

M. C. v. CP (The Motor Vehicle Insurance Case)

KEYWORDS:

motor vehicle – insurance – insurance contract – motor vehicle insurance – civil liability – insurance cover – compensation – insurer – insurance company – damage to property – motor vehicle accident – exclusion clause – consumer

FACTS:

On 9 June 2018, the client's motor vehicle was damaged in a car accident which a third party had caused. The person responsible for the accident had been insured by the insurance company CP who paid without objections the costs of the damage repair in the amount of 24 997 CZK (approximately 1 000 EUR). The insurance company further offered the client a rental of a replacement car and informed her that the costs of the rental will be paid by the insurance company. The client agreed and rented a car for the two weeks when her car had been the car service. On 20 July 2018, the client was informed that the rental costs amounting to 6 897 CZK (approximately 280 EUR) had been paid in full to the car rental company.

Ten days later, on 30 July 2018, the client was requested to refund the costs of the car rental to the insurance company. The request was justified by the claim that the damaged car lacked, at the time of the accident, the necessary technical inspection certificate and the insurance indemnity had, thus, been provided without legal basis. The client refused to refund the car rental costs. On 11 November 2018, she received a pre-action call (*předžalobní výzva*) informing her that if she fails to pay the amount in a specified time, she will be sued.

The client visited the Students Legal Aid Office requesting the information whether she is obliged to pay the car rental costs as required by the insurance company.

LEGAL ANALYSIS:

The present case raises the issue of whether the lack of the technical inspection certificate of the vehicle at the time of an accident caused by a third party excludes the right of the damaged party to be refunded the costs of the rental of a replacement car.

Legal provisions with specific reference to EU directive when applying:

National provisions (Law No. 89/2012 Coll., Civil Code; Law No. 168/1999 Coll., on the Motor Vehicle Insurance and the amendment of certain related laws) implementing Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability

LEGAL SOLUTION:

The client has been informed about possible solutions under the cited directive, as transposed in the Czech Republic.

The client has a claim against the third party who caused the accident who, in turn, has a claim against the insurance company. However, the insurance claims are usually settled directly among the insurance company and the damaged party.

The right of the damaged party to be refunded by an insurance company any real damaged caused by the insured party encompasses the right to refund of the costs of the rental of a replacement car. Any reasonably and efficiently incurred costs should be paid in full for the time when the damaged party had not been able to use the car due to the repairment of the vehicle. Costs are incurred reasonably and efficiently if the rental of a replacement car is necessary in order to ensure a normal household operation, a transport to work, medical needs etc. The rented car must be used in the same way the damaged vehicle is usually used, it must be of the same or lower category, the price of the car rental must be reasonable. In the client's case it was concluded that the costs of the replacement car rental were incurred reasonably and efficiently as she uses the car daily in order to ensure a normal operation of her household, in particular having regard to the needs of her child and all the other objective conditions were also fulfilled.

The exceptions from the refund of such costs are specified in Article 7 and 10 of the Law on the Motor Vehicle Insurance, however, the fact that the client's vehicle lacked, at the time of the accident, the necessary technical inspection certificate, does not fall within any of the exceptions. The insurance company was, hence, legally obliged to cover the costs of the replacement car rental.

SUGGESTED SOLUTION:

The client was advised to refuse to refund the costs of the replacement car rental covered by the insurance company and to send them a letter (drafted by the students) analysing the situation and explaining why the right to refund of the replacement car costs exist. She was also warned that the insurance company may, however, decide to sue her; the argumentation put forward in the letter drafted by students should stand before the court.

SPECIFIC REMARKS:

The client later informed the Students Legal Aid Office that after receiving the letter drafted by the students, the insurance company refrained from further enforcement of the refund.

