INSURANCE COVERAGE IN CIVIL LIABILITY OF MOTOR VEHICLES OWNERS’ COMPULSORY INSURANCE

(COMPARATIVE ANALYSIS OF THE LEGISLATION OF THE REPUBLIC OF TURKEY AND THE REPUBLIC OF AZERBAIJAN)

Abstract. Both Turkish and Azerbaijani legislation requires motor vehicle owners to enter into a contract of compulsory civil liability insurance. The list of vehicles with compulsory civil liability insurance to third parties is reflected in Article 50.2 of the Law of the Republic of Azerbaijan on “Compulsory Insurance”. A similar list of vehicles with compulsory civil liability insurance is reflected in the Law of the Republic of Turkey “On Motor Roads”. Losses included in the coverage area of the insurance contract on compulsory motor third party liability insurance are classified in the form of damage to vehicles, material damage and damage to life and health of the victim.

Keywords: Azerbaijan, Turkey, comparative, legislative, compulsory, motor vehicle, civil liability, insurance, driving license, robbery.

Introduction.

We believe that it would be useful to classify and analyze the damages included in the coverage area of the insurance contract on compulsory motor third party liability insurance in the form of damage to vehicles, property and damage to life and health of the victim.

1. The concept of security in compulsory civil liability insurance of motor vehicle owners.

Articles 85 and 91 of the Law of the Republic of Turkey “On Road Traffic” (hereinafter referred to as “LRTORT”) state that the subject of compulsory civil
liability insurance includes damage to the life and health of any person or any object. In order for such damages to be included in the subject of compulsory civil liability insurance, it is mandatory for both Turkey and Azerbaijan that the vehicle causing the accident is a motor vehicle and is in motion.

As noted in Article 52.1 of the Law of the Republic of Azerbaijan “On Compulsory Insurance” (hereinafter referred to as “LRACI”), the fact is considered an insured event. Article 52.2 of the same Law states that the use of a motor vehicle means its operation in connection with the movement of a motor vehicle. The use of equipment installed in a vehicle, but not directly related to its participation in traffic, is not considered the use of a vehicle.

As it is known, the damage suffered by a third party due to car accidents caused by vehicles that were not in motion at the time of the accident is not covered by the compulsory civil liability insurance. Even in Turkey, the law states that the damage suffered by a person assisting in an accident caused by a vehicle as a result of relief work is not covered by compulsory civil liability insurance [4, 99].

In addition, Article 92 of the LRTORT lists events that are not covered by compulsory third party liability insurance for vehicle owners. According to this article, the following losses and claims are not subject to compulsory civil liability insurance:

1) claims (claims) that the owner (operator) of the vehicle may file against the persons responsible for his actions in accordance with this Law;

2) Claims (claims) that the vehicle owner (employer) may file due to damages to his / her spouse, blood and brother-in-law relatives, adoptive parent, adoptive parent and siblings living together;

3) Claims (claims) related to property damage for which the owner (operator) of the vehicle is not liable in accordance with this Law;

4) claims (claims) arising from accidents that occur in vehicle races or driving for inspection purposes for a small amount of the sum insured of compulsory civil liability insurance in accordance with Article 105.3 of this Law;

5) Damages to the cargo (item) transported in the vehicle;

6) Requirements for moral compensation.
It should be noted that the LRACI does not specifically reflect the events (losses) that are not included in the provision of compulsory civil liability insurance of motor vehicle owners, as in Article 92 of the LRTORT. However, in addition to the general grounds provided for in the Civil Code of the Republic of Azerbaijan, the insurer may refuse to pay the insurance indemnity in the following cases specified in Article 21.1 of the LRACI:

1) if the event or situation is related to military operations, terrorism, riots, nuclear explosion, radioactive contamination;

2) insurance claim related to damage to the property of a third party in the form of money, securities, precious metals and precious stones, works of art, including paintings, engravings, sculptures, as well as models, plans and sketches, patents for inventions, documents, books and writings when;

3) if the insurance claim is related to moral damage or loss of income;

4) if the insurance claim is related to the property interests of the insured or the insured to pay fines, penalties, fines;

2. Definition of a third party in terms of compulsory liability insurance of motor vehicle owners. The concept of a third party in terms of compulsory civil liability insurance of motor vehicle owners is defined in a special norm in LRACI. Thus, Article 54 of the same Law states: “Subject to the exception set forth in Article 7 of this Law, persons who are not parties to the relevant compulsory insurance contract and suffer as a result of the actions or omissions of the insured including passengers in motor vehicles in the event of their death, family members shall be considered third parties for the purposes of this Chapter.”

As is known, in both Turkey and Azerbaijan, in exceptional cases, the liability of the owner of the insurer for damage caused to the property or life and health of third parties due to an accident caused by the accident while the car is in compulsory insurance. The subject of material damage from these losses includes the cost of spare parts and repair services of the vehicle. Of course, the insurer does not cover the losses associated with the loss of income, the loss of the owner because the vehicle involved in the accident does not work is not covered by this insurance. However, Z. Yilmaz believes that the loss of value (decrease in value, price) of the
vehicle involved in the accident due to a road traffic accident should be included in the coverage of compulsory civil liability insurance [3, 1020]. Article 87.2 of the Code of Civil Procedure states that damage to other items in the vehicle, except for luggage and similar items in the possession of the victim, is not covered by compulsory civil liability insurance. At the same time, according to Article 92 of the same Law, the damage caused by the cargo (item) transported in the vehicle is not covered by that guarantee. There is no special norm in the legislation of the Republic of Azerbaijan regulating whether the baggage or cargo carried in the vehicle is covered by the compulsory civil liability insurance. For this reason, there may be different approaches to the issue. We believe that, as in Turkey, it would be expedient to regulate this issue in the legislation of the Republic of Azerbaijan with a special norm.

