

Legal - juridical nature of the insurer and the insured commitments, and their incompatibility with general conditions of law in comprehensive car insurance

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Abstract

This paper aims to study legal - juridical foundation of comprehensive car insurances, approved by High Council of Insurance in 1937, and their incompatibility with general conditions. According to investigations, it was found that there is a contradiction between article 8 of the general conditions in regulations of comprehensive car insurance and article 19 of the Insurance Act. Since a regulation does not violate the law, it is necessary to revise the regulation. In addition, regarding the juridical rights and laws reveals that insurance contracts are consensual contracts, and once the agreement is signed between the parties, it is valid and both parties (insured and insurer) bound to respect conditions of the contract. Therefore, refusing to pay fees at a specific maturity by insured and refusing to pay compensations by the insurer can damage the legal nature of comprehensive car insurances. Failure to pay compensations in such cases is contrary to the juridical principles, but the requirements of the contract are in accordance to the requirements of Civil Law.

Keywords: Comprehensive car insurance, general conditions of comprehensive car insurance, consensual contract, binding contract, revocable contracts, insurer liabilities, insured liabilities.

Introduction

As the study of law is one of the human sciences deciding to search for rules to regulate the relations among individuals as members of a society, it investigates the communities only for creating new rules to provide public order. Thus, in order to remove all tensions in a society, it lies down and implements a set of laws, which results in cultural and social prosperity by removal of tensions. This paper examines the legal and juridical nature of comprehensive car insurances; in addition, it compares and contrasts the compatibility of this contract with religious principles and the conditions of certain contracts in Civil Law (Smith and Thomas, 2000). This study is going to investigate the mentioned items because comprehensive car insurance is one of the best-selling insurance is insurance companies, one of the significant insurances dealing with properties and commercials, and their legal-juridical foundation ha never been examined. This Insurance policy has many advantages (Outreville, 2004). Car has acquired a special significance in the modern life of people due to its role in the ease and speed of transport, travel, movement of goods and carrying passengers. Comprehensive car insurance preserves economically national wealth, moreover, it plays an important role in compensating damages of cars as a vehicle or as the source of a family's income. In spite of all the advantages of a car for a family, it may cause damage or danger. Comprehensive car insurance covers one's car for accidental damage, collision or crash, earthquake,

explosion, fire, flood, storm, theft or attempted theft, tsunami, vandalism or a malicious act, according to insurance contract provisions. This has led to disagreements and different interpretations of technical issues relation to the contracts of comprehensive car insurances and their legal-judicial nature.

This article tries to examine comprehensive car insurances from legal viewpoint and create a balance among legal, civil and religious rules because the Iranian laws are based on Sharia. Although contracts such as insurance contracts did not exist at the time of the Prophet and Sharia does not mention its regulations explicitly, this article enables readers to compare insurance deals to certain principles of civil law (Smith and Thomas, 2000). Another goal of such a study is to solve disputes between the insurer and the insured in society, or at least reduce the differences, to provide grounds for social and cultural development and prosperity. The present investigation cites references from scholars in jurisprudence and law, which inevitably are not the same in many cases about comprehensive car insurance and other types of insurances. The paper attempts to find whether the general conditions in policies of comprehensive car insurance are consistent with the provisions of Insurance Act, or not.

