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Practical Application of Proclamation no. 799/2013 against Motor cycle: The Case of Wolaita Sodo, Southern Ethiopia

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Abstract

This paper examines practical application of vehicle insurance against third party risks on motor cycle. Accordingly, the government has introduced vehicle insurance against third party risks proclamation no. 559/2008 and this proclamation was repealed by the proclamation no. 799/2013. The proclamation is equally applicable to all types of vehicle. In this regards the experience of some countries shows that this type of insurance has been practicing for several decades and influenced the insurance market. The objective of this paper is to assess the practical application of the Proclamation no. 799/2013 against motor cycle particularly the case of Wolaita Sodo city, Southern Ethiopia. The enforcement of the proclamation positively affects the insurance companies in particular and the insurance industry in general to alleviate socio-economic problems. Despite, the proclamation prohibits any person to drive or use a vehicle on a road without having a valid vehicle insurance coverage against third party risks; the practice is far from the mandatory prohibition of the law. Therefore, the insurance companies, insurance associations, insurance fund and the government are required to conduct various awareness creation activities. Since the proclamation is compulsory, the government and other stake holders also needs to enforce the proclamation mandatorily against all types of vehicles including motor cycle.

Key words: - motor cycle, premium, third party, vehicle, vehicle insurance.

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CHAPTER ONE

1. INTRODUCTION

1.1. Background and Justification of the study:

Motor vehicle accident is increasing in an alarming rate and become common phenomenon in Ethiopia.¹ It is cause for loss of human life, bodily injury and material damage, which in turn result in socio-economic problems.² Fear, feeling insecure and uncertainty is high because the accident is happening every day with its consequential problems.³ Due to these problems, the government of Ethiopia introduced the vehicle insurance against third party risks proclamation no. 559/2008 and this proclamation repealed by the current proclamation no. 799/2013 on July 23, 2013. The insurance fund administration agency establishment council of ministers regulation no. 300/2013 issued to implement the later proclamation. The laws adopted to tackle the socio-economic problems, which result from vehicle accident. The proclamation established an Insurance Fund as a permanent source of finance to be deposited at the National Bank of Ethiopia (NBE). The Insurance Fund Administration Agency (IFAA) also established under Ministry of Transport (MOT) as an executive organ and entrusted with the power to administer insurance fund and to implement the law of vehicle insurance against third party risks.

The vehicle insurance against third party risks proclamation no. 799/2013, (here in after referred to as "the proclamation"), is applicable to any types of vehicle and mandatorily requires all types of vehicles to have vehicle insurance coverage against third party risks.⁴ Due to this reason, it is referred to as mandatory/compulsory/ type of insurance. The term vehicle defined as "any wheeled motor vehicle semi trailer or trailer for use on the road with the exception of wheelchair and bicycle" pursuant to article 2(5) of the proclamation. It is possible to understand from the provision that motorcycles are within the scope of application of the proclamation. Article 2(6) of the proclamation also defined motor vehicle as a vehicle moving on a road by mechanical or electrical power. Thus, motorcycles should have vehicle insurance against third party risks for use on the road. It expressly prohibits driving a vehicle on a road without having valid vehicle insurance coverage against third party risks. According to article 3(1) of this proclamation "no person may drive, use or cause or permit any other person to drive or use a vehicle on a road without having a valid vehicle insurance coverage against third party risks in relation to such vehicle". Thus, it is totally prohibited to drive a vehicle including motorcycles on a road without having a valid vehicle insurance coverage against third party risks.

There is low-level of understanding by stakeholders; policyholders; insurance officers; and law enforcing bodies concerning compulsory third party insurance.⁵ For this reason,

¹ Shimelis Tesfaye, The implementation of Compulsory motor insurance in Ethiopia, p. 3, Unpublished MA thesis, School of Graduate studies, Addis Ababa University.

² *ibid*

³ *ibid*

⁴ Vehicle insurance against third party risks proclamation No. 799/2013, *Federal Negarit Gazeta*, 19th year No. 53, Art. 3

⁵ *supra* note 1, p-66

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vehicle owners underestimate the importance of third party motor insurance and not willing to renew their insurance cover unless they are detained by law enforcing bodies.⁶

1.2. Objective of the study:

The general objective of the research is to examine implementation of the compulsory vehicle insurance against third party risks proclamation no. 799/2013 particularly with regard to motor cycles in the Wolaita Sodo.

