለሚለው ሲያብራሩ የቦርድ አባላት ቁጥር እስካሁን ድረስ ከ 5 እስከ 7 የሚደርስ ሲሆን በዚህ ህግ ላይ ግን ሁሉም ኢንሽራንስ ኩባንያዎች መወከል ያለባቸው በመሆኑ ይህን ያህል አባላት ሊኖሩት ይገባል የሚለውን ቀድሞ ለማስቀመጥ አስቸጋሪ በመሆኑ አለመቀመጡን ስለሆነም በመንግስት በኩል የሚወከሉትን ብቻ መገለጽ ካልተቻለ በስተቀር የሁሉንም የቦርድ አባላት መገለጽ ስለማይቻል በኋላ የኢንሽራንስ ኩባንያዎች ቁጥር በሚታወቅበት ጊዜ የተገለፀ መሆኑን ጠቁመዋል።

አያይዘውም የመድሀን ፈንድና የ3ኛ ወገን መድሀን ፖሊሲ በአንድ ለምን እንዲወጡ ተደረገ ለሚለው ሲመልሱ ፈንድ ዝም ብሎ የተቋቋመ ሳይሆን ኢንሹራንስ የገባው መኪና ገጭቶ ቢያመልጥ ዜጎች ተጎድተው ሳይቀሩ ከፈንድ የተወሰነውን ገንዘብ እንዲከፈል ለማድረግ በመሆኑ ከዚህ አንፃር ሁለቱ የሚሰሩት ስራ ለዜጎች ደህንነት ማስጠበቂያ እስከሆነ ድረስ የተለያዩ ናቸው ማለት እንደማይቻል አስታውቀው በሌላ በኩል የ 3ኛ ወገን ኢንሹራንስ ገንዘብ በብሔራዊ ባንክ ብቻ ለምን መቀመጥ አለበት ይባላል የሚለውን በተመለከተም ምንም እንኳ መንግስታዊ የሆኑም ሆነ ያልሆኑ አካላት በስቴክ ሆልደርነት ያሉበት ቢሆንም የዜጎችን መብት ማስከበር ኃላፊነት

fund

ያለበት ሙንግስት በመሆኑ ይህን የ3ኛ ወገን ኢንፎርግሽንም አካውንቲን በብሔራዊ ባንክ አድርጎ በቅርበት መቆጣጠር አለበት በሚል እንጂ ሌላ የተለየ ተልዕኮ ስለአለው አለመሆኑን አመላክተዋል።

አክለውም ይህ የ3ኛ ወገን መድሀን ፖሊሲ የክልሎችን ተጨባጭ ሁኔታ ያገናዘበ ነገር ወይ? ተብሎ ለቀረበው ጥያቄ ሲመልሱ ይህ ህግ ለገዢዎች ብቻ ሳይሆን ለሁሉም የአገሪቱ ክፍሎች በመሆኑና በይበልጥ አደጋ የሚበዛው ክልሎች ላይ በመሆኑ ይህን ሁሉ ታላቢ በማድረግ የተዘጋጀ መሆኑን አስታውቀዋል።

በማስከተልም የትራንስፖርት ባለስልጣን ኤጀንሲ የህግ አገልግሎት ኃላፊ አቶ ፍስሃ ገ/ዋህድ አሽከርካሪውና እረዳቱ ከ3ኛወገን መድሀን ፖሊሲ ለምን ተጠቃሚ ለምን አይሆኑም በሚለው ላይ ተጨማሪ መልስ ሲሰጡ ይህ ረቂቅ አዋጅ ምንም ውል ለሌላቸው 3ኛ ወገን አካላት በመሆኑ እነዚህ አሽከርካሪውና እረዳቱ ግን ለሚደርስባቸው አደጋ ከባለሀብቱ ጋር የተዋዋሉት ውል ስላለ በዚያ መሰረት መጠየቅ እንደሚችሉ፣ በሌላ በኩል ቤተሰብ ከካላ ክፍያው እንዲወጣ የተደረገው ምንም እንኳ በኢትዮጵያ የሚደረግ ባይሆንም በውጭ ሀገር ካላ ለማግኘት ሲሉ የቅርብ ቤተሰባቸውን የሚገጩ ስራ ከዚያ ልምድ በመነሳት ክፍተቱን ለመሙላት ሲባል መሆኑን ገልጸዋል።

አያይዘውም የካላ ክፍያን በተመለከተ የተቀመጠው አሐዝ ለምን እነሰ ለሚለው ጥያቄ ሲያብራሩ የኢትዮጵያ ማክሮና ማይክሮ ኢኮኖሚ በየጊዜው ተለዋዋጭ በመሆኑ በተደጋጋሚ በፍ/ቤት የተወሰነውን በመያዝ የተቀመጠ ሲሆን በህጉ ላይ ከተቀመጠው በላይ ይሁን ቢባል ኢንፎርግሽን ኩባንያዎችን ከሥራ ውጪ ስለሚያደርጋቸው ከዚህ አንጻርም ብዙ ታስቦበት ለሞት 30ሺህ ብር፣ ለአካል ጉዳት 12ሺህ ብር እና ለንብረት መውደም መቶ ሺህ ብር የተወሰነ መሆኑን አመላክተዋል።

