

On judicial practice in disputes arising from insurance contracts

Unofficial translation

Normative decision of the Supreme Court of the Republic of Kazakhstan dated October 6, 2017 No. 8.

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Issuing from generalization results and with a view to ensure uniformity of judicial practice of applying by the courts of the legislation regulating relations in the field of insurance, also proceeding from the questions arising in the courts in consideration of this category of cases, the plenary session of the Supreme Court of the Republic of Kazakhstan resolves to provide the following explanations.

1. The legislation on these legal relations shall be based on the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution) and shall consist of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Code), the Labor Code of the Republic of Kazakhstan (hereinafter referred to as the Labor Code), Code of Civil Procedure of the Republic of Kazakhstan (hereinafter referred to as the Code of Civil Procedure), Laws of the Republic of Kazakhstan dated December 18, 2000 № 126-II "On insurance activities" (hereinafter referred to as the Law on Insurance Activities), dated July 1, 2003 № 446-II "On compulsory insurance of civil liability of vehicle owners" (hereinafter referred to as the Law on liability insurance of vehicle owners), dated December 31, 2003 № 513 "On compulsory insurance of a tourist," dated February 7, 2005 № 30-III "On compulsory insurance of an employee against accidents in the performance of labor (official) duties" (hereinafter referred to as the Act for employee accident insurance), Rules for determining the amount of damage caused to a vehicle, approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan dated January 28, 2016 № 14 (hereinafter referred to as the Rules for determining the amount of damage) and other regulatory legal acts

Footnote. Paragraph 1 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 8 of 29.09.2022 (shall be enacted from the date of first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

2. Cases of this category shall be considered according to the general rules of territorial jurisdiction - at the location of the defendant.

A claim against an insurance company may be brought at the location of a branch or representative office that has entered into an insurance contract.

A claim for the recovery of insurance payments under an insurance contract may be brought at the place of residence of the plaintiff or at the location of the defendant. The concept “place of residence” implies a plaintiff as an individual; therefore, plaintiffs- legal entities shall file a lawsuit per standard procedure - at the location of the defendant.

2-1. In accordance with Part II of Paragraph 1 of Article 86 of the Law on insurance activities, the insurance ombudsman shall settle disagreements between policyholders (insured, beneficiaries) and insurance organizations arising from insurance contracts.

At the same time, the courts should bear in mind that not all disagreements between insurers (insured, beneficiaries) and insurance organizations arising from insurance contracts shall be subject to consideration by the insurance ombudsman.

The law shall distinguish between the subjects of circulation by types of insurance and limits the amount of their claims.

Thus, individuals and (or) small businesses that shall be insurers (insured, beneficiaries) have the right to contact the insurance ombudsman to resolve disagreements on all types of insurance. Other legal entities may apply to the insurance ombudsman only for the class (type) of compulsory insurance of civil liability of vehicle owners.

The number of requirements for disagreements of these persons shall not exceed ten thousand times the size of the monthly calculation indicator (hereinafter referred to as MCI).

Since the legislator shall use the division of subjects of appeal into individuals and (or) small businesses, and shall define the remaining subjects of appeal as other legal entities, therefore, when an individual entrepreneur applies, he should be classified as a natural person who can apply to the insurance ombudsman for all types of insurance, regardless of which category of business entities he belongs to.

Individuals specified in Part 2 of Paragraph 1 of Article 86 of the Law on insurance activities, who are policyholders (insured, beneficiaries), as well as the insurer have the right to go to court in accordance with the legislation of the Republic of Kazakhstan after receiving the resolution of the insurance company. The above rule shall indicate the need for the above individuals to comply with the procedure for pre-trial settlement of the dispute.

Footnote. The regulatory resolution as added by paragraph 2-1 in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force dated 01.01.2024).

2-2. In accordance with paragraph 1 of Article 24 of the Entrepreneurial Code, depending on the average annual number of employees and average annual income, business entities belong to the following categories: small businesses, including micro-enterprises, medium-sized businesses, large-scale businesses.