1.3. Research Methodology:

1.3.1. Study area description: Wolaita sodo city, which is administrative center of Wolaita zone, is found in Southern Nations, Nationalities and peoples Regional state of Ethiopia. It is located 330kms South East of the capital city of Ethiopia, Addis Ababa. It is bordered on the North by Hadya Zone, on the North West by Kembata Tembaro Zone, on the North East by Oromia Regional state, on the South by the Gamo Gofa Zone, on the West by Omo river, on the East by Bilate river and on the south east by Abaya river. The city is divided into three sub-cities (i.e. Arada, Merkato, Mehal). The three sub-cities were included in the study.

1.3.2. Study Design: The researchers used both survey and descriptive type of research design to identify attitudes of various stakeholders and challenges in the implementation of vehicle insurance against third party risks laws particularly concerning motor cycles in the city. The quantitative type of research also employed in the study.

1.3.3. Subjects of the study: The target population of the study was the total number of registered motor cycle owners in Wolaita Sodo city.

1.3.4. Sampling techniques: The total numbers of senior insurance officers including branch managers (i.e. $9 \times 3 = 27$) were selected as an interviewee from nine branches of insurance companies in the city. The researchers considered the total number of motor cycles registered in Wolaita Zone Transport and Road Development Department (3,426 motor cycles owners), which amounts to 100% of total population and 30% (1,028 motor cycles owners) of the total population were selected through random sampling for the purpose of conducting questionnaires. Then practical application of the proclamation was analyzed in relation to the total number of registered motor cycles in the city.

1.3.5. Sources of data: The researchers were used both primary and secondary sources of data. In order to achieve the intended research objectives by gathering valid, relevant and reliable information from the pertinent sample of the target population, the researchers were selected and used different tools of data collection. The primary data were collected through interview, questionnaires and observation. The secondary data were collected from published and unpublished documents.

⁶ ibid

1.3.6. Tools of data collection: The researchers used the combination of close-ended and open-ended self-completed questionnaire, as it is an effective tool to obtain valid qualitative and quantitative information from heterogeneous group of people.

1.3.7. Method of data analysis: The data collected through document analysis and close-ended parts of the questionnaire tabulated, interpreted and analyzed by using descriptive statistics (percentage), where as those collected through open-ended parts of the questionnaire and interviews treated by using narration, in a qualitative approach.

1.3.8. Ethical considerations: The researchers were patient, friendly, smooth and acted in an informed consent in the collection of data to secure consents of the respondents.

CHAPTER TWO

2. Conceptual and Legal framework of insurance

2.1. Definition of insurance

The definition of the term “insurance” varies with writers and legal systems. There is no universally agreed uniform definition for the term insurance. The Black’s Law Dictionary defined the term insurance as a contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage, or liability arising from the occurrence of some specified contingency, regardless of whether the insured is ultimately found liable.⁷ Insurance is also regarded as the equitable transfer of the risk of loss, from one entity to another, in exchange for a payment, and can be thought of as a guaranteed and known small loss to prevent a large, possibly devastating loss.⁸ According to J.B. Maclean, “insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual”.⁹ Here, the term insurance regarded as a mechanism used to share financial loss of a person that is difficult for him to cover in his individual capacity. Insurance business is the business of undertaking liability as an insurer or reinsurer under insurance contract.¹⁰ The above definitions share some common elements such as insurance is a contract between the insurer and insured with their own rights and obligations to share or transfer financial loss of a person that is difficult to cover in individual capacity.

2.2. Concept of insurance under Ethiopian laws:

There is no definition for the term insurance but definition of the term insurance policy provided in the commercial code of Ethiopia of 1960. It defined the term insurance policy as 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.¹¹ The code uses the term insurance policy in the sense of insurance

⁷ Bryan A. Garner, 2009, Black’s Law Dictionary, (9th ed.), A Thomson Reuters Business, USA, p. 322

⁸ T. Srinivas Prasad (Dr.), Feb 2015, The role of Professional Associations in Insurance Business, IJRIM, Vol. 5, Issue 2, p-37.

⁹ CA Rajkumar S. Adukia, 2009, Insurance Laws of India, p. 3

¹⁰ Insurance Bill, 2014, Ver. IRA/003, Kenya, Section 3.