ከዚያም የተከበሩ ሰብሳቢው አቶ ሀጂ አሊ በቀረበው ማብራሪያ ላይ የማጠቃለያ አስተያየተ እንዲቀርብ መድረኩን ክፍት አድርገዋል።

በዚህም መሰረት የተከበሩ አቶ ዘነበ ከሀይረቄቅ ሀገን ለማውጣት የተደረገው ጥረት
 ለምሳሌ እንደ ብሔራዊ ባንክ ያሉትን ሌሎች ባንኮች ለማድረግ በግልጽ እንደሳተፉ
 ተደርጎ ሀገር መርቀቅ በጣም የሚያስመሰግን ሆኖ በታላቢነት እንደገና እናያቸዋለን
 የተባሉትን ጊዜ ሳይወስድ ታይተው እንደሰተካካሉ መደረግ እንደሌለት አስገንዘባል።

በዚህም መሰረት የተከበሩ አቶ ደግ ከግዛቱ ለሀገር ለሀገራዊ ጥቅም ላይ ስህተት ለማድረግ
 ለተነሱት ጥያቄዎች የተሰጠው በቂ የሆነ ማብራሪያ እንግዲሁም አይሰጥም።

በዚህም መሰረት የተከበሩ አቶ ደግ ከግዛቱ ለሀገር ለሀገራዊ ጥቅም ላይ ስህተት ለማድረግ
 ለተነሱት ጥያቄዎች የተሰጠው በቂ የሆነ ማብራሪያ አይሰጥም።

Attachment Five

የመሠረተ ልማት ጉዳዮች ቋሚ ኮሚቴ ስለተሸከርካሪ አደጋ

የሦስተኛ ወገን መድን ዋስትና ከትራንስፖርትና መገናኛ

ሚኒስቴር ከመጡ የሥራ ኃላፊዎችና ከባለድርሻ አካላት

ጋር ያደረገው ውይይት

ቃለ-ጉባኤ

ስብሰባው የተካሄደበት ቦታ፡- 52 ቁጥር አዳራሽ
 ስብሰባው የተካሄደበት ቀን፡- ህዳር 6 ቀን 2000 ዓ.ም.
 ስብሰባው የተካሄደበት ሰዓት፡- 3:25 -6:30



በስብሰባው ላይ የተገኙ የኮሚቴ አባላት

1.	የተከበሩ አቶ ውብነህ እምሩ	የመሠረተ ልማት ጉዳዮች ቋ/ኮሚቴ ሊቀ መንበርና የውይይቱ ሰብሳቢ
2.	የተከበሩ አቶ አህመድ መሐመድ	የመሠረተ ልማት ጉዳዮች ቋ/ኮሚቴ አባል
3.	የተከበሩ አቶ ዳማ ኩማ	" " " " " "
4.	የተከበሩ አቶ አዳነ ኦዳ	" " " " " "
5.	የተከበሩ አቶ ላቀ ጥላይ	" " " " " "
6.	የተከበሩ አቶ አስፋው መኮንን	" " " " " "
7.	የተከበሩ አቶ ሆነልኝ ሳህሌ	" " " " " "
8.	የተከበሩ አቶ አምላኩ ገላ	" " " " " "
9.	የተከበሩ ወ/ሮ አታለል መላኩ	" " " " " "
10.	የተከበሩ አቶ ጉቱ ሙሊሳ	" " " " " "
11.	የተከበሩ ወ/ሮ ዘይቱና ጣሐ	" " " " " "
12.	የተከበሩ አቶ ይብጌታ ወ/ማርያም	" " " " " "
13.	የተከበሩ አቶ ከተማ አምዴ	" " " " " "
14.	የተከበሩ አቶ ወንድሙ ኢብሳ	" " " " " "
15.	የተከበሩ ወ/ሮ ፋንታይ ገብኸኝ	የህግና አስተዳደር ጉዳዮች ቋ/ኮሚቴ አባል
16.	የተከበሩ ሻለቃ መኮንን ገለታ	የህግና አስተዳደር ጉዳዮች ቋ/ኮሚቴ አባል

- | | |
|------------------------|-----------------------------|
| 17. የተከበሩ አቶ ወርቁ ባሻህደር | የንግድና ኢንዱስትሪ ጉዳዮች ቋ/ኮሚቴ አባል |
| 18. የተከበሩ አቶ አረጋ በንቲ | የም/ቤት አባል |

አስረጅዎች

- | | |
|-------------------|------------------------------|
| 1. አቶ ካሳሁን ኃ/ማርያም | የትራንስፖርትና መገናኛ ሚ/ር ዋና ዳይሬክተር |
| 2. አቶ ፍስሐ ገብረ ዋህና | " " " የህግ አገ/ኃላፊ |
| 3. አቶ ንጉሴ ከበደ | " " " የተሽ/ብ/ማ/ የሥራ ኃላፊ |
| 4. ወ/ሮ ትዕግሥት አሰፋ | " " " የህግ ኤክስፐርት |