The Entrepreneurial Code also shall define the goals, taking into account which the gradation of business entities by categories is used.

At the same time, for the purposes of state statistics, only the criterion of the average annual number of employees shall be used, while for the application of other legislative

standards, which include the application of the Law on insurance activities, two criteria are used: 1) the average annual number of employees and 2) the average annual income.

Resolution of the Government of the Republic of Kazakhstan dated December 28, 2015 № 1091 approved the Rules for maintaining and using the register of business entities (hereinafter referred to as the Rules).

According to paragraph 3 of the Rules, the determination of the category of business entities shall be carried out in accordance with the criteria and their threshold values specified in Article 24 of the Entrepreneurial Code, as well as the rules for calculating the average annual number of employees and the average annual income of business entities approved by the Government of the Republic of Kazakhstan. The register shall be formed by the authorized body for entrepreneurship.

The courts should bear in mind that in accordance with paragraph 16 of the Rules, the register shall be the main source of data on the category of business entities for any interested individuals, including government agencies.

Footnote. The regulatory resolution was supplemented with paragraph 2-2 in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force dated 01.01.2024).

3. The rates of state duty for cases of this category shall be determined by Article 610 of the Code of the Republic of Kazakhstan “On Taxes and Other Obligatory Payments to the Budget (Tax Code)”. Pecuniary claims include claims for the recovery of insurance payments, including in subrogation or reverse claims, exaction of a penalty, and others. Non-pecuniary claims include appeals of the insurer’s refusal to make insurance payments, acknowledgement of an insured event occurrence, invalidation of the insurance contract, and others.

Exemption from state duty payment in accordance with subparagraph 19) of Article 616 of the Tax Code is provided only for policyholders and insurers in claims arising from compulsory insurance contracts.

The expression “in claims” contained in this provision means that the policyholders and insurers are exempted from paying state duty regardless of whether they act as a plaintiff or a defendant in the proceedings.

Alongside this, beneficiaries do not use such a benefit. Therefore, if the beneficiary, who is not the policyholder, filed a lawsuit against the insurer to recover the insurance payment under the compulsory insurance contract, he is obliged to pay the state fee in the amount stipulated by article 610 of the Tax Code, if he is not exempted from paying the state fee on the grounds provided for in article 616 of the Tax Code.

In this respect, legal costs between the parties shall be distributed on the general rules prescribed in Article 109 of the CCP. If the decision on the claim of the beneficiary against the insurer under the compulsory insurance contract was made in favor of the beneficiary, the court shall adjudge reimbursement of all legal costs incurred in his favor from the insurer, including state duty.

Footnote. Clause 3 as amended by the regulatory decision of the Supreme Court of the Republic of Kazakhstan dated April 20, 2018 № 7 (shall be enforced from the date of its first official publication).

4. Claims arising from insurance contracts are subject to a statute of limitations - three years. This term shall be calculated from the moment when the beneficiary or the policy holder (insured) became aware of violation of his rights – of a decision to refuse to make an insurance payment or to reduce its size, and if no decision has been made - from the end of the term established by law or the contract for making an insurance payment.

To file a claim of the insurer against the policyholder as a reverse claim, the three-year term shall be calculated from the moment of making the insurance payment.

The replacement of persons in the obligation at subrogation in accordance with Article 181 of the CC shall not entail any changes in the statute of limitations and the procedure of its calculation, so the debtor can declare the lapse of this term in the same way as if the old creditor acted in place of the new one. The limitation period for the insurer in bringing a claim against the harm-doer in the subrogation order shall be calculated from the moment of the insured event occurrence, and not from the moment the insurance payment was made. In the presence of a dispute related to establishment of the subject - the harm-doer, the limitation period shall be calculated from the moment of enforcement of the judicial act by which this subject is defined.

A harm-doer is understood to mean the person who caused the harm, or a person, who, although not being a direct doer of the harm, is assigned by legislative acts to compensate for the harm.