¹¹ Commercial Code of the Empire of Ethiopia, *Negarit Gazeta*, Extra Ordinary Issue, No.3 of 1960, Art. 654 (2)

Practical Application of Proclamation no. 799/2013 against... Y. K. Demarso & Anja Aba Ethiopia contract.¹² Here, insurance policy is defined as an agreement between an insurer and an insured upon payment of premium by the former and to pay money to the latter when the specified risk occurs. There is no clear distinction made between the term insurance and insurance policy. However, the recent insurance business proclamation No. 746/2012 of Ethiopia specifically defined the term insurance in the following manner:¹³

Insurance means an undertaking by an insurer to indemnify another person, in exchange for consideration called premium, against damage, destruction, loss or liability in respect of a certain risk or peril to which the object of the insurance may be exposed or to pay a sum of money or other thing of value depending up on the happening of a certain event.

According to this definition, insurance is a conditional contract agreed between the insurer and the insured person and it is dependent on the happening of a certain event. The insurer has under an obligation to indemnify on the occurrence of such event and the insured has an obligation to pay the agreed amount of premium. Insurance policy also defined as a document evidencing a contract of insurance whereby an insurer undertakes against payment of premiums, to pay indemnity or the benefit specified in the policy to the insured where conditions specified in the policy are fulfilled or risk materialized, and includes a certificate, interim receipt, renewal receipt, or any other document evidencing a contract of insurance.¹⁴ Both the term insurance and insurance policy defined separately by the proclamation with better clarity from the previous definitions. Premium is consideration paid by the insured to the insurer for the protection the insurer undertakes to give for the insured event.

On the other hand, the vehicle insurance against third party risks proclamation no. 799/2013 under article 2(8) defined insurance policy as a contract whereby an insurer undertakes to pay compensation and cost of emergency medical treatment to any third party for death, bodily injury or damage to property caused by the vehicle of an insured person. The above definitions under the proclamations exhibits that insurance is an agreement of indemnity between an insurer and an insured person where as insurance policy is a document evidencing such an insurance agreement between the two parties. Conceptually, insurance and insurance policy are not the same and one.

CHAPTER THREE

DISCUSSIONS:

3.1. Demographic variables of participants

¹² Fekadu Petros, 2008, Effect of Formalities on the Enforcement of Insurance Contract in Ethiopia, *Ethiopian Journal of Legal Education*, p. 13

¹³ Insurance Business Proclamation No. 746/2012, *Federal Negarit Gazeta*, 2012, 18th year No. 57, Art. 2 (16).

¹⁴ *ibid*, Art. 2(20)

3.1.1. Age of respondents: Among 986 respondents, 61% of them are aged from range 18 to 25 years; 30% of them are aged from range 26 to 35 years; and 9% of them are above 36 years. The age of respondents shows active participants in the motor cycle market.

3.1.2. Educational Background of respondents: Among the total respondents, 21% of them have diploma in different fields; 68% of them are completed their high school; the remaining 11% of them are not completed high school. So, the vast majority of the respondents at least completed their high school education and mature enough to respond. This in turn helps to achieve the objective of the study.

3.1.3. Experience of respondents: All respondents are active participants in the motor cycle market. They comprise motor cycle owners, drivers, traffic police, officers in road transport authority and managers of insurance companies. Among the total respondents, 90% of them have experience in the motor cycle market more than five years, which helps us to be confident in their experience and knowledge in the area.

3.2. Discussion: From this total sample size (1028), 986 (96%) respondents completed and returned the questionnaires. Both close and open-ended questions were used. Close ended questions include five alternatives (i.e. (a) strongly agree, (b) agree, (c) neutral, (d) disagree, and (e) strongly disagree)). The researchers also employed personal field observation and experience. The data collected in such a way shows the following facts:

3.2.1. Lack of awareness

Significant number of responses (70%) shows that the respondents have information about the mere existence of laws governing vehicle insurance against third party risks but the remaining 30% have no information at all. In other side, with regard to applicability of the proclamation against motor cycles, 14% of the respondents agree and the vast majorities (86%) of the responses show that they do not have awareness in this regards.

The response of interview made with officers in the insurance companies also show there is lack of awareness from the side of stakeholders concerning vehicle insurance against third party risks law. There is also low awareness with regard to premium rate in particular and the importance of the insurance in general. They also responded that majority of motor cycle drivers have no driving license and motor cycle owners have not secured title deed and plate, which are prerequisites for insurance contract. It is possible to discern from the above data, there is low public awareness on the proclamation in general and its applicability against motor cycles in particular.

