

AN INVESTIGATION OF THE PROBLEMS IN THE
COMPENSATION SYSTEM FOR PERSONAL
INJURIES AND DEATHS IN MOTOR INSURANCE
IN KENYA.

BY

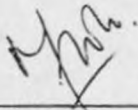
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A MANAGEMENT PROJECT SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENTS FOR THE
DEGREE OF MASTERS OF BUSINESS AND
ADMINISTRATION, FACULTY OF COMMERCE, UNIVERSITY
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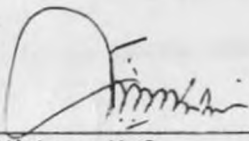
JUNE, 1992.

DECLARATION

This Management Project is my original work and has not been presented for a degree in any other University.

Signed.  Date. 14th July 1992
Solomon Mwandikwa Makembo

This management project has been submitted for examination with my approval as the University Supervisor

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ACKNOWLEDGEMENT

I wish to express my sincere gratitude to
the many individuals who in one way or another,
contributed to the reality of this paper.

Special thanks to Mr. Mibian, M.D. who gave me
a tremendous assistance from start up to the conclusion
of this paper while I was faced with many odds such as
being time shortage.

DEDICATION

To my beloved Parents;

Tabitha Nkuru and Japhet Makembo

And last but not the least, I should thank Rose of Resources
Agency, Family of Excellence for her unconditional assistance
and moral support during this work.

ACKNOWLEDGEMENT:

I wish to extend my sincere gratitude to the many individuals who in one way or another, contributed to the reality of this paper.

Special thanks to Mr. Kibisu, M.C. who gave me a tremendous assistance from start up to the conclusion of this paper while I was faced with many odds worst of it being time shortage.

I am indebted to the Insurance Industry and the Judges both in the High Court and Court of Appeal of Kenya for giving me the primary data used in the project.

Lastly but not the least, I should thank Rose of Insurance Department, Faculty of Commerce for her unconditional assistance and more particularly typing this work.

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The data collected was analysed by use of tables, percentages and proportions. The analysis led to the conclusion that the

ABSTRACT

The Insurance industry plays a major socio-economic role in a developing country like Kenya. The Motor Insurance specifically is very vital in a growing economy like ours. The vast aggregation of the premiums collections provides a fund that is an important source of finance for not only the private sector but also the public sector. The motor insurance, however, has reported a continuous decline in the profits record. One of the prevailing setbacks to the insurance industry are the problems which the present compensation system; Fault-system, pose.

This exploratory research investigated into these problems and sought further to identify the possible solutions to them.

The primary information for the research was collected by use of questionnaires and a number of personal interviews. The study sampled two populations that is the Insurance companies offering Motor Insurance and the Judges in the High Court and court of appeal at Nairobi.

The study revealed that the insurance companies have been recording increasing losses on the business. Several problems emanating from the lawyers ambulance chasing the reinsurance, the underwriting of the insurance, the characteristics of the personal injuries and death claims, the determination of the liability and quantum of damages under these claims and the fault system itself were identified.

The data collected was analysed by use of tables, percentages and/or proportions. The analysis led to the conclusion that the fault system should be replaced by a NO-FAULT system with the further encouragement of out of court settlements to eliminate all the problems affecting the nourishment of the Insurance. Alternatively the solutions suggested should be implemented to improve the present system of compensation.

There has been a rapid growth in the number of the motor vehicles operating in Kenya over the last five years. The table below is illustrative of this:

Table 1:

Motor Vehicles

| Year | Number of vehicles as indicated by Road Licenses (cars and trucks). |
|------|---------------------------------------------------------------------|
| 1967 | 12463 |
| 1968 | 12531 |
| 1969 | 12627 |
| 1970 | 12621 |
| 1971 | 20405 |
| 1980 | 24018 |
| 1981 | To be out by end of June 1982 |

Office of the Registrar of Motor Vehicles

and Central Bureau of Statistics (May 1981)

SECTION 1
INTRODUCTION

1.1. **BACKGROUND:**

The creation and maintenance of a strong domestic insurance industry is a prerequisite for economic development.

(UNCTAD: 1987).

There has been a rapid growth in the number of the Motor vehicles operating in Kenya over the last five years.

The table below is illustrative of this.

Table 1:

| Year | Persons Killed | Seriously Injured | Slightly Injured | Total |
|----------------------|----------------|-------------------|-------------------------------|-------|
| <u>Road Vehicles</u> | | | | |
| 1985 | 4208 | 6957 | 17269 | |
| 1986 | 3704 | 6363 | 16955 | |
| 1987 | 3413 | 6455 | 18727 | |
| 1988 | 6455 | 6957 | 19621 | |
| 1989 | 7214 | 6957 | 20405 | |
| 1990 | | | 24018 | |
| 1991 | | | To be out by end of June 1992 | |

Source: Office of the Registrar of Motor Vehicles
and Central Bureau of Statistics (May:1992)

The major causes of these accidents are the present poor road conditions, negligent driving, inadequate traffic control and the lack of adequate traffic laws. Owing to their economic and social contributions to our economy for example through easing transportation problem of people and produce to the market places, Motor Insurance is one of the services which both the government and the private sector need to increasingly turn their attention to. (Mutiga:1991).

Corresponding to the increase on average in the number of the motor vehicles on our roads is the number of the road accidents as shown in the table below:

Table 2

Road accidents (Nation-Wide Report)

| Year | Persons Killed | Seriously Injured | Slightly Injured | Total |
|------|---------------------|-------------------|------------------|-------|
| 1981 | 1720 | 4208 | 6959 | 12887 |
| 1982 | 1462 | 4978 | 7400 | 13840 |
| 1983 | 1515 | 5017 | 8509 | 15041 |
| 1984 | 1490 | 4856 | 8220 | 14566 |
| 1985 | 1800 | 5113 | 8470 | 15383 |
| 1986 | 1832 | 5701 | 9676 | 17209 |
| 1987 | 1889 | 6385 | 10540 | 18814 |
| 1988 | 1919 | 6460 | 10280 | 18659 |
| 1989 | 1515 | 5615 | 9236 | 16409 |
| 1990 | 1856 | 6455 | 10619 | 18930 |
| 1991 | 2216 | 6958 | 12546 | 21720 |
| 1992 | Totals not yet out. | | | |

Source: Kenya Police, Road Traffic Division, Ruaraka

The major causes of these accidents are the present poor road conditions, negligent driving, inadequate traffic control and lack of adherence to the traffic rules by road users among others.

This increase in the accidents toll claims year after year a high number of deaths and personal injuries. These accidents have negative effects on the social and economic lives of the community at large. The accidents result in wasted human, material and financial resources. The losses may be compensated by the insurance companies or the governments but the society bears the brunt of the losses. (Mutiga:1991). The relatives of the deceased for example take up the responsibility to cater for the bereaved dependants. Further if somebody suffers from an accident and requires to be taken out of the country for special treatment for example, an "Harambee" will need to be conducted in some cases to support the family of the road accident victims. Harambee here refers to a voluntary contribution to help the needy at a given point in time.

The claims which arise on road accidents are for property damages, personal injuries and deaths and legal liability. The risks covered in a specific motor vehicle policy depend on the cover purchased. The covers may be one of the following:

- (i) Third Party only, covering personal injuries and death.

Depending on the agreement between the parties to the **contract** the cover may be extended to cover damage to property.

(ii) Third Party, Fire and Theft cover. This covers the insured against losses from fire damages and theft of the vehicle or its accessories while on the vehicle or private garage above the coverage offered under third party only cover.

(iii) Comprehensive cover, This in addition to the covers offered under the third party fire and theft, it covers losses caused by injuries to the drivers and servants, damages caused by children or falling trees, damage caused by accidents to the vehicles themselves, and other damages as provided in the policy document.

All these covers are available for any type of motor vehicle owned, be it private cars, commercial vehicles, motor cycles or agricultural motor vehicles.

The most common damages and claims are for personal injuries and death (UNCTAD:1987). These are also the most complicated damages to determine their quantum as some of the damages are not pecuniary but sentimental and subject to a lot of personal judgements by the judges. A lot of legitimate complaints have arisen from the victims, insureds, insurers and the public at large concerning the compensation for these personal injuries and death. Due to time limit, my study concentrates on only the problems which the insurers face pertaining to the compensation for personal injuries and deaths arising from road accidents.

(iii) To compensate them equitably

(iv) To avoid excessive administrative costs

(v) To avoid substantial increases in the cost of insurance

(vi) To allow the insurers a reasonable profit margin

Personal injury here refers to any bodily injury and/or damage caused to a third party accidentally. (Kemp: 1983).

Deaths occur either directly, after an accident, or subsequent to an injury.

An award for damages here are given where the accident victim is entitled to compensation for accidents arising under statutory law as in workmens compensation Act or where the defendant is in a breach of statutory duty or under the tort of negligence. (E.A.L.R: 1975). For the parties seeking compensation to succeed, they must prove that the defendant was at fault and therefore liable for the accident. It is up to the concerned judges to determine the liability basing their judgement on the particular facts and circumstances of the case at hand. The authority employed in any of these cases is derived from the judgements on the past similar cases in the High court, Court of Appeal, Kenya Law Report, Khadhis Court, East African Law Report and British Law Report. This system of compensation as is commonly practised in Kenya, is referred to as the Fault System.

The judges with observance of the general principle of "reasonable compensation" adopt the following criteria for drawing conclusions in respect of road accident cases.

- (i) To compensate the maximum number of road accident victims
- (ii) To compensate them promptly
- (iii) To compensate them equitably
- (iv) To avoid excessive administrative costs
- (v) To avoid substantial increases in the cost of insurance
- (vi) To allow the insurers a reasonable profit margin.

Almost all the insurers, however, lament that the above criteria is never met. The judges hardly give equal awards even on similar cases and neither are the awards given satisfactory to all the claimants nor are they prompt. (Munkman: 1973). This has a very negative bearing on the insurers particularly and other parties like the claimants, insureds and the government generally. The impact of this is discussed in the literature review under the defects of the faulty system. This study will reveal the problems the judges face in determining the liability under each of the cases presented and the subsequent problems which the insurers face generally on the compensation of these claims.

1.2 STATEMENT OF THE PROBLEM:

The motor insurance performance in most developing countries apparently has not been favourable. In spite of the fact that there are sufficiently many vehicles insured to permit the operation of the law of large numbers and to facilitate compilation of meaningful statistics and reliable loss prediction, the motor insurance records losses. In some countries loss ratios of up to 180 percent and higher are found (UNCTAD: 1987). (Mukhalu: 1989). The reasons behind the poor performance are:

- i) Claims management is lacking.
- ii) Operating expenses are high.

1.3 OBJECTIVES OF THE STUDY:

The two main objectives of this study are:

- i) To identify the problems which the insurers face arising from the determination and payment of damages for personal injuries and deaths caused by motor vehicles.

iii) Investment yields are often artificially depressed.

iv) The premium rates especially as related to compulsory Motor insurance have often been held to insufficient levels by the regulatory authorities.

Of the above factors, the claims issue is more significant as it is affected by the other factors in one way or the other.

Without adequate premiums, and investment yields, payment of the damages (Claims) by the insurers become difficult and draining to the insurers' funds for example. The high operating expenses inclusive of the legal expenses incurred in the claims settlement hikes the quantum of the damages to be paid by the insurers hence adversely affecting their financial reserves.

The personal injuries and death claims are the most prevalent and severe than material damages which arise after (from) the motor accidents. They thus contribute greater than anything else to the poor performance of the motor insurance industry.

The specific problems which the insurers face in relation to claims settlement are neither well known by the public nor properly documented. This exploratory study is to identify the problems which the insurers face on the compensation for personal injuries and deaths and the possible practical solutions to these problems so as to enhance the Motor Insurance industry as a whole for the good of our Kenyan economy.

1.3 OBJECTIVES OF THE STUDY:

The two main objectives of this exploratory study were;

- (i) To identify the problems which the insurers face arising from the determination and payment of damages for personal injuries and deaths caused by motor vehicles.

The study is to be of great benefit to the insurance industry
(ii) To identify the practical remedies to these problems.

The identification of the problems
In order to address itself to these objectives, the study will
inherent in the practice, will subsequently enable identification

seek to answer the following questions;

(i) What problems do the insurers face which emanate from
of the solution to them. This will lead to a well researched claims
settles and thereby giving "credence" to the "sickness" which
the characteristics of the personal injuries and death
has created for motor insurance industry for long-
claims.

With proper way of controlling (managing) the claims, there
(ii) What problems do the judges themselves specifically
will be little if any variation in the anticipated claims costs
face in the process of determining the above liability?
which will enhance costs predictability by the insurance companies

(iii) What problems do the insurers face under compensation
which is a vital factor in planning and plant implementation.
for third party bodily injury and deaths which emanate
The solutions suggested, if implemented, will mean relatively
from the manner in which the insurance is practised?

(iv) Which specific problems to the insurers are caused by
more customer satisfaction and legal system. This will enhance
the legal system (Fault system) for determining
maintenance of the present insurance policies and purchase of more
liability applied in Kenya?

(v) What problems do the insurers face which arise from
insurance business.
the lawyers practice of Ambulance Chasing?

Even and proper claims management will mean less expenses by
(vi) Which problems do the insurers face as a result
elimination of unnecessary litigations and claims procedures with
of the limited reinsurance available in Kenya?

(vii) Having identified the problems, what remedies would be
their costs hence improving the insurers profit margins.
Finally, the study may establish grounds for further research
taken to curb the problems?
for the academicians.

1.5 OVERVIEW OF THE REPORT:

This project consists of five chapters.
The first chapter, the introduction gives some general information
on the subject matter of the study and the

1.4 THE IMPORTANCE OF THE STUDY:

The study is to be of great benefit to the insurance industry and the economy as a whole. The identification of the problems inherent in the practice, will subsequently enable identification of the solution to them. This will lead to a well managed claims settlement and thereby giving "treatment" to the "sickness" which has thwarted the Motor Insurance Industry for long.

With proper way of controlling (managing) the claims, there will be little if any variation in the anticipated claims costs which will enhance costs predictability by the insurance companies which is a vital factor in planning and plans implementation.

The solutions suggested, if implemented, will mean relatively quicker and satisfactory claims settlement which will lead to more customer satisfaction and loyalty. This will enhance maintenance of the present insurance policies and purchase of more policies by these insureds. Consequently, this will boost the insurance business.

Keen and proper claims management will mean less expenses by elimination of unnecessary litigations and claims procedures with their costs hence improving the insurers profit margins.

Finally, the study may establish grounds for further research for the academicians.

1.5 OVERVIEW OF THE REPORT:

This project consists of five chapters.

The first chapter, the introduction gives some ground information on the subject matter of the study and the

SECTION 2.

LITERATURE REVIEW

2.0 THIRD PARTY 11-10 - INSURANCE

This is the basic coverage available to an owner of an automobile. It is a compulsory cover by law in Kenya. It provides cover for

The second chapter provides a review of the pertinent literature on the study.

The third chapter deals with the design of the study specifying the two populations of interest and the instruments used to collect the data.

The fourth chapter is mainly concerned with the data analysis and the findings.

The fifth and final chapter entails the conclusions, summary of the findings, limitations of the study and concludes with suggestions for future research.

The policy holder is also indemnified while driving any other car that does not belong to him subject to the laid down terms and conditions of the policy cover. Indemnity is further provided to any one driving the car with the policy holders consent as long as he is eligible to drive. Indemnity is given to anyone using the car while driving the car on the policy holder's permission (including the passengers). Indemnity is also provided to the employer or partners as long as the car is used in accordance with the descriptions of its use.

The stipulations, terms and conditions under the policy are shown in the policy document attached. (see appendix E)

SECTION 2.

LITERATURE REVIEW

2.0 THIRD PARTY LIABILITY INSURANCE

This is the basic coverage available to an owner of an automobile. It is a compulsory cover by law in Kenya. It provides cover for accidental bodily injuries or deaths caused to third parties in either limited or unlimited amounts. (Canner: 1979).

For pedestrians and other non-passengers i.e. people not using the vehicle at the time of the accident, their indemnity (compensation) is unlimited. The compensation for those affected while using the vehicle at the owner's permission is limited as shown in the schedule attached to the policy document in the appendices. (see Appendix Indemnity for the claimant's costs, emergency, treatment and legal expenses is also provided (Singha: 1988). No indemnity is given for loss or damage to the third parties property. Injuries due to third party negligence is excluded.

The policy holder is also indemnified while driving any other car that does not belong to him subject to the laid down terms and conditions of the policy cover. Indemnity is further provided to any, one driving the car with the policy holders consent as long as he is eligible to drive. Indemnity is given to anyone using but not driving the car on the policy holder's permission (including the passengers). Indemnity is also provided to the employer or partners so long as the car is used in accordance with the descriptions of its use. (Vaughan: 1989).

The exclusion terms and conditions under the policy are shown in the policy document attached. (see appendix D).

This is the Insurance which solely covers my area of concern i.e. personal injuries and deaths. It is the basic Motor Vehicle Insurance cover while others e.g. third party, Fire and theft and comprehensive covers are more extensions. For simplicity, brevity and relevance therefore, my study refers to this cover only.

(a) UNDERWRITING THE RISKS:

Utmost care is usually taken by the Insurance Companies in selecting the automobile risks. Though the Insurance is compulsory to the automobile owner's, the insurers are very vigilant lest they insure an automobile with alot of mechanical defects or reckless drivers, which means insuring against risks which are almost certain to happen in the nearest future. (UNCTAD: 1987).

The Insurance Companies supply the proposal forms with detailed questions which the persons seeking insurance answer and sign after which they are sent back to the insurers to assess the risks. The questions in the proposal forms relate to several issues such as the age, nature and use of the car, geographical location, the vehicles capacity, its condition, the driver's age, driving experience, and claims history among other things. All these reveal the nature of the risks inherent in the object and subject matter of the Insurance and it is the determining factor on whether the risks will be accepted or not and if so, at what premiums and terms. (Lemaine: 1985).

The owner of the automobile knows much about himself as to be the insured and about the automobile unlike the insurer.

(a) It is therefore necessary that the proposers exercise utmost Good Faith when disclosing the material facts required for the underwriting as the insurers take them as the truth and base all their decision on them. (Freeman & Pellat: 1986). The exactness and truthfulness of the information given, however, vary with individual automobile owners. Some of these proposers for example hardly disclose whether they had caused any road accidents before. Some do not even report accidents after being involved so that they can get a No Claim Discount (N.C.D) in the subsequent premiums. The unreliability of these facts makes the underwriting or predicting the risks by the Insurance Companies rather incorrect and unreliable. (Mukhalu: 1989).

The liability of the insurers does not commence until the acceptance of the proposal and its being formally intimated by the insurers and the premiums paid. Any untrue, incorrect or misleading answer to the questions in the proposal form can make the Insurance invalid and inoperative in respect of the claims arising.

The insurers are therefore subjected to the problem of receiving incorrect or fake information on which they base their underwriting of the risk. The possibility of appropriate and correct prediction of the risks and setting of adequate premiums is minimal.

(b) RATING METHOD:

Different insurance companies use varied rating methods. Some of the insurers use the tariff used by the already

(6) Contd

dissolved Kenya Motor Insurance Pool while others use their own flat rates which differ. These premiums are, however, loaded to reflect the differing degree of the risks among the insured depending on the following factors:

The use to which the automobile is put, the type of the automobile in terms of its maximum speed, make, cost, difficulty of repair and the model or its make, the district in which the car is normally kept, the specific cover required, the policy holders driving experience, his age and the age of the car. (Lemaine: 1985).

Taking an example of Access Insurance Company Limited, its Motor rates with effect from 1.3.90 were as follows:-

THIRD PARTY COVER ONLY:

| | Premiums (Ksh.) | Excess (Ksh.) |
|--------------------------------|-----------------|---------------|
| 1. Private cars: | 1,500 | 2,500 |
| 2. Commercial Vehicle: 1 Tonne | 1,800 | 3,000 |
| 1 < x < 3 Tonnes | 2,250 | 3,500 |
| 3 Tonnes | 2,800 | 4,000 |
| 3 < x < 7 Tonnes | 3,700 | 5,000 |
| 7 Tonnes | 4,250 | 5,000 |
| x > 7 Tonnes | 9,000 | 5,500 |

Where x above refers to tonnage.

- 3. Tractors: 1,000 2,500
- 4. Motor Cycle:

CC not Exceeding:

| | | |
|----------|------|-----|
| 50 | 500 | 500 |
| 150 | 600 | 500 |
| 300 | 700 | 500 |
| 500 | 800 | 500 |
| over 500 | 1000 | 500 |

(b) in one or more of the investments below: The securities

(b) Source: Access Insurance Company Ltd.

Motor rates w.e.f. 01.03.90

Schedule: (Attached in the appendixes).

The final premium figure arrived at is usually higher than the basic premium. The problem here is that all the facts and circumstances which affect the automobile risks cannot be wholly and easily identified for assessment. It is further difficult to precisely predict the possible impact of the already identified facts. This leads to the establishment of inadequate premium to cover the claims which normally turn out to be extremely higher than expected hence making the insurers incur abnormal losses. Some insurance companies may experience a loss ratio of 180%.

(Mutiga: 91). This is one of the major factors which even led to the scrapping of the Kenya Motor Insurance Pool in 1989.

The government of Kenya through the Insurance Act chapter 487 restricts the insurers on the areas in which they can invest the premiums to earn a yield which can make the claims settlement a little bit less of a burden to the insurance. Sections 48 through to section 50 of the same CAP (487) contains all these government regulations of investments: (Laws of Kenya: 1988).

Section 50 sub-section 2(a) and (b) for example states: "The admitted assets of an insurer carrying on general insurance business required by section 41 (2) to be maintained by the insurer shall be invested and kept in the following manner:-

- (a) Twenty percent in one or more of the following securities; Government securities, securities of prescribed statutory bodies, local authorities, and any other prescribed organization.

(b) in one or more of the investments below: The securities set out above, mortgages, on unencumbered immovable property in Kenya, Debentures secured by a mortgage on unencumbered immovable property in Kenya. Debentures, preference shares or ordinary shares of public companies whose shares are quoted on the stock exchange in Kenya; instruments of title to immovable property in Kenya. Loans on life assurance policies constituting a liability on Kenya business within their surrender values: Deposits in banks or financial institutions licensed under the Banking Act: provided that- The deposits in any one bank or financial institution shall not exceed ten percent of the total value of the assets of the Insurer relating to that business.

