

INDEMNITY LAW IN BULGARIA

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I. Introduction

My presentation aims at summarizing the basic principles of Bulgarian tort law and of Bulgarian MTPL insurance indemnity law in a way that hopefully gives foreign audience a comprehensive and systematic approach to the subject.

Bulgarian MTPL insurance indemnity law is based on tort liability of the insured person. At the same time, specific exemptions of insurer's liability are established.

The accession of Bulgaria to the European Union, effective from 1 January 2007, expanded the territorial scope of the MTPL insurance throughout all the EEA countries. For the non-EEA countries which are part of the Green Card System, a Green Card insurance is required.

All EU motor insurance directives are implemented in Bulgarian legislation, including the compulsory character and the scope of cover of MTPL insurance for vehicles that are normally based in Bulgaria, the direct right of action against the insurer (this right has existed in Bulgarian law at least since 1950), the minimum insurance sums, the appointment of claims representatives, the establishment of the Guarantee Fund (established in 1997), of the Information Center (managed by the Guarantee Fund) and of the Compensation Body (this capacity is granted to the Bulgarian Green Card Bureau).

II. General Principles of Bulgarian Tort Law

1. The main legislative act in the field of indemnity law in Bulgaria is the Law on Obligations and Contracts. It establishes the bases of tort law.

2. Tort liability itself is based on causal relation between the illegal act or omission to act and the damages caused.

The relation is causal when the damages are a direct and inevitable consequence of the act or omission to act.

3. Damages can be material and/or non-material.

Material damages can be loss sustained and/or benefits foregone.

Non-material damages can be of a quite wide range. Mainly, these are pain and suffering as a result of bodily injury or as a result of the death of a loved one.

4. Generally, tort liability is based on fault – intent or negligence. Here the principle is that everyone is obliged to rectify the damages guiltily caused to another person.

A presumption of fault is established. It is the person who caused the damages who must prove that the damages were caused accidentally or by force majeure – only then he is not held liable.

An act or omission to act is accidental if the person both cannot and is not obliged to foresee the harmful consequences of his behavior. Though, if the act or omission to act is in a breach of a legal regulation and this breach is in a causal relation with the damages, the person cannot plead accidental behavior.

This means the basic principle is that the person who himself caused the damages is liable. In terms of traffic accidents this generally is the driver. A passenger in the vehicle can also be responsible for an accident, e. g. when wrongfully opens a door and hits a passing vehicle.

Inevitable self-defense exempts liability. This can be an option in traffic accidents.

The so called extreme necessity exempts liability of the person who directly caused the damages. In this case, if there is no other person liable, rectification of damages is due by the person whose interests were protected with the harmful act or omission to act. Extreme necessity is a situation when in order bigger damages to be prevented other damages are caused. In traffic accidents this can also be a real option.

5. In some cases, strict joint liability of the owner of the object (vehicle) and of the person under whose control is the object (vehicle) exists. This is when damages are caused by a defect of the object (vehicle) itself. The strict liability shall exist only if this defect is not due to guilty behavior of another person (e. g. poor service in a workshop) or of the owner himself (then the basis for his liability shall be the fault). Most often such strict liability exists in cases of sudden and unforeseeable breakdown of a vehicle causing damages.

6. If several persons have jointly caused damages they are jointly responsible, i. e. each person is liable for the indemnity of all damages without prejudice of the extent of his own causal contribution. The person who pays instead of the other liable persons can claim against them.

7. If a person has delegated work to another person, he is jointly responsible for the damages caused by this person while performing the work or while acting in connection with the performance of the work. Yet, limited interpretation of the term "delegated work" is applied – mostly to cases of an employer – employee relationship.

8. A person who is incapable of understanding or of running his behavior is not liable for the damages caused in this condition except if he contributed to getting to such a condition. In this case, responsible is the person who is obliged to supervise the incapable person. Though, the supervising person shall not be liable if it was not in his power to prevent the damages.

9. Similarly, parents and legal guardians are responsible for damages caused by minor children who live with them. Though, parents and legal guardians shall not be liable if it was not in their power to prevent the damages.

10. All damages that are direct and inevitable consequence of the harmful event must be fully compensated.

The amount of damages is determined at the moment they occurred.

If the damaged person has contributed to the harmful event, compensation can be reduced accordingly. This is valid also in cases when minor children have

contributed to damages – fault in contribution is not examined, proof of the pure fact of causal contribution is enough.

11. Monetary compensation is due for non-material damages which are estimated by the principle of justice.

Various factors can be taken into consideration.

For bodily injury such are the type and extent of bodily injury, period of medical treatment, period of experiencing pain, age of the victim, temporary and/or permanent disability, incapability to experience the same lifestyle as before the accident, etc.