3.2.2. Problems associated with implementation of the law

All respondents (100%) agree that the proclamation is not fully implemented with respect to motor cycles. 100% of the respondents agree that there was no measure taken against uninsured motor cycles by the law enforcement organs. They are not taking strict measure against those uninsured motorcycles. Out of the total respondents, 95% responded that they have no knowledge whether there is challenge to enforce the proclamation or not and the remaining 5% agree on the existence of the challenges. Some of the challenges raised here are lack of willingness of motor cycle owners due to awareness gap and lack of commitment of law enforcement organs. The interview with officers in the insurance

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companies shows that there are challenges in the implementation of the proclamation. Some of these are:

- Lack of awareness about accident and its effects;
- Lack of awareness about benefit of insurance and premium rate;
- Some of the motorcycle owners have no legal ownership certificates (title deed) & plate;
- Most of the motor cycle drivers have no driving license;
- Lack of commitment of the law enforcing organs like traffic police, transport and road development department;
- Lack of cooperation among various stakeholders such as traffic police, justice office, insurance companies, and transport and road development office.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. CONCLUSION

Vehicle accident is cause for loss of human life, bodily injury and material damage. The data collected from various sources shows that the number of motor vehicle accident and its effect is increasing from time to time. It is becoming common to observe such accident every day. There must be certain mechanisms to alleviate the problem. In order to resolve the economic as well as social problems resulting from vehicle accident, the government enacted compulsory vehicle insurance against third party risks law. The first vehicle insurance against third party risks proclamation no. 559/2008 proclaimed before seven years on January 9, 2008 and replaced by the current proclamation no. 799/2013. The proclamation mandatorily requires that all type of vehicles to have vehicle insurance coverage against third party risks. Despite its compulsory nature, the law remained unenforced for a long period of time particularly against motor cycles. Out of the total registered motor cycles (3,426), the vast majority (3,303 or 96.4% motor cycles) have no valid vehicle insurance coverage against third party risks in Wolaita Sodo city. Out of the total registered motorcycles, insignificant number (only 123 or 3.6%) were insured against third party risks pursuant to the law.,

It is also possible to discern from the data collected that there is lack of awareness of stakeholders. The motor cycle owners and drivers lack awareness regarding the benefits and amount of premium of insurance. They also lack awareness concerning mandatory nature of the vehicle insurance against third party risks proclamation.

The data also reveals that there is poor cooperation among law enforcement institutions and stakeholders particularly Transport and Road Development office, Traffic police, IFAA, insurance companies and medical institutions. Practically, there are a number of motorcycles driven in a road without valid insurance coverage against third party risks. Almost 96.4% of the registered motor cycles were not yet secured vehicle insurance against third party risks. However, there is no measure taken by these law enforcement organs.

4.2. RECOMMENDATIONS

Based on the above findings and conclusions, the researchers provided the following recommendations: -

- There is lack of awareness of stakeholders concerning the benefit of insurance in general and vehicle insurance against third party risks in particular. There is also lack of knowhow with regard to the premium amount and mandatory nature of the vehicle insurance against third party risks law. Besides the enactment of the law, awareness creation generally for the public and particularly for motor cycle owners and drivers is vital for its enforcement. The law enforcement institutions and stakeholders particularly; Transport and Road Development Department, Traffic police, IFAA, medical institutions and insurance companies should conduct awareness creation.
- There must be cooperation of among various institutions and stakeholders. Vehicle insurance against third party risks law by its nature requires participation and cooperation of various organs. There should be cooperation among Transport and Road Development Department, Police office, Justice office, IFAA, medical institutions, and insurance companies stakeholders concerning effective implementation of the vehicle insurance against third party risks laws.
- There should be strict measures taken against uninsured motor cycles. Wolaita Zone Transport and Development Department, after registering and giving plate, must check whether those registered motor cycles are insured or not and hence, it should report those uninsured motor cycles to the traffic police and the latter should take strict measures against those uninsured motor cycles. They must prohibit, even by detaining, any person from driving uninsured motor cycles in a road without securing valid vehicle insurance coverage against third party risks and make them criminally liable. According to proclamation no. 799/2013, any person who contravenes the provision of the proclamation and the regulation issued pursuant to the proclamation should be subject to criminal liability. Thus, the law enforcing organs should perform their duties and endeavor for the effective enforcement of the vehicle insurance coverage against third party risks law specifically with regard to motor cycles.

Competing Interest: The authors declares that this research work is original and never been published in any any other journal. All sources (references) used have been duly acknowledged.

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