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Any Safe Heaven for Motor Accident Victims? A Critical Review of Litigation and Arbitration as Mechanisms for the Resolution of Motor Accident Disputes in Cameroon

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Abstract

The resolution of motor accident disputes in Cameroon is of a tripartite nature. It begins firstly with the process of amicable compensation through which the insurer is mandated by the compensation law to make an offer of compensation to the victim before the expiration of 12 months of occurrence of the accident. It is only after the failure of this process that a part can either make recourse to ordinary law or to arbitration for a resolution of their dispute. This paper does a critical review of the methods of administration of justice in motor insurance cases both at ordinary law and in arbitration, bringing out the strength and weaknesses inherent in both systems and identifying which resolution mechanism best suits the situation of motor accident victims.

Key Words: *Motor accidents, Motor accident victims, Cameroon, Litigation, arbitration, Dispute resolution, Motor insurance, CIMA Code¹².*

1.0 Introduction: The settlement of motor vehicle insurance claims begin with the process of amicable compensation. The Code has clearly made this procedure a mandatory one. The parties are only permitted to go to court only upon the expiration of 12 months³ from the date of the occurrence of the accident. However, the victim has the right to reject any compensation offer from the insurer, where he deems it to be unsatisfactory. It is only upon the expiration of 12 months and the inability to reach a consensus on how much is to be paid as compensation that a party can resort to ordinary law (judicial procedure) or arbitration for resolution of their dispute and the determination of the amount compensable.

1.1 Resolution of motor accident disputes at ordinary law⁴ jurisdictions: Litigations at ordinary law are administered by the courts put in place to handle such issues. A court is competent to hear a particular case depending on its territorial and material competence. Territorial competence deals essentially with the location of the courts in relation to the place of occurrence of the dispute while

¹ Conference Inter-Africaine des Marches d'Assurances.

² Hereinafter referred to as the Code.

³ Article 239 of the CIMA Code.

⁴ Ordinary law here refers to the mainstream justice system administered by the state.

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material competence is substantive in nature. Therefore, we shall be examining the judicial procedure and the arbitration procedure.

1.1.1 Judicial Procedure⁵: From a reading of article 225, we understand that the indemnification of motor accident victims can be done either by amicable settlement or by judicial procedure. Many articles of the code have been allocated to govern amicable settlements and we can understand that because of its obligatory nature. However, only a few articles have been dedicated to the judicial procedure. Should we therefore deduce that the respect of amicable settlement by the victim completely bars him from any possibility of going to court? Another question that arises here is which court is the competent court to hear the matter?

The provisions of the code related to the judicial procedure reveal the secondary character of this procedure as well as the principles which apply to govern the determination of the competent tribunal.

1.1.1.1 The secondary character of the judicial procedure: This character can be observed at a double level: firstly the Code has enumerated the various situations in which a party could make recourse to judicial procedure and secondly the Code has equally stated the powers of the judge in determining matters related to compensation. This shows the scepticism of the *CIMA* legislator is when it comes to dealing with the judicial authority.

1.1.2 Conditions under which a party can make recourse to ordinary law: These conditions have been succinctly enumerated by the Code.⁶

1.1.2.1 The situations previewed by the Code: A detail and combined reading of articles 233, 234, 235, 237 and 239 leads us to understand the competence of the tribunals in two hypotheses: firstly in the case of disagreement between the insurer and the victim⁷ and in a case of an application for reduction, cancellation or contestation of a procedure of amicable settlement.

1.1.2.1.1 Disagreement between the insurer and the victim: Article 239 expressly states that litigation cannot be brought before the judge until after the expiration of the time limit stated in article 231. Two conditions have therefore been imposed on the victim who seeks to seize a competent tribunal. The necessity for the existence of a disagreement and such disagreement must persist right up to the expiration of the 12 months maximum period provided by the Code.

- The Existence of a disagreement

The *CIMA* legislator permits recourse to a tribunal only when there is a disagreement between the victim and the insurer.⁸ This demonstrates the legislator's will to dissuade the parties as much as possible from resolving their disputes through a judicial procedure. However, the question that arises here is what will be the context of this disagreement? Will it lie on the responsibility of the driver? Is it on the role which the vehicle played in the happening of the accident? Is it on the assessment of damages? or on the amount to be paid as indemnity? One can only imagine that the disagreement will be linked to the reparation of damages caused to the victim, notably on the scope, as well as on the definition of prejudice and on the elements which it constitutes. It will equally be necessary to determine whether the reparations will be for permanent or temporal damages, direct or

⁵ Article 225 of the Code.

⁶ This could be seen from a reading of articles 233, 234, 235, 237 and 239 of the Code.

⁷ Article 239

⁸ Such disagreements will normally arise from the process of amicable compensation

indirect victims and a host of other considerations. In effect, the reading of article 239 clearly indicates that disagreement will most likely be related to what is to be paid as indemnity⁹. But the existence of a disagreement is however not the only element required in order for a party to seize the jurisdiction of a court. Another condition is that the disagreement must persist up to the time limit of 12 months set by the Code.

- Inability to resolve the disagreement

This point simply demonstrates the will of the legislator to avoid resolution of compensation disputes through litigation. Therefore resolution of disputes through this procedure is only possible after the amicable settlement procedure has irretrievably broken down. This procedure however, simply penalizes the victim because for her, the earliest she receives compensation, the better she will feel. On the contrary, the insurer highly benefits from amicable compensation because the payment of indemnity to the victim is not a task which he wishes to complete as early as possible. As it is often said, insurers are quick to collect premium but very slow to compensate victims.

1.1.2.2 The case of a request for reduction or cancellation of the penalty: Articles 233, 234, 235 give the judge the authority to reduce or cancel a penalty, a payment or a clause. The objective of the *CIMA* legislator here and by this provision is to protect the insurer, the incapable and the victim.

Concerning the insurer, article 231, imposes on him the obligation to present to the victim an offer of compensation within the maximum time limit of 12 months. Where the insurer fails to make this offer within this prescribed time limit, the amount due as indemnity will be held to produce interest as of right. However, article 233 expressly states that this amount could be reduced or cancelled where the lateness of the offer was as a result of circumstances not imputable on the insurer especially where he has no knowledge of the address of the victim. In my opinion, in as much as this provision seeks to protect the insurers, it gives them sufficient grounds to considerably delay the payment of compensation due the victims.¹⁰ We are however of the opinion that, the law should compel insurers to work in collaboration with the police and the courts to try and locate the address of the victim. It should only be after several attempts to trace the victim's address have failed that the insurer can be exonerated from payment of penalties for late offer of compensation. This is justifiable in the sense that most often victims of motor accidents are severely injured and spend weeks if not months in hospital for treatments where they are lucky enough to survive the accident. It is therefore presumable that if victims were strong after accidents, then they will make all necessary efforts to trace the insurer. But since this most often is not the case, the onus should be on the insurer to take reasonable steps to locate the victims. Another justification could be that these victims most often than not are not economically viable. The domicile of the insurer may be too far for them to spend that much trying to trace the insurer. For example in a case where the insurer is domiciled in Limbe and the accident took place in Maroua. It is evident that the victim will spend huge financial resources just trying to trace the insurer. Therefore, unless the insurer can show tangible proves of haven made several attempts to locate the address of the victim and failed, he should be held liable to pay penalties for late offer of compensation.

⁹ Indemnity owed by the insurer is calculated following the modalities laid down in article 258.

¹⁰ Many a times, insurers rely on this provision not to make offers of compensation on the grounds that they are not aware of the residence of the victims. But most often this is not true because police reports submitted to the insurer always often contain the victim's address.

One thing which is certain here is, the Code has created an obligation on the part of the insurers non respect of which will definitely attract sanctions. However, only a cause for disobedience which is independent of the will of the insurer could exonerate him from such sanctions. But the Code is however silent on what will constitute a circumstance which is not imputable on the insurer. Therefore an act of silence which is caused by force majeure signifies that the insurer will have to pay compensation plus interest. This is because; the insurer under the new law on compensation can no longer raise force majeure as a defence against the victim. But if the circumstances non imputable on the insurer do not necessarily constitute force majeure, the regime of payment of compensation for late offer will be one highly beneficial to the insurer. The insurer could therefore raise every circumstance as a defence except those for which he is utterly responsible. What therefore are the circumstances which can be relied upon by the insurer, apart from those expressly stated in the Code? Could it be the absence of courier distribution services or what could it be?

If the insurer however respects the deadline previewed by the Code, the judge can slap him with a penalty. This is because he has given the victim the appropriate time to appreciate the offer and to take an action to court where he is dissatisfied. One could therefore say the say the insurer has acted in good faith and it will therefore be unfair to punish him. On the contrary, where the insurer has failed to respect the time limit, will his error be regarded as a ground for the reduction of the sanctions? Certainly not, as this is considered as a fault imputable on him. A particular scenario however arises where the insurer does not know the address of the victim as expressly provided by the Code. This is of a nature to put the victim in an extremely weak position vis-à-vis the insurer and to strip him off the benefits he could get as a result of late offer of compensation. This is because the member states of the *CIMA* are developing countries with poorly developed courier services. The streets in most of these countries are neither named nor numbered and therefore tracing someone's residence becomes an uphill task. It is however clear that those insurance companies most often than not invoke this aspect to free themselves of any penalties that could be levied against them by the judge. This is why one could ask without fear of contradiction whether the *CIMA* legislators did not involuntarily sow a seed of prolongation of the compensation procedure under this article.

Finally let's consider a situation where the victim receives an offer of compensation which is late but advantageous or a payment made to him after the deadline. It is hard to imagine a victim refusing such an offer or payment on the motive that the interest for late or payment has not been included to it by the insurer. The provisions of article 231 and 233 will remain a dead letter every time the victims abstain from invoking it.

1.1.2.2.1 Protection of minors and legally incapable persons¹¹: The Code has provided protection for minors and legally incapable persons both before and after the procedure of amicable settlement. In this respect, the code states as follows:

“The insurer must submit to the judge of guardianship or to the family counsel, according to their competence to authorize, a proposed compromise concerning a minor or a legally incapable person. He must give notice without further procedure to the judge of guardianship or family counsel at least 15 days in advance of the payment of the first instalment of an annuity or any other amount which must be paid as compensation to the legal representative of the person. Any payment not preceded by the required notice or an

¹¹Article 234

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authorized compromise can be nullified at the request of any interested party or public
prosecution with the exception of the insurer”

Here the legislator is making reference the notion of absolute nullity. The threat of nullity can also be seen under article 235(2)¹². Here we can see that no possibility of appreciation is left for the judge. It is an absolute non-negotiable right given by the Code that seeks to protect the victim. However, under article 234(2), the Code gives the judge a power to appreciate when it states as follow;

“...can be nullified at the request of any interested party or public prosecution with the exception of the insurer”.

It is only logical that the insurer was specifically excluded from those that can bring an action for nullity. This is because it will be difficult though not impossible to envisage a scenario where an insurer will make payments and then subsequently turn around and make request for nullity.

Finally the interests of the victims are protected even after the process of amicable settlement and this is because the legislator has given the victim the possibility of renouncing the amicable compensation¹³. One could only understand this absolute protection given to minors and other legally incapable persons because of the fact that most often they are not able to appreciate the consequences of what they are getting in to and they are open for exploitation by some unscrupulous insurers.