5. Upon the occurrence of an insured event, the beneficiary shall be entitled to make a claim for the insurance payment, provided for in the insurance contract, directly to the insurer . Paragraph 8 of Article 816 of the CC provides for such a right, but not the obligation of the wronged person, who can bring his claims directly to the harm-doer (insurant).

At the same time, when bringing such a claim, the court should, on its own initiative, involve the insurer as a third party in the proceedings, who does not make independent claims on the subject of the dispute, since later the person who is responsible for the harm and who had insured his liability will be entitled to make a claim to the insurer.

6. When preparing a case for trial on a dispute arising from a voluntary property insurance contract, it is necessary to find out if there is a harm doer to the insured property and to involve him in the proceedings as a third party, since the court decision to recover the insurance payment under the property insurance contract entitles the insurer to sue the harm-doer in subrogation order (Article 840 of the CC).

7. The grounds on which the insurer has the right to completely or partially refuse to effect the insurance payment are provided for in article 839 of the CC, and also in the laws governing certain types of compulsory insurance. Parties to a voluntary insurance contract may provide other grounds for relieving the insurer from effecting the insurance payments. In

this case other grounds specified in the voluntary insurance contract for refusal to make insurance payments that are not provided for in Article 839 of the CC and that do not contradict its paragraph 6 cannot be regarded as conditions worsening the position of the insured (insured person), since by virtue of paragraph 6 of Article 806 of the CC insurance conditions at the conclusion of the contract are determined by agreement of the parties on their free will.

By intentional actions specified in subparagraph 1) of paragraph 1 of Article 839 of the CC, actions are meant that are directed to occurrence of an insured event, the commission of which by the insured (insured person, beneficiary) is determined by the intent to the occurrence of the insured event or creation of conditions for its occurrence with the purpose of obtaining insurance payments. The presence of such intent on the part of the insured person must be proved. By virtue of paragraph 6 of Article 22 of the Law on Insurance of Liability of Vehicle Owners, intentional creation of conditions for the occurrence of an insured event, as well as other fraudulent actions directed to unlawful receipt of insurance payments, shall entail liability in accordance with the Penal Code of the Republic of Kazakhstan.

The ground for relief from exercising insurance payment in accordance with subparagraph 2) of paragraph 1 of Article 839 of the CC is not commission by the insurer (insured, beneficiary) of any criminal or administrative offenses, but only the intentional crime or misdemeanor that are in causal connection with the insured event.

In the case of an insured event caused by the fault of a person whose liability is the object of insurance under a liability insurance contract, the insurer shall not be released from making the insurance payment irrespective of the form of fault. In this case, the insurer who made the insurance payment shall be entitled to recover from the insured person to the extent of the amount paid (sub-paragraph 1) of paragraph 1 of Article 28 of the Law on Insurance of Liability of Owners of Motor Vehicles.

Footnote. Paragraph 7 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 8 of 29.09.2022 (shall be promulgated as of the date of first official publication).

8. Failure to notify the insurer or untimely notification of the occurrence of an insured event gives him the right to refuse insurance payment with reference to paragraph 3 of Article 835, subparagraph 5) of paragraph 4 of Article 839 of the CC, unless it is proved that the insurer learned of the occurrence of the insured event in time or the insurer's unawareness of this event could not affect his obligation to make insurance payments.

In particular, obligations of the insurer to make insurance payments may be affected by the lack of necessary information due to breach by the policyholder of the deadlines for notifying the insurer of the occurrence of the insured event.

Timely notification of the insurer about the occurrence of the insured event provides him with the opportunity to participate in the investigation of the circumstances of the insured event occurrence, organize prompt collection and recording of data necessary, in particular, to

: establish the presence or absence of the insured event; determine the amount of losses incurred by the insured person; take measures to reduce losses from the insured event; for possible subsequent appeal to the reinsurance company.

The burden of proof that the lack of information about the occurrence of the insured event could not affect the obligation of the insurer to pay compensation or that the insurer promptly received the information necessary for making the insurance payment lies with the person making the claim for payment.