ባለድርሻ አካላት

- | | |
|--------------------|----------------------|
| 1. አቶ ፈለቀ ይመር | አዲስ አበባ ከተማ ም/ሥ/አ |
| 2. አቶ ዳንኤል ዘሚካኤል | የኢ.ት.ፍሬተሮር ወርዳርሳ |
| 3. አቶ አየለ በላቸው | " " " |
| 4. አቶ ባይሣ ፋፋ | በክልቻ ትራንስፖርት አ/ማ |
| 5. ወ/ሮ መሠረት በዛብህ | ህብረት ኢንሹራንስ አ/ማ |
| 6. ወ/ሮ አ.የሱስወርቅ ዛፋ | የኢ.ት.መድን ሰጭዎች ማህበር |
| 7. አቶ ፋሲል አስናቀ | ህብረት ኢንሹራንስ አ/ማ |
| 8. አቶ ወንድሙ ፈይሣ | በክልቻ ትራንስፖርት አ/ማ |
| 9. ወ/ሮ ትርሲት ዑስማን | ሸበሌ ትራንስፖርት አ/ማ |
| 10. አቶ ሰማኝ አባተ | ኮሚት ትራንስፖርት ማህበር |
| 11. አቶ ገ/አግዚአብሔር | ኮሚት ትራንስፖርት ማህበር |
| 12. አቶ አባይነህ ከበደ | ኢስት ዌስት ኢትዮ. ትራንስፖርት |
| 13. አቶ ሰብስቤ ነሪ | ኢስት ዌስት ኢትዮ. ትራንስፖርት |
| 14. አቶ ፀጋዬ በቀለ | ትራንስ ኢትዮጵያ ኃ/የተ/የግ. |
| 15. አቶ መስፍን ተፈራ | ወይራ ትራንስፖርት አ/ማ |
| 16. አቶ አብርሃም መርሻ | ከንብ ኢንሹራንስ ኩባንያ አ/ማ |
| 17. አቶ ካሣ ልሣነወርቅ | ከንብ ኢንሹራንስ ኩባንያ አ/ማ |
| 18. አቶ ተስፋዬ ታደሰ | ከአዲስ አበባ ዩኒቨርሲቲ |

- | | |
|------------------------|---------------------------------|
| 19. አቶ ሀብታሙ ሁነኛው | ናይል ኢንሹራንስ ኩባንያ |
| 20. አቶ ካግሁን ቢጋሻው | ናይል ኢንሹራንስ ኩባንያ |
| 21. ወ/ሮ አልማዝ ሞገስ | ናይል ኢንሹራንስ ኩባንያ |
| 22. አቶ እስጢፋኖስ ዳንኬሰው | ከዋሊያ የጭነት ባለንብረት ማህበር |
| 23. አቶ ተድላ ማንደፍሮ | ከዋሊያ የጭነት ባለንብረት ማህበር |
| 24. አቶ ገዛኸኝ ለማ | አልፋ ባለጭነት ተ/ማህበር |
| 25. አቶ በፍቃዱ ካሣ | አልፋ ባለጭነት ተ/ማህበር |
| 26. አቶ አበጀ በዛብህ | አቢሲኒያ ትራንስፖርት አ/ማ |
| 27. አቶ ብርሃኑ ጌታቸው | አቢሲኒያ ትራንስፖርት አ/ማ |
| 28. አቶ ሹምቦ ገብሬ | ተፈጥሮ ሃብትና አካባቢ ጥበቃ ትራንስ ኢት. |
| 29. አቶ ኃይሉ አበበ | አንበሳ የከተማ አውቶቡስ |
| 30. አቶ እንዳሻው አለማየሁ | አንበሳ የከተማ አውቶቡስ |
| 31. አቶ ዘሪሁን ሸዋ | አፍሪካ ኢንሹራንስ ኩባንያ ም/ዋ/ሥ/አስኪያጅ |
| 32. አቶ ዮናስ መላኩ | አፍሪካ ኢንሹራንስ ኩባንያ የሕግ አገ/ሥ/አስኪያጅ |
| 33. አቶ ብርሃኑ ታደሰ | አዲስ አበባ ዩኒቨርሲቲ የቡድን መሪ |
| 34. ተማሪ ሰለሞን ወ/ገብርኤል | አዲስ አበባ ዩኒቨርሲቲ የሕግ ተማሪ |
| 35. ተማሪ ይስሐቅ ወርቁ | አ.አ ትራፊክ ፖሊስ ህ.ግንኙነት |
| 36. ሳጅን ዳንኤል ታደሰ | ግሎባል ኢንሹራንስ ም/ዋ/ሥ/አስኪያጅ |
| 37. ወ/ሮ ያህያ መሐመድ | ደቡብ ጭነት ማመላለሻ የቦርድ ሰብሳቢ |
| 38. አቶ ገበየሁ ታምሬ | ደቡብ ጭነት ዋና ሥራ አስኪያጅ |
| 39. አቶ ደጅኔ መገርሣ | |
| 40. ሻምበል ጀምበር አስማማው | |
| 41. አቶ ሲሣይ ይመር | ዋሊያ አገር አቋራጭ ዋና ሥራ አስኪያጅ |
| 42. አቶ ጥላሁን ፈንታ | አፍሪካ ትራንስፖርት የቦርድ ሰብሳቢ |
| 43. አቶ አቢ ኃ/ሥላሴ | ብሔራዊ የኢት.አን.ኩ. የኦፕሬሽን ም/ዋ/ሥ/አ |
| 44. አቶ አበራ ገ/ማርያም ጉርሜሣ | ምዕራብ ጭ/ማ/ማ የቦርድ ሊ/መንበር |
| 45. አቶ ብርሃኑ በለው | ምዕራብ ጭ/ማ/ማ ሥራ አስኪያጅ |
| 46. አቶ ብርሃኔ ሊባኖስ | ጣና የአፍሪካ የቦርድ አባል |
| 47. አቶ ክብሩ ወርቅነህ | ኒያላ ሕ/ማ/ማ የቦርድ ም/ሊቀመንበር |