(c) The balance, subject to section 48 and the other provisions of this section, in such investments in Kenya as the insurer thinks fit. Even if a given Insurer identifies a lucrative investment channel, the amount to be invested there is restricted as seen in the sections mentioned above. Much of the assets are bound to be invested in low risk and low return securities like government securities. This makes the total funds available less than the claims experienced as the premiums are charged with some expectations that by the time the accident occurs or claims arise, they will have been employed in highly profitable areas enough to cover the claims.

(c) MARKETING OF THE INSURANCE:

Like any other insurance, the ceding offices use several methods of marketing namely: Use of direct sales representatives, use of agents

- (c) and brokers, advertisements, radio programmes, and use of publicity and public relations. (Crane: 1984).

This kind of Marketing is not very necessary here as the insurance is Mandatory. It is, however, useful in competing for the customers amongst the insurers.

The failure of the marketing practice is that they only emphasize on the sales of their policies without any concern on whether the insureds fully understand their rights under the policy. There is no general public education on their legal protection such that in case of any accident one can claim for the damages suffered. Once the insureds know of the insurers' ignorance, they (insureds) lose their (insurers) credibility. This makes the insureds only purchase the cover which is compulsory and self insure themselves for the other risks to avoid the inconveniences which the insurers pose to them as insureds. This reduces the volume of the business they (insurers) could have ceded and subsequently hampering the insurance growth.

- (d) RE-INSURANCE UNDER THE INSURANCE:

This refers to the practise of the insurers to insure with another insurer the risks they have already assumed. (Green: 1965). The second insurer is known as the reinsurer.

In Kenya, the insurers insure with the only local reinsurer (Kenya Reinsurance Corporation) 25% of every risk accepted. This is a mandatory reinsurance according to section 145 of chapter 487, laws of Kenya.

(d) for refusal subject to the Tribunals confirmation. This makes the business to be ceded by the insurers restricted since it must be accepted by the reinsurer for the mandatory reinsurance. The restrictions may be on the risks assumed and the amounts accepted as the value of the subject matter of insurance.

Secondly the 75% of every risk assumed which is left to be catered for by the individual insurance company is relatively high especially for high risks which the insurers meet a lot of difficulties in meeting the claims once the insured event occurs.

The amounts awarded for damages suffered under this insurance sometimes is unlimited and this subjects the insurers to high risk of depleting their reserves. This insurance being a major business, it should be catered for by having adequate reinsurance.

2.1 THE CLAIMS PROCEDURE:

In most developing countries, losses arising from motor accidents are settled according to the liability system. This means that to receive compensation, the victim must file a claim against the party causing injury (the tortfeasor), and the tortfeasor must be found to be at fault in causing the damage. Also the victim must have not significantly contributed to his or her own loss. (UNCTAD: 1987). Until very recently many persons living in developing countries either were not aware of their legal rights regarding compensation for death or bodily injury caused by another or did not think it proper to file a claim for "blood money". Societal values are, however, changing. People are becoming more claim conscious than before. It is becoming unusual **not** to make claim for bodily injuries or property damage caused by the motorists either intentionally or accidentally.

The conduct of the claim is governed by specific policy conditions as shown in the attached policy document. (see appendix D). The claim is notified to the insurer in a written form within a reasonable time (Ivamy: 1973). A claim form is then filled giving all the details of the accident, particularly the circumstances under which it is occurred.

Since the insurers hardly accept the liability fast enough, the common practice in Kenya has been to engage lawyers right from the time of the accident to push legally the insurers to admit the liability and pay the claims at the earliest possible time.

This forces the operation of the court settlement mode of claim settlement. Other modes include arbitration, and negotiations between the insurers and the claimants or clients.

With court settlements, the insurers face several difficulties. The practice of the lawyers here has made almost everybody believe that for any claim to be settled, the lawyers must be involved. This means that almost in every case, there is the legal fee to be met which ranges between 25% to 50% of the amounts recovered. (Mogambo: 1984). This hikes the level of the amounts paid by the insurers affecting their profit margins. It is further, dissatisfying to the insureds who have to wait at times for about five years or more before they are compensated pending court procedures. This dissatisfaction leads to lack of the credibility of the insurers from the insureds who consequently are reluctant to purchase other covers as they are regarded as a bother.

They (insureds) employ other methods of risk management like loss prevention, loss reduction and self insurance above others. This means that the insurance companies have little business in this line hence low premium receipts.

The lawyers further in pursuit of the commissions they charge for every case they handle, influences potential non claimants to make claims and at most these cases end up being heard in the courts. This is because of the already pointed out fact that the insurers do not readily admit liability taking caution of fake claims.

The court settlement mode bears no benefits to the insurers. The delay in these settlements caused by the inadequacy of the judges assigned the "Running Down" (Motor accident) cases i.e. being only two, and aggravated by the alarming increasing number of road accidents has a very big financial impact on the insurers. When the inflation factor comes into play, which leads to changes in the interest rates, make the sums which could have been low if settled immediately to be inflated to reflect the current inflation index.

He remained in the hospital for 14 days.

As to quantum of damages Mr. Gor for the paintiff has quated the case of (MSA) H.C.C. 591/81, Hansa A. Amin VS. Girado Odhiambo Owour and another, a decision of this court. In that case a 40 years old nursing sister employed by Pandya Memorial Hospital has received injuries on the head, fracture of the left shoulder, laceration of left knee and injures on the chest and left ribs. She was hospitalized for ten days and thereafter attended as an out patient for two years. She fully recovered from her head and chest injuries and knee laceration. She however continued to have pain and stiffness in her left shoulder inspite of manipulation. She developed asteo-arthritis in that shoulder joint. This court awarded her a sum of Shs.130.000 as general damages and that was in August, 1984.

The court having considered these cases, taking into account that seriousness of the plaintiff's injuries coupled with the fact that he will be spending about Shs.600 per annum on drugs, and keeping note that the incidence of inflation, the court assess general damages of Sh.642 as special damages, no evidence was let in respect thereof and the court is unable to give judgement for this amount. There shall therefore be judgement for the plaintiff in the sum of Sh.100,000 plus costs and interest. As the Defendants did not prove the counter-claim, the same is dismissed with costs. (legal expenses).

ARBITRATION

The case elicits the several problems already discussed like time difference factor and the subsequent inflation effect, false and conflicting information from the police and non-satisfactory amounts of awards.

It is particularly noteworthy here that the time difference between when the cases occur and when they are ruled in the courts affects the quantum of the damages reflecting effect of inflation and interest rate changes.

As a result, insurers favour either arbitration or direct negotiations with the claimants preferable the latter.

Arbitration refers to involvement of an independent impartial third party or person (s) to decide on the quantum of damages which the defendants and plaintiffs will go by. It is rather time consuming just like court settlement as it is always difficult to establish the time convenient to the three parties who must be there. The fee charged here and the time taken however is less than in the court settlement mode.

Direct negotiation with the client is the cheapest in terms of both time and money incurred and paid. It is however at times disadvantageous to the clients as the insurers may convince them to accept unreasonably low quantum of damages. To the insurers, the rare management's time which could have been spent in the court cases is conserved. Eliminated here is legal fees and commission which the lawyers charge also.

2.2 ALTERNATIVE LEGAL SYSTEMS FOR COMPENSATION OF MOTOR

ACCIDENT VICTIMS:

Four possible legal systems exist for compensation of road accident victims, each capable of variations. They are:

- (a) The fault system
- (b) The presumption of fault system
- (c) The No-fault system
- (d) A mixed system of basic no-fault system and full fault compensation.

(a) THE FAULT SYSTEM:

Under the fault system, the victim of a traffic accident receives compensation only to the extent to which he or she is able to prove that the accident was caused through the fault of the driver (or, exceptionally that the car was defective due to **some** one's fault). (UNCTAD: 1987).

Before one succeeds in a claim for an award under this system, he or she must prove that the accident (injury) was caused by another one's fault. The injured party must prove that the defendant owes a duty of care to him, that the defendant has broken the duty and by that breach, has caused him an injury or damage. (Mungo: 1986). This is the system followed in Kenya.

This system appears "natural" in that one is held liable for the consequences of his or her fault, and none is held liable for a fault he or she has not committed. However, this philosophy may not be adequate for the phenomenon of accidents in general and traffic accidents in particular.

Liability for fault here is far from ensuring that justice will be done.

First, liability for fault is fully justified when someone has made a deliberate choice between possible modes of behaviour.

Accidents however occur against the will of the author, who frequently becomes a victim, and there is often a tragic disproportion between the fault and its consequences. (Colin: 1985). A pedestrian for example may be killed because of a split - second lack of attention. When an accident has occurred, the first reaction is to ask: "Whose fault is it?" It is hard to uproot the popular feeling that no justice is done when this question is answered.

Fault or negligence is defined as the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man **would** not do. (Singha: 1988). It is applied objectively and is independent of the idiosyncrasies of the particular person whose conduct is in question commenting on this aspect, Justice Holmes of Britain states: "If for instance, a man is born hasty and awkward, is always having accidents and hurting himself or his neighbours, no doubt his congenital defects will be allowed for in the courts of heaven, but his slips are no less troublesome to his neighbour than if they spring from guilty neglect. His neighbour accordingly requires him, at his proper peril, to come up to their standards and the courts which thus establish decline to take his personal equation into account. (The common law, Boston, 1949).

(a.1) Defects and weakness of Fault System.

This system has several criticisms which pose alot of problems to the insurers in different ways as pointed out below:

(a.1) (i) The imposition on the parties of the burden of proof as to fault, though the accident itself has hindered them from obtaining witnesses. We agree with the compelling words of the former Chief Justice of Ontario that; "The court is asked to come to a conclusion on what the fictional, reasonable and prudent man would have done in circumstances which more often than not required split second decisions. Witnesses are asked to tell months or years after the event with great accuracy their observations of events prior to and leading up to an accident when they had no occasion whatever to make any observations because no accident was anticipated. The evidence in the ordinary intersection cases affords the best example of the unreality of evidence of this character. It would require several witnesses of the accident with directors and stop watches to give the sort of evidence, witnesses are often asked to give in these cases. The witness is asked how far he was from the intersection when he looked to the right, where he was when he sounded his horn, and where he was when he applied the brakes. A great part of the evidence in actions arising out of motor accidents is in fact reconstruction and too often reconstruction with an eye on the result". (MCRuer: 1968).

This shows the problems faced by the plaintiffs, court, witnesses and the insurers.

The result of the above is more automobile litigation, more fraught with both innocent misrepresentation and outright perjury as well as all the stops between, than any other area of contested litigation. (Keenton & O'Connell: 1967).

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Moreover and even worse, the only evidence available in quite many accidents is that of the plaintiff alone. So what you simply have is the plaintiff's word against the defendant. Mr. Green in his book known as "Traffic Victims Tort Law and Insurance", stated that when an accidental harm is done, it is not for the doer to excuse himself by proving that the accident was inevitable and due to no negligence on his part. It is for the injured to prove affirmatively that it is as due to the negligence of him who caused it.

The inaccuracy of the facts given by the witnesses makes the damages quantum quite different from the actual loss suffered. This leads to high claims payments. Further, the fact that its only the plaintiff in most cases who is allowed to have witnesses the defendant may be proved guilty to a level he or she was not hence insurers paying more than necessary. This is because the outcome of any dispute between the victim and the tortfeasor depends upon the presence or absence of the witnesses, their impartiality, and their clarity of expression. (UNCTAD: 1985).

Negligence lottery is very important here which is worsened by the high degree of illiteracy and deficiency of the police services. In this context, the concept of fault as a basis of liability leads to distorted consequences bearing no resemblance to reality.

The element of proof has made the insurers of the tortfeasors to develop a tendency to decline their responsibility. This leaves the victims with no alternative other than taking the case to court with all the delays, expenses and uncertainty entailed by a lawsuit. The high expenses e.g. legal fees drain insurers funds and the uncertainty of the amounts and time of awards cripples planning and implementation by the Insurance Companies.

ii) The difficulty of ascertaining the facts sought even where the best evidence is obtainable because of witnesses who are neither trained nor prepared to observe cannot, after the lapse of months or even years enable a jury, which has no training in fact finding, to fix the blame for an accident caused by events which succeeded each other in the space of a few seconds. This means that the establishment of both the liability and the quantum of damages is based on 'half-baked' facts which are not reflective of the reality. Insurers thus are bound to pay quite irrelevant amounts on damages.

iii) Impossibility of fixing the damages accurately since there are no recognisable criteria of the value of non-economic losses like pain and suffering of disability. Determination of damage is not always intricate, but in the area of liability for third party injuries this is compound by two factors namely:

(a) The insistence that damage should not merely be compensatory but above all penal. The degree of fault has no bearing on the award of damages made.

"A further difficulty suggested by the use of punishment as justifying the fault criteria of liability, is the fact that the scale of fault and the scale of damages are unrelated. How great is the fault of the driver when a minor inadvertence brings a disaster? The road, weather, or the machine may have all played their part". (Hamish: 1964).

(b) The problem of determining damage for non-pecuniary losses. The assessment of damages for non-pecuniary losses has some degree of arbitrariness and uncertainty on the awards made.

This leads to various malpractices and unscrupulous conduct particularly in cases where the tortfeasor is insured.

The insurmountable problems of measuring pain and suffering for example assists the insurers to resist tort claims. The amounts depend on the accuracy of the prognosis. More often than not, the doctor can only forecast the future in terms of possibilities and probabilities never of certainty. Any error in the prognosis leads to plaintiff to recover either too much or too little to the disadvantage of the insurer and the claimant respectively.

Moreover in trials where there are Jurors, the victim would rather look as miserable as possible before the Jury so as to win their sympathy and hence secure a bigger award.

The amounts awarded here therefore differ as its merely arbitrary. It is not rare to hear a Judge of appeal saying: "In refusing to raise an award of damages, that of course he might have well given more himself, but the court only interferred if there was an error of principle or if the damages are wholly out of skill". (Lord Parker: 1965). This gives room for appeals. Eventually the insurers waste a lot of their rare valuable time in courts, damage their public image by the delays and refusal to pay the claims and ultimately overspend their funds.

iv) There is an inherent contradiction in the application of the fault liability to traffic accidents. Fault can be defined as a form of behaviour that departs from the behaviour of a reasonable man, a good citizen.

iv) Unfortunately, these road accidents are caused by citizens. They are guilty of no more than oversight, a feeling lack of attention, an unfortunate reaction to danger. These are errors regrettable indeed but statistically unavoidable. It is thus a contradiction to call them 'faults' and an injustice to apply to them the legal consequences of refuse all compensation to the family of a driver who is killed in a collision simply because it has been proven that the driver was at fault. This stains the public image of the insurance companies concerned here.

v) Delay caused by waiting for trial and aggravated in some cases by appeal. The delays in making judgements on urgent cases makes the system and courts blamable. The old adage 'Justice delayed is Justice denied' applies. As pointed out earlier, this injures the insurance companies' public image and affects any future businesses brought.

vi) There is heavy financial responsibility of the motorists who cause the accidents and their insurers. The fault system does admit limits to compensation. It is in favour of this system to pay victims any sum of money which as nearly as possible is reflective of the loss suffered. This creates a lot of financial burden to the insured's and their insurers.

vii) The principle is very impersonal. If there is no fault, there is no compensation. In the case Bell Versus Travco Hotles Limited (1953) IQB P.473. The chief Justice said "Nowadays, if somebody is unfortunate to meet with an accident from which injury results, its always thought

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that there must be somebody to pay it. I think the idea is getting too common. It is not every injury that a person may sustain in the course of everyday life that he or she can recover compensation.

The degree of fault is a factor in determining the amount of compensation. The degree of fault is a factor in determining the amount of compensation. The degree of fault is a factor in determining the amount of compensation.

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It can only be recovered if that injury is due to the fault of somebody who owes a duty to that person. Since there is insurance, the victims may think that it is the insurers who have declined payment without knowing that it is the full application of the Fault system.

viii) The fault system does not consider the defendant's degree of fault. Aliya P.S. in his book entitled "Accidents compensation and the Law" stated, "Fault is like a magic talisman, once it is established, all shall be given to the injured Party". The fault can be trivial and the compensation gross or the fault be gross while the compensation is trivial. The degree of fault matters only for contributory negligence. Insurers pay amounts which under normal circumstances, it should have not paid.

(ix) Difficulties of Adjudication:

Negligence is hard to prove. These difficulties are purely practical and technical. Litigation is very expensive because it involves two forms of action. One, between the injured party and the defendant and then between the injured and the insurers of the defendant; two, the events leading to an accident occur in a split of a second. It's difficult to state in detail and accurately what one saw in this very brief moment to ensure that the court's decision correspond with what actually happened. The witness' memory may have lapsed because the accident occurred long time ago.

People even refuse to give details of the accident because they see courts as cruel and oppressors just like policemen. They thus avoid courts as much as possible. The useful witnesses therefore insist that they saw nothing. Such incident was reported over the television—

Voice of Kenya News on 3rd March 1986 where in Bungoma a boy of ten years was knocked by a speeding "matatu" whose driver ran away. The boy died. No one agreed to come forward and give the police any information regarding the accident. The truth as to how the accident occurred will never be known save by those who saw the incident but have refused to cooperate. This means that the court's Judgement will be based on incorrect information meaning that the insurers are likely to pay a figure they would have not paid if the correct information was gathered.

x) Claim Consciousness:

Most of Kenyans are illiterate and know nothing to do with Law. The compulsory Third Party Insurance Practices presupposes a citizenry well educated and well informed of their rights. Even the most affluent in Kenya are very ignorant of these rights. This is something the insurers have been taking advantage of but since the recent past, people have become claim conscious especially with the well functioning of the Lawyers who through "ambulance chasing" convince the accident victims to make claims. (Munga: 1986).

Ambulance chasing here refers to the act of the lawyers running after accident victims and convince them (victims) to agree to make claims through them (lawyers). They promise the victims total representation and success.

Despite its weaknesses, the fault system has been operating in most of countries influenced by British Common Law, for many years. This system remains in force because most of these governments have strong National Health Services and other social security Schemes which provide reasonable compensation of the wages cost after road accident. The insurers are not often liable and pay the claims several years after the accident which helps in preserving their funds.

To improve the system, the following measures need to be introduced:

- i) Have limitations to the principle of full compensation to avoid both minor and excessive claims.
- ii) All non-economic losses should not be paid.
- iii) The highly waged people should not be allowed to take advantage of the lawyers and benefit from the insurance unlike the poor victims who cannot afford to hire lawyers. They should purchase personal accidents' insurance to cover any claims above an average (limitations) given by the courts for such claims.
- iv) There should be measure to compensate even the people travelling free of charge.
- v) The government and the insurance industry should together establish measures to compensate accident victims through the operation of indemnity funds whether the person is insured or not. This will cater for the uninsured drivers and "hit and run" victims .
- vi) The government should enforce a law which requires a speedy recovery of the losses. The urgent cases should be distinguished and be dealt with the soonest possible. Arbitration should be heavily enforced and discourage the issue of taking the cases to courts. The cases taken to courts should not be subject to any adjournments once the date of hearing is set.
- vii) Lastly, there should be measures which facilitate recourse for victims against the insurer by establishing direct responsibility of the insurer. This will prohibit the insurers from defending themselves and fail to compensate the accident victims.

vii) This means that there should be an alternative compensation system like NO-FAULT system.

(b) THE PRESUMPTION OF FAULT SYSTEM:

This system assumes that the motor vehicle is a dangerous vessel and whoever drives it along the roads does it at the expense of the others. (Vaghan: 1989).

The fault here bears on the operator or owner of the Motor vehicle and the ones of proof is the insurer. The victims are directly entitled to compensation unless the insurer proves otherwise (UNCTAD: 1987).

The system is employed in countries following the French Law. The dominant advantage of this system is that more victims are paid relative to the fault system though to the disadvantage of the insurers. The fact that more victims are compensated, even higher amounts, since the tort liability is presumed entirely here means that heavy financial burden is laid on the insurance industry without relief.

Other drawbacks as discussed under fault system apply equally here. The measures suggested there carries the same weight here. Further, to eliminate or at least lessen the burden pointed out above, deductions and bonuses should be applied. There need to be an allowance for the insurers to recover from the insureds if they were negligent. Lastly, the government and insurance can encourage and employ alot of loss prevention measures.

(c) NO-FAULT SYSTEM:

Under this system, everybody (victim) is compensated irrespective of fault or no fault.

(c) There is no negligence lottery and the compensation does not depend on fortune, impartiality, witnesses, or clarity of thought of witness. The delay in compensation is reduced as there is direct compensation of victims and drivers. It eliminates or reasonably reduces the claims administration expenses.

The law here sets the upper and the lower limits of compensation and this encourages the abled persons to purchase personal insurance. It is commonly practised in countries like Sweden and Israel.

The problem under this system is that there is no full compensation, no subrogation and it may encourage passengers to provoke injuries maliciously for compensation, for the compensation is rather automatic. (Munga: 1986).

To make the system more admirable, the following needs to be done;

- i) The insurers and the law should agree to adjust the ceilings to cost of living and to the capacity of insurance market to pay the claims.
- ii) Only economic losses which can easily be quantified should be paid and avoid sentimental issues.
- iii) Lumpsum payments should be encouraged to avoid the impact of money erosion in value overtime. For the benefit of the insurers instalments should be encouraged.
- iv) Lastly, other sources of compensation should be employed to augment and compliment this one like pension schemes and workmen's compensation.

(d) MIXED SYSTEM:

This is a two tier system. It provides limited compensation to all victims.

2.3 ASSIGNMENT OF DAMAGES FOR PERSONAL INJURIES AND DEATH
It offers, however, full compensation if the victims can prove a fault on the part of the author of the damage and if the damage is of a certain magnitude. (UNCTAD: 1973).

From the insureds' perspective, the system's merit include, the fact that it ensures basic protection and assures further that every victim can attain full compensation. It holds on the quotation "The victims right should be protected from contestation, with delays, and pressures which result from the courts' proceedings and other precious necessary procedures e.g. getting police letters:"

The system however exposes the insurers' to unjustifiable claims. It assures full compensation to people who do not even need it e.g. wealthy people with personal Accident covers.

The available scarce resources i.e. money and time is wasted in negligence lottery and its administration expenses. This has put a very heavy burden on the insurers to pay these claims.