9. An event deemed to be an insured event must have all the attributes specified in paragraph 3 of Article 817 of the Civil Code.

When concluding an insurance contract, the insurant is obliged to inform the insurer of the circumstances known to him that are essential for determining the probability of the occurrence of the insured event and the amount of possible losses from its onset (about the health condition of the insured person at the time of life and health insurance, about the technical condition of the property when insuring it, etc.), if these circumstances are not known to and should be known by the insurer (paragraph 1 of Article 832 of the CC).

Presenting by the insured person of false information to the insurer about the insurance object, insurance risk, insurance event and its consequences shall be one of the grounds for the insurer to refuse to make insurance payments (subparagraph 1) of paragraph 4 of Article 839 of the CC).

Footnote. Paragraph 9 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 8 of 29.09.2022 (shall take effect from the date of its first official publication).

10. Waiver by the insured person of his right of claim to the person responsible for occurrence of the insured event, refusal to transfer to the insurer the documents necessary for his subrogation, and also receipt by the policyholder of appropriate compensation for a loss on property insurance from the person guilty of causing the loss, are independent grounds for refusing insurance payments. If such a payment was made, the insurer shall be entitled to demand from the policyholder the refund of overpaid amount (paragraph 4 of Article 840 of the CC), namely, refund of the insurance indemnity in whole or in part.

11. Subrogation - is transfer to the insurer who has effected an insurance payment, of the right of claim that the insured (beneficiary) has to the person responsible for the losses compensated by insurance. Subrogation is possible only under property insurance contracts (Article 840 of the CC).

Subrogation is not a type of recourse claim. In recourse claim, a new obligation arises, while in subrogation, there is a replacement of person (creditor) in the existing obligation.

In accordance with article 933 of the CC, the person who has compensated for the harm caused by another person is entitled to counter claim (recourse) to this person in the amount of the compensation paid, unless a different amount is established by legislative acts. For example, the employer, guided by the provisions of Article 921 of the CC, compensates for

the harm caused by his employee in the performance of labor duties, after which the employer can make a counter demand to his employee, and their relationship will already be regulated by labor legislation. In this case, in the first obligation, the creditor is the person who has been harmed, and the debtor is the legal entity - the employer. In a recourse claim, the employer becomes the creditor, and the employee who directly caused the harm becomes the debtor.

The insurer, making the insurance payment, does not compensate the harm for the harm doer, the law does not bind him with this obligation, he fulfills his obligations under the insurance contract, after which the creditor's rights in the existing obligation pass between the policyholder (beneficiary) and the person who caused the harm.

The reverse claim right (recourse) in insurance may arise only between the insurer and the policyholder. This right is exercised by the insurer in the manner and on the conditions provided for by legislative acts regulating the corresponding class of compulsory insurance, or by a voluntary insurance contract. For example, Article 28 of the Law on Liability Insurance of Vehicle Owners contains a list of cases where the insurer that has paid insurance has the right of contribution to the insured (insurant).

The right of contribution transferred by subrogation is exercised in compliance with the same rules as the right of claim of the original creditor in this obligation.

Accordingly, the insurer, making a claim to the person who caused the loss that has passed to him by subrogation, is obliged to abide by the regulatory acts that govern the relations existing between the policyholder (beneficiary) and the causer of losses. The guilty person has the right to raise objections to the insurer, which he could make to the injured (policyholder), including the amount of damage.

12. The civil liability of the person driving the vehicle due to labor relations with the vehicle owner or in his presence is not subject to compulsory insurance; therefore, in the onset of an insured event, the insurance contract shall be applied that was concluded between the vehicle owner and the insurer.

If, in doing so, the insurer acquires the right of contribution to the insured, as provided for in paragraph 1 of Article 28 of the Law on Liability Insurance of Vehicle Owners, the insurer shall make such a claim to the owner of the vehicle, and not to the person driving it.

13. In order to determine the person responsible for causing damage from the impact of the vehicle, it has to be established who at the time of the road accident (hereinafter - the accident) was the owner of this vehicle, whether his liability was insured.