- | | |
|--------------------|-------------------------------|
| 48. አቶ ሃሌሉያ ረታ | |
| 49. አቶ ታደሰ አየነው | ጣና ትራንስፖርት መምሪያ ኤክስፐርት |
| 50. አቶ ሙሉጌታ አደም | ሰሜን ጭነት ማ.ም/ቦርድ ሊቀመንበር |
| 51. አቶ ሀሸም ዳውድ | ሰሜን ጭነት ማ.ቦርድ ሰብሳቢ |
| 52. አቶ በቀለ ኃ/ማርያም | ከንብ አ/ማ የማሕበሩ ፀሐፊ |
| 53. አቶ ፍስሐ ማሞ | ሰጎን ታክሲ ባ/ማህበር ሰብሳቢ |
| 54. አቶ ጋሻው ወጂ | ከሰላም ታክሲ ባ/ማህበር " |
| 55. አቶ ኃ/ማርያም ዲንቃ | ኒያላ ኢንሹራንስ የህግ አገ/ኃላፊ |
| 56. አቶ በኃይሉ ታምራት | ኒያላ ኢንሹራንስ የህግ አገ/ኃላፊ |
| 57. አቶ ብርሃኑ በላይነህ | አዋሽ ኢንሹራንስ የውል መምሪያ ሥ/አ |
| 58. አቶ በቃሉ ጥላሁን | አዋሽ ኢንሹራንስ የውል የህግ አገ.ሥ/አ |
| 59. አቶ ደበበ ታዘነ | የኢትዮጵያ መድን ድርጅት የሞ.ፕ.ኤክስፐርት |
| 60. አቶ ሰለሞን አለማየሁ | የኢትዮጵያ መድን ድርጅት የካሳ ክርክር ሥ/አመ |
| 61. አቶ ኃ/ሚካኤል ከምባታ | ንጋት ኢንሹራንስ ማኔጅመንት ዳይሬክተር |
| 62. አቶ ሙላት አድማሱ | መድን ሕ.ትራንስፖርት የቦርድ ሰብሳቢ |
| 63. ወ/ሮ ፍሬሕይወት አባይ | አዲስ አለም ማ. የቦርድ ሰብሳቢ |

የዕለቱ ሰብሳቢ የተመራው የመሠረተ ልማት ጉዳዮች ቋሚ ኮሚቴ ሊቀመንበር በተከበሩ አቶ ውበነህ እምሩ ሲሆን የተከበሩ ሰብሳቢው እንግዶችን እንኳን ደህና መጣችሁ ካሉ በኋላ ከትራንስፖርትና መገናኛ ሚኒስቴር ለመጡ የሥራ ሃላፊዎች ስለተሸከርካሪ አደጋ የሦስተኛ ወገን መድን ዋስትና አጠቃላይ መግለጫ እንዲቀርብ መድረኩን ክፍት አድርገዋል።

በዚህም መሠረት የትራንስፖርትና መገናኛ ሚኒስቴር ዋና ዳይሬክተር አቶ ካሳሁን ኃ/ማርያም ስለተሸከርካሪ አደጋ የሦስተኛ ወገን መድን ዋስትና አጭር ሪፖርት አቅርበዋል።

ከዚያም የተከበሩ ሰብሳቢው ከቤቱ ጥያቄዎች ካሉ እንዲቀርቡ መድረኩን ክፍት አድርገዋል።

16
2

በዚህም መሠረት ሳጅን ዳንኤል ታደሰ ከአዲስ አበባ ትራፊክ ፖሊስ ረቂቅ አዋጅ አስፈላጊ በመሆኑ በፍጥነት ፀድቆ ወደስራ ቢተገበር ተገቢ መሆኑን ጠቁመው ስለተሸከርካሪዎች ንብረትና በሰው ህይወት ላይ ቀድሞ የቀረበው ረቂቅ አዋጅ ተሻሽሎ ቀርቧል ወይ? ለሰው ህይወት 30 ሺህ ተብሎ የቀረበው አያንስም ወይ? ቢያንስ ወደ 100 ሺህ ብር ቢቀራረብ የተሻለ እይቻም ወይ? ካለ በኋላ የኢንሹራንስ ኩባንያዎች ሹፌሮችን እንዲቆጣጠሩ የሚያደርግ ህግ ለወደፊቱ ቢወጣ ተገቢ መሆኑን ጠቁመው የመጀመሪያ እርዳታ ለመስጠት አንድ ሺህ ብር ተብሎ የቀረበው ጥሩ መሆኑን ገልፀዋል።

በመቀጠልም አቶ ኃ/ሚካኤል ከንባታ በግል የሀላፊነት የጣሪያ መጠን እስከ 30 ሺህ ተብሎ የቀረበው በፈቃደኝነት ኢንሹራንስ ለሚገቡ መሆኑንና ህጉ የሚለው እንደ ጉዳት መጠኑ የሚከፈልበት ሁኔታ በመኖሩ በረቂቅ አዋጅ ላይ በገንዘብ መጠን ከማስቀመጥ ይልቅ በህጉ መሠረት ቢተገበር የተሻለ እንደሚሆን አስታውቀዋል።

በሌላ በኩል የተከበሩ አቶ ወንድሙ ኢብሳ አንድ ሾፌር ምን ያህል ጥፋት ያደርሳል የሚለው ተብራርቶ የተቀመጠ ባለመሆኑ በአሁኑ ወቅት አጽንኦት ተሰጦት መታየት እንዳለበትና በሰው ህይወት ላይ ጉዳት ላደረሰ 30 ሺህ እንዲሁም በንብረት ላይ ደግሞ 100 ሺህ ተብሎ የቀረበው መታየት እንዳለበት ጠቁመው አንድ ሾፌር በሚያደርሰው አደጋ የማሸከርከር ፈቃድ የመቀጠልና ያለመቀጠል ሁኔታ እንዴት ይታያል በማለት ማብራሪያ እንዲሰጣቸው ጠይቀዋል።