The measures employed to improve the other systems can be replicated here since this is mere combination of the two extreme system i.e. fault and Non-fault systems.

2.3 ASSESSMENT OF DAMAGES FOR PERSONAL INJURIES AND DEATH:

Damages is the value estimated in money of something lost or withheld. It is the sum claimed or awarded in compensation for loss or injury sustained. (Lunzt: 1983).

There are several steps followed in assessing these damages namely;

(a) Pre-trial considerations

i) Establishing liability

ii) Establishing Damage

(b) Pre-litigation procedures

(c) Litigation

i) Issue of writs

ii) Service to insurers

iii) Pleadings

iv) Payment into court

I. PRE-TRIAL CONSIDERATIONS:

Before trial in the courts, the liability and damages as a result of any accident should be established. (Kemp: 1990).

i) Establishing Liability:

Even the biggest case may fail if the plaintiff cannot establish the defendants liability. (Munkman: 1973).

The liability can be established through the following ways:

(a) Oral Evidence: Stating clearly what happened by an eye witness.

(b) Hearsay Documents: use of hospital bills for example to prove that one was seriously injured and was treated.

(c) Plans and photographs of the accident to show actually how things were.

(d) Convictions: The Judges in the courts can be convinced that the defendant was really at fault once the vehicle is found to be actually defective.

Where there is a possibility of a contributory negligence issues like seat belts are looked at. If the plaintiff was found to have not been using the belts at the times of the accident which would otherwise reduce the level of the accidental injury.

ii) Establishing the Damage:

Damages suffered can be evidenced by the following:

(a) Medical Evidence: This is the use of doctors evidence that the plaintiff actually suffered, treated and incurred how much. The problem here is that the doctors can liaise with the client (accident victim) to cheat on the figure of the costs incurred here.

(b) Provisional Damages: This is where the plaintiff proves or the defendant admits that there is a chance that the plaintiff's health will change (get worse) because he or she may develop a serious disease. The problem arises in the question of the predictions accuracy.

(c) Accountants, Loss adjusters, and actuaries: These are called for to evaluate the extent of the loss which the plaintiff's solicitor could not do himself. These experts fee needs to be

- (c) included as part of the damages. These fees are not static and can be inflated.
- (d) Architects and surveyors: A badly disabled plaintiff may need specially constructed or modified accommodation and a whole range of appliances to make his life more tolerable. These experts are called upon to give evidence in support of or to dispute such claims. The truth on whether the specially constructed items are required and if so for how much may not be reported hence leading to ambiguous claims.
- (e) Nursing expenses, loss of use of a company car and loss of earnings are other damages claimed. There is always a problem in arriving at an agreed final figure for compensation here.

II. PRE-LITIGATION PROCEDURE:

This refers to discovery and inspection. The prelitigation applications for discovery and inspection of particular documents are mainly relevant to liability.

III. LITIGATION:

- (a) Issue of writs:
When the matter is taken to courts, the first thing done is to send formal legal written order to the defendants to do or not to do something. The writ can be posted or taken by hand if possible. The basic limitation of issuing a writ is 3 years from the accident date or date of knowledge, if later, of the person injured, (Kemp & Kemp: 1961). The knowledge should be on that the injury was significant, caused by negligence and identity of the defendant. The date of knowledge is mainly the police report of a motor accident if

III. available.

One can sue a second defendant whose possible liability who was revealed in the report more than three years after the accident.

Limitation for plaintiff under a disability is three years from the end of their disability or death whichever is first.

Knowledge here is irrelevant.

There are delays here because;

- i) Defendants cannot be saved early enough.
- ii) A writ renewal is possible.
- iii) Plaintiff's solicitor wait for medical prognosis before being able to quantify the claims.

(b) Service to insurers:

Once a matter is put into the court, it is necessary to inform the insurers so that they can send their representatives in the courts for the proceedings.

(c) Pleadings:

Denials should be supported with facts on which the party relies in mitigation of or otherwise in relation to, the amount of damages.

(d) Payment in Court:

To prevent the case continuing in the courts and thereby incurring all the consequent expenses, the claims should be paid 21 days before trial. (Lunzt: 1983).

III. (d) All these procedures take a lot of time which causes the delay in the claims settlements hence bringing forth the inflation and interest rates effect. The claims are paid through the lawyers who don't remit it early enough or never at all.

2.4 ESTABLISHING THE QUANTUM OF DAMAGES:

i) PRINCIPLES OF LAW APPLICABLE AND FOLLOWED:

The rule governing the measure of damage in tort is that the tortfeasor is liable for all damages following directly from the tort, whether such damages be reasonably expected or not. (Munkman: 1973).

One of the principles is given in the following passage from the Judgement of Lord Blackburn in Livingstone versus Rawyards coal company: "I do not think there is any difference of opinion as to its being a general rule that where an injury is to be compensated by damages in setting the sum of money to be given for reparation of damages you should as nearly as possible get at a sum of money which will put the party injured or suffered in the same position as he or she would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation" . (Kemp: 1990).

The person suffering the damage is entitled to full compensation for the pecuniary injury suffered. (Dave: 1987). It is the common practice to get the present value of all the victims prospective earnings and become the damages due from the

the defendant. The difficulty arise in the case of damages which cannot be calculated in terms of money for example pain and suffering, loss of a limb, loss of sense, and loss of expectation of life.

The courts say that the injured should be given a reasonable compensation. There cannot be any perfect compensation for such matters as indicated above and if there was, there would then be no limit to the amount of the damages for no sum would be equivalent of say loss of eyes of a man. The test of reasonableness is the previous awards on similar cases. Since, however, what may be reasonable to one judge, may not be reasonable to another, the amounts awarded are bound to differ and this creates an element of uncertainty in the overall company expenditures which hampers progressive planning.

11) HEADS OF DAMAGES:

In applying the principles, it is necessary to distinguish the damages under different heads. Factors which affect the amount to be paid for each claim depends on the damages suffered. Difficulties arise when trying to use these factors to determine the Quantum of damages.

Depending on the nature of the accident and the degree of injury to the third party there are generally two types of damages which the insured is unable to compensate the affected persons namely:
Pecuniary and non-pecuniary Loss.

(a) Pecuniary Loss;

1. Expenses: Among these are medical expenses and legal expenses.

(a) 1. The problems encountered in using these heads to determine the quantum of damages is that the Law requires 'reasonable' compensation of these. (Lunzt: 1983). What is reasonable to one person may not obviously be reasonable to another. The insurers may be called thus to pay an extremely high sum which to the Judges is reasonable.

2. **Loss of Earnings:**

Difficulty arises in determining which incomes have to be included for computation of the damage.

It is quite burdening financially to the insurers who are to pay if all the incomes (earnings) lost are compensated for be they personal, private, or employment.

A further problem arises in determining the future earnings which need to be discounted to the present value to be paid. The Judges do not only consider the present level of wages but also the prospective future changes in wages e.g. as a result of the promotion which would be forthcoming were it not for the accident. (Kemp: 1990).

The uncertainty of this future changes makes the quantum uncertain or grossly incorrect which may affect the insurers financial reserves and weaken the planning.

3. Handicap in Labour Market:

Due to the injury suffered, one may experience a problem of being absorbed into the industry simply because he or she is believed not to be any productive. (King'ori: 1985). The loss which arises therefrom is therefore compensated for. The problem is that an insurer cannot predict the lost earnings precisely. The unpredictability, affects the insurer's planning and expenditure.

(b) Non-pecuniary Loss:

These are non economic losses and include;

- i) Pain and suffering.
- ii) Loss of amenities of life for example loss of sight or sense.
- iii) Loss of Expectation of life for example loss of future prospects of being productively employed and living a decent life.
- iv) Inconviniences and discomfort for example inability to attend a football match to spectate or inability to go to any other planned recreational activity simply due to the injury.

v) Exemplary damages:

These are damages suffered as a result of intentional or deliberate acts of the owner of car or the author of the accident.

These losses are rather sentimental and determination of the quantum to be paid is rather difficult. The Judges employ their personal Judgement which may mean coming up with a figure excessively above

what the insurers would have preferred. Insurers further complain that these losses are not at all economic and should not be awarded for damages. An example of such which is mostly refuted is the inconveniences and discomfort losses. (Munkman: 1973).

1.1 SAMPLE PROCEDURES

1.1.1 THE POPULATION

The study included two populations of interest. The first population is all the registered companies operating and manufacturing in Ontario which reported their 1972 financial performance. The second population is all the claims in the first half and the second half of 1973 of Public Adjusters.

1.1.2 THE SAMPLE

For purposes of data, all the 100 registered companies manufacturing the Motor Insurance Policies were interviewed. Further, 1000 of the 1000 registered Public Adjusters were interviewed. The sample of 1000 was selected from the 1000 registered Public Adjusters in Ontario. There was no selection of Public Adjusters on the basis of their experience or other factors.

1.1.3 DATA COLLECTION METHOD

The primary data for this study was obtained through the use of all the registered Public Adjusters and a sample of registered companies with the permission of the Ontario Insurance Board and the Public Adjusters. The Public Adjusters were contacted for the information required for the study and the registered companies contacted with similar requests.

SECTION 3.

3.0 RESEARCH DESIGN:

This was an exploratory research which investigated into the problems the compensation system for personal injuries and death has on the motor vehicle insurers in Kenya.

3.1 SAMPLING PROCEDURES:

3.1.1 THE POPULATION:

The study included two populations of interest. The first population is all the insurance companies operating and headquartered in Nairobi which transact Motor vehicle insurance business. The second population is all the Judges in the High court and the court of Appeal of Kenya (Nairobi).

3.1.2 THE SAMPLE:

For adequacy of data, all the 36 insurance companies transacting the Motor Insurance business were interviewed. Further to cater for the risk of non-responses from some of the few Judges here, I was bound to include all the 24 Judges in the court of Appeal and the high court of Kenya. There was therefore no sample selected necessitating the use of any sampling method.

3.2 DATA COLLECTION METHOD:

The primary data for this study was collected through the use of two questionnaires and a number of personal interviews with the executives of the insurance companies and the Judges. The questionnaires were developed from the literature reviewed on the subject and the preliminary interviews conducted with selected respondents.

The initial questionnaires were developed and pretested on a sample of insurance companies claims managers and two judges, after which the questionnaires were adjusted and restructured on the basis of the experience on the answers given to the questions asked. The final versions of the questionnaires were then developed and used.

The first questionnaires (see appendix A2) accompanied by a letter to the respondents to explain the purpose of the survey (see appendix A1) was designed to collect both quantitative and qualitative data and covered the major dimensions of the issues raised in the problem. It sought to find out the position of the Motor Insurance in terms of its profitability as shown by the operations' results over the past five years, the problems the insurers face from the point of view of the characteristics of the personal injuries and deaths claims as determined by the judges, the problems insurers face from the delay in claims settlement, the problem the insurers face from the manner of the insurance practice and the problem the lawyers' practice of "ambulance chasing" pose to the insurers. The next section sought to identify the problems posed by the fact that there is only one locally owned Reinsurance. The last section of the questionnaire sought to identify the mode of the claims settlement the insurers prefer and the rationale for their preference.

Accompanying each of these sections are subsections to give possible solutions to these problems. This questionnaire was administered to the claims managers of each of the insurance companies.

The second questionnaire (see appendix A3) accompanied by a copy of the letter referred to above, comprised of two main questions.

The first main question sought to identify the problems the Judge face in determining the liability and the quantum of damage for these personal injuries and deaths claims.

The second question sought to identify the main problems posed by the fault system followed in Kenya for these claims' compensation. For each of the questions there is a subsection which required the Judges to give suggestions on what could be done to solve the problems.

The Judges themselves both in the High Court and Court of Appeal were interviewed.

The questionnaires were dropped personally to the Insurance Companies and delivered to the Judges through the High Court Registrar Chambers through whom the responses were to be transmitted. I however, collected the questionnaires personally both from the Insurance Companies and the Judges. In most of the cases I was bound to sit together with the respondents to answer the questionnaires a kind of self-administering instead of only "pick and collect latter" method.

3. DATA ANALYSIS:

The data collected in this study was presented and mainly summarised by use of proportions, tabulations and percentages.

4. DATA ANALYSIS AND PRESENTATION OF FINDINGS.

This chapter documents and discusses the findings on the specific areas of inquiry. The results are summarized and presented by the use of proportions, percentages and tabulations.

4.1 RESPONSE RATE

The effective response rate to the questionnaires to the insurance companies was about 64%. Out of the 36 questionnaires dispatched out to the insurance companies transacting motor insurance business, a total of 23 were completed and picked within the time limit set.

The response rate of the questionnaires to the judges was about 46%. Out of the 24 questionnaires dispatched to the judges 11 were returned completed within the time limit. This rate was quite satisfactory as it was not expected that such a rate of response would be achieved from such busy people within the time limit. Most of the other judges who did not complete the questionnaires, claimed that they were rather too busy that they could not have time for my questionnaires unless the time limit was (would be) relaxed. The claims are true in the sense that in the High Court and Court of Appeal of Kenya, there are less than the required number of judges i.e. only 24 where the minimum required is 30 judges. Of the 11 questionnaires returned, one was not fully completed. It lacked very crucial information and thus was not used for the analysis.

4.2 PRESENTATION OF FINDINGS

The main objective of the analysis in this study was to identify the problems the insurers face on the compensation system for personal injuries and deaths emanating from seven major areas.

in a bid to identify the problems. Presented below are the findings that go towards answering these questions.

4.3 THE PROBLEMS THE INSURERS FACE.

The analysis of the data showed that the Motor Insurance business is declining as all the Insurance companies reported experience of continuously increasing losses over the last five years.

From the data revealed in the study, 14 out of 23 insurance companies i.e. 60% of the response agreed to the statement that claims for personal injuries are the most prevalent followed by death claims medical expense claims and damage to property claims in that order. A higher percentage of 90% i.e. 9 out of the 10 judges agreed to the above quoted statement.

4.3.1. CHARACTERISTICS OF PERSONAL INJURIES AND DEATH CLAIMS.

The table 3 below shows the characteristics of the personal injuries and deaths claims which cause problems in the claims compensation as mentioned by the insurance companies. The companies further ranked the characteristics in their order of significance as shown in the table below. Significance here refers to the degree of their effect on the operations and economic performance of the companies.

TABLE 3

The number and proportion of the companies mentioning the characteristics under the given ranks.

| Ranks \ Characteristics | 1 | 2 | 3 | 4 | 5 | Total number of mentions of each characteristic |
|-------------------------------------------------------------------------|--------|-------|-------|-------|-------|-------------------------------------------------|
| a. They are very many over a given year. | 5=29% | 4=24% | 6=35% | 2=12% | 0=0% | 17 |
| b. Take too much of the companies time and money in settling. | 5=23% | 9=41% | 5=23% | 3=14% | 0=0% | 22 |
| c. They are generally higher than the premium received on the insurance | 13=62% | 6=20% | 1=5% | 1=5% | 0=0% | 21 |
| d. The amount paid to clients differ even where the cases are similar | 0=0% | 7=37% | 4=21% | 8=42% | 0=0% | 19 |
| e. Others | 0=0% | 2=40% | 0=0% | 1=20% | 2=40% | 5 |

All the characteristics perceived earlier were mentioned though in varying proportions by the insurance companies. Five different companies further gave more characteristics which pose problems in the compensation as mentioned here under:

- a) These claims mostly relate to commercial vehicles especially Matatus where the amounts payable are generally higher than under private vehicle covers.
- b) The death claims are cheaper than personal injuries claims even on similar cases. Given further that these personal injuries claims are the most prevalent then the insurers are bound to pay a lot of money on these claims.
- c) The claims may be intimated quite unexpectedly to the company and may assume very huge figures not hitherto anticipated due to for example minor injuries turning into major ones in future.
- d) Some of these cases take even longer than others depending on who are involved as the victims.
- e) The awards and claimants have increased due to the advent of ambulance chasers. These characteristics were ranked fifth on their significance by a show of 40% of the insurance companies which generally mentioned them.

From the table we find further that the characteristic that these claims are generally higher than the premiums received on the insurance has been ranked the first by a show of 62% by the insurance companies who mentioned it. This is the highest percentage of mention under rank 1 though the characteristic was mentioned by second largest number of the companies as seen in the table.

The most mentioned characteristic by a show of 22 companies mention and mostly ranked second under which rank it scored the highest percentage i.e. 41% of mention was the characteristic that the claims take too much of the companies time and money in settling.

The third position in the order of significance was taken by the characteristic that the claims are very many over a given year. This was by a show of 35% of the 17 companies which mentioned it.

In the same line, the characteristic that the amounts paid to clients differ even where the cases are similar despite the fact that it was third in the order of mention with 19 mentions, it attained the highest percentage of mention under rank 4 by a show of 42% of the companies who mentioned it.

SUGGESTED SOLUTIONS TO THE CHARACTERISTICS MENTIONED ABOVE

The insurance companies further gave suggestions on what should be done by the relevant "persons" to change the characteristics. The table 4 below shows the statements descriptive of the solutions to these characteristics.

Table 4

Statements descriptive of the solutions to the above

Characteristics (n=23)

| Statements | Number of mentions by the companies | Proportion of mentions |
|----------------------------------------------------------------------------------------------------|-------------------------------------|------------------------|
| a) More Judges should be assigned the "Running Down Cases" | 7 | 30% |
| b) Cases should be heard fairly and by priority | 2 | 9% |
| c) A shorter time limit of hearing the cases should be set especially 2 years | 1 | 4% |
| d) The premiums should be loaded. | 10 | 40% |
| e) The government to educate the public and enforce the law on road safety. | 15 | 65% |
| f) The Insurance companies should impose higher excesses. | 4 | 17% |
| g) Insurers should be more strict in underwriting | 2 | 9% |
| h) The government and insurers should set a schedule of awards together. | 7 | 30% |
| i) Encourage out of court settlements | 8 | 35% |
| j) Eliminate ambulance chasing | 5 | 20% |
| k) Lawyers should be made not to view insurers as profit centres | 2 | 9% |
| l) Have a panel of doctors to examine the road accident victims. | 6 | 26% |
| m) There should be established a state-owned insurance scheme to cater for excessively big losses. | 1 | 4% |

| Statements | Number of Mentions by the companies | Proportion of mentions |
|---------------------------------------------------------------------------------------------|-------------------------------------|------------------------|
| n) The insurers should have their in-house lawyers, architects, loss adjustors and doctors. | 4 | 17% |
| c) Insurers should computerize their operations | 2 | 9% |
| p) The claimants should be paid their dues directly instead of through lawyers. | 1 | 4% |

From this table, we find that the suggestion that the government should educate the public and enforce the law on the road safety measures strictly scores the highest percentage of mention.

It was mentioned by 65% of the insurance companies. The suggestions that the premiums should be loaded and that the out of court mode of settlements should be encouraged followed by a show of 40% and 35% respectively.

Tying with 30% show of mention are the solutions that the number of judges assigned to the "Running Down" cases should be increased with the present ones being more vigilant and committed and that there should be a schedule of awards which is to be followed by both insurers and judges in awarding damages.

In the same line the solutions that the government with the collaboration of the insurers should set a panel of doctors to be examining the road accidents victims and that the ambulance chasing should be eliminated by making it illegal follow by a show of 26% and 20% respectively. 9% and 4% of the 23 Insurance companies which responded suggested the solutions that the cases should be handled fairly and by priority and that there should be a time limit set of hearing the cases in that order.

A proportion of 17% of the insurance companies suggested that the insurers should impose higher excesses and they should have their in-house lawyers. The solutions that the insurers should be more strict in their underwriting was suggested by 9% of the companies. The same proportion suggested that the insurance companies should computerize their operations and that there should be an agreed code of cooperation between the lawyers and insurers so that the former will not view the latter as profit centres.

A very low proportion of 4% of the responses further suggested that the claimants should be paid directly instead of through their lawyers and that the government should establish a state insurance scheme to be catering for excessive losses which are beyond accomoditable limits by the insurance companies.

4. 3.2 DELAY IN COURT AWARDS

A total of 22 insurance companies out of the 23 which responded to the interviews i.e. 96% of the responses agreed to the statement that Motor accident cases take too long in the courts pending hearing and judgement of the cases.

The tables below shows a list of the statements descriptive of the negative effects to insurers, this delay poses as given by the insurance companies.

From this table we find that all the insurers who agreed to the statement that the cases take too long in the courts pending hearing indicated that this delay makes the insurers to pay more than it could have paid due to inflation and rates of interest factors.

The facts that the delay leads to more pending cases hence affecting planning and waste of manhours in courts were indicated by 68% and 46% of the companies respectively. Further, 82% of the companies indicated that the delay prevents reasonably prompt settlement of claims hence giving a bad image of the insurance company.

The other effects that the delay poses as mentioned by insurers are that it forces the insurers to keep unnecessary speculative reserves and have archives of claims documentations by a show of 36% and 9% respectively. In the same line, a further 9% of the insurers mentioned that the delay makes recovery of the claims from the reinsurers rather difficult due to the lack of cooperation and changes in the currency as time passes.

Table 5:

Negative Impact of the Delay in Court Awards

(n=22)

| Statement | Number of Mentions | Proportion of mention |
|---------------------------------------------------------------------------------------------------------------|--------------------|-----------------------|
| a) The insurers pay more due to the inflation and interest rates factors | 22 | 100% |
| b) There are long pending claims which affects planning | 15 | 68% |
| c) Leads to waste of manhours while attending court | 10 | 46% |
| d) Prevents prompt settlement of claims hence giving a bad image of the company | 18 | 82% |
| e) Keep on Maintaining unnecessary speculative reserves | 8 | 36% |
| f) Make an archive of claims documentations | 2 | 9% |
| g) Problem of recovery from reinsurers due to lack of cooperation, currency problem and delays as time passes | 2 | 9% |

4.3.3 UNDERWRITING PROBLEMS

The table 6 below shows the problems as indicated by the insurance companies, which they (insurers) experience from underwriting the Motor Insurance. The table further shows the ranking of problems in the order of their significance as mentioned by the insurance companies.

Table 6

The number and proportion of the companies mentioning the problems under the given ranks.