By virtue of paragraph 1 of Article 287 of the CC, a joint obligation or joint claim arises if it is provided for by the contract or established by legislative acts.

The joint liability of owners of increased danger sources is provided by law only if harm is caused to third parties by the interaction of these sources (paragraph 2 of Article 931 of the CC).

If the increased danger source driving is transferred to another person without the due formalization of such a transfer, for example, another person drives a car in the presence and

with the consent of its owner, the owner, who remains in possession of the increased danger source shall be directly responsible to the victim.

Joint liability of the owner of the vehicle and the person in possession of the vehicle does not occur without the presence of the owner on another legal basis provided for in Article 931 of the CC (lease agreement, power of attorney). This person shall be solely liable to the victim for the damage caused by the vehicle.

14. A person who does not have the right to drive a vehicle as indicated in subparagraph 3) of paragraph 1, Article 28 of the Law on Liability Insurance of Vehicle Owners shall be a person who does not have a driver's license or a corresponding category, that is, the person who at the time of the traffic accident lacks the necessary knowledge and skills in the scope of standard training programs for drivers of vehicles of the corresponding category, who has not passed the tests in the prescribed manner, is deprived of the right to drive a vehicle on the enforced court ruling, or whose driver's license expired before the date of the accident.

15. Evidences that the insured event has taken place owing to technical malfunctions of the vehicle about which the insurer (insured) knew or had to know are provided to court by the insurer. "Had to know expression" means that malfunction was obvious, such which the driver or the vehicle owner could reveal at visual inspection of the vehicle before departure.

In particular, cases of management of the driver (admission to it other owner) obviously technically faulty vehicle, for example, the vehicle with the invalid working brake system or steering, other malfunctions matter and under conditions under which Traffic rules and Basic provisions on the admission of vehicles to operation, the list of operational and special services which transport shall be subject to the equipment special light and sound signals and coloring according to special color graphic schemes (approved by the order of the Minister of Internal Affairs of the Republic of Kazakhstan dated June 30, 2023 № 534) prohibit operation of vehicles and which driver or the vehicle owner shall be able to reveal prior to the movement without the address to experts.

Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

16. Under the personal life insurance contract, the life and health of the insured shall be the object of insurance, therefore, the death of the insured as an insured event is covered by the insurance contract.

Under the compulsory insurance contract, the object of insurance shall not be the life and health of the insured, but the property interest of the insured individual related to his obligation established by the civil legislation of the Republic of Kazakhstan to compensate for damage caused to the life, health and property of third parties.

Accordingly, in order to make an insurance payment (in the amount provided for by Article 24 of the Law on the liability insurance of vehicle owners), it is not enough to only the fact of death as a result of exposure to a source of increased danger, it is necessary to

establish whether there are circumstances on the basis of which the duty of the guilty person to compensate for the harm caused by the death of the victim arises.

The beneficiary under the contract of compulsory insurance of civil liability of vehicle owners is the victim, in the event of his death – an individual who, according to the Laws of the Republic of Kazakhstan, shall have the right to compensation for damage in connection with the death of the victim.

The list of individuals entitled to compensation for damage in connection with the death of the beneficiary, and therefore for the insurance payment provided for by the insurance contract, shall be provided for in Article 940 of the Civil Code. Family members or heirs of the insured, not belonging to the specified list, insurance payment is not carried out.

At the same time, individuals, although not beneficiaries, but who carried out the burial of the victim, by virtue of paragraph 6 of Article 24 of the Law on liability insurance of vehicle owners, shall be entitled to reimbursement from the insurer of burial costs in the amount of one hundred MCI. At the same time, there is no need to provide the insurer with documents confirming the costs of burial of the victim.

Footnote. Paragraph 16 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

17. The procedure for determining the amount of harm caused to a vehicle shall be established by Article 22 of the Law on insurance of liability of vehicle owners and the Rules for determining the amount of harm.