የተከበሩ አቶ ይብጌታ ወ/ማርያም በበኩላቸው በአንቀጽ 30 ላይ በመድን ፖሊሲው ስለማይሸፈኑ ሁኔታዎች ውስጥ በሾፌሩና ረዳቱ ላይ አደጋ ቢደረስ አይሸፈንም የሚለው እንዴት ይታያል? እንዲሁም በአንድ ተሳፋሪ ላይ ጉዳት ከደረሰ አስራ ሁለት ሺህ ተብሎ የቀረበው አያንስም ወይ? በአንቀጽ 16 ንዑስ ቁጥር 2 በተወሰነው ላይ ቅሬታ ያለው ወደ ፍ/ቤት ይሄዳል የሚለው በረቂቅ አዋጅ ላይ የቀረበው የፍ/ቤቱ ከፍተኛ ጣሪያ ከሆነ አቤቱታ የሚሰማው የትኛው አካል ነው? በአንቀጽ 17 የወንጀለኛ መቅጫ ህግ በሚያዘው መሠረት 30 ሺህ ተብሎ የቀረበው በየትኛው የወንጀለኛ መቅጫ ህግ ነው? በመጨረሻም በሰው ህይወት ላይ ጥፋት ያደረሰ እንዴት ከንብረት ጉዳት ሊያንስ ቻለ? በማለት ማብራሪያ ጠይቀዋል።

እንዲሁም አቶ ደበበ ታምር ከኢትዮጵያ መድን ድርጅት ረቂቅ አዋጅ አስፈላጊ በመሆኑ በፍጥነት መጽደቅ እንዳለበት ገልጸው የተሸከርካሪ ብቃት ማረጋገጫ ላይ ትኩረት ተሰጥቶ መሰራት እንዳለበትና የጣሪያ መጠኑ ከፍ ማለት እንዳለበት፣ በፈንዱ መሠረት ካሳ ሲፈጸም ተመጣጣኝ መሆን እንዳለበት ከገለጹ በኋላ በፈንዱ ዓላማ ላይ መድን ያልተገባለት ወይም ባልታወቀ ተሸከርካሪ የተጎዳ ማንኛውም ሦስተኛ ወገን ካሳ እንዲያገኝ ይደረጋል የሚለው መታየት እንዳለበት፣ እንዲሁም በሌሎች ሀገራት እንደሚታየው በሰው ህይወት ላይ ለሚደርሰው ጉዳት የተቀመጠው የገንዘብ መጠን መሻሻል እንዳለበት አስገንዝበዋል።

አቶ በቃሉ ጥላሁን ከአዋሽ ኢንሹራንስ ለህዝቡና ለንብረት ከሚያደርገው ጥበቃ አንፃር ረቂቅ አዋጁ ጠቃሚ መሆኑን ገልጸው ከይትኛው ሀገር ተሞክሮ የተወሰደ ነው? ከሌሎች ሀገራት ጠቃሚ ነገሮችን ወስዶ መስራቱ ጠቃሚ አይሆንም ወይ? እንዲሁም የካሳ ክፍያ መጓተትን ለመቀነስ ምን የታሰበ ጉዳይ አለ? በማለት ማብራሪያ ጠይቀው በመድን ዋስትናዎች ጫናዎች እየበዙ በመሆኑ የዜጎችን መብትና ግዴታ እንዲሁም ሁሉንም ተጠቃሚ ባደረገ መልኩ መቀመጥ እንዳለበት አመላክተዋል።

አቶ አብርሃም መርሻ ከንብ ኢንሹራንስ ኩባንያ በበኩላቸው የአካል ጉዳት ከሞት ጋር የሚዛመድበት ሁኔታ በመኖሩ 12 ሺህ ተብሎ ከማስቀመጥ በሀኪሞች ከታየ በኋላ ውሳኔ ቢሰጥበት የተሻለ እንደሚሆን ጠቁመው የመድን የምስክር ወረቀት ከአንድ ዓመት ላላነሰ የሚለው በኢንሹራንስ ኩባንያዎች ከሚሠራበት አሠራር ጋር የሚጋጭ በመሆኑ መታየት እንዳለበትና ከአንድ ዓመት ባነሰ የጊዜ መጠን መቀመጥ እንዳለበት እንዲሁም ዓመት ባነሰ የጊዜ መጠን መቀመጥ እንዳለበት እንዲሁም የመድን ገቢዎች በማንኛውም ጊዜ ውሉን ማቋረጥ የሚችሉበት ሁኔታ በመኖሩ በረቂቅ አዋጁ ውስጥ ይህንን በተመለከተ የተቀመጠ ባለመሆኑ አብሮ ቢታይ ተገቢ መሆኑን ገልጸዋል።

በሌላ በኩል አቶ ብርሃኑ በላይነህ ከአዋሽ ኢንሹራንስ ኩባንያ ረቂቅ አዋጁን በአጽንኦት ለማየት የተሰጠው ጊዜ አነስተኛ በመሆኑ ለወደፊቱ ለማየት ያመች ዘንድ ሰፊ ጊዜ መሰጠት እንዳለበት ጠቁመው ክፍል 2 አንቀጽ 5 ተራ ቁጥር 4 ላይ " አንድ ተሸከርካሪ አገልግሎት የሚሰጥበት ክልል አይወሰንም።" የሚለው ህጉ በኢትዮጵያ ክልል ለማለት ነው ወይስ ከኢትዮጵያ ውጭ ህጉ ይሰራል ለማለት ተፈልጎ ነው? እንዲሁም አንቀጽ 7(4) ላይ