(n=23)

| Ranks \ Problems | 1 | 2 | 3 | 4 | 5 | 6 | Total Number of mentions of the problem |
|------------------------------------------------------------------------------|--------|--------|-------|-------|-------|-------|-----------------------------------------|
| a) The premiums charged are too low | 8=38% | 10=48% | 2=10% | 1=5% | 0=0% | 0=0% | 21 |
| b) The claims payments are unproportionately increasing year after the other | 14=61% | 5=22% | 3=13% | 0=0% | 1=4% | 0=0% | 23 |
| c) The operating expenses are very high | 0=0% | 3=16% | 7=37% | 2=11% | 6=32% | 1=5% | 19 |
| d) The investment areas are limited by the government regulations | 1=7% | 1=7% | 3=20% | 9=60% | 1=7% | 0=0% | 15 |
| e) The investment returns are low | 0=0% | 0=0% | 5=29% | 4=24% | 7=41% | 1=6% | 17 |
| f) Others | 1=20% | 2=40% | 0=0% | 0=0% | 0=0% | 2=40% | 5 |

The table above shows that further to mentioning the perceived problems, the insurers indicated experience of more other problems. These other problems included: heavy competition, ambulance chasing, faked claims and the fact that these claims are too frequent. The insurers generally ranked these problems mainly under rank six by a show of 40%.

Under rank 1 the problem that the claims payments are unproportionately increasing year after the other was the most mentioned by a show of 61%. The problem was mentioned by all the insurers.

In the same order the problems that the premiums are too low and that the operating experiences are very high follow in significance and number of mentions. The ranks were indicated by a show of 48% and 37% of the insurers which mentioned them respectively.

The problem that the investment areas are limited by the government regulations was ranked fourth by a show of 60% while the problem that the investment returns are low was ranked fifth with a 41% mention under the rank.

SUGGESTED SOLUTIONS TO THE UNDERWRITING PROBLEMS

The table 7 below shows the solutions to these problems as suggested by the insurance companies.

The table shows that 87% of the companies suggested that they should be left free to review their premiums constantly. Further 83% of the

Table 7
Solutions suggested to the underwriting problems
(n=23)

| Solution | No. of mentions | proportion of companies mentioning it |
|-------------------------------------------------------------------------------------------------------|-----------------|---------------------------------------|
| 1) The premiums should be constantly revised | 20 | 87% |
| 2) The government should increase its participation in loss prevention measures | 19 | 83% |
| 3) The government and insurers jointly to form a central repairing station with a pool of spare parts | 12 | 52% |
| 4) The insurers should have strict underwriting | 6 | 26% |
| 5) The insurers to adopt cost saving measures like computerization | 14 | 61% |
| 6) The government should remove the investment restrictions. | 10 | 43% |
| 7) The Association of Kenya Insurers to set ethics to curb unhealth competition | 5 | 22% |
| 8) The insurers and the government to jointly establish a schedule of awards | 8 | 35% |
| 9) The insurers should impose higher excesses | 7 | 30% |
| 10) The insurers should have in-house lawyers and assessors | 10 | 43% |
| 11) Out of court modes of settlement should be encouraged. | 4 | 17% |
| 12) Corruption at vehicle inspection and driving tests to be checked | 7 | 30% |

| Solution | No. of mentions | Proportion of companies mentioning it |
|---------------------------------------------------------|-----------------|---------------------------------------|
| 13) Improve the local hospitals | 3 | 13% |
| 14) Stabilize the economy | 1 | 4% |
| 15) The limits of third party damages should be lowered | 3 | 13% |
| 16) No-Fault compensation to be adopted instead | 12 | 52% |

companies suggested that the government should increase its participation in Loss prevention measures, strict enforcement of the traffic rules and having refresher courses for drivers among other things.

Third in the order was the suggestion that the insurance companies should adopt a cost saving measures e.g. computerizing and increasing the efficiency of their operations. This was mentioned by 61% of the companies.

The Fourth rank was attained by the suggestion that the government together with the insurers should form a central repairing station and a spare parts pool and that an alternative compensation system i.e. NO-FAULT system should be adopted in Kenya instead of the current fault system. Each of these solutions were suggested by 52% of the 23 insurance companies.

Suggestions that the government should remove its restrictions on the investment areas and that the companies should have their own in-house lawyers and assessors followed each having a mention of 43% of the companies. 35% of the companies suggested that the insurance industry in collaboration with the government should establish a schedule of awards for particular damages.

Another tie of suggestions in order of the mentions by a show of 30% each were that higher excesses be imposed to ensure that that the careless drivers at least pay for their mistakes and that the government should ensure that there is no corruption at the vehicle inspection and driving tests.

26% of the Insurance Companies suggested that the insurers should have strict underwriting to check "bad" risks while only 22% mentioned that the Association of Kenya Insurers should set ethics to curb the unhealthy competition among the insurance companies.

A proportion of 17% of the insurance companies suggested that they should encourage out of court settlements while 13% of the companies suggested that the local hospitals should be improved to reduce the number of victims taken out of the country for treatment and that the insurance companies with the government consent should lower the third party damages.

The lowest proportion i.e. 4% of the insurance companies suggested further that the government should use all way possible e.g. restating its fiscal and monetary policies to ensure stable economy by checking or controlling inflation.

4.3.4 THE LAWYERS PROBLEM

The lawyers practice of ambulance chasing poses several problems to the motor insurance more especially from the compensation for the damages point of view. The table below shows the statements indicated by the insurers as descriptive of the problems the lawyers practice cause to the Kenya Insurers in the respect of compensation for personal injuries and deaths - claims.

Table 8: The number and proportion of the insurers mentioning the problems of the given ranks.

(n=23)

| Ranks Problem | 1 | 2 | 3 | 4 | Total number of companies mentioning the problem |
|-----------------------------------------------------------------|--------|--------|-------|-------|--------------------------------------------------|
| a) They influence potential non-claimants to make claims | 15=68% | 3=14% | 3=14% | 1=5% | 22 |
| b) They encourage the victims to take the matter to the courts. | 2=11% | 8=42% | 7=37% | 2=11% | 19 |
| c) Their fees are too high | 3=15% | 10=50% | 6=30% | 1=5% | 20 |
| d) Others | 1=8% | 1=8% | 2=17% | 8=67% | 12 |

All the insurers who responded to my interviews mentioned all the problems perceived though in varying proportions. Twelve insurance companies further mentioned other problems caused by the lawyers as under:

- a) That the lawyers do not remit all the money due to the claimants back to the claimant.
- b) They even delay the remittance
- c) They conspire amongst themselves and inflate the damages very often.
- d) They encourage fake claims
- e) They do not follow the remuneration order governing their fees.

Table 7
Solutions to the Lawyers' Problem

| Solution | Number of | Percentage |
|------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|
| These problems generally were ranked fourth in significance by a show of 67% which was the highest percentage of mention under the rank. | | |

The other problems in the order of significance followed the order of total mentions with the most serious problem being that the lawyers influence potential non-claimants to make claims. This was mentioned by 22 insurance companies overall and was ranked first by show of 68% of these.

The problems that the lawyers charge very high fees and that they encourage the victims to take the matter to courts followed by a show of 50% and 37% respectively. These percentages were the highest under the respective ranks thus enabling the ranking.

SUGGESTED SOLUTIONS TO THE LAWYERS' PROBLEM.

The insurance companies suggested several solutions to the lawyers' problem. The table 9 shows the solutions suggested.

| Solution | Number of | Percentage |
|-----------------------------------------------------------------------------------------|-----------|------------|
| 1. The courts will continue to be overburdened by cases involving the lawyers' problem. | | |
| 2. The courts will continue to be overburdened by cases involving the lawyers' problem. | | |
| 3. The courts will continue to be overburdened by cases involving the lawyers' problem. | | |
| 4. The courts will continue to be overburdened by cases involving the lawyers' problem. | | |

Table 9.

Solutions to the lawyers' problem.

n=23

| Solution | Number of Companies mentioning the solution | Proportion Mentioning it. |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------------------------|---------------------------|
| 1) Lawyers to be regulated by their remuneration order and be subjected a commission | 16 | 70% |
| 2) Payment for damages be done to clients directly | 20 | 87% |
| 3) Encourage out of court settlement | 19 | 83% |
| 4) Legal fees should be rationalized | 18 | 78% |
| 5) NO-FAULT Compensation to replace the fault system | 10 | 45% |
| 6) Eliminate corruption at giving of statements and issuance of police abstracts whose nature should also be checked. | 8 | 35% |
| 7) Lawyers be encouraged to act to meet their clients' interest | 3 | 13% |
| 8) Scrap Ambulance chasing or have heavy discipline for the lawyers who act unprofessionally | 8 | 35% |
| 9) Keep the clients well informed by communicating to them while doing so to their advocates | 7 | 30% |
| 10) Restrict information on the victims to the lawyers especially in the hospitals | 4 | 17% |
| 11) The clients to be left free to go to the lawyers of their choice. | 2 | 19% |

The table above shows that 87% of the Insurance companies suggested that the payment for the damages should be made in the name of the clients. A proportion of 83% and 78% of the companies suggested that the out of court modes of settlement be encouraged and the government through the department of insurance, insurers, and law society should liase to rationalize the legal fees respectively. A reasonably high proportion 70% suggested that the lawyers should be regulated by the Rumeneration order and then be subjected to a commission.

The suggestion that the no-fault system of compensation should be adopted to replace the present Fault system was mentioned by 45% of the companies. 35% of the companies suggested that the government should enforce the law strictly to check corruption at the giving of statements or issuance of the police abstracts and that the commissioner of police should scrypt Ambulance chasing or the Law Society to discipline Lawyers for their malpractices. Only 30% of the companies gave the suggestion that the clients should be served with copies of all letters written to their advocates so as to keep them well informed.

About 17% of the companies suggested the ministry of Health should restrict Lawyers from obtaining victims information in the hospitals while about 13% gave a suggestion that the Lawyers should be more professionally trained to be dealing with clients with their interest at hand but not only be moved by the desire of filling up their pockets.

Lastly, as a low proportion as 9% of the companies suggested that the clients should be allowed to go to the lawyers of their choice but not to be influenced by lawyers they even do not know to take their cases with.

4.3.5 THE RE-INSURANCE PROBLEM.

All the insurance companies indicated that they cede 25% of every insurance business with the Kenya Reinsurance Corporation. Some companies however declined to give the names of other Reinsurers as they alleged the information to be confidential.

In view of the re-insurance offered by our only local reinsurer (Kenya Reinsurance Corporation), the insurance companies mentioned all the problems perceived though in varying proportions of mention. These problems were however mentioned by only 20 insurance companies as the others denied experience of any problem here.

The most significant problem was that there is a limited capacity of reinsurance. This was mentioned by 18 out of the 20 insurance companies and 72% of these ranked it first in significance.

The second problem in that order is that there is a limited recovery of claims which was mentioned by 15 insurance companies and ranked second by 53% of this.

Third in significance was the problem that there is a limited capacity of ceding which was mentioned by 15 companies over all and ranked third by 47% of these. These were the highest percentages of mentions under the ranks.

SUGGESTED SOLUTIONS TO THE REINSURANCE PROBLEM.

The table 10 below shows the various solutions given by the companies interviewed:

Table 10: Solutions to Reinsurance problem.

(n=20)

| Solution | No. of companies mentioning it | Proportion mentioning it |
|------------------------------------------------------------------------------|--------------------------------|--------------------------|
| 1) Decontrol reinsurance to enable free competition | 6 | 30% |
| 2) Discourage repudiation of claims by the reinsurer | 4 | 20% |
| 3) Privatize the reinsurance and widen it by encouraging say PTA reinsurance | 16 | 80% |
| 4) Kenya Reinsurance Corporation to relax controls | 4 | 20% |
| 5) The Insurers to increase their share capital | 1 | 5% |
| 6) Kenya Reinsurance to increase its percentage of reinsurance | 1 | 5% |

80% of the Insurance Companies suggested that the reinsurance business should be privatized and widen it by establishing say P.T.A. Reinsurance. The number of companies which suggested that the business be decontrolled constituted only 30%. About 20% of the companies gave suggestions that repudiation of the claims by the reinsurer should be discouraged and/or that the Kenya Reinsurance should relax its controls.

Lastly about 5% of the companies suggested that the insurance companies should increase their share capital and/or that the Kenya Re should increase its percentage of reinsurance.

4.3.6 MODE OF SETTLEMENT PREFERRED.

Twenty one Insurance Companies gave their views on this but two did not. Of these 21 companies none indicated that it preferred court settlement. They were quite indifferent on direct negotiations with their clients or arbitration as they said both were cheaper in terms of time and money spent. The cases are also dealt with in privacy as the insurers said.

4.3.7 THE PROBLEM IN DETERMINING THE

LIABILITY AND QUANTUM OF THE DAMAGES

The table below shows the situations the judges encounter in their pursuit of determining liability and quantum of damages for personal injuries and death.

| SITUATION | NO. OF JUDGES | PERCENTAGE |
|---------------------------------------------------------------|---------------|------------|
| 1. The amount of damages is not clearly stated in the policy. | 6 | 29% |
| 2. The amount of damages is not clearly stated in the policy. | 1 | 5% |

Table 11

Statements descriptive of the situations encountered by Judges as they determine the liability and quantum of damages. (n=10)

| Statement | no. Mentioning the item | Proportion Mentioning the item. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------------------------------|
| Circumstances of each case differ from the other. | 10 | 100% |
| The application of the common legal principles is not easy in every case | 3 | 30% |
| The juges differ in their rulings on the quantum of damages especially for non-pecuriary losses | 7 | 70% |
| The facts given by the police differ with those given by eye witnesses in some cases | 2 | 20% |
| Accidents victims and the insurers are not always satisfied with the judges rulings on the qauntum and payment of claims as indicated by the generally high number of appeals made on this issue. | 6 | 60% |
| Other situation(s) please encountered. | 5 | 50% |

The table indicates that all the Judges (100%) mentioned that the circumstances of each case differ from the other. The Judges further indicated by 70% show that they differ in their rulings especially on quantum of damages for non-pecuniary losses. Along the same line was an indication by 60% show by judges that the accident victims and the insurers are not always satisfied with the rulings on the quantum and payment of claims as indicated by the generally high number of appeals made on this issue.

Other situations were mentioned by 50% of the Judges. These situations included, that:

- a) Many times pedestrians are held to have substantially contributed to the accidents. Their degrees of contribution however is in most cases lower than that of drivers. In many cases, the liability is apportioned equally.
- b) Apparently most pains and aches complained of by the plaintiff disappear not too long after giving evidence in a suit but more significantly such complaints invariably disappear after a judgement and/or payment'
- c) One comes across a certain amount of fraud in personal injuries cases especially 'Matatu Accidents'. This leads insurers to be more vigilant in settling claims.
- d) Quantum of damages depend on the discretion of the judges.
- e) The insurance companies are more often than not unwilling to settle claim even in the cleanest of cases.

The least mentioned situations by a show of 30% and 20% respectively by judges were that the application of the common legal principles is not easy in every case and that the facts given by the police differ with those given by eye witnesses in most cases.

SUGGESTED SOLUTIONS TO THE ABOVE SITUATIONS

The judges gave solutions to a few but not all of the situations encountered. They all argued that nothing can be done to change the unique nature of each case as victims always differ in age and earning among other things. They all further argued that appealing is a right to every person concerned to challenge a ruling of a lower court in a superior court. However, 70% of the judges suggested that there need to be a schedule of awards established through a tripartite agreement amongst the insurers, the government and the lawyers. Second in rank with 50% mention was the suggestion that the publication and the implementation of the HANCOX commission report on the insurance could change things. In the same line, the judges suggested that there should be an up-to-date reporting system of cases decided so that the judges can be guided by what the other judges have ruled on the matter and that the eye witnesses should be genuine and not simply hand picked by claimants or their lawyers for their own selfish ends. These were mentioned by 40% and 20% of the judges respectively.

Lastly, with a show of 10% each by judges, were the solutions that the police investigations should be exhaustive, the courts

be reluctant to grant stays of execution to defendants and generally, the accidents should be reduced by drivers exercising due care and attention in driving.

Table 12

Statements descriptive of the solutions to the problematic situations encountered by judges in determination of liability and quantum of damages.

(n=10)

| Statement | No. of Judges mentioning it | Proportion of Judges mentioning it. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|-------------------------------------|
| - Publication and implementation of the HANCOX Commission report on Insurance by the government. | 5 | 50% |
| - A schedule of awards should be established | 7 | 70% |
| - The eye witnesses should be genuine and not simply hand picked by claimants or their lawyers for their own selfish ends. | 2 | 20% |
| - Police investigation officers should be more vigilant in their investigations to come up with exhaustive findings as to the circumstances of the cases. | 1 | 10% |
| - The courts should be reluctant to grant stays of execution to defendants. | 1 | 10% |
| - The government should encourage an upto date reporting system of cases decided so that the judges can be guided by what the other judges have ruled on the matter. | 4 | 40% |
| The road accidents should be generally reduced by drivers exercising due care and attention when driving. | 1 | 10% |

4.3.8 THE PROBLEM OF THE FAULT-SYSTEM.

The table 13 shows the statements which the judges mentioned as descriptive of the problems the present legal compensation system (Fault System) pose in the determination of liability and payment of claims for personal injuries and deaths. The table further shows the ranking of these problems in order of their significance.

From this table we find that 75% of the judges who mentioned problem that there are delays caused by waiting for trials ranked it first. Since this is the highest percentage of mention under the rank, the problem takes the position.

In the same line, the other problems mentioned and ranked in the respective percentages were that; only victims with money can make claims by a show of 50%, the fault does not consider the degree of the defendant's fault by a show of 50%, there are difficulties in adjudication as witnesses refuse to give details of the accidents by a show of 50%, it highly imposes the burden of proof on the parties even when the accident may have hindered them from obtaining witnesses by a show of 60%, the witnesses are not trained in fact finding so there is a problem of ascertaining the facts by a show of 40%, there is a problem of fixing the damages for non economic losses as there is no recognisable criteria for this by a show of 40% and that most kenyans are ignorant of law and their legal rights hence they do not make claims even after being involved in an accident by a show of 50%. These problems followed in that order as the percentages given were the highest under the particular ranks.

Table 13: The number and proportion of the judges mentioning the problems emanating from the present fault-system under the ranks given.

| Ranks Problems | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | Total mentions |
|---------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------------------|
| a) Only those victims with money are not ignorant of the law can make claims in this area. | 1=17% | 3=50% | 0 | 0 | 0 | 0 | 0 | 2=33% | 6 |
| b) It highly imposes the burden of proof as to the fault through the accident may have made it impossible to obtain witnesses. | 0 | 0 | 1=20% | 1=20% | 3=60% | 0 | 0 | 0 | 5 |
| c) There is a problem of ascertaining the facts as the witnesses are not trained on fact finding and were not prepared to observe the facts | 0 | 0 | 1=20% | 0 | 0 | 2=40% | 1=20% | 1=20% | 5 |
| d) There is a problem of fixing damages for there is no recognisable criteria of the value of non-economic losses | 3=30% | 0 | 1=10% | 1=10% | 0 | 0 | 4=40% | 1=10% | 10 |

| Ranks Problems | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | Total ment ons |
|--------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|----------------------|
| e) There were delays caused by waiting for trials and judgments aggravated by the appeals made | 6=75% | 1=13% | 0 | 0 | 0 | 1=13% | 0 | 0 | 8 |
| f) The fault system does not consider the degree of the defendants fault unless when there is a possibility of contributory negligence. | 0 | 1=17% | 3=50% | 0 | 2=33% | 0 | 0 | 0 | 6 |
| g) Difficulties of adjudicating as some witnesses refuse to give details of the accident | 0 | 0 | 1=17% | 3=50% | 0 | 2=33% | 0 | 0 | 6 |
| h) Most Kenyans are ignorant of the law and their legal rights. They do not make claims even after being involved in an accident. | 1=17% | 1=17% | 0 | 0 | 0 | 0 | 1=17% | 3=50% | 6 |

SUGGESTED SOLUTIONS TO THE ABOVE PROBLEMS

There were several solutions suggested by the judges on the problems posed by the present Fault system.

The Judges heavily suggested that an alternative compensation system, NO FAULT SYSTEM, should be adopted in Kenya. This was indicated by a show of 50% of the Judges. In the same line, 40% of the judges suggested that Alternative settlement modes e.g. out of court negotiation and/or arbitration should be encouraged. The Judges further suggested the cases should be dealt with speedily. This was suggested by 30% of the judges. Only 10% of the judges however gave further suggestions that; more judges should be assigned the "Running Down" cases as the motor accident cases are commonly referred to as in the Legal circles; the government should increase the level of literacy in the country with more public education on their Legal rights; The government should establish a department whose function is to investigate each and every accident to ascertain any infringement of the Legal rights; a schedule of compensation for every type of damages should be established by a tripartite agreement between the government, insurers, and the lawyers, and lastly that the government should establish a state funded scheme whose function is to compensate for these victims promptly and equitably.

As high a proportion of 20% of the judges suggested that the solution should be given to what causes the accidents by observing and educating the Kenyan on the observance of the Highway CODE, LAWS and RULES and mostly discipline the accident authors.

Table 14

Solutions to the problems posed by the Fault system (n=10)

| Solution | No. of Judges mentioning it | Proportion of judges mentioning it. |
|---------------------------------------------------------------------------------------------------|-----------------------------|-------------------------------------|
| Encourage out of court settlements | 4 | 40% |
| Have a NO-FAULT system instead of the fault system. | 5 | 50% |
| Educate the public to observe Highway code, Law, rules and penalize the accidents authors heavily | 2 | 20% |

4.4 CONCLUSION

The foregoing findings have brought into light a number of issues on the system of compensation for personal injuries and deaths followed in Kenya. Several problems emanating from different areas have been identified. Practical solutions to these problems have also been suggested.

These findings tie in with the literature available. They are discussed in the next chapter.

SECTION 5

5. SUMMARY AND CONCLUSIONS

This final chapter, summarizes and discusses the findings mainly in relation to the major questions raised in the objectives of the study. The chapter also highlights the limitations of the study and concludes with some suggestions for future research.

5.1 SUMMARY AND CONCLUSIONS

Six major questions were raised in the problem that was under investigation in the study. The questions sought to identify the problem: the compensation system for personal injuries and deaths **pose** in Motor Insurance in Kenya specifically emanating from the characteristics of these claims, the judges problems in the determination of these claims, the manner in which the insurance is practised, the fault system, lawyers practice, and the reinsurance available in Kenya. Alongside with these problems, the study sought to identify the solutions to each category of problems and ended with identification of the mode of settlement the insurers prefer plus the rationale for their preference.