One of the controversial questions and disputes about comprehensive car insurance, which insurance experts and authors of books have offered different opinions, is failure to pay installments at determined maturity; in addition, the perceptions of justice and insurance experts in this case is different. For example, Hanife Zadeh (2012,a,b) and Karimi (2000) believe if the insured does not pay the installments of comprehensive car insurance at a certain maturity, the insurer has the right to terminate the contract of insurance and refuse to pay compensation. On the other hand, Babaei (2002,2008, 2009) opposes to the mentioned opinion because they consider the insurance contracts as consensual contracts. Babaei (2002,2008, 2009) argues that since any insurance contract is a consensual contract, once the parties sign the contract, the provisions are valid, thus the insurer is required to compensate the damages and the insurer is obligated to pay the pursuant premium as well. None of the parties has the right for unilateral refusal of his commitments, the, none of them can consider the contract revocable. Dr. Jafar Langroodi asserts about the insurance contracts, "Insurance contract is a twofold consensual contract, it means that both parties are committed to the contract; it is an ongoing and continuous contract. Continuous contract is a deal bound to a certain space of time, such as lease and marriage and dedication, etc. Insurance contracts are not real contracts, in other words, paying the insurance funds is not a measurement for correctness of conditions, and article one of Insurance Act 1937 does not implicate a matter of contrast. Insurance contract brings benefit to each party, it cannot be considered as donation because both gain something or at least pulls a loss. Despite the fact that the insurance fund must be paid continuously, damage may do not occur during the entire period of insurance contract enforcement to lead the insurer to pay compensation. In French law, which is the background of Iranian Insurance Act, the legislators argue that testimony will never replaces the policy paper, even by the commercials, and just confession and swear can take its place. Insurance policies may be formal or ordinary. However, the practices of informal insurance are not welcomed. Ordinary, document and letters between insurance companies and policyholders are not enough to prove actual insurance contract (*Insurance Rights*, p. 48; Briere de l'Is). Beyond, Dr. Jafar Shahidi says, "Nowadays, scholars in the field of insurance studies regard insurance in general and personal insurances in specific as consensual contracts. Some lawyers even believe special contracts that are revocable without seal of the signer do not exist in Iranian law, unless some special contracts like mere sale, which requires the object of contract in addition to the agreement and payment" (Sodhi, 1980). Finally, Ali Reza Hasani argues the insurance contract as consensual one in his article titled "The legal-judicial nature of insurance of persons in Islamic and Iranian law."

The operation of insurance companies for paying compensation fees in comprehensive car insurances have changed in recent years; in this way, when one agrees to pay premium in installments, if one or more installments are not paid to insurer, compensation will be paid with respect to the amount that the insured has paid. It means that the more the insured pays the installments, the more he will receive compensation at the time of accidents or damages. The field and library studies conducted in relation to comprehensive car insurance contracts were determined that some contradictions exist between the general conditions of insurance regulations about comprehensive car insurance and Insurance Act 1937 approved by Islamic Consultative Assembly. According to the questions posed in the research project, two hypotheses will be investigated. First, "if the insured does not pay the installments of comprehensive car insurance at a certain maturity, the insurer has not the right to terminate the contract of insurance and cannot refuse to pay compensation;" second, "there is a contradiction between article 8 of the general conditions in regulations of comprehensive car insurance and Insurance Act." The population in this study is Iran Insurance Company. The research is comparative regarding the regulation number 8 of comprehensive car insurance and the conditions of certain contracts described in civil law, religious principles and juridical affairs. It also reviews the experts' opinion about the times that the insured does not pay installments at the specified maturity.

Contradiction between Article 19 of the Insurance Act and article 8 of General Conditions for Comprehensive Car Insurance Regulations

Private law seeks to remove contradictions relationship between human beings, complete legal rules, regulate the relations between human beings, develop the legal affairs and reduce tension and trial claims between them. Since this study is a legal research, it tries to achieve the aims of private law. Details of this study are descriptive and analytical - and target population is Iran Insurance Company. The study tries to examine comprehensive car insurance in the lens of religion and Insurance Act and offers solutions for the problems rising from the contracts of comprehensive car insurance. In comprehensive car insurances, the insurer is committed to pay compensation fee for accidental damage, collision or crash, earthquake, explosion, fire, flood, storm, theft or attempted theft, tsunami, vandalism or a malicious act, according to insurance contract provisions. According to article 8 of regulations for general conditions, comprehensive car insurance is concluded with the application of the insured and the insurer acceptance. Because the insurance agreements are binding and consensual contracts, once the mutual agreement is signed, the insured must pay each installment at its maturity, of course if it the premium is in installments. If the insured does not pay one, or more, of the premiums with respect to the installment schedule, the insurer can terminate the policy; As well the insurer is obliged to compensate for damages in case of occurrences. Therefore, if the insurer has not terminated an insurance policy before an accident, compensation payments must be paid according to terms anticipated in the provisions of insurance policy. In this case, the insurer can terminate the mutual contract on behalf of the insured due to failure of paying installment. This situation is incompatible with the nature of binding and consensual contracts because in legal and jurisprudential contracts, none of the parties is allowed to terminate the agreement without the other part's consent, unless they have predicted a condition for terminating the contract in the policy. Moreover, since insurance agreement is a consensual contract and the base of consensual contract is the parties' consent, once the agreement is signed between the parties, the insurer and the insured, as parties of insurance contract, are required to follow contract terms. Therefore, article 9 of Insurance Act stipulates, "The insurer is responsible for paying the difference between the price of insured's properties before the accident and the remainder of the price immediately after the accident; the resulting damage will be paid in cash." In article 19 of

