

HOW IS THE DRIVER COMPENSATED IN FRANCE?

Driver compensation rules in France often cause problems for foreign claims managers, especially when a foreign driver is required to compensate the other driver even though s/he believes no wrongful act has been committed.

This can be explained by the fact that compensation rules are no longer based on traditional liability provisions since the enactment of the “Badinter” law dated 5 July 1985.

Irrespective of the type of damage (property or bodily injury), parties cannot cite acts of God or third party involvement to reduce compensation to the driver making the claim.

Only wrongful acts committed by the driver reduce or preclude his or her right to compensation.

This memorandum is intended to explain the conditions for driver compensation in France.

Before 1985, the traditional liability rules apply

Before the 5 July 1985 rule was enacted, traffic accidents incurring the liability of motorised land vehicles were subject to common law general liability provisions (regulated by articles 1382 to 1384 of the French Civil code).

In case of an accident, the “custodian” of the vehicle who caused the damage is presumed to be liable, according to article 1384 of the Civil code). He could then seek exemption by demonstrating that the accident was due to an outside cause such as an act of God, a third party action or the victim’s wrongful act.

Thus, an accident occurring under unclear circumstances would lead to compensation by each party to the other (based on the dual applicable of article 1384 of the French Civil Code).

The rules changed entirely after 1985

Before analysing how driver compensation must be considered according to Badinter provisions, it would be advisable to understand the framework of this law and its objectives.

- 1) **The Badinter law is an “autonomous” law which applies only to victims of a traffic accident in which a motorised land-borne vehicle is involved:** common law liability provisions are systematically excluded and replaced by Badinter law measures, as long as the conditions for their application are fulfilled. If it is not the case, articles 1382 and 1384 §1 apply.
- 2) **As long as the victim proves that the conditions for the application of the Badinter law are fulfilled, he/she is in principle entitled to be fully compensated (100 %) by the “custodian” or driver of each vehicle involved in the accident.**

Driver's situation within the framework of the Badinter Law

Only a wrongful act committed by the driver reduces or eliminates his or her right to compensation.

The above arises from article 4 of the Badinter law:

"A wrongful act committed by the driver of a motorised land-borne vehicle has the result of limiting or excluding compensation for the damage he or she incurred".

In other words, in reading this article we must consider that the driver of a motorised land-borne vehicle involved in a traffic accident in which one or more other vehicles are involved **is entitled in principle to compensation** for bodily damage s/he incurs.

Any wrongful act committed by the driver may, however, limit or exclude compensation. The driver's attitude must be assessed in order to establish his or her entitlement to compensation, not the attitude of all the drivers involved in the accident. The courts must therefore establish the extent to which his or her behaviour lessens or excludes this right.

Brief overview of case law developments

The Court of Cassation considers that a proven wrongful act, contributing to the occurrence of the driver's damage, reduces or eliminates his/her right to compensation.

A ruling in principle by the Combined Chamber of the Court of Cassation handed down on 28 March 1997 clearly outlined the extent of article 4:

"Whereas whenever several vehicles are involved in a traffic accident, each driver is entitled to compensation for damage he or she has incurred except if s/he has committed a wrongful act which contributed to the occurrence of the damage; the courts must therefore be free to assess whether the result of the wrongful act is to reduce compensation or preclude such".

The Court of Cassation confirmed in this ruling that even if the driver involved in the accident is the only liable party, s/he is not deprived of the right to compensation. His or her fault must be assessed and qualified with no regard for the behaviour of the other driver. *It may therefore be required to compensate a driver to whom no wrongful act applies and to submit in turn a claim for compensation. Victim compensation is therefore no longer dependent on a 100% scale.*

The Court of Cassation's ruling on 4 July 2002 went even further in terms of fault of a driver who is victim of an accident and upheld the wrongful act of a driver on the grounds that he drove whilst under the influence of alcohol, which the law forbids, although alcohol levels did not contribute to the occurrence of the accident.

The above case law has just been rescinded by the Plenary Assembly of the Court of Cassation, which ruled to the contrary on 6 April 2007 (refs 05.81.350 and 05.15.950) and noted that without a wrongful act in driving as a factor in the accident, alcohol levels in the driver have no causal relation with the damage incurred. In other words, there is a clear difference between breaking the law and driving badly.

IN CONCLUSION: the Badinter law and case law ensure that the insurer of a driver involved in a traffic accident is required to compensate the other driver with regard to whom no wrongful act has been established, even if s/he estimates that he committed no fault. However, he or she may file a claim to ensure his own compensation from the other driver (which is assessed according to his own behaviour, in relation with the damage).