5.1.1 CHARACTERISTICS OF PERSONAL INJURIES AND DEATHS CLAIMS

The findings showed that of the characteristics mentioned by the insurance companies, the characteristic that they are generally higher than the premiums received on the insurance ranked the first in the order of significance by a show of 62%. This characteristic is a major problem in that with the amounts paid out as claims being higher than the premiums received, the insurance business will be operating at losses as indicated by all the insurance companies interviewed that the business was declining.

The second characteristic in the order of their significance is that the claims take too much of the companies' time and money . This was shown by 41% of the companies who mentioned it. In adherence to the present compensation system procedures, most of these cases are taken to courts. With the delays in the courts due to fact that the judges assigned these "Running Down" cases are only / the two inspite of the high number of cases, alot of the rare management time is taken above the money spent here. This means Managers have little or no time at all to do other office work to gain more business. Aggravated by the money spent here on transport, legal fees and the other court payments, the business is actually handicapped.

The highest number of the insurance companies who mentioned the characteristic that they are very many over a given year, ranked it third by a show of 35%. The big number of claims means much money is spent in the compensation of these claims against the insurance companies expectations. The fourth rank was awarded the characteristic that amounts paid to the clients differ even where the cases are similar. The companies indicated the rank by a show of 40%.

As pointed out in the literature, the differences in awards even for completely similar cases makes the clients perceive some injustice as having practised. This negative feeling has the impact / been on the insurers in that the blame is all converted to the insurers who they (claimants) know pay the money. This means that lesser of insurance businesses is ceded as the insurers are viewed as "cheaters".

Other characteristics / ranked fifth by a show of 40%. These / were generally

included that these claims mostly related to passenger vehicles, this explains why most of the Kenyan motor insurers do not offer cover for matatus and buses. Others were that the deaths claims are cheaper than injury claims as death is death and fewer in numbers, but injuries have several additional sub elements e.g. pain and suffering, inconveniences and lack of amenities of life. The claims may further be intimated quite unexpectedly to the company and may assume very huge figures not hitherto anticipated due to for example minor injuries turning into major ones in future. The other characteristics mentioned under here were that some cases take even longer depending on the parties involved; and that the claimants and awards have increased due to the advent of ambulance chasers. In view of the former a case involving a Judge as a victim will be handled in a shorter time than one where the victims are common (low) class people. This encourages discriminatory practices in the courts which has an overall negative effect to the insurers as the claimants affected will always blame the insurers for they are the ones they significantly know. The problem of the ambulance chasing will be seen later in the discussion.

The insurance companies gave the following suggestions as solutions to these characteristics which are problematic in nature. Please note that the suggestions are in the order of their mention and not corresponding the order of the characteristics. They are / to as follows.

1. The government should reduce the road accidents by imposing more safety measures and enforcing more strictly those that are there. The income the government receives from the toll

- stations should be employed even further to improve the road conditions and educating the public on the safety measures.
2. A reasonably big number of companies (40%) further suggested that the premiums should be freely loaded by the companies without any government censorship to reflect the inflation and rates of interest factors.
 3. Out of court settlements should be encouraged and discourage completely the court settlements. This was suggested by 35% of the companies.
 4. The number of judges assigned the "Running Down" cases should be increased with the present ones becoming more efficient and avoiding cases adjournments. This will reduce the delay in case hearings.
 5. There should be a schedule of awards established jointly by the government, insurers and lawyers to act as a guiding rod or a yardstick for quantum of damages establishment.
 6. A panel of doctors to examine the road accident victims should be set jointly by the government and the insurance companies. This will reduce the inflated and (faked) claims.
 7. The lawyers 'Ambulance chasing should be eliminated either through the Commissioner of Police illegalizing it or the Law Society of Kenya disciplining the lawyers.
 8. Individual insurance companies should have their own in-house lawyers loss assessors and architects to be handling their own cases at a reasonably lower costs.
 9. They (Insurance Companies) should impose higher excesses so as to make the faulty drivers be responsible of their mistakes, something believed will reduce the number of road accidents. The accidents authors should also be punished heavily.

10. The cases should be handled fairly and by priority in the courts. The court procedures should be streamlined. This will check discrimination and delays in the courts.

11. The insurers should be more strict in their underwriting of the business to check 'bad' selection. Abnormal cases here should be charged adequately higher premiums to cater for possible losses.

12. There should be an agreed code of cooperation between lawyers and insurers so that the former may not view the latter as profit centres.

13. The insurance companies should computerise their operation as a cost saving tool to combat the effect of the high number of claims.

14. The claimants should be paid directly and not through lawyers. This will eliminate the lawyers practice of gaining from the clients' money by depositing it into their accounts for interest income before remitting.

15. The government should establish a state owned insurance scheme to cater for excessive claims on the insurance.

16. A shorter time limit of say two years should be set of hearing a case after which it becomes time-barred. This will force the lawyers to push the cases fast and the judges will be more committed and settle the claims early enough.

Almost all the insurance companies (96%) agreed to the statement that the motor accident cases take too long in the courts pending hearing and judgement. They further gave the following as the negative effect of this. Please note that the following statements are in the order of their mention.

1. The insurance companies end up paying more money than necessary due to inflation and rate of interest factors.

2. It inhibits prompt settlement of claims which creates a bad image (name) of the company on the people (claimants).
3. There are long pending claims which affects the planning by the insurance companies.
4. It wastes alot of man-hours while attending the courts. This time would be spent on other productive areas (issues) in the company.
5. Forces the companies to keep maintaining unnecessary speculative reserve. This money could be used (invested) somewhere to earn interest income.
6. The insurance companies are bound to make an archive of claims documents which is time and space consuming.
7. There is a problem of recovery from reinsurers due to lack of cooperation and the currency problem all due to the lapse in time.

This problem of delay in court awards can be eliminated by having more judges assigned these cases and the present judges being more efficient as indicated in the earlier discussion.

5.1.2 THE MOTOR INSURANCE UNDERWRITING.

The findings revealed that the manner in which the insurance is practised posed a lot of problems to the insurance in respect of the compensation for the accident victims.

Of the problems mentioned the problem that claims payment are unproportionately increasing year after the other was ranked first in significance by a show of 61% by insurance companies. The increase in the claims payment is a product of the increased number of claims consequent to the increased number of accidents and the increase in the public awareness on the rights to claim. This drains the companies reserve.

The premiums are too low. This was mentioned by 21 (twenty one) companies and 48% of this gave it the second rank. The low premiums are mainly due to the competition present for the insurance business amongst the insurers. Some insurance companies even todate use the dissolved Motor pools rates which are competitively lower than those charged the companies independently. These premiums do not match the claims which are met. This means that the companies operate below the expected profit margins.

The third position was taken by the problem that the operating expenses are very high. This problem was mentioned by 19 companies and 37% of these ranked it third overall. The expenses are high due to the necessity of loss adjustors, lawyers, doctors and architects who demand alot of money for what they do in relation to a particular case.

In the same line the problem that the investment areas are restricted by the government regulations ranked fourth by a show of 60% of the companies, which mentioned it. The insurance companies are limited in the areas they can invest in despite of the interests incomes foregone. Much of the investments are by law supposed to be in short term and low interest government securities. This means that there is less money available to meet the escalating motor claims. The problem of there being low investment returns therefore was ranked fifth by a show of 41% of the 17 companies who mentioned it as a problem.

The last rank six in significance was given to other problems encountered in the practice of the insurance. They included heavy competition with premium cuts, ambulance chasing, faked claims and the fact the claims here are too frequent a factor of the increased

number of road accidents. These were mentioned by 5 companies and the rank was given by 40% of these.

The insurance companies suggested several solutions to these problems. Some of these problems are mentioned under the solutions to the claims characteristics but they are also noteworthy here. These Solutions are given in the order of the mention starting with the most mentioned and ending with the least mentioned by the insurance companies. They are as follows:

1. The insurance companies should be left free to review their premium rates constantly or at least the office of the Commissioner of Insurance should collaborate with the insurers to review the premiums. This will be to reflect and check the increased inflation and interest rates problem.
2. The government should increase its participation in loss prevention measures e.g. improving the roads, organising refresher courses for the drivers, educating the public on safety measures and enforce the traffic rules and laws strictly. This will reduce the accidents' number and severity and/or frequency.
3. The insurance companies should adopt a cost-saving measures e.g by operating efficiently and computerizing their operations. This will reduce heavily the operating expenses.
4. An alternative compensation system for example NO-FAULT system should be adopted to replace the fault-system. This will reduce the number of claims going to court as the issue of fault will not be overriding or of any importance. This will mean less unnecessary legal expenses and more time for managers to spend in more productive activities for the benefit of the insurance companies.

5. The insurers with the government assistance should form a central repairing station with a pool of spare parts. This will reduce the repairing costs charged by private garages who at times fake the cost. It will also eliminate any chance of importing spare parts unnecessarily. The government can promote our local "JuaKali" group to make parts which can easily be made. "Juakali" is a non-mechanised, low cost production of items otherwise produced in the factories at higher costs.

6. The government should remove its investment restrictions and leave the companies free to invest where they deem fit. This will enable them earn the interest income they cherish at their own in-house loss adjustors, assessors, lawyers and architects to reduce the high fee the private ones charge.

8. It was further suggested that the insurance industry in collaboration with the government of Kenya should establish a shedule of awards for particular damages. This will eliminate the subjectively set high quantum of damages.

9. High excesses should be imposed to ensure that careless drivers pay heavily for the accidents they cause. This will go a long way in reducing the number of road accidents as the drivers will become more cautious while driving.

10. The corruption at vehicle inspection and driving test should be eliminated by the government ensuring that these are done professionally and fairly. This will reduce the number of the road accidents due to faulty vehicles and incompetent or unqualified drivers. This subsequently will reduce the claims here.

11. The insurance companies should have strict underwriting to eliminate 'bad' selection. The abnormal or substandard risks should be charged high premiums.
12. The Association of Kenya Insurers (AKI) should set ethics to curb unhealthy competition among the insurers e.g. the unreasonable premiums cuts.
13. Out of court settlements e.g. arbitration and direct negotiations with the clients preferably should be encouraged. This will reduce the unnecessary court procedure, legal fees, and time spent.
14. The local hospitals should be improved to reduce the number of the road accident victims going out of the country for treatment for they are more expensive in terms of hospital fees and that there is a very high transport cost element included in the claims.
15. The government should do all things possible in collaboration with the insurers to lower the limits of third party damages.
16. Lastly the government should ensure a stable economy to check inflation. They can do this by influencing both the monetary and fiscal policies where possible.

5.1.3. THE LAWYERS' PROBLEM.

The laws problem of ambulance chasing was broken into several areas which the insurers were asked to indicate.

The findings revealed that the most serious problem which the insurers face from this practice is that the lawyers influence potential non-claimants to make claims. The lawyers send their staff to "poach" accident victims either on the roads, from police traffic departments, or in the hospitals. They even influence people in their private capacity to report any accident and take some victims' names to them as a business for commission. The lawyers personally go to

these victims and convince them to make claims. This is due to the fact that the lawyers know they make a lot of money as legal fees from such claims. Consequently, the insurers end up paying for claims some of which would have not been made given the level of some Kenyans' ignorance on their legal rights.

The second problem in the order of significance as revealed by the insurance companies is that the Lawyers charge very high fees. Some of these lawyers do not follow their remuneration order but instead charge the fees they feel like on the clients who are not aware of the limits given on the fees. This being the main way the lawyers benefit from the case, they exploit their clients a lot. Since the payments by the insurance companies are done in the name of the lawyers who represented the claimants, the claimants do not know the actual figure the insurers paid and they blame the low eventual figures they receive on the insurers. This creates a bad image of the company on the clients who consequently reduce or completely withdraw the business they had ceded. This is evidenced by the several policy cancellations the insurance companies complained of especially on this line of insurance. The clients change insurers very frequently.

In the same line 37% of the insurers mentioned the problem that the lawyers encourage the road accident victims to take the matter to courts under rank three. If the lawyers for example demand their clients be paid extremely high figures as damages for relatively high commission; and the insurers refuse to pay it, they take the matter to courts. This subjects it to the unreasonably high legal expenses, loss of man hours and bad image of the companies due to the delays in the claims settlements.

Under rank four were other problems like; that the lawyers do not remit all the money due to the claimants back to the claimants; they even delay the remittance so as to deposit the money and earn interest into their accounts; they conspire amongst themselves and inflate the damages, they encourage fake claims and that they do not follow their remuneration order governing the fees they should charge.

The main effect on this is that the clients are usually dissatisfied with the practice and due to their ignorance, blame it all on the insurance companies. They (clients) do not know when the money was paid as the correspondence is between the companies and the lawyers. They are hardly informed on most of the steps in the claims procedure and the stage of their cases at any given time.

The insurance companies suggested several solutions to these problems. They are as shown below in the order of their mention.

1. The payment for the damages should be effected in the name of the clients and not the lawyers. This will enable the clients receiving their money fully and early to the advantage of the company in that there will be a good public image.

2. Out of court settlements should be encouraged to eliminate the delays in the judgements and subsequently the payment for the damage. Unnecessary legal and court fees will also be eliminated. With direct negotiations and arbitrations, lawyers are not necessary hence the lawyers' fees would be eliminated.

3. The government through the department of insurance, insurers and the Law Society should liase together to rationalize the legal fees. This will check the inflated legal fees which the lawyers charge.

4. The lawyers should strictly be regulated by the remuneration order and then be subjected to a commission.
5. The NO-FAULT system should be introduced to replace the presently followed fault-system. This will eliminate all the problems caused by the system. These are discussed very well in the literature review.
6. The government should enforce the Law strictly to check corruption at the giving of statements and/or issuance of the Police abstracts whose source and nature should be changed. There has been noticed some corruption and consequently faked claims being reported. Wrong statements are made which in actual sense differs with the truth. This leads to increased claims unnecessarily. With the corruption being checked only the genuine claims will be made and paid thus reducing the amount spent on claims.
7. The Commissioner of Police should either scrap Ambulance chasing or the Law Society of Kenya take up the responsibility to discipline the lawyers when they play their role unprofessionally or in unethical way.
8. When communicating with the advocates, copies of the letters should be addressed to the clients to keep them well informed with any matter at hand. This will erase the lack of knowledge on the part of the clients. They will be knowing who is responsible for what between the advocates (lawyers) and the insurers. This will thus improve the company's image on the public.
9. The Ministry of Health should restrict the information on clients which the lawyers seek. This will reduce the number of claims taken against an insurance company with the obvious results that less amounts will be spent on claims.
10. The lawyers should be trained more professionally to act to the

interest of their clients and not only filling their pockets with money. It is believed that if the lawyers have their clients' interest at hand always, they would not charge high legal fees or inflate claims unnecessarily or even refuse to remit the whole amounts awarded at all or on time.

The clients should be going to the lawyers of their own choice. The friendship which exists once the parties are known to each other may prevent the lawyer not to charge unreasonably high legal fees.

5.1.4 THE REINSURANCE PROBLEM

The insurance companies mentioned the following problems as emanating from the Reinsurance available in the country.(Kenya). In the order of their significance, these problems were indicated as follows:

The most significance problem as shown by 72% of the insurance companies who mentioned it is that there is limited capacity of reinsurance offered by our local Kenya Reinsurance which is quite inadequate. If a risk is by far beyond the limits the insurers can comfortably retain, there should be more reinsurance availed. With only the limited reinsurance offered, the insurers in Kenya end up in re-insuring differing portions of the remaining part of the risk with foreign reinsurers hence affecting the foreign currency reserves. The limited reinsurance makes the insurers be more reluctant to accept high risks which the public may be seeking insurance hence refusing business.

The limited reinsurance leads to the second problem in rank, that is, there is a limited recovery of claims. The percentage reinsured is the percentage recovered from the reinsurance companies. The other part, the insurer itself bears it. The Kenya Reinsurance imposes several conditions and clauses which limit their liability for these claims hence leaving the burden to the insurer.

These conditions further cut the insurers willingness to accept some of the motor risks. The businesses which insurers accept should be satisfactory to the Reinsurer otherwise there would be no reinsurance. This means that the insurance companies accept only the businesses acceptable to the Kenya Reinsurer inspite of their wishes on other risks. This therefore means that there is a limited capacity of ceding (insurance).

To solve these problems, the insurers gave their independent suggestions as shown in the findings that the following should be done,

1. Privatize the reinsurance and widen it by encouraging Group or a Preferential Trade Area (PTA) reinsurance in Kenya. This will mean more businesses will be ceded as there will be reinsurance available. The results here will be an increased premium income and growth in the insurance.
2. The reinsurance business should be decontrolled to enable competition. If other foreign reinsurers are allowed to operate in Kenya freely without any restrictions protective to the local Kenya Reinsurance Corporation, the reinsurance rates, terms, conditons and clauses would be competitively low and admirable to the insurance companies. There would be less fear and or reluctance to cede businesses

and consequently, this will lead to increased premium income.

3. The Kenya Reinsurance Corporation should relax its controls.

It should let the Insurance companies accept the risks they deem acceptable to their standards.

4. The Reinsurer should be discouraged from repudiating claims.

It has been noted with a lot of disappointment that the Kenya Reinsurance Corporation at times refuses to pay a claim even if it's a genuine claim alleging that one or two conditions though unreasonable were not met. This would improve recovery of claims to the good name of the insurer.

5. The insurance companies should increase their share capital preferably through Mergers e.g. the one sought between the Kenya Alliance Insurance Company and Taisho Monarch Insurance Companies.

The increase in share capital would mean that there are enough funds to meet the claims made irrespective of the reinsurance available.

6. The Kenya Reinsurance Corporation should increase its percentage of Reinsurance from 25% to a reasonably higher percentage as would agreed by the government and the insurers. This increase, will enable insurance of even high risks would otherwise have not been accepted. Consequently, this will boost the insurance business.

5.1.5 THE PROBLEM IN DETERMINING THE LIABILITY AND QUANTUM

OF DAMAGES

The findings shows that the circumstances of each case differ from the other as indicated by all the judges who responded. With the circumstances differing, there is hardly a one best ruling. The awards will differ since there is hardly any genuine yardstick for the damages. The causes and the consequences of each case are unique

and so should be the rulings. The ages and incomes for example of the victims differ always and with the effect of inflation, reference to the past similar cases becomes inadequate. This therefore means that there is no reasonably an adequate quantum of damage for any case. This gives room for dissatisfaction and appeals are made in the court of appeal leading to the delay in the claims. The insurance suffer from this delay in that there is dissatisfaction by clients heavily as discussed earlier.

In the same line, the situation that the judges differ in their rulings on the quantum of damages especially for non-pecuniary losses ranked second by a show of 70%. Perceptions differ amongst individuals and so applies to the judges. Due to the fact the circumstances of each case are different and that there is no given schedule of damages, the judges are left to make their judgements in reference to their personal feelings which is affected by emotions a product of the number of damages claimed and the extent of injury expressed to be suffered by the claimants. Differences in the quantum makes some clients sense some injustice practise which they ignorantly blame on the insurers who pay the claims. A Judge may rule a case and award an unreasonably high quantum of damage which may deplete the company's reserves.

The fact that the accident victims and the insurers are not always satisfied with the judges rulings on these cases, ranked third by a show of 60% the subjective manner of making awards is questionable and leads to several appeals being made with the delays in the cases settlements consequently. The impact of the delay in the claims

settlements on the insurance has been discussed in the preceding section.

The findings revealed other situations encountered here which were ranked fourth by a show of 50%. The included the facts that; most pains and sufferings complained of by the plaintiff disappear not too long after giving evidence in a suit but more significantly such complaints invariably disappear after a judgement and/or payment. There are frauds encountered in the personal injuries and deaths cases especially with Matatu accidents. Hardly do we know who were and were not in the matatu by the time of the accident especially if an accident occurs in a place quite far from a police patrol area, and all the real accident victims are totally injured in a way that they cannot identify those who brought themselves to report having suffered out of the accidents. This makes the insurers to be more vigilant in settling claims hence causing the delays in settlements. They further indicated that the insurance companies are more often than not unwilling to settle claims even in the cleanest of cases.

Fifth in the rank is the situation that the application of the common legal principle like having reasonable and adequate degree of compensation is not easy in every case. Non-pecuniary cases for example involve some damages which are not easily and correctly expressed in money terms. The extent of suffering is also not well known with certainty as a suffering may worsen or improve in future. To set a reasonably adequate awards here becomes impossible. In the first place, what is reasonable to one party may not be reasonable to another. This therefore leads to awards which may not be satisfactory to claimants who ignorantly blame the insurance companies who they always feel are responsible for the low payments.

The last position, six, was given to the situation that the facts given by the Police differ with those given by eye witnesses in somecases. Corrupt individuals may bribe the police to have an abstract and report to have suffered even where he or she did not suffer at all. False witnesses are called upon as the real ones may be reluctant to testify a faked claim. This problems leads to insurance companies paying for faked claims which affects their financial reserves.

The judges suggested several measures to curb problems the judges face in the determination of the liability and quantum of damages for the personal injuries and deaths claims. They are as follows:

1. A scheme of awards should be established by an agreement of the lawyers, insurers and the government. This will act as a yardstick and a frame of reference for establishing the quantum of damages. The subjective awards will thus be eliminated increasing the level of the clients' satisfaction with the awards. Less time will thus be spent in cases' settlements leading to companies preserving their management rare time and money.
2. The publication and implementation of the HANCOX COMMISSION REPORT on the insurance by government would help alot here.
3. The government should encourage an upto date reporting system of cases decided so that the Judges can be guided by what the other judges have ruled on the matter instead of using quite old cases as

frames of reference. This will enable reasonably equitable compensation.

4. The eye witnesses should be genuine and not simply hand picked by claimants or their lawyers for their own selfish ends. This will eliminate faked claims.

5. The police investigation officers should be more vigilant in their investigations to come up with exhaustive findings as to the circumstances of the cases. Adequate and true findings will enable a reasonable award.

6. The courts should be reluctant to grant stays of execution to defendants. Every claimant has a right to enjoy his award. The cases should thus be made fast and adequately to reduce appeals with their consequent time delays.

7. The road accidents should be generally reduced by drivers exercising due care and attention when driving.

The government should improve the roads and enforce the traffic rules more strictly.

5.1.6 THE PROBLEM OF THE FAULT SYSTEM

The findings show that the fault system currently adopted for compensation of the accident victims in Kenya has several problems to all the parties concerned as indicated by the judges.