ታደሰውም ጋር ታይቶጋንያ ቆይታ ሲያደርግ ታደሰም ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ

። ለሌሎች ስራዎች ሲሰጥ

ታደሰም ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ

። ለሌሎች ስራዎች ሲሰጥ

ታደሰም ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ

። ለሌሎች ስራዎች ሲሰጥ

ታደሰም ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ ለሌሎች ስራዎች ሲሰጥ

ከፍተኛ አደጋ የሚደርሰውንና ዝቅተኛ አደጋ በማጣጣም የተቀመጠ እንደሆነ፣ ነገር ግን በሰውም ቢሆን በአካል እንዲሁም በንብረት ላይ ለሚደርሰው ጉዳት የሚሠጠው ካሳ በቂ ሆኖ ካልተገኘ መረጃ በማቅረብ በፍርድ ቤት መጠየቅ የሚቻል መሆኑን አመልክተዋል።

አያይዘውም የሦስተኛ ወገን መድን የተዘጋጀው በውል መሠረት ለሚያንገዙው ሰው ወይም ንብረት ላይሆን ለአንድ መንገደኛ ወይም ለሚገጩው ንብረት ካሳ እንዲከፍል ለማድረግ እንደሆነ፣ በተጨማሪ የትራፊክ አደጋ ለመቀነስ አመታዊ የተሸከርካሪ ምርመራ በጥብቅ በሚደረግበት ጊዜ አደጋ የሚያደርሱ ተሸከርካሪዎች ወደ መንገድ አይወጡም በሚል እሳቤ ህጉ የወጣ መሆኑን አስረድተዋል።

*f. p. 25/26
Excellence!*

ከዚያም የውይይቱ ሰብሳቢ የተከበሩ አቶ ውበነህ እምሩ ያልተነሡ ጥያቄዎች ካሉ በማለት መድረኩን ክፍት ባደረጉት መሠረት አቶ ፈለቀ ይመር አንድ ተሸከርካሪ የሦስተኛ ወገን መድን ጉብዩ ወደ ሥራ በሚሠማራበት ጊዜ የገባውን መድን ሀብረተሰቡ እንዲካፈለው ሊያስደርግ የሚችል በመሆኑ የተጨመረው ወይም ተተንትኖ ሀብረተሰቡ ሊከፍለው ይችላል አይችልም የሚል ዝርዝር ጥናት ተሠርቶ ውጤቱ መታየት ያለበት በመሆኑ ምን ያህል እንደታየ ጠይቀዋል።

በመቀጠልም የተከበሩ ሻለታ መኩንን ገለታ የካሳ መጠን የተቀመጠው ከሌሎች ሀገሮች ልምድ የተወሰደ ነው የሚባለውና ይህ ህግ የወጣበት አካሄድ የተለያየ እንደሆነ፣ ምክንያቱም ሌሎች ሀገሮች በኢኮኖሚ ላይ ተመሥርተው ሲሆን ኢትዮጵያ ያወጣችው ደግሞ በፍርድ ቤት ውሳኔ እንደሆነ፣ ስለዚህም ይህ ህግ ሲወጣ ሀብረተሰቡ የኢኮኖሚ ጫናውን መሸከም የማይችል ከሆነ ለምን በሳይንሳዊ ትንታኔ እንዳልተቀመጠ ጠይቀዋል።

በማያያዝም አቶ ገዛኸኝ ለማ የፈንዱ ምንጭ ከመድን ታሪፍ ይሰበሰባል የሚለው በትክክል ጫናው ማን ላይ እንደሚያርፍ ማብራሪያ ቢሰጥበት፣ ከገዥው ወገን ከሆነ ደግሞ ለምን በማለት ጠይቀዋል።

አክለውም የመድን ሽፋን ጣራም ሆነ ዝቅተኛ ወሰን ተብሎ የተቀመጠው ለመሐል ከተማ የሚሠራ ቢሆንም ከአዲስ አበባ ወደ ጅቡቲ በሚኬድበት ጊዜ አንድ ተሽከርካሪ እንስሳም ሆነ ሰው ከገጨ የአካባቢ ሽማግሌዎች በሚወስኑት መሠረት እንዲከፍል የሚገደድ በመሆኑ ይህ ደግሞ ንብረትን ጥሎ እስከመሰወር የሚደርስ ካሳ የሚጠይቅ ስለሆነ ህጉ ለገጭው ምን ያክል ዋስትና እንደሰጠ ጠይቀዋል።

በመቀጠልም የተከበሩ አቶ ሆነልኝ ሣህሌ ተሳፋሪዎች በሦስተኛ ወገን የማይታዩ ናቸው የሚለው በአንቀጽ 7 "በመድን ፖሊሲ ስለማይሸፈኑ ሁኔታዎች" በሚለው ውስጥ መካተት የለበትም ወይ? አልያም ትርጉሙ ላይ ያለው ተሳፋሪንም ሊያካትት የሚችል መሆን የለበትም ወይ በማለት ጠይቀዋል።