1.1.2.3 Contestation of amicable settlement¹⁴: The CIMA Code gives the victim on whose behalf compromise (amicable settlement) the ability to contest such a settlement before a judge. It seems at first sight that the code really seeks to protect motor accident victims in this respect but on a second look it is not the case. The code further states that compromise could be contested but not the amount paid as compensation. Here we realize that even the powers of the judge have been limited as authority has been withdrawn from him to alternate amounts reached as compensation for the victim during compromise. What then is likely to be the substance of a victim’s challenge against compromise if it is not allowed to touch on the sum paid as compensation?¹⁵ However, the victims have another alternative of not contesting the compromise but rather terminating it¹⁶ and going to court but only after the period of 12 months has elapsed.

With the failure of the compromise, the victim is free to go to the ordinary law court so that the issue can be resolved. But however many issues begin to come into play when things actually come to this phase. For some victims, it is the first time of ever going to court and so many questions cloud their minds which are mostly on how to go about with the commencement of litigation. Many a times it is financial difficulty that poses the problem as well as illiteracy. Often, victims of motor

¹² This article states that “Any clause of the compromise to which the victim waives his right to terminate shall be null and void”.

¹³ Article 235(1)

¹⁴ Article 237

¹⁵ Victims face a similar situation when they make recourse to the National Arbitration Council for arbitration. A council in which they are not even represented and they do not have the ability to contest the decision.

¹⁶ See article 235 of the CIMA Code.

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accident are usually very poor and even to initiate proceedings by paying the necessary legal charges¹⁷ is actually a bone of contention. This hinders access to justice by the victims.

However, cost is not the only aspect that clouds the minds of victims when it comes to initiating litigation procedures. Many of these victims are illiterate and others, though schooled, but not in legal studies. They are thus lay men in the area of law. They are thus faced with issues of choosing the competent court.¹⁸ Some may thus decide to solicit the advice of a competent lawyer. Having access to a lawyer for the first time for a legal advice is however not a possibility for everyone. In some chambers you are requested to pay a first time consultation fee of 25000 frs CFA and of recent, this fee has risen to 50.000frs CFA¹⁹. This is 25 and 50 times respectively higher than the consultation fees paid in public hospitals which stand at 1000 FRs CFA. Well, of course it is often said in Cameroon, “a goat eats where it is tied”.

Nonetheless these fees are exorbitantly high for an average litigant to afford in Cameroon²⁰. This however brings us to the issue of competence which will be discussed below.

1.2 Choosing the competent court: In legal language, when referring to a court’s competence, two things immediately comes to mind which are territorial and material competence.

1.2.1 Territorial and material competence: It is surprising for us to notice that the law which governs insurance activities in Cameroon²¹ has made mention only about territorial competence and scrolling through, one would not see any article on material competence²². This two areas of competence will however be discussed below.

1.2.1.1 Territorial Competence: In ordinary law, the jurisdiction geographically competent²³ is that of the defendant except in cases where there is a contrary provision in the contract²⁴. Therefore, a clause in the contract setting another court as a competent court is however valid on the condition that it is written in a bold and clearly visible print on the contract.^{25,26} This absence of restriction is referred to as freedom of contract.²⁷ However, in insurance law, determining territorial competence

¹⁷ In ordinary law courts in Cameroon, the victim is required to pay 5% of the total sum he is claiming from the insurer as an initial deposit plus other procedural charges both present and future.

¹⁸ However, this will not be the case where they seek the advice and help of an advocate. But this does not come however without a price tag. Some lawyers task very high charges for their expert advice.

¹⁹ Consultation rates gotten from pupil barrister Elvis Achi Mbandi of Fidelity Law Firm Limbe, South West Region, Cameroon.

²⁰ Cameroon is rated by the World Bank as an upper middle income country but reality is that this statistic does not represent the standard of living of an average Cameroonian.

²¹ The CIMA Code.

²² This is just one of many areas in the code for which a vacuum has been left by the legislator.

²³ Berr C. J., Groutel H., (1978) *les grandes arrêts du droit d’Assurances*, Sirey Paris. P.398.

²⁴ Article 8 of the CCPC.

²⁵ Article 9 of the CCPC.

²⁶ Failure of such a clause to take this form will render it null and void and make its application impossible.

²⁷ Freedom of contract is the freedom of individuals and groups such as corporation to make contracts without any government restrictions. This is opposed to government restrictions

Any Safe Heaven for Motor Accident Victims? A Critical... Abue Ako Scott Eke & Abia Elisabeth Achancho is submitted to particular rules for which the primary aim is protecting the insured.²⁸²⁹ In effect, to avoid the insured being systematically deployed to a tribunal in the domicile of the insurer,³⁰ the CIMA Code has put in place a body of rules to ensure that the insured is well protected as will be examined below.

1.2.1.1.1 The principle of the tribunal of the insured's domicile³¹ as the competent tribunal: The CIMA legislator has clearly demonstrated his will to protect the insured by adopting this principle which is derogatory to ordinary law principles of civil procedure which usually is captioned in the phrase "*actor sequitur forum rei*".³² This position taken by the legislator of CIMA requires that we examine both the content and the scope of the principle.

1.2.1.1.1.1 Content of the principle: What ever may be the type of insurance concerned³³, the CIMA Code³⁴ attributes competence³⁵ to the tribunal of the domicile of the insured. It is of no importance whether the defendant is the insurer or the insured. It therefore implies that in case of litigation, the insurer will be forced to displace himself constantly until the litigation is over.³⁶ A historical justification can however be given for this principle in that a few years back in France, insurance companies previewed in the contracts that in case of a litigation, the competent courts shall be the courts of Paris. This specification caused severe hardship on insured persons living in other far off regions from Paris who needed justice. It is however to avoid such situations that the

such as minimum wage, competition law or price fixing. The freedom to contract is the underpinning of laissez-faire economics and is a corner stone of free market libertarianism. Through freedom of contract, individuals entail a general freedom to choose with whom to contract, whether to contract or not, and on which terms to contract.

²⁸ This is only however logical because in the judicial procedure, the insurer is economically more powerful in practically every case more than the insured. Choosing a competent jurisdiction which will entail less cost for the insured will definitely be highly welcomed.

²⁹ This principle is however derogatory to principles of determining competence in ordinary law.

³⁰ Insurance companies in Cameroon mostly do business all over the national territory, but most of them have their headquarters in Douala or Yaoundé. It will practically be a financial burden for an insured who is based in Garoua to leave Garoua to Douala for court hearings in a court located in Douala which is the domicile of the insurer.

³¹ In law, domicile is the status or attribution of being a permanent resident in a particular jurisdiction. A person can remain domiciled in a jurisdiction even after they have left it, if they have maintained sufficient links in that jurisdiction or have not displayed an intention to leave permanently. A corporation's place of domicile is equivalent to its place of incorporation.

³² The competent tribunal is always that of the defendant.

³³ It is however necessary to specify that this rule does not cover maritime insurance. This is because article 30 falls under Book I of the CIMA Code which essentially lays down common rules applicable to non-marine and life insurance contracts.

³⁴ Article 30.

³⁵ Ratione loci.

³⁶ The economic might of the insurer comes to play here. He has the financial means to afford such constant displacements. However, a similar burden put on the insured will spell doom for most of them and darken all prospects to pursuit justice. Of what *raison d'être* will be the putting in place of a justice system where those actually seeking justice cannot afford it?

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CIMA Legislator opted to take such a stand³⁷ by opting that the domicile of the insured be the competent domicile to hear litigation issues arising from the insurance contract.

A question however arises where the buyer of insurance is not the insured. In such a case and in the light of article 30³⁸, which court will therefore be the competent court? This question does not arise when the buyer of insurance is simultaneously the insured. Therefore, did the legislator intend that this provision should apply to contracts where the insured is simultaneously the buyer of the insurance? In other words, did the legislator intend to simply protect the insured who are most often the buyers of insurance or buyers of insurance in general? A plain reading and a literal interpretation of article 30 simply indicates to us that the legislator intends to protect the insured. Therefore, where the buyer of insurance is not the insured, he does not benefit from that clause. So in a case where an employer takes out an insurance policy on behalf of his employees, the latter who is the beneficiary is at the same time the insured. It is the domicile of the beneficiary in this case that will be taken into consideration..

The domicile of the insured here should be understood as the insured's principal place of business. The notion of domicile is always almost clear when used to determine the domicile of moral persons. But when used with respect to physical persons, it becomes somehow complicated because it is usually confused with residence.

1.2.1.1.2 The scope of the principle: The scope of the principle actually refers to the various situations in which this principle as laid down in article 30 will apply and cases where it will be considered to be applicable.³⁹

It is understood from the code that the principle applies only to disputes related to the determination of territorial competence in insurance disputes for the payment of indemnity. In the absence of this provision, it would have been article 8 (7)⁴⁰ that will determine the territorial competence of the court that will handle the insurance dispute and in this case, it is the court of the domicile of the defendant.

One would therefore ask the question, what if it is an insurance dispute but it is not related to the setting and settlement of claims? For example, an insurance dispute related to the payment of the premium or rescission of the contract. Would the rule laid down in article 30 of the CIMA Code still be applicable in the determination of the territorial competence or recourse will have to be made to article 8 (7) of the Civil and Commercial Procedure Code?⁴¹ This researchers are of the opinion that recourse will definitely have to be made to articles 8 (7) of the CCPC as a plain reading of article 30 of the CIMA Code indicates that such disputes are not actually covered.

³⁷ This was the least that could be done to really help insured persons who throughout the insurance contract are weaker parties from the inception of the insurance contract to the end of the contract. They have very little bargaining power against the insurers and it therefore becomes only logical that the law intervenes to for their course.

³⁸ Article 30 talks about the competent court being the court of the domicile of the insured.

³⁹ In law, it is often said "for every rule, there is an exception".

⁴⁰ Of the CCPC.

⁴¹ Yigbezek Z., (2003) *l'interprétation du dispositions du Code CIMA sur le Contrat d'Assurance*. Edition PUY. P.256.

Also, determining the scope of application of article 30 of the *CIMA* Code has posed a major problem to the Cameroonian judge. This could be seen in the light of the case of *Chanas Assurances v. Nkamga Jean Pierre*⁴².

In this case, Mr. Nkamga⁴³ took a third party liability insurance with Chanas Assurances⁴⁴, he was however surprised that after accidentally causing damage to a victim, his properties were seized for failure to partially compensate the victim, a compensation which ought to have been executed by his insurer the defendant. Filled with anger, the plaintiff sued the defendant for breach of contract⁴⁵ before the High Court of Bafang⁴⁶ which is the court of his domicile. In opposition, the defendant raised the question of competence of the High Court of Bafang claiming that it has no competence to hear the matter and it should rather be the court of where the defendant is domiciled, that is his permanent place of business or that of one of its agencies⁴⁷ of which none exists in Bafang. It is on this grounds that the judge rejected the insurer's claim reminding him that when it concerns setting and settlement of claims due, the court with the territorial competence is the court of the insured's jurisdiction.^{48,49}

At the end, the court condemned the defendant to pay compensation to the insured for breach of contract. The defendant not satisfied with the judgement decided to go on appeal. At the Court of Appeal, the substractum was to determine whether the litigation brought up to the High Court was one which falls under setting and settlement of claims due as propounded by article 30 of the *CIMA* Code. From the answer the court will get from this question, it will be able to determine whether the High Court was competent or not to handle the litigation at first instance. Faced with this problem, the judges of the court of appeal declared the High Court of Bafang territorially incompetent to have heard the matter at first instance.

According to the reasoning of the judges, the provisions of article 30 of the *CIMA* Code could not be applicable in this case. To them, it could be only applied where the matter relates to disputes dealing with the setting and settlement of claims due to the victim by the defendant who may accord the same provision be either the insurer or the insured. This position of the court was however only logical because an action for remedy for a breach of contract was however different from an action for indemnification related to victims. Consequently, the competent tribunal is not the tribunal of the domicile of the insured as inferred in article 30.