Insurance Act, insurer is obliged to compensate for damages in in case of an occurrence, and cannot refuse to compensate and terminate the agreement under the pretext of insured failure to pay premium installments because he will act contrary to natural conditions of binding and consensual contracts, which have their special conditions. Therefore, the regulations for general conditions of comprehensive car insurances are incompatible with the nature of binding and consensual contracts, and consequently incompatible with the rules of Islam. Given that the laws of Iran must obey the rules of Islam and the legislators must approve laws compatible with Islamic orders, other solutions must be considered for this case. For example, instead of terminating the contract by insurer in the case of failure or delay in paying the premium installments, they can consider a penalty. When the contract is terminated by problems in payments and the no damage to be compensated, the action is contrary to principles of law and religion, and incompatible with article 19 of Insurance Act. When such anti-religious and anti-legal issues develop, sharia and law become subject of change and gradually disappear; the elimination of law and religion results in a cultural and economic chaos. As it was mentioned, this article tries to help private law to achieve its goals, which are to remove contradictions relationship between human beings, complete legal rules, regulate the relations between human beings, develop the legal affairs and reduce tension and trial claims between them. In this manner, it creates a balance between civil and religious rules with legal rules of comprehensive car insurances in order to increase the development of law in society.

Consensual / Real contracts of Comprehensive Car Insurances and its Relation to insurer and insured Obligations

Relying on article 1 of the Insurance Act enacted in 1316, some writers and scholars often comment that in insurance contract, the start of insurer's obligation is subject to the concrete and practical payment of the premium by the insured. They believe as long as this has not been actually paid, insurance contract is not perfect and does not create an obligation for the insurer. Article 1 of Insurance Act stipulates, "Insurance is an agreement whereby one party promises to compensate for damages of an accident or phenomenon, or pa a certain amount of money in return for payment or other funds. The committed party is called insurer, the other party is called insured, the paid money by insured for agreement is called premium and the insured object is called object of insurance."

The insurer's commitment to cover compensations of the object if insurance is carried out due to paying the premium by insured; therefore, as long as the payment does not occur, the contract will not be fulfilled, and results in no commitment.

While insurance contract is a consensual or real contract, various opinions have presented by various scholars. The scholars who comment according to article 1 have not presented the legal foundations of their thought and interpret the article based on their own judgment. However, since the nature on insurance contracts, the insured and insurer's obligations are source of many works, it is necessary to explain the foundation of opinions considering the general rules of contracts in Iran legal system and jurisprudence in order to enable jurists to deduce new regulations for new insurance contracts. As insurance contracts are considered as a subcategory contracts in Iran law, first, it relies on the general rules of civil law, then, it will be set as the source of other rules due to its specific features. Therefore, the legal nature of insurance agreement must be explained based on the general rules of all contracts.

Laws in Iran juridical system are divided in two groups of consensual contracts and real contracts according to the consent in agreements and the real performance of an affair. Consensual contract includes settlements made due to arbitrary relation and mutual commitment as the mere result of agreement of wills and the action of offer and acceptance. In this case, correctness, validity, the obligations for fulfillment of the contract are not conditioned to another affair, in this case

submission of the object of insurance or premium payment. On the other hand, the system has predicted another type of contracts called real contracts. It refers to settlements depending on the practical and real submission of the object of contract; they are not valid and correct only due to consent, offer and acceptance. Iran legal system pays more attention to the consensual aspects of agreements, and real contracts are used in special cases. For a contract to be real, the legislator or text of law must stipulate the reality of contract, or the necessity of submitting the object as an element for fulfillment of the contract (Katouzian, 1997).