The most serious problem of all those mentioned is that the system causes delays in the settlement of the cases. A lot of time is taken for trials and hearings aggravated by several appeals made on these cases. The fault system encourages the issue of taking the matters to courts irrespective of how minor or clean the accident or the case is. The court procedures worsened by the small number of the judges assigned the "Running Down" cases makes the delay inevitable. The delay has its cost and the insurers as discussed earlier.

The second problem is that the fault system means that only those victims with money and are not ignorant of the law and their rights can hire lawyers to make a claim in this area and hence recover the damages suffered. It is not unusual to see people after being involved in an accident running away from the accident scene and never to take the issue further. They only go thanking God that they have not died. Irrespective of the extent of their injuries, they hardly make any claim for they do not even know whether they can be compensated by anybody. If the compensation would be automatic everybody would have known and recover the damages suffered. The insurance companies are accused of having not paid for the damages though the blame should be on the accident victims themselves. They do not make any claim and if at all, they make far later or in the wrong procedure.

The third problem in the order of mention is the problem that the system does not mostly consider the degree of the defendant's fault unless where there is a possibility of contributory negligence. Once the accident author has been found guilty in one way, it is often assumed that he was guilty fully and in most cases, he or she is totally blamed. The penalty or the damages awarded are to reflect the injuries or death damages suffered. The awards should not always be to the damages suffered but a loss should reflect the degree of the defendant's fault. This is due to the fact that a slight mistake may lead to a very big damage while a big mistake may lead to very little damages. The awards made thus are mostly unsatisfactory to the claimants (clients) who take the matter to the courts with the subsequent delays and the legal cost which follow all to be borne by the insurance company depending on the ruling made.

In the same line, the problem that there are difficulties in proving negligence as some witnesses may refuse to give details of the accident ranked fourth. The refusal to give evidence is due to the fact that some people do not want to commit themselves to waste their time to go to courts to give evidence. Others feel that it is a waste of time since even the truth will not be followed. The police are believed to be giving wrong statements which are followed in the courts by the judges. The Judges use the witnesses statements to make their rulings. If they are wrong the rulings is likely to be also wrong.

The fault system highly imposes on the parties the burden of proof as to the fault.

The accident itself may hinder them from obtaining witnesses especially if ~~there~~ was nobody around the accident scene and accident victims were all totally unconscious after the accident. According to the police the cause of the accident in such a case is referred to as "unknown" or "other". The insurers are bound to pay claims they are not sure whether they would be liable. This problem was ranked fifth.

Under rank six was mostly mentioned the problem that there is difficulty in ascertaining the facts sought even where the best evidence is obtainable because the witnesses are not trained on fact finding and were not prepared to observe the facts which the Judges depend on to make the Judgements. The cases at times are heard many years after the accident and the witnesses may have forgotten the facts since they may have not put them down in writing.

Ranked seven and eight respectively are the problems that there is the difficulty of fixing damages accurately since there are no recognizable criteria of the value of non-economic losses e.g pain and suffering and that most Kenyans are ignorant of the law and their legal rights and hence do not make claims to benefit from the Insurance. This is evidenced by the fact that at times the police may report an accident in the courts but the victims refuse to make any claim.

The Judges gave their suggestive measures to eliminate the problems caused by the fault system. The solutions are as follows:

1. There should be a NO-FAULT SYSTEM of compensation to replace the fault system.

2. Out of court settlements should be encouraged to eliminate the unnecessary court delays hence saving a lot of man-hours and money.
3. The judges should speed up the hearing of the cases with the least number of adjournments.
4. The government should educate the public on observance of Highway Code, laws and rules and heavily penalize the road accident authors.
5. Both the lower and upper limits of compensation or a valid schedule of compensation for various damages should be established jointly by the government and the insurers.
6. More judges should be assigned the "Running Down" cases.
7. The government should improve the level of literacy by educating the public on their legal rights.
8. The government should establish a department whose function is to investigate every accident to ascertain any infringement of the legal rights of the victims.
9. The government should further establish a state funded scheme to cater for excessive claims.

In conclusion therefore it can be observed that the insurance companies are facing a lot of problems from the compensation system for personal injuries and deaths practised in Kenya today.

The Judges themselves experience a lot of difficulties with this system which affect their rulings on these cases.

According to the views of the insurers and the Judges interviewed, the fault system should be completely ignored and instead adopt a NO-FAULT system. Alternatively, the relevant bodies as indicated in the findings should implement the suggested measures to improve the present system at all costs. This together with massive encouragement of the out of court settlements will go along way in eliminating all the flaws of the FAULT system followed in the compensation for these damages. Consequently, this will mean that more claims will be settled at reasonably lower costs. The faked claims will also be checked and this will reduce the total insurance companies expenditure of these claims and the insurance in general. The motor Insurance as a result will be improved and ultimately the Insurance industry and the general economy will grow.

5.2 LIMITATIONS:

The findings and conclusions of this study are subject to several limitations.

The main limitation that encumbered this study was the lack of sufficient time in which to conduct it. The limited time available did not enable me to receive responses from all Judges and Insurance companies. The judges are very busy persons and they at least require not less than a month to fill in the questionnaires. This led to the low response rate of 46%. The time limit hampered me from going to the Insurance companies who did not respond so that at least I would convince them to answer a few if not all the questions in the questionnaires. The Insurance Companies response rate of 64% would have been at least increased with time. The findings here therefore may provide useful pointers as to the problem areas in the compensation system, but they are not conclusive because a reasonable proportion of both classes of respondents did not give their views.

Secondly, there was lack of cooperation from both the insurers and the Judges. Some insurers refused to give some of the details alleging that they are confidential even after trying to convince them of the objective of the study. Some Judges were too busy that they could hardly give me a hearing even for a word of greetings. The insurers general lack of cooperation made me to convince almost every insurance company to answer my questionnaire. This actually made it in practice a self-administered questionnaire.

Thirdly, there was lack of relevant research and literature in this area on Kenyan situation. The report on the HANCOX COMMISSION on insurance if it was published or availed to me as expected would have assisted me alot in the study however, it was not. Virtually most literature available had the developing countries setting in general but not specifically Kenya.

Despite these limitations, the study throws considerable light on the problems the compensation system pose to Kenya insurers. It also identifies the measures which if adopted should go along way in checking all these drawbacks of the compensation system.

5.3 SUGGESTIONS FOR FUTURE RESEARCH AND RECOMMENDATIONS:

The following are possible areas for future research.

1. Due to time limitation, I could not carry an inferentive study to test the significance of any of the problems mentioned. A further research therefore need to be done to test the relationship and the significance of these problems to the Motor Insurance performance in kenya.
2. With more time allocated, the problems the compensation system cause to other parties like the accident victims should be researched.

In reference to the findings, I therefore recommend that the solution suggested to each and every problem area be taken seriously and be implemented by the relevant bodies. If this is done all the handicaps experienced in the Motor Insurance will be eliminated hence nourishing it and the insurance industry in general.

APPENDIX A1

Letter to the respondent

Dear Respondent,

I am a post graduate student in the Faculty of Commerce, University of Nairobi. In fulfilment of the requirements for the Degree I am carrying a management research project on the topic: AN INVESTIGATION OF THE PROBLEMS IN THE COMPENSATION SYSTEM FOR PERSONAL INJURIES AND DEATHS IN MOTOR INSURANCE IN KENYA.

I kindly request you to provide the required information to the best of your knowledge.

This information is purely for academic purpose and will be treated in total confidence.

Your cooperation in this exercise will be highly appreciated.

Thanking you in advance,

Yours Sincerely,

Makembo S.M.

Supervisor: Mr. Kibisu M.C.

Insurance Option Coordinator

Faculty of Commerce.

INTERVIEW QUESTIONNAIRE

TO INSURERS

In each of the questions below, please answer according to the instructions given to the best of your knowledge.

1. Name of your company

2. What kind of motor insurance do you offer?

(i) Private car insurance only.....

(ii) Commercial vehicles insurance only.....

(iii) Prive and Commercial vehicles insurance.....

(Tick where appropriate)

3. Please give me the total premium and claims on the motor insurance over the last five years you have been in operation.

| Year | 1987 | 1988 | 1989 | 1990 | 1991 |
|--------------------------|-------|-------|-------|-------|-------|
| Total Premiums | _____ | _____ | _____ | _____ | _____ |
| Total operating expenses | _____ | _____ | _____ | _____ | _____ |
| Total Claims | _____ | _____ | _____ | _____ | _____ |
| Net effect (loss/gain) | _____ | _____ | _____ | _____ | _____ |

4. In view of the above figures, what would you say about the motor insurance in terms of profitability. (Tick appropriate)

(a) Declining.....

(b) Constant.....

(c) Improving.....

5. Of the motor claims you are bound to pay every time would you agree or disagree with the statement that claims for personal injuries are the most prevalent, seconded by death claims, medical expenses claims follow and damage to property claims are the least prevalent.

(Tick the appropriate statement)

(a) Agree

(b) Disagree

6. Which of the following statements listed below are descriptive of the characteristics of the personal injuries and deaths claims as determined by the judges?

(a) They are very many over a given year

(b) Take too much of the companies time and money in settling

(c) They are generally higher than the premiums received (earned) on the insurance.

(d) The amount paid to clients(claimants) differ even where the cases are the same

(e) State any other characteristic(s).....

.....
.....

(ii) For each of the statements you have ticked above, please rank them by the order of their significance e.g. rank 1 to the first in significance, 2 to the second, 3 to the third, etc.

Indicate the rank at the end of each statement.

(iii) What do you think should be done to change the characteristics you have ticked in 6 (i) above?

(a).....

.....

.....

(b).....

.....

.....

(c).....

.....

.....

(d).....

.....

.....

(e).....

.....

.....

7.(i) There is a generally held belief that motor accident cases take too long in the courts pending hearing and judgement.

Do you agree or not? (Tick appropriately)

(a) Agree

(b) Disagree

(ii) If the answer is (a) above, what negative effect does the delay have on you as an insurance company?

.....

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.....

8. (i) Which of the following statements is descriptive of the problems you (insurers) experience from underwriting motor insurance. (Tick appropriately and rank them in the order of their significance e.g. giving rank 1 to the first in significance, 2 to the second in significance, 3 to the third in significance, etc).

(a) The premiums charged are too low.

(b) The claims payments are unproportionately increasing year after the other.

(c) The operating expenses are very high.

(d) Investment areas limited by the government regulations.

(e) Investment returns are low.

(f) Indicate any other problem(s).....

.....

.....

.....

.....

.....

(ii) Please suggest practical solutions to the problems you have ticked above.

(a).....
.....
.....

(b).....
/.....
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(c).....
.....
.....

(d).....
.....
.....

(e).....
.....
.....

(f).....
.....
.....

9 (i) Which of the following statements is descriptive of the problems caused by lawyers? (Tick appropriately and rank them in the order of their significance e.g. 1 to refer to the top most in significance, 2 to the second, 3 to the third, etc.)

(a) Influence potential non-claimers to make the claims

9b) Encourage the victims to take the matter to the courts

(c) Their fees are too high.

(d) Indicate any other (s)

-
- (a) There is a limited capacity of reinsurance
-
- (b) There is a limited capacity of being
-
- (c) There is limited recovery of claims
-
-

(ii) Please in your own view suggest solutions to these problems so as to enhance the insurance.

(a).....
.....
.....

(b).....
.....
.....

(c).....
.....
.....

(d).....

10. Please give me the names of your reinsurers and the proportions of business reinsured with each of them.

| | Name of reinsurer | Proportion (%) |
|-------|-------------------|----------------|
| (i) | ----- | ----- |
| (ii) | ----- | ----- |
| (iii) | ----- | ----- |

(ii) In view of the reinsurance offered by our only local reinsurer (Kenya Reinsurance Corporation), which of the following statement is descriptive of the problems you experience (Tick and rank as guided in Qn. 9 above)

- (a) There is a limited capacity of reinsurance
- (b) There is a limited capacity of ceding
- (c) There is limited recovery of claims.

(iii) Give your suggestions on what should be done to eliminate these (above) problems.

- (a) -----

- (b) -----

- (c) -----

11. Which mode of settlement do you prefer? (e.g. court settlement, arbitration, or any other but please specify).

State the rationale for your preference.

Please indicate whether you are a judge in the

- (a) Court of Appeal
- (b) Appellate of Sanyo

The court settlement does not involve any costs
involved, as you agree with the settlement and personal
tax and death claims are the most preferable, secondary
personal claims and property damage claims are
settled.

The main reason of generating the liability and
cost of damages for these claims is the personal
and death claims. The following statements are descriptive
of situations encountered. (This approximation)
A comparison of each case differs from the other
as the liability of the second legal responsibility
is not very clear in every case.

The judges differ in their rulings on the question
of damages especially for supplementary claims.
The laws given by the judges differ with those
given by the witnesses in their cases.

Without doubt and the difference of the laws
and the judges' rulings on the question will be
settled as a result of the most preferable high order of
the law in that case.

APPENDIX A3

INTERVIEW QUESTIONNAIRE TO JUDGES:

1. Please indicate whether you are a judge in the Court of Appeal or in the High Court of Kenya. (Tick appropriately)

(a) Court of Appeal

(b) High Court of Kenya

2. Of the motor accident cases you handle per given time period, do you agree with the statement that personal injuries and death Claims are the most prevalent, seconded by medical expense claims and property damage claims are the least.

(a) Agree

(b) Disagree

3. In your pursuit of determining the liability and quantum of damages for these claims (personal injuries and death) which of the following statements are descriptive of the situation encountered. (Tick appropriately)

(a) Circumstances of each case differ from the other

(b) The application of the common legal principles is not easy in every case.

(c) The judges differ in their rulings on the quantum of damages especially for non-pecuniary losses.

(d) The facts given by the Police differ with those given by eye witnesses in most cases.

(e) Accident victims and the insurers are not always satisfied with the judges rulings on the quantum and payment of claims as indicated by the generally high number of appeals made on this issue.

(f) Please give any other situation encountered -----

(ii) Please suggest what should be done to eliminate or improve
the above ticked situations

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

(f) -----

(g) -----

5 (i) Which of the following statements is descriptive of the problems the present legal system (fault system) followed in Kenya pose in the determination of liability and payment of the claims (personal injuries and death claims).

(Please tick and rank them appropriately e.g by giving rank 1 to the top most in significance, 2 to the second, 3 to the third, e.t.c).

(a) Only those victims with money and are not ignorant of the law and their rights can hire lawyers to make a claim in this area and hence benefit from the insurance. -----

(b) It highly imposes on the parties the burden of proof as to the fault, though the accident itself may have hindered them from obtaining witnesses especially if there was nobody around the accident scene and the victims were all totally unconscious after the accident. -----

(c) There is difficulty in ascertaining the facts sought even where the best evidence is obtainable because the witnesses are not trained on fact finding and were not prepared to observe the facts which the judges depend on to make the judgements. -----

(d) There is the difficulty of fixing damages accurately since there is no recognisable criteria of the value of non-economic losses, e.g. pain and suffering. -----

(e) There are delays caused by waiting for trials and aggravated in some cases by appeals made. These delays are due to the fact that there are so many road accidents in our city and towns as a result of the big number of the motor vehicles owned and used. -----

(g) The **fault** system does not mostly consider the degree of the defendants' fault unless where there is a possibility of contributory negligence. -----

(h) Difficulties of adjudication. Proving negligence is difficult and it is worsened by the fact that some witnesses refuse to give details of the accident. -----

(i) Most Kenyans are ignorant of the law and their legal rights. They thus do not make claims even after suffering injuries. This is evidenced by the fact that at times the Police may report an accident in the courts but the people affected refuse to claim. -----

(j) Please give any other; -----

5 (ii) For each of the following statements you have ticked in 5(i) above, give your suggestions on what should be done by either the government, Insurers, Claimants or the legal body (judges) to eliminate them as problems.

(a) -----

(b) -----

(c) -----

(d) -----

(e) -----

(f) -----

(g) -----

(h) -----

(i) -----

(j) -----

AFRICAN INTERNATIONAL INSURANCES (AII) LTD.

AMERICAN LIFE INSURANCE COMPANY (A) LTD. (A.L.I.C.)

ARABIC INSURANCE COMPANY

BALEK INSURANCE COMPANY LTD.

Thank you very much for your assistance.

BANQUE ASSURANCE COMPANY LTD.

BOHEMIA INSURANCE COMPANY LTD.

COOPERATIVE INSURANCE SERVICES LTD.

CORPORATE INSURANCE COMPANY LTD.

EUROPEAN SWISS INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN ACCIDENT INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN COMPANY OF EAST AFRICA (E.A.C.)

EUROPEAN AFRICA INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN ASSURANCE

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN ASSURANCE COMPANY

EUROPEAN INSURANCE COMPANY

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY LTD.

EUROPEAN INSURANCE COMPANY

APPENDIX B

LIST IF INSURANCE COMPANIES OFFERING MOTOR INSURANCE AS AT
JANUARY, 1992

1. ACCESS INSURANCE COMPANY LTD.
2. AFRICAN INTERNATIONAL INSURANCES (AII) LTD.
3. AMERICAN LIFE INSURANCE COMPANY (K) LTD. (ALICO)
4. APOLLO INSURANCE COMPANY.
5. BLUE SHIELD INSURANCE COMPANY LTD.
6. CANNON ASSURANCE COMPANY LTD.
7. CONCORD INSURANCE COMPANY LTD.
8. COOPERATIVE INSURANCE SERVICES LTD.
9. CORPORATE INSURANCE COMPANY LTD.
10. FIDELITY SHIELD INSURANCE COMPANY LTD.
11. GATEWAY INSURANCE COMPANY LTD.
12. GEMINIA INSURANCE COMPANY LTD.,
13. GENERAL ACCIDENT INSURANCE COMPANY LTD.
14. HERITAGE INSURANCE COMPANY LTD.
15. INSURANCE COMPANY OF EAST AFRICA (I.C.E.A).
16. INTRA AFRICA INSURANCE COMPANY LTD.
17. JUBILEE INSURANCE COMPANY LTD.
18. KENINDIA ASSURANCE
19. KENYA ORIENT INSURANCE COMPANY LTD.
20. KENYA NATIONAL ASSURANCE COMPANY
21. KENYA ALLIANCE INSURANCE COMPANY.
22. LION OF KENYA INSURANCE COMPANY LTD.
23. MADISON INSURANCE COMPANY LTD.
24. OCCIDENTAL INSURANCE COMPANY LTD.
25. PAN AFRICA INSURANCE COMPANY LTD.
26. SUN ALLIANCE INSURANCE COMPANY.

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co-operative insurance services

APPENDIX B:

- 27. PIONEER GENERAL ASSURANCE SOCIETY LTD.
- 28. PROVINCIAL INSURANCE COMPANY OF EAST AFRICA LTD.
- 29. PRUDENTIAL ASSURANCE.
- 30. ROYAL INSURANCE COMPANY LTD.
- 31. STALION INSURANCE COMPANY LTD.
- 32. TAISHO MONARCH INSURANCE COMPANY LTD.
- 33. TRIDENT INSURANCE COMPANY LTD.
- 34. THE UNION INSURANCE COMPANY LTD.
- 35. UNITED INSURANCE COMPANY LTD.
- 36. KENYA REINSURANCE CORPORATION.

SOURCE: Kenya Reinsurance Corporation, 1991.

SPECIMEN



co-operative insurance services

Fifth Floor View Park Towers **limited** Monrovia Street/Uhuru Highway, NAIROBI

P.O. Box 59485 • Telephone 334935/6, 334994 • Telex: 25247 • Telefax: 330096

PROPOSAL FORM — VEHICLES USED TO CARRY PASSENGERS FOR HIRE OR REWARD

NOTE: Please give a definite reply to each question on the form and use **BLOCK CAPITALS**

State Period of insurance from 19..... to 19.....

2. a) Name of Proposer (in full)
- b) Address (in full)
- c) Business or Occupation (For the purposes of this insurance)

3. Particulars of all Vehicles to be insured:-

| Index Mark and Registration Number | Make of Vehicle | Cubic Capacity of Engine | Year of Manufacture | Maximum permitted number of passengers carried at any one time (excluding driver) | Date of purchase | Price paid by proposer | Proposer's Estimate of Present Value including accessories and spare parts. |
|------------------------------------|-----------------|--------------------------|---------------------|-----------------------------------------------------------------------------------|------------------|------------------------|-----------------------------------------------------------------------------|
| | | | | | | Shs. | Shs. |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

SPECIMEN

4. State type of cover required: (a) Third Party (b) Third Party Fire and Theft (c) Comprehensive

5. a) Are you a Licensed Motor Operator? Yes/No.
 b) Indicate the purpose for which each Vehicle is used: Omnibus, Public Hire Taxi, Matatus, Private Hire, Self Drive Hire.
 c) If any of the Vehicle(s) are used for Private Hire, then do you hire them to other operators for their own use? Yes/No

If so do you enter into a written contract with them? Yes/No
If answer is "Yes" please submit a copy of the contract

NOTE: The policy to be based on this Proposal Form will not operate if some other Operator's employee is driving.

6. a) Are any of the Vehicles licensed as Public Service Vehicles? If so state which
 b) What is the maximum legal passenger carrying capacity (excluding the driver) of each Vehicle?

7. State total number of employees licensed to drive

8. To the best of your knowledge and belief have you, or has any other person who to your knowledge will drive

- a) i) defective vision or hearing? ii)
 ii) now, or within the last 5 years, experienced diabetes, fits or any complaint of the heart? iii)
 iii) any other physical or mental infirmity?

If so give details

- b) been convicted of any offence in connection with the driving of any Vehicle? If so give date and nature of penalty.
 c) only passed his driving test during the past 24 months? Yes/No
 d) had less than 36 months experience of driving omnibuses and/or heavy lorries? Yes/No

9. Will the Vehicle(s) be driven by any persons under 25 years of age? If so give name(s) length of driving experience and details of all accidents or losses during the past 3 years.

NOTE: The insurance may be inoperative or special restrictive terms applied for drivers under age of 25 years

10. Are you now or have you been insured in respect of any Motor Vehicle? If so, state Name and Branch Office of the Insurer and Policy No. if known

11. Has any Insurer ever
 a) declined your proposal or cancelled or refused to renew your policy?
 b) required an increased premium or imposed special conditions?
 c) required you to carry the first portion of any loss?