⁴² Judgement no. 168/Civ of 23 December 2009, handed down by the Bafoussam Court of Appeal.

⁴³ Hereinafter referred to as the plaintiff.

⁴⁴ Hereinafter referred to as the defendant.

⁴⁵ The insurer has two grounds to sue the insurer where he fails to meet up with his duty to compensate reasonable claims which are breach of contract and insurance bad faith.

⁴⁶ Bafang is found in the West Region of Cameroon.

⁴⁷ CS, judgment no. 10/CC of 21 march 1972, Bull. No.26, p. 3604.

⁴⁸ Judgement No. 10/CIV/TGI/08 of 16 July 2008. *Infra*.

⁴⁹ One would question why the provisions of the *CIMA* Code which is an international law would override the provisions of the Civil and Commercial Procedure Code which is a national law. The answer to this question is clear; in Cameroon international regulations to which Cameroon is a signatory take precedence over national legislations.

Nonetheless, looking at the Appeal Court's decision in another sense, one would ascertain that the position of the courts was somehow opaque. There is no gain saying that the tribunal of the domicile of the insured becomes the tribunal territorially competent when the dispute relates to setting and settlement of claims due as specified under article 30 of the *CIMA* Code. However this dispute as per the same article should exclusively be initiated either by the insured against the insurer or vice versa. However, these researchers think that, an action for breach of contract is an action for setting up and settlement of claims. This is because in one part of the case, the judge had to evaluate the scope of the prejudice caused as a result of the breach of contract and on another part determined compensation that was payable to the insured as a result of the said breach. Consequently, the action by Mr. Nkamga is an action for the setting up and settlement of claims due and therefore the competent court was however the court of his domicile.⁵⁰ This is to say that the notion of setting up and settlement of claims due is sufficiently broad to cover actions by the insured against the insurer for breach of contract⁵¹ which automatically makes it to fall under article 30 of the *CIMA* Code.

Furthermore, one can clearly understand this action before the court of appeal was one of a breach of a provision of the law and not a breach of a contractual provision. This is because the defendant was not actually contesting the claims put forward by the insured but rather the jurisdiction of the court before which the matter was brought. The judge would have raised this in order to avoid the application of article 30 of the *CIMA* Code and instead article 8 (12) of the *CCPC* would have been applicable. According to this subsection, actions for reparation of damages caused by a breached of the provision of the law can be heard before the court where the breach took place. Even under this particular situation, the competent court would still have been the *TGI* of Bafang⁵² even though this is just mere coincidence because the court of the place where the damage occurred is not always the domicile of the insured.

In brief, this analysis permits us to bring out the scope of competence of the court of the insured's domicile as stated under article 30 of the *CIMA* Code. However, it is not a principle that can be applied *mutatis mutandis*⁵³ to all actions related to setting up and settlements of claims due because some exceptions have however been put in place by the law.

1.2.1.2 Some exceptions of competence put in place by the law: Article 30 of the *CIMA* Code has expressly laid down some exceptions. These exceptions are related to litigations linked with movables or real estates and insurances for corporal accidents as well as direct actions by the victims.⁵⁴

1.2.1.2.1 Litigations relative to movables and real estates: In matters relating to real estates and movables of all nature, the competent court is exclusively the court where the real estate or movable property is found.⁵⁵ Nonetheless, one remark can be made from the application of this exception;

⁵⁰ Tribunal de Grands Instance de Bafang.

⁵¹ Groutel H., Leduc F., Pierre P., *Traite du Contrat d'Assurance Terrestre*. P. 763, no. 1152.

⁵² Because it was in bafang where the Mr. Nkamga suffered prejudice.

⁵³ Word to word.

⁵⁴ Article 30 (2).

⁵⁵ This provision is usually justified by the fact that it is easier for investigations to be carried relating to the damage as well as the availability of expert report for the resolution of the dispute by the court.

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firstly it gives a confirmation to the notion that the location of the insured properties more often than not coincides with the domicile of the insured.

1.2.1.2.2 Litigations relative to accidents of all nature: This exception arises from the provision of article 30 (2) which stipulate that:

“However, where this deals with accident insurance of any kind, the insured may summon insurers before the court of location where the loss was incurred”

This provision covers accidents of all kind caused to people, animal or things which are covered by insurance. It is in this vast domain that the insured may summon the insurer before the court of the place where the accident occurred.

At the same time, it is particularly important to figure out that the use of the word “may” in article 30 (2) only means that application of this provision is simply optional and facultative. This means that alternatively, the insured conserves the right to bring the insurer before the jurisdiction of the court of his domicile. For example, where an insured person covered by a personal insurance policy against accidents is domiciled in Buea but is the victim of an accident in Bamenda, the insured has the liberty to bring proceedings either in Bamenda which is the place of occurrence of the accident or in Buea which is his domicile. This option is equally given too to victims of motor accidents who are taking an action against insurers who cover third party liability insurance.

1.2.1.2.3 Where the victim takes direct action against the insurer: For a better understanding of this line of discussion, references will be made to two cases, for which judgement was passed by the Supreme Court in April, 1981.⁵⁶ These are the cases of *GRENCAM v. Fonkeng & BCM* and *GRENCAM v. Zeussi Joseph*. According to Professor Groutel, the Supreme Court decided:

« ...qu'il résulte des textes visés au moyen que le législateur a entendu attribuer une compétence exclusif au tribunal du domicile de l'assuré ou du lieu de l'accident pour toute contestation relative au contrat d'assurance, qu'il s'agisse du paiement ou de la fixation des indemnités dues par l'assureur »

From the above the decision, the Supreme Court established that the intention of the legislator regarding texts related to the attribution of competence is that the competent tribunal should be the tribunal of the domicile of the insured or the tribunal of the place where the accident happened in cases related to the determination and payment of indemnity.

However, Cameroonian jurisprudence could be criticised with regards to the autonomy of direct action that could be taken by the victims against insurers. This is because of the limited possibilities at the disposal of the victims to take direct actions against the insurer in terms of choosing the competent court. Tsomevou Rostand Gervais⁵⁷ nonetheless thinks that, the law was suppose to give the victim the opportunity to choose the competent court from at least for different options; the court of his residence⁵⁸, the court of the insurer's domicile, the court of the place of occurrence of the

⁵⁶ CS, Arret No. 81/CC of 21/04/1981, in the case of *GRENCAM v. Fonkeng & BCM*, RDC No. 23-24, p. 146 and Arret No. 79/CC of 25/04/1981, the case of *GRENCAM v. Zeussi Joseph*, RCD No. 23-24 P.158.

⁵⁷ « le Contentieux du Contrat D'Assurance dans la zone CIMA : Bilan et Perspectives ». A thesis submitted in partial fulfillment of the requirements for the award of a Masters Degree in law. Submitted to the University of Dschang, 2009, p. 143.

⁵⁸ As normally proposed under article 30 of the CIMA Code.

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accident and finally the court of the insured's residence. This proposal is however supported by these researchers because it affords better protection for victims of motor accidents.⁵⁹

One thing to note here is that all these clauses relating to competence are imperative by law. This means that under no circumstance can the insurer include any clause which derogates from these provisions of the law, for example by stating that in case of a dispute, the competent court shall be the court of the place where the insurer is domiciled. It is therefore clear from the above analysis that the *CIMA* legislator has taken a firm stand to adequately protect motor accident victims and their ability to access justice. The explanation for this position is actually a simple one; most victims of motor accidents are financially weak when compared to the financial prowess of the insurer they are facing. It is only logical that they are protected from heavy expenditures that will force them to displace themselves for considerable distances just to access justice.⁶⁰

Every plea requesting the case to be thrown out for lack of competence must constitute a fundamental part of the defence⁶¹ and the party making the request must equally make known the jurisdiction and competent court which he thinks is competent.⁶² The court could equally declare itself incompetent to handle the case where it realises that it lacks the necessary competence. The notion of competence takes a different whole turn when it comes to material competence. This is because the variables involved are completely different. Nonetheless, it is easier to determine.

1.2.2 Material Competence: The *CIMA* Code has no specific provisions dealing with determining the material competence of courts when it comes to insurance disputes.⁶³ Therefore, for a proper analysis of material competence for the purpose of compensation of motor accident victims, reference will be made to Law No. 2006/015⁶⁴ relating to the judicial organisation of Cameroon.

The Judicial Organization of Cameroon⁶⁵ as contained in the law on judicial organization comprises the following courts: Customary Law Courts;^{66,67} Courts of First Instance;⁶⁸ High

⁵⁹ By affording victims of motor accidents these numerous opportunity to choose from among, the possibility is that it minimizes the choice of a jurisdiction that will entail cost to the victim and increases the victim's access to justice as he will have the opportunity to even choose a court from where he is domiciled.

⁶⁰ Motor accident victims could also benefit from a less costly justice through judicial assistance.

⁶¹ Article 97 of the CCPC.

⁶² Lambert-Faivre Y., (2005) *Droit des Assurance*. Dalloz, 5^e éd. P. 775.

⁶³ Therefore, where the material competence of a particular court is put to question, references would only be made to national laws dealing on the subject matter.

⁶⁴ Of 29 December 2006. Hereinafter referred to as the 2005 ordinance.

⁶⁵ The Cameroonian judicial system has a tripartite classification which are courts with original jurisdiction, courts with appellate jurisdiction and courts with special jurisdiction.

⁶⁶ Deals essentially dealing with matters related to traditional disputes. An expert versed with the particular tradition. They have competence in civil matters, customary marriages, divorce and inheritance. Customary law courts apply the custom of the parties. Note should be taken that customary law courts have no competence in criminal matters. Note should also be taken that where the law has reserved a particular area exclusively to other courts, the customary law courts do not have competence.

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Courts;⁶⁹ Military Courts⁷⁰; the Special Criminal Court; Lower Courts of Administrative Litigation;⁷¹ Lower or Regional Audit Courts;⁷² Courts of Appeal;⁷³ The Supreme Court.⁷⁴ There

⁶⁷ Traditions are enforceable by Cameroonian courts provided they are not repugnant to natural justice, equity and good conscience as stipulated under section 27 of the Southern Cameroon High Court Laws.

⁶⁸ Have competence: -In Criminal Matters: All offences classified as misdemeanours and simple offences. It is competent to grant bail. Simple Offence: It is an offence punishable with a term of imprisonment of up to 10 days or a fine of not more than 25.000 FCFA. Misdemeanour: it is an offence punishable with loss of liberty from 10 days to 10 years or with a fine of more than 25.000FCFA.

-In Civil, Commercial and Labour Matters: To hear matters where the amount of damages claimed does not exceed 10.000.000 FCFA. It is competent to entertain actions for the recovery of civil and commercial debts not exceeding 10,000,000 FCFA through the simplified recovery procedure.

⁶⁹ Have competence:-In Criminal matters: To try felonies, related offences and to grant bail in felonious offences. Felony: It is a serious offence usually punishable with death or a term of imprisonment whose maximum is more than 10 years.-In Civil, Commercial and Labour matters: To hear cases related to the status of persons, marriage, divorce, filiations, adoption, inheritance; Recovery of debts exceeding 10.000.000FCFA; and cases where damages claimed exceed 100,000,000FCFA.

⁷⁰ Deal with offences committed by military personnel or civilians with the use of firearms. This court does not however try persons below the age of 18. They have competence amongst others to carry out trials for: • theft committed by the use of fire arms; • offences committed by military men in a military establishment or in the exercise of their duties; offences committed by civilians in a military establishment which causes damage to military equipment or to the physical integrity of a military man; • offences relating to the purchase, sale, production or keeping of military apparels.