ከዚያም አቶ ሀይሌ አበበ የcost አናሊስት ተሞክሮዎች የተወሰዱት ከኢንሹራንሶች መሆኑ የተገለጸው በሦስተኛ ወገን መድን ሽፋን አንድ ሰው ቢሞት እስከ 30,000 ብር ሆኖ ሌላው ደግሞ በሌላ ህግ ይታያል ተብሎ የተቀመጠው አሁን ኢንሹራንሶች እየሠሩ ካለው ጋር የማይመጣጠን እንደሆነ፣ ምክንያቱም በአንድ አደጋ ከአንድ ሰው በላይ ህይወቱ ቢያልፍ ሊከፍሉ የሚችሉት ጣራ እስከ 210 ሺህ ብር ሆኖ ከዚያ ውጭ የሆነውን ደግሞ ባለንብረቱ እንዲሸፍን እንደሚደረግ፣ ይህ ተሞክሮ ለመነሻነት ሊጠቀስ ለምን እንዳልቻለ ጠይቀዋል።

አያያዘውም ለመጀመሪያ ህክምና 1000 ብር ድጋፍ ይሰጣል የሚለው ጉዳይ በሀገራችን ተጨባጭ ሁኔታ ሊደን የሚችል ሰው ሊሞት ወይም አካሉን የሚያጣበት ሁኔታ ያለ በመሆኑ ይህን ሊከለክል የሚችል አንድ ነገር መከተል የለበትም ወይ በማለት ጠይቀዋል።

በመጠልም የተከበሩ ወ/ሮ ዘይቱና ጠላ በሦስተኛ ወገን ውስጥ የማይካተቱት በተለይ ሹፌሩ ከባለንብረቱ ጋር ይጣመራል የሚለው ማብራሪያ እንዲሰጥበት ጠይቀዋል።

የተለያዩ የቅጣት ሁኔታ መቀመጥ እንዳለበት አሳስበው በአንቀጽ 3 እና 4 አካባቢ እስቲክሩን መኪናው ላይ ማስቀመጥ የማይቻልበት ሁኔታ ሊኖር እንደሚችል የሚለው፣ እስቲክሩን ሳይዝ ለወጣ ሰው የሚሰጠው ቅጣት በጥቅሉ የተቀመጠ ስለሆነ ዘርዘር ባለ መልኩ ቢቀመጥ፣ ይህ ህግ የማይመለከታቸውን መኪኖች ሚኒስቴሩ መመሪያ ሊያወጣበት ይችላል የሚለው በዚህ አዋጅ ላይ በትክክል ተለይተው ቢቀመጡ የተሻለ እንደሚሆን ጠቁመዋል።

አክለውም አንቀጽ 18 የፍርድ ውሳኔ ሲሰጥ ኢንሹራንሱ መክፈል አለበት የሚለው በሁለቱ ስምምነት ወይም በሌላ ምክንያት ፖሊሲው ሊሠረዝ የሚችል በመሆኑ የተወሰነ ገደብ በአንድ አንቀጽ ውስጥ የሚቀመጥበት ዘዴ ቢመቻች የተሻለ ህግ ሊሆን እንደሚችል አመላክተዋል።

በመቀጠልም አቶ ኢየሱስወርቅ ዛፉ የህጉን መውጣት አግባብ መሆኑን ጠቁመው በህጉ ውስጥ የሽግግር ጊዜ ሊኖር እንደሚገባ፣ በዚህ አዋጅ ላይ ከትራንስፖርት ባለሥልጣን ጋር ቀደም ብለው የተወያዩ ቢሆንም ወደ ም/ቤቱ ከመመራቱ በፊት እንዲያውቁት ቢደረግ ኖሮ የበለጠ ጠቃሚ ሆኖ ሀሳቦች ሊያፈልቁ የሚችሉ ሆኖ አሁንም ለ15 ቀን ያክል ጊዜ ተሰጥቶ የሚመለከታቸው አካላት እንዲወያዩበት ቢደረግ የተሻለ አዋጅ ማውጣት የሚቻል መሆኑን ከገለፁ በኋላ የአዋጁ መውጣት አስፈላጊ ቢሆንም የአደጉ ሀገሮች ከደረሱበት በአንዴ ይህ ህግ በተመሳሳይ መልኩ እንዲወጣ ከማድረግ ይልቅ አቅም በፈቀደ ጊዜ እንደገና ሊሻሻል ስለሚችል አሁን ከሀገሪቱ ተጨባጭ ሁኔታ ጋር ተገናዝቦ ቢወጣ የተሻለ መሆኑን አስገንዝበዋል።

በማስከተልም የተከበሩ ወ/ሮ ፋንታዬ ገዛኸኝ አንቀጽ 16 "የኃላፊነት መጠን" ከሚለው ውስጥ "ለሰው 30,000 ብር፣ ለአካል ጉዳት 12,000 ብር እና ለንብረት ደግሞ 100,000 ብር መብለጥ የለበትም።" የሚል ሲሆን አንቀጽ 37 "የወንጀል ሕጉ ከሚያስቀምጠው የቅጣት መጠን በላይ የሚያስቀጣ ካልሆነ....." የሚለው አባባል እርስ በእርሳቸው አይጣረሱም ወይ? በማለት ከጠየቁ በኋላ የበሬቱን የወንጀልኛ መቅጫ ህግ በአሁኑ የወንጀል ህግ ሲሻሻል የተበታተኑ ህጎች እንዲሰበሰቡ ም/ቤቱ ከፍተኛ ስራዎችን መሥራቱን አስታውሰው በአዋጆች ላይ የተቀመጡ ሥራዎች የተሰሩት ደግሞ የተበጣጠሱ ነገሮች በየአዋጁ ላይ እንዳይወጡ ለማድረግ እንደሆነ፣ ስለዚህም

ለህግ ተርጓሚውም ሆነ ለተጠቃሚው ህብረተሰብ አመች በሆነ መልኩ እንዲዘጋጅ ታስቦ በመሆኑ በዚህ አዋጅ ላይ ከወንጀለኛ ህጉ ተለይቶ መውጣቱ ያለው ጠቀሜታ ከምን አንጻር መሆኑን ማብራሪያ እንዲሰጥበት ጠይቀዋል።