In case of death only certain categories of persons are entitled to claim for compensation for suffering from the loss of the loved one: spouse, children and parents (including in case of adoption), non-spouse who had permanently lived with the victim in a joint household without marriage. In order to claim for compensation, really close and warm relationship with the deceased must have existed, e.g. parental relation is not enough if the parent did not take care of the child.

III. General Rules of Bulgarian MTPL Insurance Indemnity Law

12. The main legislative act in the field of insurance indemnity law in Bulgaria is the Code on Insurance.

13. The compulsory MTPL insurance covers the tort liability of the insured persons for material and non-material damages caused to third parties in respect of the ownership and/or the use of motor vehicles whenever the insured persons are responsible for such damages according to Bulgarian law or the law of the country where damages occurred.

The carrier's liability is not covered by this insurance.

14. Insured are the owner of the vehicle and every person who uses the vehicle on lawful grounds.

15. The conclusion of the insurance is compulsory for every person:

- Who owns a vehicle which is registered in Bulgaria and which is not suspended from road traffic;
- Who drives a motor vehicle when entering Bulgaria and does not have insurance valid for its territory. Exempt from this obligation are the drivers from an EEA country who are included in a list of persons exempt from compulsory insurance whose civil liability is guaranteed by a competent institution of an EEA state.

16. Motor vehicles subject to compulsory insurance are:

- Any vehicle for land transportation driven by own engine and supplied with a registration plate;
- Trams;
- Trolley buses;
- Self-driven machines registered under the Law on Registration and Control of Agricultural and Forestry Machinery with engine power above 10 kW;
- Trailers and semi-trailers.

17. Third party, i. e. a person that is entitled to claim compensation, is every person, except for the one who is responsible for the damage caused.

This means that the owner of the vehicle, for example, can also claim under the insurance for damages that are not explicitly excluded by law from the scope of cover, e. g. the damages of the insured vehicle are not covered, but the owner of the vehicle can claim for bodily injury sustained as a passenger in the same vehicle, if only the driver is liable for the accident.

18. The territorial scope of the insurance is the EEA.

The applicable law is the law of the EEA state where the damages are caused.

The insurance covers also damages caused on the territory of a third country when damages are caused to persons from an EEA country during a journey between the territories of two EEA countries if there is no national insurance bureau responsible for this territory.

In this case applicable is the law of the EEA state where the insured vehicle is normally based.

The insurance provides cover in every EEA country according to the law of that country or according to the law of the country where the vehicle is normally based when this cover is higher.

19. Until 1 January 2010 the minimum insurance sums for each insurance event are:

- For non-material and material damage resulting in from bodily injury or death:
 - A) 700 000 BGN (approx. 350 000 EUR) in case of one injured person;
 - B) 1 000 000 BGN (approx. 500 000 EUR) in case of two or more injured persons;
- For property damage and other material damage: 200 000 BGN (approx. 100 000 EUR).

From 1 January 2010 the minimum insurance sums for each insurance event are:

- For non-material and material damage resulting in from bodily injury or death:
 - A) 1 000 000 BGN (approx. 500 000 EUR) in case of one injured person;
 - B) 5 000 000 BGN (approx. 2 500 000 EUR) in case of two or more injured persons;
- For property damage and other material damage: 1 000 000 BGN (approx. 500 000 EUR).

From 11 June 2012 the minimum insurance sums for each insurance event are:

- For non-material and material damage resulting in from bodily injury or death:
 - A) 2 000 000 BGN (approx. 1 000 000 EUR) in case of one injured person;
 - B) 10 000 000 BGN (approx. 5 000 000 EUR) in case of two or more injured persons;
- For property damage and other material damage: 2 000 000 BGN (approx. 1 000 000 EUR).

20. MTPL insurance covers:

- Non-material and material damage resulting in from bodily injury or death;
- Third party's property damage;
- Benefits foregone which are a direct result from the accident;
- Reasonably incurred expenses in connection of the claim for above mentioned damages, including legal costs which are judged against the insured.

21. MTPL insurance covers also the liability of a person:

- Who is not explicitly or implicitly delegated the right to use the vehicle, if the use of the vehicle is not a result of theft or robbery;
- Who does not possess a driving license or his driving license is temporarily suspended;
- Who has breached the regulations for good technical order of the vehicle.

22. Exemptions of cover:

- Damages of the guilty driver of the insured vehicle. If other drivers are also responsible for the accident he can claim under their insurance according to the share of their liability;
- Damages of property located in the insured vehicle owned by a passenger in the vehicle or owned by a family member of the driver;

23.

- Damages of property transported with the insured vehicle;
- Damages caused during racing, if the traffic regulations were not compulsory during the race and is not else agreed in the insurance policy;
- Damages caused during use of the vehicle in acts of terrorism or war;

24.

- Damages caused during transportation of radioactive, chemical or other highly dangerous materials;
- Pollution;
- Loss or destruction of money, jewels, security bonds, all kinds of documents, post marks, coins or similar collections;

25.