⁷¹ Competent to hear administrative matters at first instance. (These courts are not yet functional, thus for the time being the administrative bench of the Supreme Court continues to hear administrative matters at first instance).

⁷² Competent to control public accounts (not yet functional).

⁷³ Hear appeals against judgments and decisions of customary law courts, the courts of First Instance, the High Courts and the Military Courts. The time limit for appeals in criminal matters is 10 days. Each Region has a court of Appeal.

⁷⁴ The Supreme Court has both original and appellate jurisdictions. The seat of the Supreme Court is in Yaoundé. Its function is to ensure that judgments of lower courts are in consonance with the law. It receives appeals from the various Courts of Appeal, the Lower courts of Administrative litigation, The Lower or Regional Audit Courts. The Supreme Court is made up of the Judicial Bench, the Administrative Bench and the Audit Bench.

The Judicial Bench: Appeals from the 10 courts of Appeal go to the Judicial Bench. These appeals are on civil, criminal, labour and customary law cases. Appeals in commercial matters from the courts of Appeal are heard by the Joint Court of Justice and Arbitration in Abidjan and not by the Supreme Court.

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are various actors involved in the judicial system.⁷⁵ They are the following: magistrates;⁷⁶ lawyers;⁷⁷ bailiffs;⁷⁸ notaries;⁷⁹ registrars;⁸⁰ judicial police officers.⁸¹ The law on Judicial Organization states that Justice shall be administered in the name of the people of Cameroon.

The administrative Bench: It hears appeals against decisions in disputes relating to regional and council elections. It is also competent to hear appeals from the lower courts of administrative litigation.

The Audit Bench: It controls and rules on the accounts of State, public and semi public enterprises. It also gives final judgment on the decisions of Regional Audit Courts.

⁷⁵ These actors are generally referred to as the auxiliaries of justice.

⁷⁶ They perform different functions. There are presiding Magistrates and judges, Examining magistrates, State counsel and Procureur General.

a) Presiding magistrates / Judges: These magistrates act as referees between parties in matters brought before them. They sit in court, hear matters and take decisions on them. In the courts of first instance, these magistrates are called presiding magistrates. In the High Courts and Higher Courts, they are called Judges.

b) Examining Magistrates: These are magistrates who carry out criminal investigations (preliminary inquiry) in felonious offences, all offences committed by persons below 18 years and in some misdemeanours. Anyone may decide not to lodge a complaint with the judicial police officer but instead lodge a complaint directly with the Examining magistrate. Examining Magistrates are found in the courts of First Instance, High Courts and Military Courts. The preliminary inquiry is not open to the public. Only parties involved in the inquiry are allowed to attend the inquiry. However, the examining magistrates may at their discretion allow any other person to attend the inquiry.

c) State Counsel: These magistrates are in charge of enforcing laws, regulations and judgments and control criminal investigations and prosecution in their geographical area of competence. In the execution of their functions, the State Counsel amongst other things receive complaints, issue warrants of arrest, search warrants and control Judicial Police cells to make sure that suspects are detained in respect of the Law. They are the Bosses of Judicial police officers in their area of competence as far as criminal investigations are concerned. State counsel is assisted by deputy state counsel. The office of the State Counsel is called the State Counsel's Chambers.

d) Procureur General: Each of the 10 Regions in Cameroon has a Procureur General. His or her office is called the Procureur General's Chambers. The Procureur General is in charge of the enforcement of laws, regulations and judgments and oversees criminal investigations in his region. He is the boss of all the State Counsel in his region. The Procureur General is assisted in his job by the Advocate General and the Substitute General. The State Counsel's Chambers and the Procureur General's chambers are both referred to as the Legal Department.

⁷⁷ They advise, assist or represent their clients. They ensure their defence. The client can be:

- an accused in a criminal case
- the victim of an offence
- a person instituting a civil matter
- a person defending a civil matter
- or anybody in need of legal advice

However, our point of interest with the above mentioned courts will be with regards to their material competence in civil and commercial matters as provided by the judicial organisation law of 2006.⁸² In this respect, the 2005 Ordinance⁸³ states that where in a civil and commercial matter the amount of money claimed as damages is lower than ten million (10.000.000) frs cfa, it is the Court of First Instance that shall be competent to handle such a claim but if the claim is above ten million (10.000.000) frs cfa, then the competent court shall be the high court.⁸⁴

In an action taken by the insurer against the insured for payment of premium, the competent court is determined in function of the total sum the insurer is actually claiming from the insured as premium. When the amount is determined, the same rules stated in articles 15 and 18 of the 2005 ordinance will then apply to determine the competent court. Alternatively, in an action by an insured or a third party beneficiary reclaiming compensation from an insurer for damage suffered, the competent court will be determined by the amount which is being claimed by the former.

But where the premium to be paid by the insured varies and therefore not clearly stated, the court of first instance loses its competence because the amount reclaimed is not determined. In such circumstances, the high court automatically assumes competence.

In case of an emergency, the competent court is the court of first instance. Where there are difficulties in enforcing the court's decision because it is being contested by one party, the

The lawyer exercises a liberal profession. The resort to a lawyer is not obligatory. It all depends on the litigant. The lawyer is paid by his client. However in certain cases the state pays the lawyer on behalf of the litigant. Generally in criminal or civil matters, where a person is too poor to afford a lawyer, he can apply to the Legal Aid Commission for a lawyer to be appointed to represent his interest. The Legal Aid Commission will only grant the application in fit cases as required by law. However, the appointment of a lawyer for the accused person by the judge is mandatory in criminal cases where a person is charged with an offence punishable with life imprisonment or death and cannot pay a lawyer to defend him. Where an accused is below 18 years and has no lawyer, the presiding magistrate or judge must assign one to him or her. The appointed lawyer is paid by the State.

⁷⁸ They are officers in charge of serving court processes like summonses. They are also in charge of the execution of decisions of the court. They also draw up reports on events.

⁷⁹ They are in charge of drawing up deeds e.g. For the sale of landed property. In the South West and North West Regions, lawyers in addition to their other functions act as notaries.

⁸⁰ They receive and direct the public to the various services of the courts and legal department as well as other judicial services. They act as clerks of court during trials and registrars in attendance at preliminary inquiries. They keep registers.

⁸¹ They consist of police, gendarmes (Note should be taken here that not all police and gendarmerie staff are judicial police officers. Only those empowered by law to investigate offences are judicial police officers) and staff of certain departments (e.g. the Ministry of Environment and Nature Protection, the Ministry of Forestry and Wild Life etc) who are empowered by the law to carry out investigations in criminal matters.

⁸² This is because insurance disputes are of a civil and commercial nature.

⁸³ Article 15 (1) (b).

⁸⁴ Article 18 (1) (b).

competent tribunal is determined by Law No. 2007/01 of 19 April 2007.⁸⁵ The Cameroonian legislator has reduced⁸⁶ and redistributed the competence which was initially wielded by the President of the Court of First Instance. Competence has now been shared between the presidents of three separate jurisdictions⁸⁷; courts with original jurisdiction which are the Court of First Instance and the High Court and then courts with appellate jurisdictions which are the Courts of Appeal and the Supreme Court. These courts have material competences to handle both civil and commercial matters as well as criminal matters. Most often, it has been thought by some authors⁸⁸ that litigations related to insurance, can only be of a civil and commercial nature. This assumption has often been drawn because insurance contracts are usually of a civil and commercial nature too. However, there are certain instances where an insurance dispute can be subject of a criminal investigation. Therefore, where insurance litigations are purely of a commercial and civil nature, the commercial and civil chambers of these courts become automatically competent to handle such issues. But in instances where the litigation contains some criminal elements, it goes under a repressive chamber, usually headed by a state prosecutor in the person of a State Counsel⁸⁹ or a Procureur General⁹⁰ depending on the particular court competent to handle such disputes. We shall therefore examine below the competence of these different chambers in insurance litigations.

1.2.3 Competence of the Civil and Commercial Chambers: The frequent use of the word Civil and Commercial Chambers should not be misunderstood because in reality these are two separate chambers handling two separate categories of disputes.⁹¹ Therefore, it is important to note that, where the insurance contract is of a civil nature for both parties, the plaintiff has to seize the civil chambers but where the insurance contract is of a commercial nature for both parties, the plaintiff has to seize the commercial chambers. Where the contract is of a mixed nature, that is to say civil for one party and commercial for the other, the party for which the contract is commercial can only seize the civil chambers but the party for whom the contract is civil has the choice between the civil or the commercial chamber. One thing to note here is that determination of the competent chambers lies essentially on the quality of the plaintiff, that is whether he is a trader or not. This assertion therefore requires the following clarifications;

⁸⁵ This law puts in a judge to handle disputes related to court decisions and acts passed by state administrators.

⁸⁶ Fometeu J., (2007) « le juge de l'exécution au pluriel ou la parturition au Cameroun de l'article 49 de l'acte uniforme OHADA portant voies d'exécution », in *Juridis Périodique* No. 70, April May, J'une 2007, P. 103.

⁸⁷ Anoukaha F., (2007) “ le juge du contentieux de l'exécution des titres executoires : le législateur Camerounais persiste et signe...l'erreur » in *Juridis Périodique* No. 70, April May, J'une 2007, P. 34.

⁸⁸ Assi Ezzo A. M., Issa Sayegh J., Jacqueline L-O., (2002) « CIMA, Droit des Assurance ». Bruylant, Bruxelles. P.224, No. 667-669..

⁸⁹ This term is used to address state prosecutors of the courts of first instance and the high court under Cameroonian law.

⁹⁰ Under Cameroonian judicial law, this term is used to address state prosecutors of the appeal courts and courts higher than the appeal courts.

⁹¹ Tsomevou R. G., (2009) « le Contentieux du Contrat D'Assurance dans la zone CIMA : Bilan et Perspectives ». A thesis submitted in partial fulfillment of the requirements for the award of a Masters Degree in law. Submitted to the University of Dschang, , p. 146.

On the part of the insured natural person who is a trader, the insurance contract is a commercial contract when its purpose is to insure the insured's business. This actually means that, where a contract is taken to insure the life of the insured, it does not fall within the ambit of a commercial contract and therefore has no business with the commercial chambers. Where the insurance contract insures a moral person carrying out commercial activities, then the insurance contract is always considered as a commercial contract.

1.2.4 Competence of the repressive chambers: As mentioned above, for a long time, some authors have been of the opinion that repressive chambers of the competent courts that handle insurance disputes have no competence materially to handle insurance disputes because these disputes are mainly of a civil or commercial nature. However this is true to an extent but unfortunately not in all cases. The repressive chambers can have competence to handle insurance litigations in cases of third party liability insurance, especially in the domain of motor insurance. The Cameroonian Penal Code expressly criminalises the following driving faults:

- i. Driving under the influence of drugs and alcohol,*
- ii. Driving a vehicle for which you don't the appropriate driving license,*
- iii. Hit and run drivers with the intention to avoid identification and liability⁹²*

Therefore, where an insured driver is guilty of any of these offences, it is the repressive chamber that has the authority to handle such a case because of the criminal ingredients inherent therein. However, the victim can claim damages and therefore constitute a civil party to the proceedings⁹³. According to the Harmonised Criminal Procedure Code^{94,95}, he may do so by making an oral or a written application for damages in court but where he fails to do so, the presiding Magistrate⁹⁶ has to inform him of this right. The victim ought to make this application before the end of the proceedings before the court, if not it will be inadmissible.⁹⁷ It is not however only sufficient for the party to make an oral or a written submission to the court, but he equally has to indicate the damages which he is claiming⁹⁸. The criminal chamber has the competence to handle both the criminal and the civil litigations concurrently. Therefore, it can award damages to the civil party while at the same time pass judgement for the criminal charges. In passing the judgement, the presiding magistrate has the responsibility to mention in his judgement that the victim constituted the civil party in the case.⁹⁹ Where the victim is summoned by the court as a civil party but does not appear to indicate his claim, the court passes judgement on the criminal action only. But the victim however, does not lose his right to bring a civil action¹⁰⁰. In a case where the victim elects to withdraw his claim for damages during the criminal trial, this shall not bar his right to claim damages before a civil court.¹⁰¹

⁹² Section 290 (1).