Some scholars believe insurance contract should be considered as real contracts the argue according to article 1 realization of insurance contract is subject to the practical action of premium payment by the insured. Therefore, considering insurance contracts as real contract leads to notable effects, which Insurance Act does not pay any attention to the effects. The effects of regarding insurance as real contract are counted bellow. One of the effects manifests when the premium is not paid fully. As long as the premiums is paid by insured, the insurance contract is essentially unrealized, so the insurer has no commitment to cover and compensate for damage caused by an accident as the object of insurance contract. In fact, if paying the premium by insured is regarded as one of the constructive elements of insurance contract, it will be considered as an essential for the contract. In this case, according to article 233 of civil law, the contract is invalid because of the existence of invalid condition; the invalid conditions are the (1) existence of a condition contrary to the essentials of contract, (2) an unknown condition that its ambiguity leads to the ambiguity of the object of contract. If two parties agree on conditions contrary to the prerequisites of contracts, both the condition and the contract are void. In this regard, the agreement on beginning the insurance obligations before the real paying of premium by insured is a null condition, which even invalidate the contract, therefore, even if both parties act according to their agreement and the insured pay premium installments and the insurer pays compensation, the contract has been void due to the illegality of contract, and the contract has never been started. Beyond, the necessities of real payment of premium requires the contract to be adjusted in such a way not to allow the insurer to seek for the premium, as its property, and failure to pay money will not debt the insured to insurer. In this manner, as the result of failure to complete the contract elements and failure to fulfill contract, if the insured refuses to pay a premium, the insurer cannot ask for the payment of premium and the insurer has no legal right to call for money. However, practical reality and insurance practice in Iran indicate that none of the mentioned effects of real contracts has been accepted, and other effects on the insurance contract are considered in routine practice and different rules.

In some real cases, the insurer and the insured make an agreement whereby the insurer's commitment begins before the premium begins to be paid by insured, and in this way, the insured is given time to pay premium in cash or in installments during a scheduled time. The agreement is compatible with insurance act of all legal systems and no layer considers it contradictory to conditions of contracts. This contract will never be questioned because the agreement on paying the premium installments is correct, and the insurer cannot refuse to pay compensation due to failure in paying one, or more installments; in this situation, the insurer pays compensations because insurance contract concluded fully and the concluding date is the start of commitments. The secondary agreement on paying the premium in installments cannot question a correct contract. On the other hand, general conditions in some insurance contracts insist that the beginning of the commitments by insurer is subject to the firs payment by insured, and the insurance contract is suspended to the general condition; while we are on the subject, the insured's commitment to pay premium exists and he will be obliged to pay the premium. An example is the general condition of the fire insurance; the beginning of insurer's commitment to pay damages is subject to the payment of the first installment premiums; s long as the premium is not paid, the insurer's commitment will not begin. It is

noteworthy to state that in any case, insured owes the remainder of premiums despite the insurer's suspension and absence of commitment. It operates contrary to the nature of real contracts and the condition shows that insurance contract is a consensual contract not a real contract because real contracts bring no obligation for parties as long as the submission and payment does not occur.

Suspending Insured's Commitment to Pay Premium in Iran and other Legal Systems

Iran's legal system has not predicted the suspension condition in the events that the insured refuses to pay premium installments. Article 8 of regulation number 53 states clearly, "An insurance contract is concluded by insured's offer and insurer's acceptance, but the beginning and implementation of insurer's commitment is subject to the payments conditioned in the text of insurance policy. If the insurance premium is arranged in installments, and the insured refuse to pay one or more of the installments in their maturity, the insurer can terminate the policy. If the insurer has not terminated the contract, he is responsible for covering damages according to the anticipated conditions in the insurance policy.