The victim (beneficiary), whose vehicle has been harmed, from the date of submission by him or the insured (insured) of an application to determine the amount of damage caused to the property, keeps the damaged property in such a state as it came as a result of a traffic accident, and provides an opportunity for the insurer to calculate the amount of damage.

And only if the insurer does not determine the amount of damage within the established period, then the insured (insured) or the victim (beneficiary) or their representatives can use the services of the appraiser and begin the restoration (disposal) of property.

In this case, the result of determining the amount of damage caused to the vehicle produced by the appraiser is accepted by the insurer to make an insurance payment to the victim (beneficiary) or his representative.

The costs of estimator services incurred by the insured (insured) or victim (beneficiary) or their representatives shall be reimbursed by the insurer regardless of the insurance payment.

Footnote. Paragraph 17 - in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

18. According to paragraph 3 of the Rules for determining the amount of harm, the victim (beneficiary) or their representative within 3 (three) working days from the date of receipt of the report on the amount of harm shall indicate in the received report a note of consent or

disagreement with the results of the calculation of the amount of harm with indication of the reasons for disagreement.

The results of the calculation of the amount of harm to the victims (beneficiary) or their representatives are challenged in accordance with the procedure provided for by Article 29-1 of the Law on liability insurance of vehicle owners.

Footnote. Paragraph 18 - in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

19. Insurance amount - the amount of money for which the insured facility shall be insured and which is the maximum amount of liability of the insurer when an insured event occurs.

The obligation of the person who insured his liability to compensate for the difference between the insured amount and the actual amount of damage in accordance with Article 924 of the Civil Code arises only if the insured amount is insufficient to fully compensate for the damage caused.

In accordance with Article 24 of the Law on liability insurance of vehicle owners, the maximum amount of liability of the insurer for one insured event for damage caused to the property of the victim shall be determined within the amount of damage caused, but not more than six hundred MCI. In connection with this, Article 924 of the Civil Code applies if the amount of damage caused to property exceeds six hundred MCI.

Footnote. Paragraph 19 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

20. The right of the insurer to the property (or its remains) which is the object of insurance in case of the effected insurance payment in the amount of its market value on the day of the insured event occurrence arises only in case of complete destruction of this property, when its restoration is technically impossible or economically inexpedient.

21. An insured event under a compulsory insurance contract of an employee against accidents is an accident that happened to an employee during the performance of his labor (official) duties by exposure to a harmful and (or) dangerous production factor, resulting in an industrial injury, sudden deterioration of health or poisoning of the employee, which led to establishing the degree of his loss of professional disability, occupational disease or death, under the circumstances, provided in Article 16-1 of the Law on insurance of an employee against accidents.

The insurance payment shall be made by the insurer who has entered into a compulsory insurance contract of the employee against accidents during the validity period of which the accident happened.

The moment of an accident occurrence shall be determined: upon death or establishment of the degree of loss of professional ability to work resulting from labor injury - the date of

the accident indicated in the accident report; when establishing the degree of the employee's loss of professional ability to work by revealed occupational disease - the date of the conclusion by the healthcare organization providing specialized medical and expert assistance in occupational pathology.

The establishment, in accordance with Article 186 of the Labor Code, of the fact of a work-related accident, shall be the ground for recognizing it as an insured event and entail the insurer's obligation to make insurance payments in the absence of the grounds provided for by law or contract relieving him of fulfillment of this obligation.

22. The amount of damage associated with the loss of earnings (income) due to establishment of the degree of employee's loss of professional ability to work or his death, in accordance with article 19 of the Law on insurance of an employee against accidents, shall be determined by the insurer in accordance with the CC requirements. Insurance payment involves compensation of lost earnings and reimbursement of additional expenses caused by the damage to health.

The penalty stipulated in subparagraph 9) of paragraph 2, Article 9 of the Law on insurance of an employee against accidents in the amount of 1.5 percent of the unpaid amount for each day of delay shall be collected only for late payment of monthly insurance payments that are due to the employee as compensation for damage related to loss of earnings (income) by an employee (paragraph 1 of Article 19 of the above Law).

