

COMPENSATION FOR A CYCLIST INVOLVED IN A ROAD TRAFFIC ACCIDENT IN FRANCE

Road traffic accidents involving a motorised land vehicle are governed by the Badinter Law of 5th July 1985.

Article 2 of the law lays down a principle applicable to all victims of accidents involving a motorised land vehicle, whether they be the driver of a motor vehicle, passenger, pedestrian or cyclist: **it is impossible to claim force majeure or the actions of a third party.**

The law then distinguishes two compensation schemes depending on the type of victim:

A) The driver of a motorised land vehicle

His compensation is defined by Article 4 of the law which lays down the principle that only an error committed by the driver diminishes or eliminates his entitlement to compensation. The driver's attitude must be assessed in order to ascertain his entitlement to compensation; it must be determined to what extent his behaviour diminishes or excludes his entitlement to compensation. Compensation for the injuries suffered by the driver may be partial (25%, 50%, 75%, etc. depending on the extent of his own responsibility in the accident).

B) Other victims: passenger, pedestrian, cyclist

Compensation for these victims is governed by Article 3 of the Badinter Law, which provides a very protective scheme for these categories of victims, granting them compensation almost automatically, in the event of personal injury.

Article 3 provides two levels of protection:

- 1) Persons covered by special protection (under 16s, over 70s or persons with an invalidity or disability of more than 80%, regardless of age) who can only be challenged for deliberately seeking injury.
- 2) Other victims, who, in addition to deliberately seeking injury, can be accused of inexcusable negligence should this be found to have been the sole cause of the accident.

Therefore a cyclist will be compensated for his physical injuries in accordance with the provisions of Article 3 of the law.

1) Area of application of Article 3 of the Badinter Law

This relates to all victims of a road traffic accident other than drivers of motorised land vehicles and only deals with compensation for personal injury. It establishes an all or nothing compensation, **without any possibility of shared responsibility**, quite the opposite to driver compensation (Article 4 of the Badinter Law).

2) Principle of compensation

Article 3 provides that, just like a driver, in principle a cyclist is entitled to compensation for his injuries.

Behaviour excluding compensation:

- Specially protected victims: deliberately seeking injury.
- Other victims: deliberately seeking injury or inexcusable negligence, if such was the sole cause of the accident.

While the notion of deliberately seeking injury does not in principle pose any problem of interpretation (the victim, in wishing to commit suicide, sought his own injury), we must endeavour to define the notion of inexcusable negligence as sole cause of an accident and examine how case-law applies this to a cyclist.

3) Definition of inexcusable negligence as sole cause of an accident

Three cumulative conditions are necessary to constitute inexcusable negligence:

- Exceptionally serious negligence.
- Absence of justification.
- Awareness of the danger.

In ten rulings rendered on 20th July 1987, the Court of Cassation defined it as follows:

“Only deliberate negligence of exceptional gravity, exposing its perpetrator, for no good reason, to a danger of which he must have been aware, is inexcusable within the meaning of Article 3 of the Law of 1985.”

The victim's behaviour must also constitute “the sole cause of the accident”. This assumes that the accident was not caused by any other negligence and that the victim's behaviour made the accident unavoidable. It should be stressed that inexcusable negligence as sole cause of an accident is assessed in terms of the victim. Case-law is very restrictive and protective of victims.

4) Examination of case-law

a) Behaviour not constituting inexcusable negligence as sole cause of an accident

- A cyclist, who does not obey a red light, stops suddenly, weaves between vehicles on his bicycle or places himself in front of a lorry which is moving off when the light is green.
- A cyclist who changes direction unexpectedly without signalling his intent.
- A cyclist who lets go of the handlebars with one hand and swerves to the left.
- A cyclist who crosses a continuous line on the road without making sure he can do so without danger.
- A cyclist who passes a stop sign, refusing to give way to a vehicle.
- A cyclist who, at night and without lighting, comes out of a one-way street and cuts across a motorist.
- A cyclist who rides on the hard shoulder of a motorway, and then on the motorway, which he crosses from right to left.
- Travelling in the opposite direction, a cyclist with a high blood alcohol level who turns left and is hit by a motorist.

b) Behaviour constituting inexcusable negligence.

- A cyclist who is riding the wrong way down a boulevard, crosses an intersection on a red light and turns into a second street, still against the traffic.

Inexcusable negligence as the sole cause of an accident is therefore very rarely admitted, and the cyclist, even though he may be responsible, will practically always be compensated for his physical injury.

5) Liability for material damage

Compensation for the material loss of victims who are not drivers of motorised land vehicles is provided by Article 5 of the Badinter Law, paragraph 1 of which provides that:

“Negligence committed by the victim limits or excludes compensation for any material damage suffered. However, supplies and appliances provided on medical prescriptions are subject to compensation according to the rules applicable to reparation for personal injuries.”

It is a question of simple negligence that can be blamed on the victim and which entails either a reduction or elimination of compensation for material damage. However, supplies and appliances provided on medical prescriptions remain governed by Article 3.

➤ Example:

A cyclist ignores a red light and is hit by a vehicle. He suffers physical injury, his bicycle is damaged and his spectacles broken.

He will be compensated for his physical injuries because there is no inexcusable negligence as the sole cause of the accident. (Article 3 of the Badinter Law).

The material damage to the bicycle will not be covered (Article 5 para.1 of the Badinter Law).

He will be reimbursed for his share of the cost of replacing his spectacles within the framework of Article 3 of the Badinter Law. (see Article 5 para.1).

6) Recourse against the cyclist

The motorist's recourse against the cyclist is not covered by the provisions of the Law of 5th July 1985.

In fact, for a motorist victim, there is no involvement of a motorised land vehicle in the accident, an essential condition for application of said law (see Article 1 of the Badinter Law).

The motorist must exercise his recourse on the basis of Articles 1382 to 1384 of the French Civil Code, which does not affect his liability for compensation of the cyclist on the basis of Article 3 of the Badinter Law (unless he can provide evidence of inexcusable negligence as the sole cause of the accident).

It should be noted that all risks home insurance covers the risks related to civil liability when travelling by bicycle.