OVER

I hereby accept the terms and conditions of the Company's Motor Car or Cars described in the above Proposal, and I We hereby
 declare that the facts and particulars are true and I We have not suppressed, misrepresented or mis-stated any
 material fact. We agree that this declaration shall be the basis of the contract between me, us and the Company
 and that the Company's liability is limited to the amount of the sum insured.
 Dated this day of 19.....

Signature of Proposer

Signature of Insurer

Signature of Agent of the Company

If you are a motorist and require insurance coverage, please indicate type and value separately.

If signed in an authorized capacity on behalf of "The Proprietor" sign

- i) whether as a Partner
- ii) position in Company or Firm

Imprint here with
 Company's Stamp
 Rubber Stamp

The liability of the Insurers does not commence until the acceptance of the Proposal has been formally intimated by the Insurers and a Written Certificate of Insurance has been issued. Any entries incorrect or misleading in respect of the above questions could make the Insurance invalid and inoperative in respect of claims arising.

MAJIDMAZAH BINA KWA LSHIRRYA

Types of Insurance

- ALL RISK
- JEWELLERY
- EXTRACURRICULAR
- BAGGAGE
- COMPREHENSIVE
- DOMESTIC FLIGHT
- ACTOR'S
- FIRE
- GLASS
- LOSS OF PRODUCE
- MOTOR
- PERSONAL ACCIDENT
- PUBLIC LIABILITY
- PEDAL CYCLE
- JEWELLER'S ASSISTANCE
- COUPON
- MEN'S COMPENSATION
- EMPLOYEE PROTECTION
- MEMBER SAVER
- EMPLOYEE GROUP
- PLUS MANY OTHERS

Detailed information on any of the above is available on application.



co-operative insurance services

Third Floor, Co-operative House limited Haile Selassie Avenue, NAIROBI

P O Box 59485 • Telephone: 334935/6, 334994 • Telex: 25247 • Telefax: 330096

SUPPLEMENTARY DRIVER'S FORM

Supplementary to and forming part of Insurance Proposal of

A DEFINITE ANSWER TO EACH QUESTION IS REQUIRED - TICKS AND DASHES ARE UNACCEPTABLE

- FULL NAME: AGE:
POSTAL ADDRESS:
- HOW LONG HAVE YOU BEEN DRIVING PROFESSIONALLY?
GIVE DETAILS OF YOUR EXPERIENCE DRIVING THE FOLLOWING TYPES OF VEHICLE:
HEAVY LORRIES (OVER 5 TONNES) OMNIBUSES
LIGHT LORRIES (UNDER 5 TONNES) MOTOR CARS
- DRIVING LICENCE NO. ISSUED AT
ON TO DRIVE VEHICLES OF CLASS
CURRENT RENEWAL NO. DATE OF EXPIRY
STATE ANY ENDORSEMENTS ON LICENCE
P. S. V. LICENCE NO ISSUED AT
ON DATE OF EXPIRY
- GIVE DETAILS OF ALL PHYSICAL DEFECTS
- HAVE YOU BEEN CHARGED DURING THE PAST 5 YEARS WITH ANY OF THE FOLLOWING OFFENCES?
i) SPEEDING) If so, give
ii) CARELESS OR DANGEROUS DRIVING) full details
HAVE YOU WHILST DRIVING BEEN INVOLVED IN AN) overall
ACCIDENT CAUSED BY YOUR LOSING CONTROL OF)
THE VEHICLE?)
- ARE YOU NOW OR HAVE YOU BEEN INSURED IN RESPECT OF ANY MOTOR VEHICLE?
IF SO, STATE NAME OF INSURER AND POLICY DETAILS
- HAS ANY INSURER DECLINED YOUR PROPOSAL?
REQUIRED INCREASED PREMIUM OR SPECIAL TERMS?
REFUSED TO RENEW YOUR POLICY?

SPECIMEN

7. GIVE DETAILS OF ALL ACCIDENTS/LOSSES DURING THE PAST THIRTY SIX MONTHS:

| | TOTAL NO. OF VEHICLES DRIVEN | TOTAL NO. OF ACCIDENTS/LOSSES | CLAIMS | OWN DAMAGE | T.P. PROPERTY | T.P. INJURY |
|------------------------------|------------------------------|-------------------------------|-------------|------------|---------------|-------------|
| FAST 12 MONTHS | | | PAID | | | |
| | | | OUTSTANDING | | | |
| PRECEDING 12 MONTHS | | | PAID | | | |
| | | | OUTSTANDING | | | |
| THE NEXT PRECEDING 12 MONTHS | | | PAID | | | |
| | | | OUTSTANDING | | | |

I HEREBY WARRANT THAT THE ABOVE PARTICULARS AND STATEMENTS ARE TRUE

DATE: SIGNATURE:

HUDUMA ZA BIMA KWA USHIRIKA

I hereby warrant that the above particulars and statements are true and correct and that I have not suppressed, misrepresented or mis-stated any material fact. We warrant that this declaration shall be the basis of the contract between me/us and the Company.

I/We warrant that the above particulars and statements are true and correct and that I have not suppressed, misrepresented or mis-stated any material fact. We warrant that this declaration shall be the basis of the contract between me/us and the Company.

Dated this day of 19.....

Signature of Proposer

Signature of the Company

Signature of the Company

PRIVATE MOTOR CAR POLICY PROPOSAL

Full Name of Proposer (in block letters) Telephone No.

Address (in block letters)

Profession or Occupation

Period of Insurance For months from until

| Registered Letters and Numbers | Engine and Chassis No. | Make of Car | Type of Body | Year of Manufacture | Seating Capacity (including Driver) | Proposer's estimate of present value of Car (including Accessories thereon) |
|--------------------------------|------------------------|-------------|--------------|---------------------|-------------------------------------|-----------------------------------------------------------------------------|
| | | | | | | |



1. (a) Will Car be used exclusively for social, domestic and pleasure purposes?
 (b) If not, state what purpose it will be used -
 (i) by you for Professional purposes?
 (ii) By you personally in connection with your own or your employer's business?
 (iii) By employees or other parties in connection with your own or your employer's business?
 (iv) For the carriage of samples or trade goods or farm requisites, produce or livestock?
 (v) For any other purposes?

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2. (a) State address where the Motor Car is usually garaged
 (b) Is it garaged in the open?
 (c) Is it garaged under cover?

3. Delete insurance NOT required
 (a) Comprehensive
 (c) Third Party only
 (b) Third Party Fire & Theft
 (d) Ordinance only
 Limit Shs

4. Is windscreen and window glass insurance required?

5. Is the Car your sole and absolute property? (If not state name and address of joint owner or hire purchase interest)

6. Is the Car registered in your name?

7. (a) Date of purchase

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8. Do you or does any person who in your knowledge will drive, suffer from defective vision or hearing or from any physical infirmity?

9. Will the car usually be driven by someone other than the proposer? (If so, a separate proposal is required from that person)

10. Have you, or has any person who in your knowledge will drive, been charged with or convicted of during the past five years, any offence in connection with any Motor Vehicle (other than parking) or is any prosecution pending? If so, please give full details

11. (a) How long have you held a FULL driving licence for the type of vehicle now proposed?
 (b) How long have you been driving motor vehicle?

(c) Date and place of first issue
 (d) Current driving licence No.

12. Are you now or have you been insured in respect of any Motor Vehicle? If so, please state names of all Companies and Underwriters

13. (a) Are you entitled to a No Claim Discount?

(b) If so, for how many years up to this date have you previously been insured continuously without claim and with which Companies? Please produce written proof of this

14. Has any Company or Underwriter ever:
 (a) Declined your proposal?
 (b) Required you to bear the last portion of any loss or imposed other special conditions?
 (c) Required an increased premium?
 (d) Refused to renew or cancelled your policy?

15. Give record of Accidents and/or Losses during the past five years in connection with any Motor Vehicle owned or driven by you whether insured or uninsured including any claims outstanding - Please give full particulars (including costs) of these accidents

| Year | Total Number of Motor Vehicles owned by Proposer | Total Number of Accidents and Losses | Cost Paid and Outstanding | | Brief Particulars of each Accident |
|---------|--------------------------------------------------|--------------------------------------|---------------------------|-------------|------------------------------------|
| | | | Own Damages | Third Party | |
| 19..... | | | | | |
| 19..... | | | | | |
| 19..... | | | | | |

I/We desire to insure with the Company the Motor Car or Cars described in the above Proposal, and I/We hereby warrant that the statements and particulars are true, and I/We have not suppressed, mis-represented or mis-stated any material fact and I/We agree that this declaration shall be the basis of the contract between me/us and the Company

N.B. Our standard policy restricts the liability of the Company whilst the Vehicle is being driven by a person under 25 years of age or an inexperienced driver

This insurance will not be in force until the proposal has been accepted by the Company and the premium paid. No acknowledgment of any premium or proposal is valid unless on the printed official form of the Company

If a non-standard part and/or accessory is fitted and insurance is required, please indicate type and value separately

Dated this Day of 19.....

Signature of Proposer

**FOR
PROTECTION
AND SECURITY
REMEMBER**



**CO-OPERATIVE INSURANCE
SERVICES LTD.**

**VIEW PARK TOWERS
FIFTH FLOOR
MONROVIA ST. / UHURU HIGHWAY
NAIROBI, KENYA.**

**BOX 59485 PHONE: 334935/6
334994
TELEX: 25247
TELEFAX: 330096**

HUDUMA ZA BIMA KWA USHIRIKA

**MOTOR CAR
POLICY
COMPREHENSIVE BENEFITS**

- 1 THIRD PARTY CLAIMS.**
- The Insured is indemnified up to an unlimited amount in respect of his legal liability to pay compensation (including Claimant's costs and expenses) for:-
- (a) Death of or bodily injury caused by the use of the insured Car to persons (including passengers in the Car) except where such death or injury arises out of or in the course of the employment of such persons by the Insured and excluding liability to members of the Insured's household.
 - (b) Damage caused by the use of the Insured Car to property (including animals) other than property belonging to or in the custody or control of the Insured or any member of the Insured's household.
- The indemnity extends to the Insured (if an individual) while personally driving any (private Motor Car not belonging to him and to any person who is driving the insured Car (for the purposes permitted by the Policy) on the Insured's order or with his permission.
- The Company pays all law costs and expenses incurred with its written consent.
- 2 LOSS OR DAMAGE TO THE CAR** including Tyres Lamps and Accessories thereon, resulting from:-
- (a) Accidental Collision or Overturning.
 - (b) Collision or Overturning consequent upon mechanical breakdown or wear, and tear.
 - (c) Malicious Act.
 - (d) Fire, External Explosion, Self-Ignition or Lightning.
 - (e) Burglary, Housebreaking or Theft.
 - (f) While in Transit by Road, Rail, Lift or In-land Water-way.
- The Company will pay the cost of protection and removal of the Car to the nearest repairers in consequence of accident causing damage covered by the Policy and of redelivery to the Insured but not exceeding in all the cost of repairs of Shs. 2,000/- whichever is the less.
- 3 MEDICAL EXPENSES**
- In case of injury to the Insured, his Driver or any occupant as the result of an accident to the Car, the Company will refund the Medical Expenses incurred up to an amount of Shs. 600/- in respect of each accident.

GENERAL EXCLUSIONS. Damage to tyres unless the Car is damaged at the same time. Wear and Tear, depreciation, loss of use, mechanical or electrical breakdown or failure, Injury, loss, damage or liability arising during (unless it be proved by the Insured that the injury, loss, damage or liability was not occasioned thereby) or in consequence of Earthquake, Typhoon, Flood, Hurricane, Volcanic Eruption, Invasion, Act of Foreign Enemies, Hostilities or Warlike operations (whether before or after declaration of War), Riot, Civil commotion, Rebellion, Military or Unsupervised Power.

CO-OPERATIVE INSURANCE SERVICES LTD. PROPOSAL FOR COMMERCIAL VEHICLES

IMPORTANT — All Questions and Sub-Sections of Questions **MUST** be answered fully

Full Name of Proposer (in block letters) _____ Telephone No. _____

Address (in block letters) _____

Trade or Business _____ Number of Drivers Employed _____

Period of Insurance: For _____ months from _____ until _____

| Registered Letters and Number | Chassis No. or Engine No. | Make of Vehicle | Type of Body | Horse Power | | Year of Manufacture | Carrying Capacity | | Proposer's estimate of present value of Vehicle (including Accessories thereon) |
|-------------------------------|---------------------------|-----------------|--------------|-------------|--------|---------------------|-------------------|---------|---------------------------------------------------------------------------------|
| | | | | Treasury | Makers | | Goods | Persons | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

- State fully the purpose for which the Vehicle(s) will be used and state what Licence?
- Do you undertake Carriage for other persons?
- (a) Will a Trailer be attached to the Vehicle(s)? If so, how many? What is the purpose of each?
- If Vehicle(s) used for carrying Passengers, for what purpose are they licensed?
- (a) State address where the vehicle is usually garaged (b) Is it garaged in the city? (c) Is it garaged under cover?
- Do you require insurance NOT required?
- Do you own Vehicle(s) apart from those shown in question 1? If so, state the name and address of owner or the Managing Company.
- (a) Date of purchase of Vehicle(s) by you. (b) State whether new or second hand or trade-in.
- State in which East African Territory Vehicle(s) are to be garaged and used.
- Do you or any other person who to your knowledge is suffering from defective vision or hearing or from any other disability?
- How long has the driver been driving Motor Vehicles? (a) State date and place when he passed his driving test. (b) State his licence number. (c) State any other experience in respect of which the proposal is submitted.
- Are you now or have you ever been insured in respect of a Vehicle? If so please state name of Company or Underwriter.
- (a) Are you entitled to a "No Claim Discount"? (b) If so with which Company? Were the premiums insured?
- Has any Company or Underwriter advised in respect of your vehicle's age to be quoted your or their proposal? (a) Requested you or them to quote the first portion of any loss or refused other special conditions? (b) Refused to renew or to complete your or their policy? (c) Requested an increased premium?
- Give record of Accidents and/or losses during the past five years in connection with any Motor Vehicle owned or driven by you or your employees whether insured or uninsured including any claims outstanding.

16. Please give full particulars including details of these accidents:

| Total number of Motor Vehicles owned by Proposer | Total number of Accidents/Losses |
|--------------------------------------------------|----------------------------------|
| 19 | |
| 20 | |
| 21 | |



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I/We warrant that the above statements and particulars are true and true hereby, and that this declaration shall be held to be professed and shall form the basis of the Contract entered into with the above named Company, and I/we undertake that the Vehicle or Vehicles to be insured shall not be driven by any person who to my/our knowledge has been refused any motor vehicle insurance or continuation thereof, and I/we hereby agree to accept a Policy as designated above subject to the terms, exceptions and conditions prescribed by the Company therein.

Dated this _____ day of _____ 19____ Proposer's Signature _____
This insurance will not be in force until the Proposal has been accepted by the Company. No acknowledgement of any Premium or Deposit is valid unless on the printed Official form of the Company.

NO CLAIM DISCOUNT: In the event of no claim being made or arising under the Policy during the preceding year of insurance the renewal premium shall be reduced by 10%.

NOTE: Discount as above will be allowed on insurance transferred from other Insurance Companies or Underwriters. THE POLICY will operate in Kenya. In the event of sale of the Vehicle the Policy can be transferred to an approved new owner or endorsed to cover a substituted Vehicle. If the Vehicle is laid up (otherwise than as the result of loss or damage covered by the Policy) for any period of not less than eight consecutive weeks, Special arrangements may be made for the partial suspension of the Policy from the date when written notice together with the Certificate(s) of Insurance is received by the Company.

VEHICLES WHICH CARRY PASSENGERS FOR HIRE OR REWARD are insured subject to special conditions, details of which will be supplied upon application.

N.B. Our standard policy restricts the liability of the Company whilst the Vehicle is being driven by or is in the charge of for the purpose of being driven by a person under 25 years of age or a learner driver or an inexperienced driver.

FOR
PROTECTION
AND SECURITY
REMEMBER



CO-OPERATIVE INSURANCE
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VIEW PARK TOWERS
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HUDUMA ZA BIMA KWA USHIRIKA

MOTOR CAR
POLICY
COMPREHENSIVE BENEFITS

1. THIRD PARTY CLAIMS

The Insured is indemnified up to an unlimited amount in respect of his legal liability to pay compensation (including Claimant's costs and expenses) for:

- (a) Death of or bodily injury caused by the use of the Insured Car to persons (including passengers in the Car) except where such death or injury arises out of or in the course of the employment of such persons by the Insured and excluding liability to members of the Insured's household.
- (b) Damage caused by the use of the Insured Car to property (including animals) other than property belonging to or in the custody or control of the Insured or any member of the Insured's household.

The indemnity extends to the Insured (if an individual) while personally driving any private Motor Car not belonging to him and to any person who is driving the Insured Car (for the purposes permitted by the Policy) on the Insured's order or with his permission.

The Company pays all law costs and expenses incurred with its written consent.

2. LOSS OR DAMAGE TO THE CAR, including Tyres, Lamps and Accessories (thereon) resulting from:

- (a) Accidental Collision or Overturning
- (b) Collision or Overturning consequent upon mechanical breakdown or wear and tear
- (c) Malicious Act
- (d) Fire, External Explosion, Self Ignition or Lightning
- (e) Burglary, Housebreaking or Theft
- (f) While in Transit by Road, Rail, Lift or Inland Water way

The Company will pay the cost of protection and removal of the Car to the nearest repairer in consequence of accident causing damage covered by the Policy and of redelivery to the Insured but not exceeding in all the cost of repairs or Shs. 2,000 - whichever is the less.

3. MEDICAL EXPENSES

In case of injury to the Insured, his Driver or any occupant, as the result of an accident to the Car, the Company will refund the Medical Expenses incurred up to an amount of Shs. 600 - in respect of each accident.

GENERAL EXCLUSIONS

Damage to Tyres unless the Car is damaged at the same time. Wear and Tear, depreciation, loss of use, mechanical or electrical breakdown or failure, Injury, loss, damage or liability arising during (unless it be proved by the Insured that the injury, loss, damage or liability was not occasioned thereby) or in consequence of Earthquake, Typhoon, Flood, Hurricane, Volcanic Eruption, Invasion, Act of Foreign Enemies, Hostilities or Warlike operations (whether before or after declaration of War), Riot, Civil commotion, Rebellion, Military or Unsupervised Power.



CO-OPERATIVE INSURANCE SERVICES LIMITED

View Park Towers • Fifth Floor • Monrovia Street/Uhuru Highway
P O Box 59485 • NAIROBI

PRIVATE CAR POLICY

WHEREAS the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Co-operative Insurance Services Ltd. (hereinafter called the Company) for the insurance hereinafter contained and has paid or agreed to pay the premium as consideration for such insurance.

Now this Policy witnesseth that in respect of events occurring during the Period of Insurance and subject to the terms, exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this Policy)

SECTION I - INSURANCE ON THE MOTOR VEHICLE ✓

Loss or Damage

1. The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon. At its own option the Company may pay in cash the amount of the loss or damage or may repair, restate or replace the Motor Vehicle or any part thereof or its accessories or spare parts.

The liability of the Company shall not exceed the value of the parts lost or damaged and the reasonable cost of fitting such parts it being understood that the Company's liability shall be limited to the reasonable market value of the Motor Vehicle at the time of the loss or damage but not exceeding the Insured's estimate of value stated in the Schedule.

Hire Purchase Agreement or Mortgage

2. If to the knowledge of the Company the Motor Vehicle is the subject of a hire purchase agreement or a bill of sale by way of mortgage any payment in cash shall be made to the owner described in the hire purchase agreement or the mortgagee described in the bill of sale whose receipt shall be a full and final discharge to the Company in respect of such loss or damage.

Protection and Removal after accident

3. If the Motor Vehicle is disabled by reason of loss or damage insured under this Policy the Company will subject to the Limits of Liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained.