⁹³ Article 385 (1) of the Harmonised Criminal Procedure Code.

⁹⁴ Instituted by Law No. 2005/007 of 27 July 2005.

⁹⁵ Hereinafter referred to as the HCPC.

⁹⁶ Section 385 (3) of the HCPC.

⁹⁷ Section 385 (4) of the HCPC.

⁹⁸ Article 385 (2) of the HCPC.

⁹⁹ Article 385 (5) of the HCPC.

¹⁰⁰ Article 385 (6) of the HCPC.

¹⁰¹ Section 385 of the HCPC.

However, the above provisions of the HCPC cannot be applied smoothly when the civil litigation is one arising from a contract of insurance. This is because of some specifications inherent in the law governing insurance. According to the CIMA Code, insurance litigations for compensation can only be brought to court only upon expiry of a period of 12 months after the occurrence of the accident¹⁰². This period has been left open for amicable settlement or compromise between the victim and the insurer. In a nutshell, it is practically impossible for a victim to constitute a civil party in a criminal trial before the expiration of 12 months where the civil dispute arises from an insurance contract. Therefore where such claims are made by a victim, the judge has to reject the claim.

In practice, judges don't usually reject the claims. Instead, they resort to endless adjournments until this 12 months period is over. In our opinion, this is not a good practice because it increases expenditure on the part of the victim whom the very law seeks to protect economically. It would have been proper for magistrates and judges to simply respect the provisions of the law and educate the victims on when their actions shall be admissible in court.

Furthermore, the insurer against whom the victim is making the claim has to be the defendant to the civil litigation brought before the courts by the victim. This is because he has to defend himself and the insured driver¹⁰³ from the claims made by the victim. Insurers normally have the duties to defend third party claims against their clients and to settle reasonable claims¹⁰⁴. For a long time, it was not possible for the insurer to be a part of the civil litigation brought up against the insured before a criminal court. He could not defend himself from the claims and interest demanded by the victim.¹⁰⁵ It was in a bid to correct this situation that a law¹⁰⁶ was passed in France to reinforce the protection of victims. This law opened the way for insurers to be part of the criminal procedure¹⁰⁷.

This intervention by the insurer can take place through two means; the insurer can voluntarily join the process spontaneously as the civil action is engaged alongside the criminal action¹⁰⁸. Alternatively, the insurer can be compelled by the court to be part of the litigation. Most often, it is the victim that demands for the appearance of the insurer in court so that he should be part of the criminal procedure but sometimes it is the insured that makes the request. In the first instance, the repressive chambers entertains a case between the victim and the insurer and in the second instance, they entertain a dispute between the insured and the insurer.

As mentioned above, a party can only take a dispute to court only upon the expiration of 12 months after the occurrence of the accident. However, access to the courts and the cost of obtaining justice has always been a real worry for victims who often complain about the high cost and the

¹⁰² Article 231 of the CIMA Cde.

¹⁰³ One of the duties of an insurer in a liability insurance contract is the duty to defend.

¹⁰⁴ Non respect of these duties can lead to claims by the insured for breach of contract and insurance bad faith.

¹⁰⁵ On this pretext, it was always possible for the insurer to reject judgments passed by the courts on the grounds that he was not a party to the litigation and therefore the judgment cannot be enforced against him.

¹⁰⁶ The French law of 8 July, 1983.

¹⁰⁷ See Alessandra P. (1989) *l'intervention de l'assureur au procès pénal*, Economica.

¹⁰⁸ In most cases, such intervention by the insurers is previewed in the third party liability insurance contract. for example, this is the import of article 29 of the motor insurance policy of Chanas Assurance.

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endless delays through adjournments. Nonetheless, the victims have another possibility of getting their disputes resolved through a cheaper and faster means which takes the form of arbitration as will be examined below.

1.3 Recourse to arbitration¹⁰⁹ and its effects on the compensation of victims: Arbitration is the institution of a private justice system through which disputes are exempted from going to ordinary courts and are solved by individuals empowered in the particular circumstances with the mission to judge them¹¹⁰. It can be both of a legal and contractual nature¹¹¹. Legal because not only is the arbitral procedure identical to that of ordinary courts but also the award can be attached to an ordinary court judgement. Contractual because the authority of arbitrators finds its source in the agreement of the parties.

The advantages of resolving disputes through arbitration are that, it is confidential,¹¹² fast, easy and efficient. People with commercial disputes often prefer to resort to arbitration.¹¹³ Whether we talk of ad hoc arbitration¹¹⁴ or institutional arbitration,¹¹⁵ the parties are disposed more or less with a certain margin of liberty in determining how the arbitration proceedings unfold.¹¹⁶

The key therefore is to know whether it is possible to submit all disputes to arbitration.¹¹⁷ More specifically, one might ask whether arbitration may be a proper means of resolving disputes arising from insurance contracts.¹¹⁸ In other words, can disputes arising from insurance contracts be

¹⁰⁹ Arbitration is a form of Alternative Dispute Resolution. It is a technic of resolving disputes outside the courts. The parties to a dispute refer it to arbitration by one or more persons often referred to as arbitrators and agree to be bound by the arbitration decision often referred to as the arbitral award. A third party reviews the evidence in the case and imposes a decision that is legally binding on both sides. This decision is equally enforceable in the ordinary law courts.

¹¹⁰ Robert J., Moreau B. (1993) *L'arbitrage*. Droit Interne. Droit International Privé, Paris, Dalloz, 6^e ed. P.3.

¹¹¹ See Kassiss A., (1987) *Problemes de base de l'arbitrage*, Tome I, L.G.D.J. P.25.

¹¹² It is not resolved in the presence of the public like in ordinary law courts.

¹¹³ This is because most often, ordinary law judges don't have mastery of commercial issues. Therefore, it is better to pick a commercial expert who better understands the nature of commercial transactions and can therefore resolve such disputes with dexterity and efficiency.

¹¹⁴ In ad hoc arbitration, the arbitral tribunals are appointed by the parties or by the appointing authorities chosen by the parties. After the arbitral tribunal has been formed, the appointing authority will normally have no other role and the arbitration will be managed by the tribunal.

¹¹⁵ In institutional arbitration, the arbitration will be administered by a professional arbitration body providing arbitration services such as the LCIA in London or the ICC in Paris.

¹¹⁶ Pougoue P.G., Fénéon A., et Tchakoua J.M., (2000) *Droit de l'Arbitrage dans l'Espace OHADA*, Collection Droit Uniforme. Yaoundé, PUA, p. 13.

¹¹⁷ As mentioned above commercial disputes suits better to arbitration than other forms of disputes.

¹¹⁸ For a clearer understanding, see Chey R., *l'Arbitrage et le Contrat de Consommation: le point sur l'état du droit*. Mémoire de Master 2 Recherche, Option Droit Européen et

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submitted to arbitration? This is the question of objective arbitrability of disputes arising from the insurance contract, which arises because of the diversity of actors currently involved in the economic sphere, such as the insurance consumers; whose protection is required in view of his weakness vis a vis insurers¹¹⁹.

As a general rule, arbitration is possible only with rights that one has the power to freely dispose of¹²⁰. A right which we can freely dispose of is one which is available¹²¹. A right is available when it is in total control of its owner. In insurance law, the possibility is given to the parties to resolve their disputes by way of mediation¹²², conciliation¹²³ or transaction¹²⁴, and this signifies that, they are free to exercise their right. Therefore, there is also the possibility of submitting insurance litigations to arbitration.

If recourse to arbitration by compromise has very often been acceptable despite the risks that could face the insured and victims of motor accidents, the question of the inclusion of arbitration clauses in insurance contracts is even more dangerous¹²⁵. For a long time in French law, both jurisprudence¹²⁶ and the legislator¹²⁷ asserted the principle of the compromise clause on the ground

Internationale des Contrats, Université Lumière Lyon 2, 2006. Retrieved from www.memomiroonline.com, on 15 January 2015.

¹¹⁹ In insurance contracts, the insured is often referred to as the weaker parties. This is because one fundamental characteristics of motor insurance contract is that it is a contract of adhesion in which one party who is the insurer lays down the rules and procedure and the other party has to either take it without any modification or leave it.

¹²⁰ See Article 2(1) of the Uniform Act on Arbitration (AUA).

¹²¹ Pougoue P.G., Fénéon A., et Tchakoua J.M., (2000) *Droit de l'Arbitrage dans l'Espace OHADA*, Collection Droit Uniforme. Yaoundé, PUA, p. 66.

¹²² For many lawyers, “mediation” and “conciliation” are synonymous but however they possess portray a considerable distinction. The mediator, who is usually appointed by agreement between the parties, attempts to assist the parties to the dispute to negotiate a settlement. He may do so by discussing the disputes separately with each of the parties, drawing attention to the strength and weaknesses of each case and attempting to get the process of negotiations going. If the parties so wish, this may take place in a joint session or may be a combination of separate and joint sessions.

¹²³ This is similar to mediation, but with a difference that the conciliator will take a view on what he considers will be fair to settle the disputes. That view will be put to the parties as a recommendation which may be accepted by them or which may form the basis for further negotiations between them. The recommendation is not binding on the parties.

¹²⁴ For an elaborate discussion on these notions of alternative dispute resolutions, see Mark H. J., Nicholas G., and (1996) *International Commercial Arbitration: A Handbook*. LLP, P. 11. See also De Bourneville P., (2000) *Droit Judiciaire, L'Arbitrage*. Ed. Larcier, p. 109, no. 93.

¹²⁵ These problems only occur when it concerns national laws. In international law, insertion of compromise clauses has never, properly speakin posed any problem between insurers and insured. Compromise clauses don't concern arbitration insurers and victims of road traffic accidents.

¹²⁶ L'arret Prunier CIV. I, 10 juillet 1843. See also Turgne F., (2007) *l'arbitrage en matiere d'assurance et de reassurance*. Economica, Paris, p.242; Chey R., *l'Arbitrage et le Contrat de Consommation: le point sur l'état du droit*. Mémoire de Master 2 Recherche, Option Droit

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that it constitutes an abusive clause,¹²⁸ which could be harmful to the interests of the insured. However, the revised version of article 2061¹²⁹ provides that compromise clauses in agreements are valid when the parties concerned are traders.

The *CIMA* Code for its part provides a set of implied provisions¹³⁰ in order to reduce the power of unilateral decision of insurers. In the absence of measures which prevent, restrict or regulate unfair terms, these implied provisions cannot automatically be cancelled by the courts¹³¹ because, as the saying goes, "what is not forbidden is allowed."

It can therefore be inferred from this survey that arbitration is possible in the resolution of motor insurance litigations. In our views, this could be an effective means for the protection of victims and insured¹³², because not all disputes necessarily require a judicial response. Authors like Paul Baylac Martres¹³³, have supported the use of Alternative Dispute Resolution methods to resolve disputes. According to this author, using ADR¹³⁴ is a sign that truly, the parties to a litigation seek justice and true justice cannot only be achieved through judicial procedures and some disputes suit well to arbitration. Therefore, justice will be better achieved in ADR. To him, emphasis should be made on all methods of resolving disputes that lead to social harmony. It is therefore necessary to examine whether resolving motor insurance disputes through arbitration is undergoing an important experience. In other words, is the use of arbitration in the resolution of motor insurance disputes gaining grounds?