The suspension condition is included in insurance contracts in countries such as Iran, France and England. For instance, article 7 of general conditions of fire insurance includes this condition. In England, the usual form of the contract of insurance is provided by Lloyds. Specifically, fire insurance is suspended explicitly to the obligation of insured to pay the first installment. It is notable to remark that including this condition in insurance contract does not imply the suspension of coverage to practical and real payment by insured according to principles of insurance law (Saleh, 1993, 2009; Birds and Hird, 2001). Moreover, various legal systems have predicted different procedures to ensure the fulfillment of all installments, or the first installments of the premium before the insurer's obligations. The typical procedure is issuing an insurance policy and giving it to the insured, the method is common in Iran. However, countries like France have predicted another ways to ensure paying the installments of premium.

Article 16 of French laws of 1930 has predicted a shortcut. According to this legal matter, if the insured does not pay the premium installment in due date, insurer is obliged to remind him installment due and unpaid amount through a registered mail, and ask him to pay his debt. If the insured refuses to pay, first, the insurer suspend the contract, finally he has the right to terminate the contract after a ten-day deadline without referring to court. According to the studies about failure to pay premium and installments of comprehensive car insurance in Iran Insurance Act 1937, general conditions of comprehensive car insurance approved by High Council of Insurance, and other legal systems of the world, not fulfilling obligations by insurers and refusing to pay compensation fees when the insured refuse to pay premium, or its installments, is not relevant and will not be accepted unless the insurer has already informed the insured of failure in payments in a missive. Accordingly, Insurance Act and general conditions of comprehensive car insurances requires revision and reform of provisions including the matters about premium and instalments, which have been presented by insured and the insurer. The insurance contracts must be adopted according to the rules of jurisprudence and religion to ensure the benefits of both insurer and insured; in this way, the contradictions will be decreased and the transparency and promotion of legal system and insurance market will be increased. The issue will bring social and cultural development.

Conclusion and Suggestions

Based on the studies, according to the opinions of jurists and with reference to Sharia, because Iran Civil Law grounded on Sharia, it was determined that regulations cannot be contrary to law. Therefore, on the one hand, the second hypothesis of this study, "there is a contradiction between article 8 of the general conditions in regulations of comprehensive car insurance and

Insurance Act” is approved. As it was explained article 8 of the general conditions in regulations of comprehensive car insurance is not compatible with article 19 of Insurance Act and must be modified. On the other hand, if the insured does not pay the installments or the premium of his insurance policy of comprehensive car insurance at a certain maturity, none of the parties of the contract is allowed to cancel the agreement and refuse to carry out his commitments because the insurance contracts are consensual contracts, and they are valid immediately after the agreement. While this procedure damage the insurers and leads to the exploitations by policyholders. Consequently, the first hypothesis of the research, “if the insured does not pay the installments of comprehensive car insurance at a certain maturity, the insurer has not the right to terminate the contract of insurance and cannot refuse to pay compensation,” is also approved. This research offer some suggestions with regard to provide the goals of this study, in line with confirming the first and second hypothesis and in order to improve the legal status, resolve differences and ambiguities in insurance contracts and contribution to the development of comprehensive car insurance.

1. In order to resolve the problems about the payment of installments, the insurers can predict a penalty for delay or failure of payments. It supports the benefits of both the insurer and the insured and does not terminate the accuracy of insurance contract that is either real or consensual contract, which will result in the promotion of insurance culture and the development of insurance market.

2. With respect to the second hypothesis of the research, and certainty about the noncompliance to article 19 of Insurance Act with provisions in regulations for general conditions of comprehensive car insurance, it is necessary for insurance supervisory institution, High Council of Insurance and legislators to insist on the process of amending the Insurance Act.

3. A comprehensive and integrated investigation takes place by insurance supervisory institution and The Islamic Consultative Assembly, as the only sources of legislation. They can begin the investigations in the form of a commission and delegation of lawyers, insurance specialists and experts in jurisprudence and law to consider the nature of insurance contracts and their accordance to the principles of religion.

4. High Insurance Council, in cooperation with Islamic Consultative Assembly and professional agencies, establishes an organ in order to comment on the legal and juridical nature of insurance contracts

5. The legislators terminate the condition whereby the insurer can suspend his commitments to the first payment of insured, and can refuse to pay compensation before first payment; they can order the insurer to alert first by a formal letter, and then cancel the policy.

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