- Recovery of payments made by the system of state social security or health insurance bodies in cases of bodily injury;
- Interests and court expenses if not explicitly regulated otherwise by the law;
- Reduction in value of damaged property.

26. Within 3 months from receiving the claim the insurer must:

- Determine and pay compensation
or
- Give a reasoned reply when refuses payment or when the grounds or the amount of the claim are not justified

If the insurer fails to do so, the damaged person is entitled to a legally established interest rate as from the date of expiry of the 3 month period.

IV. Compensation for Material Damages

27. Compensation cannot exceed the actual value of the damaged property at the time of the accident.

There is legislatively adopted common Methods for evaluation of damages to vehicles. They are valid for both partial damages and total loss. The common Methods are compulsory for all insurers and the Guarantee Fund. The Methods are applied as a minimum threshold for evaluation of damages when no proper invoices for actual repair are presented and in cases when compensation is calculated according to the expert's evaluation of the insurer.

The insurer is entitled to inspection and record of damages in all cases.

28. It is important to know that police must be informed in any case of traffic accident on Bulgarian territory and a document from the police or constat amiable (in cases allowed by law) must be obtained as proof of the accident.

29. General Rules for Repair Costs

Invoices for repair works can be presented to the insurer. Inspection of actually conducted repair is held by the insurer. Then comparison analysis of invoices, the results of the inspection and the actually conducted repair are made. It is important to know that invoice values may be reduced by insurer, according to detailed tables and coefficients set in the common Methods for the different classes, makes, models and dates of production of the vehicle.

If no invoices are presented, compensation is calculated according to insurer's evaluation.

30. Total Loss

If repair costs exceed 80 % of the actual value of the vehicle at the time of the accident. Up to 25 % salvage value reduction can be made. Common Methods rates for actual value evaluation are set.

31. Experts' Fees

Experts' fees are due if reasonably incurred. Generally, they are not covered for material damages as in most cases it is difficult to accept that these costs are reasonable - inspection and record of damages is held by the Insurer as well as he calculates compensation.

32. Proforma Invoices

They can be accepted as a basis for calculation of compensation for trucks, buses, motorcycles, etc. without analogues in catalogues. Correctional coefficient set in the common Methods may be applied.

33. Towing/Salvage Charges

They are compensated, if reasonably incurred. There is no legal definition of "reasonably incurred". Generally, recovery to the place where the vehicle is normally based in Bulgaria or to the nearest appropriate garage is accepted.

34. Hire Car Costs

They may be compensated, if a direct and inevitable consequence of the accident. This is not a common claim in Bulgaria yet.

35. General Expenses

All expenses that can be proved a direct and inevitable consequence of the accident, if not explicitly excluded by insurance law, are to be compensated.

36. Finance Costs

This matter is not explicitly regulated by law and is not a common claim in Bulgaria yet. Expenses for obtaining a loan may be subject to compensation in some cases if reasonably incurred but interests in general are covered only if explicitly regulated so by the law.

37. Loss of use is not covered.

38. Loss of income is due if proved as a direct and inevitable consequence of the accident.

39. Lawyers' fees are due if reasonably incurred. Generally, they are not compensated in simple cases, especially if only material damage of a vehicle is sustained.

40. Court Fees

All court fees judged directly against the Insurer in a court decision as a result from a direct right of action are paid. Court fees judged against the Insured are covered only if the Insured has constituted the Insurer as a party in the court proceedings.

V. Compensation for Non-Material and Material Damage Resulting in from Bodily Injury or Death

41. Pain and Suffering

Out-of-court settlement: compensation is estimated by an experts' commission of the Insurer.

Court settlement: compensation is granted according to judge's concept of what is fair.

Court decisions which are not judged directly against the Insurer are not binding, except for criminal verdicts in terms of fault.

42. Costs of Medical Treatment

All costs for medicines, medical materials and procedures, extra or special nutrition needs that are proved to be a direct and inevitable consequence of the accident are refundable.

43. Nursing and Care Costs

All costs for nursing and care that are proved to be a direct and inevitable consequence of the accident are refundable.

44. Compensation in Case of Death of the Victim

Non-material compensation: monetary compensation for suffering from the loss is due to spouse, children, parents and non-spouse who had permanently lived with the victim in a joint household without marriage.

Material compensation: funeral expenses, loss of maintenance.

VI. Liability of Insurer of Trailers

45. Where the trailer is connected to a lorry and is functionally dependent on the lorry, Insurer of the lorry is responsible if damages are caused in motion and/or when the trailer has disconnected in motion.

Elsewhere, including in cases of self-motion of the trailer, the Insurer of the trailer is responsible.

VII. Limitation Period

46. The limitation period is 5 years from the date of the accident.