Firstly, it should be noted that the *CIMA* legislator somewhat passive when he makes provision for arbitration.¹³⁵ The Code talks about the National Commission for Arbitration¹³⁶ but mentions it deals only with disputes between insurers. But practice has extended this competence by enabling victims of road traffic accidents to seize the Commission in disputes between the victims and the insurers.

Européen et Internationale des Contrats, Université Lumière Lyon 2, 2006. Retrieved from www.memomoiereonline.com, on 15 January 2015.

¹²⁷ The former version of article 2061 of the French Code Civile stated «la clause compromissoire est nulle s'il n'est dispose autrement par la loi ».

¹²⁸ Law No. 90/031 of 10 August 1990, Regulating Commercial Activities in Cameroon has extensively dealt with abusive clauses in commercial contracts. See also Nyama J. M., « la liberte du commerce et de la concurrence dans la loi camerounaise du 10 aout 1990 » R.J.A, no 2et 3, 1992, pp. 51-74, see also the case of SONEL-ACC-SOCAR C v. Poissonerie Populaire, Juridis Periodique no. 24 p.55, obs.

¹²⁹ Of the Code Civile.

¹³⁰ Any agreement that goes contrary to this provision is null and void.

¹³¹ Assi Ezzo A. M., Issa Sayegh, J., Jacqueline, L.O., (2002) : *CIMA, Droit des Assurance*, Bruylant Bruxelles. P. 188.

¹³² This is related mainly the advantages mentioned above which arbitration has over litigation in ordinary courts.

¹³³ Baylac M. P., contributions des modes alternative et plus particulierement de la mediation a l'évolutions du reglement des conflits, these de doctorat, Universite Pantheon Assas, 24 septembre 2002, p.149.

¹³⁴ Alternative Dispute Resolution.

¹³⁵ Article 276 of the *CIMA* Code talks about the National Commission for Arbitration.

¹³⁶ Better known by its French acronym as CNA and herein after referred to as CNA.

Furthermore, another question that arises here again is do the parties to a motor insurance contract consider recourse to arbitration as an adequate means of dispute settlement? The answer is obscure because despite the existence of some scattered arbitration conventions, its importance is still somewhat marginal because of a certain hesitation to use it.

1.3.1 Recourse to arbitration by victims of motor accidents: When an accident occurs, the insurer is required by the *CIMA* Code,¹³⁷ to approach the victims not later than 12 months after the occurrence of the accident to make them an offer of compensation. But very often, the insurers keep a total and embarrassing silence¹³⁸ despite the many reminders of the victims¹³⁹, or they propose a misleading and pathetically unfair offer, contrary to the provisions of the Code.¹⁴⁰

It is only after 12 months¹⁴¹ that the dissatisfied victim can be admitted to initiate any legal procedure necessary to obtain a humane and fair compensation. If subconsciously, they undertake a direct action against the insurer in the ordinary courts, they shall equally be given the opportunity in practice to resort to the National Arbitration Commission established by the Association of Insurers of Cameroon.¹⁴²¹⁴³ The question that arises therefore is what is the justification for this double privilege given to the victims of motor accidents? This shall be what we will examine below.

1.3.2 Justification for Recourse to the NAC by Victims of Motor accidents: These justifications are mostly linked to the benefits and advantages that are generally attached to arbitration as well as the weaknesses that lie in litigation procedures in ordinary courts.

1.3.2.1 The Weaknesses of the Judicial Procedure: Much literature on judicial procedures at ordinary law courts have very often outlined the weaknesses inherent therein and this is constantly scaring and pushing litigants away.¹⁴⁴ This feeling though sad, is increasingly justified today. We are not struggling to highlight the weaknesses of the *CIMA* Code in this situation, we are trying to demonstrate that ordinary law jurisdictions, be they civil or criminal, present a lot of weaknesses and inconveniences¹⁴⁵ which justifies why through arbitration, the victims seek a much better protection. These inconveniences however affect both the insured and the insurer as is examined below.

¹³⁷ Article 231.

¹³⁸ It is common knowledge that insurers are always quick in collecting premium but slow in paying legitimate compensation claims from victims after the accident has occurred.

¹³⁹ Article 240 of the *CIMA* Code contains a list of documents which the victim must provide upon the request of the insurer.

¹⁴⁰ Article 243 of the *CIMA* Code succinctly explains what should be contained in an offer.

¹⁴¹ The Code restricts any party to a motor insurance litigation from bringing actions in court except after a period of 12 months has elapsed since the occurrence of the accident. This is in a bid to encourage amicable settlements.

¹⁴² Better known by its French Acronym as ASAC.

¹⁴³ Created by Ordinance No. 85/03 of 31st August 1985. It is an association that regroups all the registered insurers carrying out insurance in Cameroon. Their mission is to defend the interests of their profession, promote the development of the insurance sector and to seek solutions to problems plaguing the insurance market.

¹⁴⁴ Racine J., (1999) *Les Plaideurs*. Paris, Garnier Flammarion.

¹⁴⁵ See for example Ohandja E.A., « des épines dans la rose des accidentés, de la route ou la longue histoire de désillusion », *Juridis Periodique* No. 75, juillet-aout-septembre 2008. P.74.

1.3.2.1.1 The high cost of litigation procedures: Many litigants reject judicial procedure because of the multitude of fees that are required there¹⁴⁶.

One of the most important factors relates to the fact that the plaintiff has to deposit a certain amount of money to the court when commencing litigation. This is the requirement of the Civil Procedure and Commercial Code.¹⁴⁷

This provision however does not necessarily seek to impede justice but however, one would say it works contrarily to the principle of gratuity of justice¹⁴⁸ especially for an applicant (the insured or the motor accident victim) whom despite being poor must deposit 5%¹⁴⁹ of the amount of which he is from claiming the insurer. The question that arises here is what if he cannot afford it? Is poverty supposed to constitute a barrier to justice? How can justice be free but still people can't afford it because they are poor? This is actually a great travesty to the principle itself. Justice can therefore be free only in principle.

The Cameroonian legislator has made efforts to establish a palliative to this situation, which lies in the possibility of requesting for legal assistance¹⁵⁰. The weaker party¹⁵¹ to the insurance contract dispute may request that the judge cancel different procedural and even subsequent charges that may ensue during the proceedings. Thus, judicial assistance excludes ipso facto the payment of any subsequent charges that may be fixed by the presiding judge¹⁵². This was the view taken in the case of *Chouapi Deumaga Jean Marie v. AGF insurance*¹⁵³.

In this case, the plaintiff Mr. Chouapi instituted an action against the insurer (defendant) claiming the sum of 545 041 691 FCFA. However the plaintiff was in a financial difficulty and could not pay the initial sum required as a percentage of the amount he is claiming against the defendant insurer. Since the plaintiff could not meet his financial obligations, the insurer incessantly solicited that the court should declare the claim irreceivable. However, the judge dismissed the insurer's request stating that aspects related to procedural charges are the solely addressed to the court registrar.¹⁵⁴ This decision was later confirmed by the Bafoussam Court of Appeal¹⁵⁵. This however goes a long way to show the extent to which the courts are willing to go in order to stop the insurer from making excuses not to pay compensation to victims especially when we know that judicial assistance basically covers all the procedural charges.

¹⁴⁶ However, in principle, justice is free in Cameroon.

¹⁴⁷ In its Article 24.

¹⁴⁸ This principle of gratuity of justice has been enunciated in Article 8 of the Cameroonian Judicial Reform of 1998.

¹⁴⁹ This amount is constantly mutated.

¹⁵⁰ The ability to request for judicial assistance in Cameroon existed as far back as 1976 by way of decree no. 76/521 of 9 November 1976 relating the organisation of judicial assistance. This decree has recently been modified by law No. 2009/004 of 14 April, 2009.

¹⁵¹ The insured is always considered as the weaker party.

¹⁵² Even the insurer is not permitted to raise non-payment of procedural charges by the victim as a ground for which the case should be thrown out from court.

¹⁵³ Judgment No.11 / ADD / CIV / TGI / 08 delivered on 16 July 2008.

¹⁵⁴ See Article 24(3) of the Civil Procedure and Commercial Code.

¹⁵⁵ Arret No. 84/CIV of 10/06/2009.

However, referring to judicial assistance as cure for the outrageous procedural charges and initial deposits may be somehow misleading. This is because judicial assistance in some cases remains hypothetical, with regards to the numerous criticisms expressed against Law No.2009/004 of 14 April 2009, regulating judicial assistance. This is because keeping apart the procedural charges and deposits, there are equally other charges that arises like using the services of an advocate and solicitor. It would have been better if the Cameroonian legislator would have put in place a form of judicial assistance where all necessary litigation expenditures would be covered for victims of motor accidents. This is because most of these victims are always in a financially weak position.

Furthermore, our judicial assistance system is filled with insufficiencies and is too anaemic to be socially effective. This is because elsewhere where this practise is obtained, its contents are different. For example in French Law¹⁵⁶, judicial assistance is defined as

« toute opération consistant, moyennant le paiement d'une prime ou d'une cotisation préalablement convenue, à prendre en charge les frais de procédure ou à fournir des services découlant de la couverture d'assurance en cas de différend ou de litige opposant l'assuré à une tiers ».

We can see from this provision that the French Insurance Code has set up a specific provision for judicial assistance to victims of motor accidents. The question that arises here is that should judicial assistance be equally regulated¹⁵⁷ for victims of motor accidents in Cameroon. Such regulation will definitely be welcomed especially when it covers procedural costs between the insured and the insurer not only in litigations submitted to ordinary law courts but equally extended to litigations submitted for arbitration. Other charges that should equally be covered are those spent by victims and insured on hiring lawyers as well as additional expenses that may arise as a result of the long delays and adjournments by the courts for one reason or another. If all these items are taken into consideration, a better regime of protection will be awarded victims of motor accidents.

1.3.2.1.2 The slow nature of judicial procedure¹⁵⁸:

This delay is in many folds.

First, it should be noted that when the courts are seized with a direct action by the victim against the insurer, decisions come after several months or years, decisions which deviate partially or completely out of the anticipated delay sanctions found in the *CIMA Code*¹⁵⁹¹⁶⁰. Also, not only does the litigation procedure suffer from numerous adjournments which necessitates the victim to have a strong will power to continue with the proceedings but equally, the judges shows signs of complacency with the endless delay tactics manifested by the insurers. In our opinion, this is where

¹⁵⁶ Article 127 (1) of the French Insurance Code.

¹⁵⁷ For more on this subject see Belinga Bella L., *Spécificités du Contrat Camerounaise d'Assurance de Protection Juridique*, mémoire DESA IIA Yaoundé, 1996-1998, see also Akponne T., *Assurance de Protection Juridique, Technique et Stratégie de Développement dans les états membré de la CIMA. Mémoire DESA, IIA Cameroun.*

¹⁵⁸ Justice delayed is justice denied.

¹⁵⁹ Article 233

¹⁶⁰ The only circumstance which permits the insurer not to pay penalties for late offer is where he can proof that he was not aware of the address of the victim. However, many a times, the investigators of the accident take the pain to state the complete address of the victim. One would therefore wonder why the courts rescind from enforcing the provision of article 233.

judicial assistance is a necessity. Many a times insurers use delay tactics to weaken the will power of the victims¹⁶¹, increase their expenditure on the proceedings all in a bid to get them abandon judicial procedures and accept out of court compensation which are always very small and unrepresentative of the actual damage suffered and the necessary compensation previewed by the Code.