በማያያዝም የተከበሩ አቶ አረጋ በንቲ የሰው ህይወት 30,000 ብር፣ የንብረት ኪሳራ ደግሞ 100,000 ብር ተብሎ የተቀመጠው አንቀጽ የህግ አውጭውን ሁኔታ ሊያስገምት የሚችል በመሆኑ ለንብረት የቀመጠው ለሰው ህይወት ቢሆን እና ለአካል ጉዳት የተቀመጠው 12,000 ብር የሚለው አንቀጽ እንደገና ቢታይ በማለት ጠይቀዋል።

በመጠልም አቶ ሙላት አድማሱ በሚቋቋመው ፈንድ ውስጥ አንሹራንሶች ብቻ ከሚሆኑ የሴክተሩ ተወካዮች ለምን አይኖሩም? ሌላው ተሳፍረው የሚሄዱ ሠዎች ተሽከርካሪው የገባላቸውን መድን እንዲያውቁ የሚደረግበት ዘዴ በግልፅ ለምን እንዲቀመጥ አይደረግም በማለት ጠይቀዋል።

በማክልም ተማሪ ሰለሞን ወ/ገብርኤል ለሰው ህይወትም ሆነ ለንብረት የተቀመጠው ከፍተኛ ጣራ ብቻ ከሚሆን ዝቅተኛ ክፍያ መቀመጥ እንዳለበት፣ ሌላው የኢኮኖሚ አናሊስት ቢኖር ምክንያቱም የፍርድ ቤት ውሳኔ በኢትዮጵያ የሚያበረታታ ባለመሆኑ ተበዳይ የበለጠ መጎዳትን የሚያስከትልበት ስለሆነ በኢኮኖሚስት ቢታይ የተሻለ መሆኑን ጠቁሟል።

ከዚያም የተከበሩ አቶ ውበነህ እምሩ አንድ ረቂቅ አዋጅ ለቋሚ ኮሚቴ ከተመራ በኋላ መቆየት ያለበት 20 የሥራ ቀናት ብቻ መሆኑን ገልጸው ረቂቅ አዋጁ ወደ ኮሚቴ ከመመራቱ በፊት ከሴክተር መ/ቤቶች ጋር በረቂቁ ላይ ውይይት ተደርጎበት ዳብሮ እንደሚወጣ ታሳቢ ተደርጎ ወደ መፅደቁ እንደሚገባ፣ ነገር ግን ይህ ረቂቅ አዋጅ አዲስ ከመሆኑ አንፃር 10 ትርፍ የሥራ ቀን የወሰደ በመሆኑ እንደገና 15 ቀን መስጠቱ ህጉ የማይፈቅድ መሆኑን አስታውቀዋል።

አያይዘውም አንቀጽ 37 እና 16 አይጋጨም ወይ የሚለውን በተመለከተ አንቀጽ 37 ይህን ህግ ተግባራዊ ያላደረገ የሚቀጣ መሆኑን የሚያሳይ እንደሆነ፣ ነገር ግን አዋጁ ግልጽ ባለመሆኑ በደንቡ እና በመመሪያ ግልጽ ሊሆኑ የሚችሉ መሆኑን አመልክተዋል።

በተጨማሪም ፈንዳ ሲቋቋም ኢንሹራሶቹ ብቻ ከሚሆኑ ለምን ትራንስፖርት ባለሀብቶች አይገቡም የሚለውን ሲመልሱ የሚመለከታቸው ሁሉ እንዲገቡ የሚደረግበት ሁኔታ ሊፈጥር የሚችል መሆኑን አስረድተዋል።

በመቀጠልም አቶ ፍስሐ ገብረዋህድ አንቀጽ 16 እና 37 አይጋጨም ወይ የሚለውን ሲመልሱ አንቀጽ 16 የፍትሀብሔር ህግን በተመለከተ ስለ ካሳ ሲሆን አንቀጽ 37 ደግሞ የአዋጁን ድንጋጌ ተላላፊ የተገኘ በዚህ መሠረት ከ3,000-5,000 ብር ይቀጣል የሚል እንደሆነ፣ ዋናው ጉዳይ ግን ለምን በተበጣጠሰ ሁኔታ ተቀመጠ የሚለው ጉዳይ ትክክል ቢሆንም ማንኛውም ተሽከርካሪ የሦስተኛ ወገን መድን ሳይኖረው እንዳይንቀሳቀስ ለማድረግ ቅጣቱ የተቀመጠ መሆኑን አመለክተዋል።

በመጨረሻም የውይይቱ ሰብሳቢ የተከበሩ አቶ ውበነህ እምሩ በዚህ ውይይት ላይ የተገኙትን አካላት አመስግነው የሰጡት ግብአት ለአዋጁ በጣም ጠቃሚ የሆነ ነገር የተገኘ እንደሆነ፣ ሌላው ህጉ ለሀገር እንደሚጠቅም ሁሉም ያመነበት በመሆኑ፣ ቋሚ ኮሚቴው የውሳኔ ሀሳቡንና ሪፖርቱን ለም/ቤት እንደሚያቀርብ ገልፀው ሰፊ ማብራሪያ የሰጡትን አስረጂዎች በቋሚ ኮሚቴው ስም አመስግነዋል።

የእለቱ ስብሰባም ከቀኑ 6:30 ሰዓት ላይ ተጠናቋል።