Authority to Repair

4. The Insured may authorise the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that

- the estimated cost of such repair does not exceed the Authorised Repair Limit
- a detailed estimate of the cost is forwarded to the Company without delay

EXCEPTIONS TO SECTION I

The Company shall not be liable to pay for

- consequential loss
- depreciation wear and tear mechanical or electrical breakdowns failures or breakages
- damage to tyres unless damage is caused to other parts of the Motor Vehicle at the same time

SECTION II - LIABILITY TO THIRD PARTIES ✓

Indemnity to the Insured

1. The Company will subject to the Limits of Liability and the Jurisdiction Clause indemnify the Insured against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of

- death of or bodily injury to any person
- damage to property

where such death or injury or damage arises out of an accident caused by or in connection with the Motor Vehicle or the loading or unloading of the Motor Vehicle

Indemnity to other persons

2. The Company will subject to the Limits of Liability and the Jurisdiction Clause indemnify any Authorised Driver or at the request of the Insured any person (other than the person driving) in or getting into or out of the Motor Vehicle against all sums including claimant's costs and expenses which such Authorised Driver or person shall become legally liable to pay in respect of

- death of or bodily injury to any person
- damage to property

where such death or injury or damage arises out of an accident caused by or in connection with the Motor Vehicle or the loading or unloading of the Motor Vehicle

Indemnity to Legal Representatives

3. In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his legal personal representatives in the terms and subject to the limitations which applied to such person

Application of Limits of Liability

4. In the event of an accident involving indemnity under this Section to more than one person in the Limits of Liability shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the Insured

Representation and Defence

5. The Company may at its own option

- arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section
- undertake the defence of proceedings in any court of law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section

Expenses

6. The Company will pay all costs and expenses incurred with its written consent

JURISDICTION CLAUSE

The indemnity under Section II shall not apply in respect of judgements which are not in the first instance delivered by or obtained from a Court of competent jurisdiction within the Geographical Area

EXCEPTIONS TO SECTION II

The Company shall not be liable

- (a) under sub-sections 2 or 3 to indemnify any person
 - (i) unless such person shall observe fulfil and be subject to the Terms of this Policy in so far as they can apply
 - (ii) if such person is entitled to indemnity under any other policy
- (b) in respect of death or bodily injury to any person arising out of and in the course of such person's employment by the person claiming to be indemnified under this Section
- (c) in respect of death or bodily injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taking away of the load from the Motor Vehicle after unloading therefrom
- (d) in respect of damage to property belonging to or held in trust by or in the custody or control of
 - (i) the Insured or
 - (ii) any person claiming to be indemnified under sub-section 2 or
 - (iii) a member of the same household as the Insured or of the same household as any person claiming to be indemnified under sub-section 2

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

If the Company is obliged by the law of any country within the Geographical Area to pay an amount for which the Company would not otherwise be liable under this Policy the Insured shall repay the amount to the Company

SECTION III - MEDICAL EXPENSES

The Company will subject to the Limits of Liability pay to the Insured the reasonable medical expenses incurred in connection with any bodily injury by violent accidental external and visible means sustained by the Insured or Authorised Driver or any occupant of the Motor Vehicle as the direct and immediate result of an accident to the Motor Vehicle

SECTION IV - MOTOR VEHICLE IN CUSTODY OF MOTOR TRADER

Notwithstanding General Exception 1 (b) the indemnity provided by this Policy shall be operative but only so far as it relates to the Insured whilst the Motor Vehicle is in the custody or control of a member of the Motor Trade for the purpose of overhaul upkeep or repair

GENERAL EXCEPTIONS

The Company shall not be liable in respect of

1. any accident loss damage or liability caused sustained or incurred
 - (a) outside the Geographical Area
 - (b) whilst on the Insured's order or with his permission or to his knowledge any motor vehicle in respect of which indemnity is provided by this Policy is
 - (i) being used otherwise than in accordance with the Limitations as to Use
 - (ii) being driven by any person other than an Authorised Driver or is for the purpose of being driven by him in the charge of such person
2. any accident loss damage or liability (except so far as is necessary to meet the requirements of the Legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with
 - (a) war invasion act of foreign enemy hostilities or warlike operations (whether war be declared or not) civil war mutiny rebellion revolution insurrection military or usurped power
 - (b) strike riot civil commotion
 - (c) detention seizure confiscation or any attempt thereof
3. any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement
4. ~~(a) any accident loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss~~
 - (b) any liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purposes of this exception combustion shall include any self-sustaining process of nuclear fission

5. any accident loss damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons materials
6. the first Shs. 1000/- of any amount otherwise payable under this insurance in respect of each and every event arising whilst the Motor Vehicle is being driven by or is for the purpose of being driven by him in the charge of any person who:
 - (a) is under 24 years of age or
 - (b) has not held for a period of at least three years a licence other than a Provisional Licence to drive a Motor Vehicle of that class
 The said sum of Shs. 1000/- shall be in addition to any other amount for which the Company is not liable under this Policy

CONDITIONS

Interpretation

1. This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear

Insured's Duty

2. The due observance and fulfilment of the Terms of this Policy in so far as they relate to anything to be done or not to be done by the Insured or any person claiming to be indemnified and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy

Written Notice

3. Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company

Care of Motor Vehicle

4. The Insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examine the Motor Vehicle or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the Motor Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity granted by this Policy

Notification of Accidents

5. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the Insured or any person claiming to be indemnified shall have knowledge of any impending prosecution inquest or fatal inquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy the Insured shall give immediate notice to the police and co-operate with the Company in securing the conviction of the offender

Claims Procedure

6. No admission offer promise or payment shall be made by or on behalf of the Insured or any person claiming to be indemnified without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured or such person the defence or settlement of any claim or to prosecute in the name of the Insured or such person for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured and such person shall give all such information and assistance as the Company may require

Payment of Limits of Liability

7. At any time after the happening of any event giving rise to a claim or series of claims under Section II-1(b) and Section II-2(b) of this Policy the Company may pay to the Insured or any person claiming to be indemnified the full amount of the Company's liability under Section II-1(b) and Section II-2(b) and relinquish the conduct of any defence settlement or proceedings and the Company shall not be responsible for any damage alleged to have been caused to the Insured or such person in consequence of any alleged action or omission of the Company in connection with such defence settlement or proceedings or of the Company relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or such person or by any claimant or other person after the Company shall have relinquished such conduct

Other Insurance

8. If at the time any claim arises under this Policy there is any other insurance covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its ratable proportion of any loss damage compensation costs or expenses. Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under Exception (a) (ii) to Section II of this Policy

Cancellation

9. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the time during the current Period of Insurance the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the current Period of Insurance and the current Certificate(s) of Insurance has been returned to the Company on or before the date of cancellation) the Insured shall be entitled to difference (if any) between the premium paid and the premium calculated at the Company's Short Period rates for the time during the current Period of Insurance the Policy has been in force

Arbitration

10. All differences arising out of this Policy shall be referred to the decision of an Arbitrator or to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder

SCHEDULE PART II

Limits of Liability:

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Limit of the amount of the Company's liability under Section I paragraph 3 | Shs. 2000/- |
| Limit of the amount of the Company's liability under Section II paragraph 1 (a) and 2 (a) | |
| A. in respect of any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the Motor Vehicle | |
| (i) in respect of death of or bodily injury to any one person | Shs. 1,200,000/- |
| (ii) in respect of a series of claims arising out of one event | Shs. 4,000,000/- |
| B. in respect of any other person | UNLIMITED. |
| Limit of the amount of the Company's liability under Section II paragraph 1(b) and 2(b) in respect of any one claim or series of claims arising out of one event | Shs. 400,000/- |
| Limit of the amount of the Company's liability for Medical Expenses under Section III in respect of any one accident | Shs. 600/- |

Authorised Repair Limit: Two Thousand Shillings

Geographical Area: Republic of Kenya

Legislation: Motor Vehicles Insurance (Third Party Risks) Act 1945, (Kenya)

INSURANCE PROVIDED

1. Where the Insurance Provided is "Comprehensive" all Sections of this Policy are operative
2. Where the Insurance Provided is "Third Party Fire and Theft" Section III of this Policy is cancelled and Section I operates only in respect of loss or damage caused directly by fire self-ignition lightning explosion theft or attempted theft
3. Where the Insurance Provided is "Third Party" Sections I and III of this Policy are cancelled

LIMITATIONS AS TO USE

| | | |
|------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CODE | E.A.1 | "Use only for social, domestic and pleasure purposes. The policy does not cover use for racing competitions rallies or trials (or use for practice for any of them) or use for hire or reward commercial travelling the carriage of goods in connection with any trade or business or use for any purpose in connection with the Motor Trade" |
| | E.A.2 | "Use only for social, domestic and pleasure purposes and by the Insured in person in connection with his business or profession." The policy does not cover use for racing competitions rallies or trials (or use for practice for any of them) or use for hire or reward commercial travelling the carriage of goods in connection with any trade or business or use for any purpose in connection with the Motor Trade. |
| | E.A.8 | "Use for social, domestic and pleasure purposes and for the Insured's business. The policy does not cover use for racing competitions rallies or trials (or use for practice for any of them) or the carriage of passengers for hire or reward." |

ENDORSEMENTS

(Which apply if referred to in Schedule Part I)

1. Excess

In respect of each and every occurrence the Insured shall be responsible for the first amount of any claim under this Policy to the extent of the Excess stated in Schedule Part I.

2. Windscreen

In consideration of the payment of an additional premium it is hereby understood and agreed that any claim for the cost of reinstating any windscreen or window glass forming part of the motor vehicle, as a result of breakage will be made within the terms of the policy without deduction of any amount for which the Insured is responsible in the terms of any Excess endorsement attaching to the Policy. Any payment under this Endorsement shall not constitute a claim within the meaning of the No-Claim Discount provisions of the Policy. The maximum indemnity provided by this extension is limited to the amount stated in Schedule Part I and in the event of a claim arising under this Endorsement notwithstanding that the payment may be less than the indemnity provided by the extension, cover under the extension shall be forfeit and may be reinstated at the discretion of the Company and the payment of an additional premium of not less than the amount originally charged.

Provided that this Endorsement shall not apply to the breakage of glass arising from an occurrence in which other damage is sustained by the Motor Vehicle.

Subject otherwise to the terms exceptions and conditions of the Policy.

3. Excluding Passenger Liability (Code Ex. P.L.L.)

It is hereby declared and agreed that the Company shall not be liable in respect of any claim arising out of the death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from any Motor Vehicle in respect of or in connection with which insurance is granted under this Policy nor for any claim for damage to property belonging to or in the custody or control of any such person.

For and on behalf of the Company

General Manager



CO-OPERATIVE INSURANCE SERVICES LIMITED

Third Floor • Co-operative House • Haile Selassie Avenue
P O Box 59485 • NAIROBI

COMMERCIAL VEHICLE POLICY

Whereas the Insured by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid or agreed to pay the Premium as consideration for such insurance

Now this policy Witnesseth:-

That in respect of events occurring during the Period of Insurance and subject to the terms exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this Policy)

SECTION I - LOSS OR DAMAGE

- The Company will indemnify the Insured against loss of or damage to the Motor Vehicle and its accessories and spare parts whilst thereon
 - by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear
 - by fire external explosion self-ignition or lightning or burglary housebreaking or theft
 - by malicious act
 - whilst in transit (including the process of loading and unloading incidental to such transit) by road rail inland waterway lift or elevator
- At its own option the Company may pay in cash the amount of the loss or damage or may repair reinstate or replace the Motor Vehicle or any part thereof or its accessories or spare parts. If to the knowledge of the Company the motor car is the subject of a hire purchase agreement such payment shall be made to the owner described therein whose receipt shall be a full and final discharge to the Company in respect of such loss or damage. The liability of the Company shall not exceed the value of the parts lost or damaged and the reasonable cost of fitting such parts. The Insured's estimate of value stated in the Schedule shall be the maximum amount payable by the Company in respect of any claim for loss or damage
- If the Motor Vehicle is disabled by reason of loss or damage insured under this Policy the Company will subject to the Limits of Liability bear the reasonable cost of protection and removal to the nearest repairers and of delivery within the country where the loss or damage was sustained
- The Insured may authorise the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that:
 - the estimated cost of such repair does not exceed the Authorised Repair Limit
 - a detailed estimate of the cost if forwarded to the Company without delay

EXCEPTIONS TO SECTION I

The Company shall not be liable to pay for

- consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakages
- damage caused by overloading or strain
- damage caused by explosion of any boiler forming part of attached to or on the Motor Vehicle
- damage to tyres unless the Motor Vehicle is damaged at the same time

SECTION II - LIABILITY TO THIRD PARTIES

- The Company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of:
 - death of or bodily injury to any person
 - damage to property
- In terms of and subject to the limitations of and for the purposes of this Section the Company will indemnify any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver
 - shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply.
 - is not entitled to indemnity under any other policy
- In the event of the death of any person entitled to indemnity under this Section the Company will in respect of the liability incurred by such person indemnify his personal representatives in terms of and subject to the limitations of such Section provided that such representatives shall as though they were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply
- The Company will pay all costs and expenses incurred with its written consent
- In the event of accident involving indemnity under this Section to more than one person the Limits of Liability shall apply to the aggregate amount of indemnity to all persons indemnified and such indemnity shall apply in priority to the Insured
- The Company may at its own option
 - arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section
 - undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section

EXCEPTIONS TO SECTION II

The Company shall not be liable in respect of

- death bodily injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to the Motor Vehicle for loading thereon or the taking away of the load from the Motor Vehicle after unloading therefrom
- death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment

- (v) damage to any bridge, weighbridge or viaduct or to any road or any thing beneath by vibration or by the weight of the Motor Vehicle or of the load carried by the Motor Vehicle;
- (vi) damage to property caused by sparks or ashes from the Motor Vehicle if steam driven;
- (vii) damage to property caused by or arising out of the explosion of a boiler forming part of attached to or on the Motor Vehicle;
- (viii) death or bodily injury caused by or arising out of the explosion of a boiler forming part of attached to or on the Motor Vehicle except so far as is necessary to meet the requirements of the Legislation.

SECTION III - TOWING DISABLED VEHICLES

This Policy shall be operative when the Motor Vehicle is being used for the purpose of towing any one disabled mechanically propelled vehicle and the Company will indemnify the Insured in terms of Section II in respect of liability in connection with such towed vehicle provided that:

- (a) such towed vehicle is not towed (i) toward
- (b) the Company shall not be liable by reason of this Section in respect of damage to such towed vehicle or property being conveyed thereby

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any endorsement hereon shall affect the right of any person entitled to indemnity under this Policy or of any other person to recover an amount under or by virtue of the Legislation BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the Legislation

GENERAL EXCEPTIONS

The Company shall not be liable in respect of

1. any accident loss damage or liability caused sustained or incurred
 - (a) outside the Geographical Area
 - (b) whilst the motor vehicle is
 - (i) being used otherwise than in accordance with the Limitations as to Use
 - (ii) being driven by or is for the purpose of being driven by him in the charge of any person other than an Authorised Driver
2. the first Shs. 500/- of any amount otherwise payable under this insurance in respect of each and every event arising whilst the Motor Vehicle is being driven by or is for the purpose of being driven by him in the charge of any person who -
 - (a) is under 24 years of age or
 - (b) has not held for a period of at least three years a licence other than a Provisional Licence to drive a Motor Vehicle of that class

The said sum of Shs. 500/- shall be in addition to any other amount for which the Company is not liable under this Policy
3. any accident loss damage or liability (except so far as is necessary to meet the requirements of the Legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with flood typhoon hurricane volcanic eruption earthquake or other convulsion of Nature aviation the act of foreign enemies hostilities or warlike operations (whether war be declared or not) civil war strike riot civil commotion mutiny rebellion revolution insurrection military or usurped power or by any direct or indirect consequences of any of the said occurrences and in the event of any claim hereunder the Insured shall prove that the accident loss damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim
4. any liability which attaches by virtue of an agreement but which would not have attached in the absence of such agreement
5. any sum which the Insured would have been entitled to recover from any party but which would not have attached in the absence of such agreement
6. (a) any accident loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- (b) any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exception combustion shall include any self-sustaining process of nuclear fission
7. any accident loss damage or liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material

CONDITIONS

1. This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such specific meaning wherever it may appear
2. Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company at its Head Office
3. The Insured shall take all reasonable steps to safeguard the Motor Vehicle from loss or damage and to maintain the Motor Vehicle in efficient condition and the Company shall have at all times free and full access to examine the Motor Vehicle or any part thereof or any driver or employees of the Insured. In the event of any accident or breakdown the Motor Vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage and if the Motor Vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Vehicle shall be excluded from the scope of the indemnity granted by this Policy
4. In the event of any occurrence which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Company with full particulars. Every letter claim writ summons and process shall be notified or forwarded to the Company immediately on receipt. Notice shall also be given to the Company immediately the Insured shall have knowledge of any impending prosecution inquiry or fatal enquiry in connection with any such occurrence. In case of theft or other criminal act which may give rise to a claim under this Policy the Insured shall give immediate notice to the Police and co-operate with the Company in securing the conviction of the offender
5. No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in his name the defence or settlement of any claim or to prosecute in his name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require
6. At any time after the happening of any event giving rise to a claim or series of claims under Section II (b) of this Policy the Company may pay to the Insured the full amount of the Company's liability under Section II (b) and relinquish the conduct of any defence settlement or proceedings and the Company shall not be responsible for any damages alleged to have been caused by the Insured in consequence of any alleged action or omission of the Company in connection with such defence settlement or proceedings or of the Company relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct
7. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and provided no claim has arisen during the then current Period of Insurance the Insured shall be entitled to a return of premium less premium at the Company's Short Period rates for the period the Policy has been in force
8. If at the time any claim arises under this Policy there is any other insurance covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its rateable proportion of any loss damage compensation costs or expenses Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under provision (a) of Section II 2 of this Policy
9. All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder
10. The due observance and fulfilment of the Terms of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy

For and on behalf of the Company

EXD.
Form: MOTCV/80

General Manager

1. Where the Insurance Provided is "Comprehensive" all Sections of this Policy are operative
2. Where the Insurance Provided is "Third Party Fire and Theft" Section III of this Policy is cancelled and Section I operates only in respect of loss or damage caused directly by fire self-ignition lightning explosion theft or attempted theft
3. Where the Insurance Provided is "Third Party" Sections I and III of this Policy are cancelled

LIMITATIONS AS TO USE

| | |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>CODE</p> <p>E.A.11</p> | <p>"Use in connection with the Insured's business." Use for the carriage of passengers in connection with the Insured's business. Use for social domestic and pleasure purposes. The Policy does not cover:- (1) Use for racing competitions rallies or trials (or use for practice for any of them) or use for hire or reward. (2) Use while drawing a trailer, except the towing (other than for reward) of any one disabled mechanically propelled vehicle."</p> |
| <p>CODE</p> <p>E.A.19</p> | <p>"Use only for Agricultural and Forestry purposes." The Policy does not cover:- (1) Use for racing competitions rallies or trials (or use for practice for any of them.) (2) Use for the carriage of passengers for hire or reward. (3) Use while drawing a greater number of trailers in all than is permitted by law."</p> |

ENDORSEMENTS

1. Excess

In respect of each and every occurrence the Insured shall be responsible for the first amount of any claim under this Policy to the extent of the Excess stated in Schedule Part I.

2. Windscreen

In consideration of the payment of an additional premium it is hereby understood and agreed that any claim for the cost of reinstating any windscreen or window glass forming part of the motor vehicle, as a result of breakage will be made within the terms of the policy without deduction of any amount for which the Insured is responsible in the terms of any Excess endorsement attaching to the Policy. Any payment under this Endorsement shall not constitute a claim within the meaning of the No-Claim Discount provisions of the Policy. The maximum indemnity provided by this extension is limited to The Amount stated in Schedule Part I and in the event of a claim arising under this Endorsement notwithstanding that the payment may be less than the indemnity provided by the extension, cover under the extension shall be forfeit and may be reinstated at the discretion of the Company and the payment of an additional premium of not less than the amount originally charged.

Provided that this Endorsement shall not apply to the breakage of glass arising from an occurrence in which other damage is sustained by the Motor Vehicle.

- Subject otherwise to the terms exceptions and conditions of the Policy.

APPENDIX E

| DESCRIPTION | AMOUNT | AMOUNT |
|-------------|---------|---------|
| ... | 1,500/- | 1,500/- |
| ... | 1,500/- | 1,500/- |
| ... | 2,500/- | 2,500/- |
| ... | 2,500/- | 2,500/- |
| ... | 1,500/- | 1,500/- |
| ... | 1,500/- | 1,500/- |
| ... | 1,500/- | 1,500/- |
| ... | 1,500/- | 1,500/- |

CANCELLED

SCHEDULE PART II

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Limits of Liability: | |
| Limit of the amount of the Company's liability under Section I para 1(a) | Shs. 3000 |
| Limit of the amount of the Company's liability under Section II para I (a) in respect of any one claim or series of claims arising out of one event | Unlimited |
| Limit of the amount of the Company's liability under Section II para I (b) in respect of any one claim or series of claims arising out of one event | Shs. 400,000/- |
| Authorised Repair Limit: | Shillings Two thousand |
| Geographical Area: | Republic of Kenya |
| Legislation: | Motor Vehicles Insurance (Third Party Risks) Act 1945, (Kenya) |

- It is hereby understood and agreed that the indemnity provided herein shall not apply to:-
- (i) compensation for damages in respect of judgements delivered or obtained in the first instance otherwise than by a Court of competent jurisdiction within the Geographical Area
 - (ii) costs and expenses of litigation recovered by any claimant from the Insured which are not incurred in and recoverable in the Geographical Area

APPENDIX E

ACCESS INSURANCE CO. LTD.
MOTOR RATES W.E.F. 1.3.90

From 1st March 1990

THIRD PARTY ONLY

| | <u>PREMIUM KSH.</u> | <u>EXCESS KSH.</u> |
|----------------------------------------------|---------------------|--------------------|
| Private Cars | 1,500/= | 2,500/= |
| Commercial Vehicle 1 Tonne | 1,800/= | 3,000/= |
| Greater than 1 Tonne but less than 3 Tonnes | 2,250/= | 3,500/= |
| 3 Tonnes | 2,800/= | 4,000/= |
| Greater than 3 Tonnes but less than 7 Tonnes | 3,700/= | 5,000/= |
| 7 Tonnes | 4,250/= | 5,000/= |
| Greater than 10 Tonnes | 9,000/= | 5,500/= |

THIRD PARTY FIRE & THEFT

Apply only for vehicles upto 10 years. Mechanical valuation report is compulsory.

Private Car: T.P. premium + 4% of value.

Commercial T.P. premium + 3.5% of value.

Excess: Apply as for T.P.O. Cover.

COMPREHENSIVE:

T.P. premium + 6% of value.

Excess: Theft 10% of value. All other claims 5% of value.

WINDSCREEN

10% of value

RADIO CASSETTE: Make & purchase receipt compulsory.

6% of value

YOUNG AND INEXPERIENCED DRIVERS 2,000/= extra excess.

STRIKE RIOT AND CIVIL COMMOTION 10% premium extra.

PASSENGER LIABILITY COVER: Ksh. 500/= extra premium.

TRACTOR RATES:

| | <u>PREMIUM</u> | <u>EXCESS</u> |
|--------|----------------|---------------|
| T.P.O. | 1,000/= | 2,500/= |

T.P.F. & T. T.P. premium + 1.5% of value 2,500/=

COMPREHENSIVE 3.5% of value Excess 2.5% of value.

NO CLAIMS DISCOUNT

THIRD PARTY ONLY AND THIRD PARTY FIRE & THEFT

Private Car 15% (maximum)

Commercial vehicle 10% (maximum)

COMPREHENSIVE

| | | |
|--------------|----------|---------------|
| Private Car: | 1st year | 20% |
| | 2nd year | 30% |
| | 3rd year | 40% |
| | 4th year | 50% |
| | 5th year | 60% (maximum) |

Commercial vehicle 20% (maximum)

MOTOR CYCLE INSURANCE:

Gross premiums before no claims discount
drivers aged 25 - 59 yrs both ages inclusive.

THIRD PARTY

| <u>C.C. NOT EXCEEDING</u> | <u>PREMIUM</u> | <u>EXCESS</u> |
|---------------------------|----------------|---------------|
| 50 | 500/= | 500/= |
| 150 | 600/= | 500/= |
| 300 | 700/= | 500/= |
| 500 | 800/= | 500/= |
| over 500 | 1,000/= | 500/= |

THIRD PARTY FIRE & THEFT

T.P. premium + 3.5% of value maximum 300/=
Excess: 5% of value minimum 1,000/=

COMPREHENSIVE

T.P. premium + 5% of value minimum 500/=
Excess: 5% of value minimum 1,000/=

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