However, the decisions arrived by the courts become the object of numerous stay of execution which are most often unfounded. See the case of *Massah Wabo V. SAAR Assurances*¹⁶². Therefore, the desire by the insured to opt for an alternative less long and cumbersome litigation procedure begins to emerge.

We however take note of a certain vacuum created by the new Civil Procedure and Commercial Code on the question of the insurer's appearance in court¹⁶³. The texts do not in effect preview any sanctions for an insurer who despite being regularly solicited in court in person, fails to appear. However, he can be represented¹⁶⁴ but if this is not the case, the judgement will not be reputed as being "*contradictoire*"¹⁶⁵. However, the Civil and Commercial Procedure Code states that where the insurer is solicited in person and he fails to appear, the judgement will be passed considering that that the both parties have been heard.¹⁶⁶ Many a times, insurers rely on this provision to absent themselves constantly from court sessions and to later on come back to oppose the court decision by proving they had a tangible reason for their absence. This has the effect of slowing down the compensation procedure for victims of motor accidents¹⁶⁷. In this respect, NGOUBEYO Sébastien¹⁶⁸ is effectively of the same opinion.

However, arbitral awards¹⁶⁹ are not always faced with similar difficulties¹⁷⁰. This is because arbitral awards are always signed by all the members of the association of insurers¹⁷¹ including that of the insurer involved in the litigation.

¹⁶¹ In some cases, just in a bid to cause delays, the insurer request for a legal expert to check on the authenticity of the medical reports showing damages suffered by the victim, whereby the doctor has already confirmed that those damages are real.

¹⁶² CS, Ordonnance No. 3618 du 15 Janvier 2010.

¹⁶³ In criminal matters, appearance in court of the accused is however compulsory but not in civil matters.

¹⁶⁴ Article 353 of the Civil and Commercial Procedure Code.

¹⁶⁵ A judgement passed after both parties have been heard in court.

¹⁶⁶ See Article 349 of the Civil and Commercial Procedure Code.

¹⁶⁷ However, if financial sanctions were meted out for this absenteeism, insurer will definitely always make it to court to avoid this financial sanction. Through this the litigation procedure will be faster as well as the compensation procedure for victims of motor accidents.

¹⁶⁸ Ngoubeyo S., Reflexion sur l'indemnisation des victims d'accidents des circulation dans la zone CIMA : le cas du Cameroun. *Juridis Periodique* No. 82, 2010, p. 108.

¹⁶⁹ See appendix for a sample of an arbitral award.

¹⁷⁰ This is because arbitral awards are always signed by the representatives of Insurance companies under the association of insurers, including that of the insurance company to the litigation.

¹⁷¹ ASAC (Association of Insurers of Cameroon).

Finally, court registrars¹⁷² often fail to respect the provisions of article 443 of the Civil and Commercial Procedure Code¹⁷³. This however causes delays in the transfer of files to the Appeal Court and therefore slows down substantially the compensation of victims of road traffic accidents. Had this not been the case, these victims would however benefit from the rejection of the appeal from the courts on grounds of “irrecievability”. Appeals which are most often baseless and unfounded as was in the case of *Satellite Assurance v. Simo Emmanuel*.¹⁷⁴ Robert Assontsa¹⁷⁵ in criticising the Civil and Commercial Procedure Code states

« *De virus en virus, toute le system du Code de Procédure Civile finira par être endommagé* ».

All these weaknesses inherent in the judicial process somewhat justifies the decision by some motor accident victims to make recourse to arbitration, moreover, there are no appeals against arbitral awards¹⁷⁶. However, it should be noted that court judgements carry a force of execution which permits them to be easily executed.¹⁷⁷

1.4 The Role of the National Arbitration Commission in the regulation of Disputes: As earlier mentioned, the CNA was initially created with the objective of regulating disputes between insurers.¹⁷⁸ But however, today this commission has wider powers especially as more and more victims of motor accidents¹⁷⁹ seize the commission for resolution of disputes for which they could not reach a compensation agreement with the insurers responsible for the compensation. It is however regrettable that those victims who suffered from material damages are excluded from seizing the NAC.¹⁸⁰ One would only wish that that the CIMA legislator subsequently includes all categories of victims amongst those capable of accessing arbitration.¹⁸¹

The arbitration commission is seized through an application for arbitration sent to its president. To this application are attached documents showing why the victim is suppose to be indemnified¹⁸²

¹⁷² Court registrars are mandated to inform the appellants by all means to deposit a memorandum to the courts concerning their appeal and justification within 15 days of the appeal.

¹⁷³ This article lays down the deadline and procedures for appeal. It states that the court registrar shall inform the appellant of duty to submit a memorandum containing his declaration for appeal and his justification within 15 days of him declaring his intention to go on appeal and failure to respect this deadline will rejection of the appeal from the courts.

¹⁷⁴ Court of Appeal of Bafoussam, judgement no. 94/Civ, of 27/06/2007.

¹⁷⁵ Doctorat d'Etat, University of Dschang. Cameroon.

¹⁷⁶ See article 25 of the Uniform Act on Arbitration.

¹⁷⁷ As it is often said and it's true “for every dark cloud, there is a silver lining”.

¹⁷⁸ See example of arbitral awards by the CNA, Assurance et Securite no. 007, June 2006, p. 39.

¹⁷⁹ Victims involved here are those seeking for compensation for corporal damages suffered as a result of the motor accident.

¹⁸⁰ This is because insurance companies have always handled aspect of compensation for material damages between them.

¹⁸¹ It is only normal that justice should be beneficial to all and not to some.

¹⁸² These are amongst others the same documents required to be presented by the victim to the insurer under article 240 if the CIMA Code at the commencement of the procedure of amicable compensation.

by the insurer and equally documents showing that amicable compensation procedures have failed.¹⁸³

The commission sits in plenary session with all the representatives of the insurance companies for each of its sessions after it has been seized. These representatives debate highly over the case at hand. Then an agreement¹⁸⁴ is reached which is signed by all the parties plus the representatives of the insurance companies.¹⁸⁵ This signature is however an imperative one.¹⁸⁶ Where the insurer responsible is found guilty by the commission, he is compelled to indemnify the victim in at most 30 days from the time the judgement is passed.¹⁸⁷ But the question that arises here is what if the insurer refuses to respect the arbitral award? Here again it is easy, the failure to respect the arbitral award by the insurer gives the victim ipso facto the right to submit the decision to an ordinary law judge so that it can be enforced against such an insurer^{188,189}.

It is one thing to run to the National Arbitration Commission, get an arbitral award and the get it enforced in an ordinary law court and it is another thing to obtain real satisfaction from all these processes. That said, it is a normal rule in law that every rule has an exception and unless it is looked from all angles judgements made cannot be valid. To ensure a better protection for motor accident victims, it will only be proper for us to examine some of the weaknesses inherent in the procedures of the National Arbitration Commission.

1.4.1 Review of arbitration procedures at the NAC: It is an undisputable fact that recourse to the NAC would have been more protective of victims of motor accidents if not for the necessity of the intervention of the ordinary law judge in cases where insurers responsible to compensate the victims are hesitant basically because arbitral awards do not carry a force of execution.¹⁹⁰ This probably is time consuming. This is because it takes considerable time for the judgements to be enforced by the ordinary law judge. One thing victims of motor accidents have always decried is the time it takes for them to get compensation for damages they suffer as a result of motor accidents. Definitely they prefer arbitration for its fast and convenient nature but referring arbitral awards to ordinary law judges only come to compound their miseries. We however realise that after arbitration, most victims do not derive the anticipated satisfaction. This dissatisfaction emanates from the fact that

¹⁸³ The CIMA Code makes amicable compensation mandatory as the first step for compensation of victims of motor accidents. It is only after this process has failed that a party can proceed to justice for compensation to be decided by the courts or by arbitration.

¹⁸⁴ In ordinary law courts, this agreement is equal to a judgement.

¹⁸⁵ See appendix for a sample of an arbitral award.

¹⁸⁶ See award no. 22 of 13/09/2005, Paul Donfack Denise v. Satellite Insurance; no 65 of 25/03/2008, Neguhe Jean Daniel v. Citoyenne Assurance; no. 88 of 09/02/2010, POUOKAM Honorine Carole v. Alpha Assurances.

¹⁸⁷ This further demonstrates the advantages which arbitration has over litigation in ordinary courts. Here, the arbitration procedure is not only fast, its decisions are executed within the slowest delays.

¹⁸⁸ At ordinary law, judgements carry an executionary force. The same is the fate of an arbitral award when it is submitted to an ordinary law court and then enforced by this court.

¹⁸⁹ By so doing, the arbitral award becomes of the same value like an ordinary law court's judgement.

¹⁹⁰ Force of execution gives power for the judgement to be executed by the use of lawful force even against the wish of judgement debtor.

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there is disregard for the adversarial principle and the poor manner in which arbitral awards are drafted.

1.4.1.1 A breach of the adversarial principle of justice¹⁹¹: The adversarial principle of justice is without that the most important in procedural law. According to Motulsky¹⁹², this is a natural principle and it suffices that every party to litigation has the right to defend himself against the claims made by the other party.¹⁹³ This is to say that, a motor accident victim who makes recourse to arbitration for the settlement of his dispute with the insurer has to be there in person to defend his claims or claims against him or be represented by a counsel¹⁹⁴. But this has never been the case with the National Arbitration Commission as only the insurance companies who are members of the National Association of Insurers are represented. It is said that decisions are derived by the commission after a debate but it is a debate which involves only representatives of insurance companies. So of what use is actually such a debate in which not all parties to the dispute are represented?¹⁹⁵

Therefore one would induce that by submitting their disputes for arbitration in the national arbitration commission, the victims cannot valuably defend their interests. One would therefore not be categorically wrong to establish that the National Arbitration Commission is a body at the service of insurers, permitting them to preserve their interests instead of looking for a way to resolve the numerous problems plaguing the insurance industry as well as the victims of motor accidents. This is one reason why the commission only comes up with some of its decisions very late.¹⁹⁶ Even if the victim is given the possibility to appear the arbitral award for breach of the adversarial principle, this would evidently only lead to prolongation of the compensation procedure.¹⁹⁷

However, it would be good that despite the fact that victims are not called up to be part of the arbitration process, the commission should appoint at least two representatives with many years of experience in the subject matter to effectively represent the victims.¹⁹⁸

1.4.1.2 Poor drafting of arbitral awards:

The verdict is the third and final part of a judgement.¹⁹⁹ According to section the *HCPC* states as follows:

¹⁹¹ Referred to in French as the “principe du contradictoire”.

¹⁹² Motulsky, “le droit naturel dans la pratique jurisprudentielle”, *Melanges Roubier*, Tome II, p. 175.

¹⁹³ In Criminal Law, it is often said that every accused person deserves his day in court.

¹⁹⁴ Even though it will be difficult to envisage such a scenario of a victim hiring a lawyer for an arbitration proceeding, because of the high cost it will entail for a victim who initially resorted to arbitration partly in a bit to minimise cost, it would still have been necessary for such dispositions to be put in place.

¹⁹⁵ Ordinary law procedures have an edge in this aspect because even if you lose, you lose after being represented.

¹⁹⁶ Award No. 88 of 09/02/2010, the case of Pouokam Honorine Carole v. Alpha Assurance. Op cit. at page.....

¹⁹⁷ This would be against one of the very reasons why the victim resorted to arbitration which is to get a fast and convenient process.

¹⁹⁸ Ngoubeyo S., op cit...at page.....