3. Impact of motor vehicles owner’s compulsory liability insurance on stolen or looted vehicles.

The LRTORT also contains special rules for stolen or looted vehicles. Thus, according to Article 107 of the same Law, the compulsory civil liability insurance of the vehicle owner also covers damages in case of theft or robbery of the vehicle, or in the event of driving by a thief or robber. However, in such cases, if the owner of the vehicle proves that he or one of the persons responsible for his actions is not guilty of stealing or looting the vehicle, he is not covered by such compulsory civil liability insurance because he is not liable. Also, damage to passengers who board a vehicle knowing that it has been stolen or looted is not covered by compulsory civil liability insurance [1, 154-155].

It should be noted that the legislation of the Republic of Azerbaijan on compulsory insurance does not contain a special norm regulating whether losses incurred in the event of driving a stolen or looted vehicle by a thief and robber are included in the subject of compulsory insurance. However, in accordance with the requirements of Article 32.1.2 of the LRACI, in case of damage to the health of a third party by an unknown or stolen vehicle, the third party shall be compensated by the Compulsory Insurance Bureau for such damage.

This shows that in all cases in Azerbaijan, losses incurred in the event of driving a stolen or looted vehicle by a thief and robber are not included in the coverage of
compulsory insurance. We believe that in order to protect the rights of third parties, as in Turkey, in such cases, it would be useful to include these losses in the provision of compulsory civil liability insurance. Of course, the insurer can then claim the amount paid from the thief or the person who caused the damage in the form of regression or subrogation.

We consider it necessary to state that a norm similar to Article 32.1.2 of the LRACI is enshrined in Article 14.2 of the LRTORT. According to this article, if the stolen or looted vehicle caused the accident and the owner of the vehicle is not responsible for it, in such cases the damage to the life or health of a third party shall be reimbursed by the Traffic Safety Account (Compulsory Insurance Bureau). In the event of damage to the health of a third party by a stolen or looted vehicle, the Compulsory Insurance Bureau's compensation for such damage shall not preclude the inclusion of damage caused by the vehicle driven by the thief or robber in the owner's compulsory civil liability insurance. Of course, in such cases, it would be reasonable to assume that the owner of the vehicle will not be liable if he or one of the persons responsible for his actions is not guilty of theft or robbery, and such damages will not be covered by compulsory civil liability insurance.

4. The matter of whether the damage caused by driving a vehicle by a person without a driver's license is covered by compulsory civil liability insurance. There is no special rule in the legislation of both countries regulating whether the damage caused by a person without a driver's license while driving is covered by compulsory civil liability insurance. However, in Turkey, in such cases, the insurer is obliged to pay damages to a third party caused by a person without a driver's license. Of course, the insurer can then file a recourse claim against the insured if he proves that the car is allowed to be driven by a person without a driver's license, and if he cannot prove it, against the person without a driver's license [1, 155]. Such an opportunity is reflected in Article 4 of the Rules on Compulsory Civil Liability Insurance of Motor Vehicle Owners in Turkey [2].

The legislation of the Republic of Azerbaijan on compulsory insurance does not contain a special norm regulating whether the losses incurred by a person who does not have a driver's license while driving a vehicle are covered by compulsory insurance.
However, in practice, in such cases, insurers avoid paying insurance premiums to third parties, citing Article 58.1 of the LRACI. The norm stipulates that in order to pay insurance premiums for compulsory civil liability insurance of vehicle owners, along with the relevant documents provided for in Article 17.1 of this Law, a copy of the driver's license of the insured (person driving it at the time of the accident) is required. The person who caused the accident does not pay for the damage because he does not have a driver's license, and the rights of third parties are violated. This, of course, contradicts the purpose of compulsory civil liability insurance, which has an important purpose, such as the protection of the rights of third parties. In our opinion, it would be expedient to include in the LRACI the provisions of Article 4 of the Rules on Compulsory Civil Liability Insurance of Motor Vehicle Owners in Turkey.

On the other hand, although the lack of a driver's license creates administrative liability, it is wrong to accept that a person without a driver's license is guilty in all accidents. Guided by these considerations, we believe that if a third party without a driver's license is not at fault in an accident while driving, the damage to his property or life and health should be included in the compulsory insurance of the owner of the vehicle causing the accident. This issue can lead to abuse because it is not reflected in normative legal acts. In our opinion, it would be a positive thing to regulate this issue in both countries.

**Conclusion:** In the legislation of both Turkey and the Republic of Azerbaijan, it is obligatory for motor vehicle owners to conclude a contract of compulsory civil liability insurance. The list of vehicles for which third party liability insurance is compulsory is reflected in Article 50.2 of the Law of the Republic of Azerbaijan on Compulsory Insurance. A similar list of vehicles with compulsory civil liability insurance is reflected in the Law of the Republic of Turkey “On Motor Roads”. Losses included in the coverage area of the insurance contract on compulsory civil liability insurance of motor vehicle owners are classified in the form of damage to vehicles, material damage and damage to life and health of the victim.

**References:**