“The part of the judgment known as the verdict shall indicate the nature of the judgment, the level of the court and whether the accused is guilty or not. If guilty, it shall state the offence for which he has been found guilty, the relevant sections and the law applied, the sentence pronounced and where necessary the civil award”²⁰⁰

As afore mentioned, the verdict is the third part of the judgment and it most often contains the solution handed down by the judge. Arbitration decisions are however always poorly drafted. This is because they are usually inexplicit on the sanctions against the insurer. The arbitration commission usually finds it sufficient just to mention in a vague manner that the insurer has to compensate the victim within a deadline of 30 days. Worst of all the amount to be paid as compensation is not precisely stated. This leads us to ask questions relating to the enforceability of such judgments by ordinary law judges when it does not respect the standards of a regular judgment. Should we therefore say the commission gives with one hand and collects back with the other?

On a closer analysis, should we say the objective of the arbitration commission is to make arbitral awards one that will be difficult to forcefully execute? The answer is a definite yes, if not how would explain the fact that the judgments always require the parties to come into some sort of compromise? In the case of *Neguhe Jean Daniel v. Citoyenne Assurance*,²⁰¹ the arbitration committee ordered the insurer to scrupulously respect the law in indemnifying the victims. In other words, the commission was requesting the insurer to approach the victim with the goal of making an offer of compensation which he would have previously determined the amount. This constitutes a slowdown in the compensation procedure for motor accident victims especially as we know that recourse to arbitration only comes after the failure of amicable settlements.

Through these mistakes, we can therefore understand that recourse to arbitration made to the National Arbitration Commission is not in its current form the ideal solution to motor accident victims. For the benefit of the victims and as we recommend, the commission should ensure that the insured should equally be represented in the commission. Also, the commission should equally fix the amount to be paid as compensation in its awards.

1.4.2 Recourse to arbitration in disputes between the insured and the insurer: If it is undeniable that the role of arbitration in resolving insurance disputes increases as time passes, it remains equally true that in relationships between the insurer and the insured there is a certain reluctance to make recourse to this system of dispute resolution. This is the status quo at present, and it will therefore be convenient to determine the reasons for this reluctance to refer disputes for arbitration by either the insured or the insurer.

¹⁹⁹ The HCPC talks about judgments in its Chapter V. Section 389 of the HCPC states that a judgment shall be divided into three parts which are; the hearing, the reasons and the verdict.

²⁰⁰ 389 (4)

²⁰¹ Sentence No. 65 of 25/03/2008.

1.4.2.1 The status quo: Most insurance contracts do not make reference to arbitration as a means to settle disputes that may arise there from and therefore it makes it difficult to resort to arbitration when litigation has been born. In a nutshell, for disputes arising from insurance contracts to be subject to arbitration, there must have been a clause in the contract stating as such. This clause is often referred to as the compromise clause.²⁰²

1.4.2.2 The rare existence of compromise clauses in insurance contracts: As mentioned above, it is through compromise clauses that insurance disputes could easily be submitted for arbitration. However, recourse to arbitration rarely appears expressly in Cameroonian insurance contracts. Despite this rarity of recourse to arbitration, various methods nonetheless allow for arbitration to be used implicitly.

1.4.2.3 The scarcity of express recourse to arbitration in insurance contracts: According to studies carried out, only 10% of insurance contracts in France contain compromise clauses referring disputes to arbitration.²⁰³ The situation in Cameroon is similar to what is obtained in France but what makes the difference here is that arbitration is hardly ignored when it comes to disputes between the insurer and the insured. This hopefully is the silver lining that is found in a dark cloud. The presence of arbitration clauses in some insurance contracts serve as a starting point for its development in a bid to make it the way forward in relation to the regulation of future insurance disputes.

Accordingly, some Cameroonian insurance contracts²⁰⁴ in their general conditions, clearly spell out that all disputes arising there from will be submitted for arbitration. This submission is usually made to an arbitration commission regulated by the Uniform Act on Arbitration.²⁰⁵ The parties to the dispute appoint an arbitrator each and then the both arbitrators choose a third and final arbitrator.²⁰⁶ If a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made upon request of a party, by the competent judge in the member state.²⁰⁷ Sometimes, on the contrary, parties to the insurance contract elect to resolve their disputes through the application of the rules of the Common Court of Justice and Arbitration²⁰⁸ This way of analysing could be somehow limited by the fact that third party liability insurance contracts would not contain any compromise clause. This is because such contracts benefit a third party instead of the insured and in case of litigation; it is the victim who stands against the insurer and not the insured. This is because it is the victim who suffers injury.²⁰⁹ Therefore it would be improper to

²⁰² The compromise clause is an agreement by which parties to an insurance contract agree to resolve disputes arising there from by means of arbitration.

²⁰³ Turgne F., (2007) *l'arbitrage en matiere d'assurance et de reassurance*. Economica, Paris, p.272.

²⁰⁴ See article 18 of the “assurance maladie groupe” of Chanas Assurances s.a.

²⁰⁵ See appendix for a complete copy of the Uniform Act on Arbitration.

²⁰⁶ Article 5 (a) of the Uniform Act on Arbitration.

²⁰⁷ Articles 5 and 8 of the Uniform Act on Arbitration.

²⁰⁸ See article 15 (2) of “contrat d'assurance des titulaires de compte bancaire” of PROASSUR Life.

²⁰⁹ This type of contract however goes against the English contract law doctrine of privity of contract.

Any Safe Heaven for Motor Accident Victims? A Critical... Abue Ako Scott Eke & Abia Elisabeth Achancho impose an arbitration clause on a victim when it is normally intended to govern disputes between the insured and the insurer.

But one can legitimately regret the absence of arbitration clauses in these contracts²¹⁰ because, once the liability of the insured is established, the insurer may refuse against all odds his duty to settle reasonable claims or to pay full compensation. It would be desirable therefore that, such clauses exist so that they can facilitate the resolution of disputes of this nature.

1.4.2.4 Reasons for the rare existence of compromise clauses in insurance contracts: These reasons are not particularly limited to Cameroon but are equally linked to countries like France and the United States²¹¹. These reasons range from the absence of an arbitration culture to refusal to refer disputes for arbitration and finally the scarcity of specialised insurance arbitrators.

1.4.2.4.1 The absence of a culture of arbitration: As a general rule, recourse to arbitration is not yet a part and parcel of the habit of insurance actors. In reality, insurance generally has a judicial culture. Immediately as a dispute emanates, the first thought is to seize the jurisdiction of an ordinary law court without even taking time to even think of a possibility of resolving the dispute through other means like arbitration. To ameliorate this mind set, it is necessary that arbitration be portrayed as an efficient means of resolving insurance disputes especially when they are compensation related. Also, one thing that stands clear is that once the stakeholders of insurance have developed the habit of recourse to arbitration, the will be no turning back. The advantages that will be benefitted from arbitration²¹² will of course not permit them to turn back.

On this point of view, we realised from our discussion with insurers that arbitration is getting a more and more favourable welcome. It suffices that this enthusiasm which is usually expressed in discussion is translated into compromise clauses and made part and parcel of insurance contracts.

1.4.2.4.2 Refusal to resolve disputes through arbitration: This refusal can either emanate from the insured or from both parties.

- Refusal by the insured

Insurers are not fundamentally hostile to the conclusion of arbitration contracts, but they are however very offended by the refusal of the insured to resort to arbitration because this latter sees arbitration as a veritable instrument constantly abused by the economic power of the insurers. This is one reason why insured persons in countries like the United States prefer to submit their disputes to the jurisdiction of ordinary law courts. It is however difficult to understand it otherwise because insurance contracts are contracts of adhesion imposed by the economic power of the insurer. Therefore refusal to refer disputes to ordinary law courts will therefore create disequilibrium in a contract where the insured has to accept the terms on a take it or leave it basis. The main argument in favour of refusal to resort to arbitration by the insured is that they believe in the impartiality of judges and magistrates.²¹³

²¹⁰ Turgne F., (2007) *l'arbitrage en matiere d'assurance et de reassurance*. Economica, Paris, p.282.

²¹¹ See [www.thefederation.org/documents/BRADY\(Arbit\).htm](http://www.thefederation.org/documents/BRADY(Arbit).htm).2002.

²¹² Advantages like its fast and cheap nature plus its confidentiality.

²¹³ Insured persons always have it in mind that the judge always protects their interest against the economic might of the insurer.

This worry by the insured could be appeased by the inclusion of arbitration clauses in to the insurance contract which adhere to international arbitration rules²¹⁴. Failure to do so only mean it will be very difficult to transform the fear of the insured and victims into hope. This is because insured persons always believe that compromise clauses included in a contract of insurance are traps put in place to minimise the insurer's liability towards the compensation of the insured or victims. This point of view could be justified by the fact that contracts of insurance are unilateral contracts. This is to say that only the insurer makes the legally enforceable promise to pay. Therefore, he could manipulate the terms of the contract to minimise his liability.

Furthermore, the refusal by insured persons to resort to arbitration is as a result of its high cost. Even though, it is considerably cheaper than the judicial process, arbitration still considerably has a high cost. In the judicial system of the state, the judges are not paid by the parties. This makes the judicial procedure to appear less expensive than arbitration. To create incentives that could motivate insured persons to embrace arbitration clauses in insurance contracts, insurers could reduce the premium of such contracts in comparison to premium paid by the insured persons who settle for insurance contracts where disputes will be resolved by the judicial cost. Insurers will definitely be surprised to see the rate at which insured persons, whether rich or poor will settle for contracts with arbitration clauses.²¹⁵ Failure to motivate insured persons or buyers of insurance, the insurers will be faced with massive loss of customers as most insured persons do trust the justice system of the state.

1.4.2.4.3 The limited number of specialised arbitrators: Insurance arbitration cannot truly develop unless the parties can have access to specialist in insurance and in arbitration simultaneously. Experts in these fields are pretty rare and it makes it difficult for parties to take the risk of accepting arbitration clauses in insurance contract knowing that access to experts in insurance arbitration would be difficult.

In Cameroon specifically, it would be difficult to have access to a competent and independent arbitrators. Firstly because the number of lawyers specialised in insurance are minimal and secondly because law professors specialised in this domain are equally rare. This is due to the fact that courses in insurance law are only coming into prominence now.²¹⁶

However, knowledge of insurance is not sufficient enough to be an arbitrator in insurance disputes. It is equally necessary for these persons to have an in-depth knowledge of arbitration.

1.5 Conclusion: From the above analysis, we have examined the various litigation courses open to the victim should in case there is a failure in amicable settlements. These litigation courses are both arbitration and the judicial procedure. Whichever method the victims choose, they are still faced with enormous challenges as the both systems are flawed either procedurally or materially. Whatever may be the case, it is always good for the parties to reach an agreement through amicable settlements as further litigations only entail cost and waste of so much time and resources. This is

²¹⁴ Most arbitrators for insurance litigations are mostly insurance and reinsurance professionals. This can therefore lead us to doubt about their ability to be impartial vis a vis their disputes related to their colleagues.

²¹⁵ Brady M., Anastassiou T., "binding arbitration of coverage and bad faith disputes: a way of the tickets for American insurance industries", [www.thefederation.org/documents/BRADY\(Arbit\).htm](http://www.thefederation.org/documents/BRADY(Arbit).htm).2002.

²¹⁶ Equally, it is only recently that Cameroonian private universities have launched degree programs in insurance.

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usually painful for the victims who for the most time are economically weak. It is of no doubt that victims would normally prefer that their disputes with insurers be resolved at the level of amicable settlements but for the fact that most often insurers are exploitative and always want to pay below what they are supposed to pay, it becomes very difficult for settlements to be concluded at the level of amicable settlement. Hopefully, the proposals listed in the various analyses above if implemented by the authorities that be, will bring a fundamental improvement in the dispute resolution mechanisms in which victims will be awarded a greater and satisfactory protection.