Since the first insurance payment due as compensation for the harm associated with the loss of earnings (income) by an employee upon establishment of the degree of loss of professional working capacity for less than one year is made by the insurer within seven working days from the date of submission of the documents specified in paragraph 2 of article 20 of the Law on insurance of employees against accidents, the number of days of delay shall be calculated upon expiry of the indicated seven-day term.

Regarding the insurance payment due as compensation for the damage associated with the loss of earnings (income) by the employee by establishing the degree of loss of professional ability to work for one year or more, it is necessary to proceed from the terms of the annuity contract, including the date of the first insurance payment determined by the parties.

For late insurance payments to reimburse additional costs caused by health damage, provided for in paragraph 2 of Article 19 of the Law on insurance of an employee against accidents, the insurer shall be held liable in accordance with Article 353 of the CC. In this case, when determining the number of days of delay, it is also necessary to proceed from the fact that the insurance payment must be made by the insurer within seven working days from the moment the employee or the person who incurred these expenses presented the documents confirming the expenses.

23. In accordance with amendments to the Law on insurance of an employee against accidents by the Law of the Republic of Kazakhstan dated April 27, 2015 № 311-V "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on

Insurance and Islamic Financing,” enforced on May 10, 2015 (hereinafter - the Law of April 27, 2015 № 311-V), the employer shall pay compensation for the damage associated with the loss of earnings (income) by an employee upon establishment of the degree of loss of professional working capacity from five to twenty-nine percent inclusive.

In compensation for the indicated damage in the event of loss of professional capacity for work from thirty to one hundred percent inclusive, the insurance payment due to the employee shall be made by the insurer.

24. Article 938 of the CC determines that the average monthly earnings (income) is calculated by dividing by twelve the total amount of earnings (income) for twelve months of work preceding the injury to health or the onset of disability.

Limit on the amount of average monthly earnings (income) is established for the insurer, taken into account for estimation of the loss of earnings (income) to be reimbursed. This limit in accordance with Article 19 of the Law on insurance of an employee against accidents shall not exceed tenfold size of the minimum wage established for the relevant fiscal year by the Republican Budget Law, on the date of the compulsory accident insurance contract conclusion for the employee. Therefore, if the actual amount of damage caused to the employee exceeds the insurance payment determined by the insurer, the difference in accordance with article 122 of the Labor Code shall be compensated by the employer.

25. In accordance with paragraph 1 of Article 19 of the Law on accident insurance, the period of annuity payments shall be limited to the moment when the employee reaches the retirement age established by the legislation of the Republic of Kazakhstan on social protection.

Footnote. Paragraph 25 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

26. Reimbursement of additional expenses caused by damage to the employee's health in the event of establishing the degree of loss of professional ability to work in accordance with paragraph 2 of Article 19 of the Law on accident insurance of an employee shall be carried out by the insurer on the basis of documents confirming these costs submitted by the employee or the person who incurred these costs. At the same time, the insurer is not subject to reimbursement for expenses that are included in the guaranteed volume and in the system of compulsory social health insurance in accordance with the legislation of the Republic of Kazakhstan in the field of health care.

Footnote. Paragraph 26 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

27. Subject to the procedure for applying its standards in time and if the degree of the employee's loss of professional ability to work is established for the first time or if he underwent a re-examination after May 10, 2015, the Law on insurance of the employee

against accidents as amended on May 10, 2015 shall apply to the legal relationship between the parties, regardless of the terms of the effective insurance contract (paragraph 2 of Article 383 of the CC).

The rule contained in subparagraph 5) of paragraph 3 of Article 77 of the Constitution does not apply to this case, because according to the explanations contained in the resolution of the Constitutional Council of the Republic of Kazakhstan dated March 10, 1999 № 2/2 “On official interpretation of paragraphs 1 and 2 of Article 14, paragraph 2 of article 24, subparagraph 5) of paragraph 3 of article 77 of the Constitution of the Republic of Kazakhstan”, in accordance with the indicated constitutional provision, laws that establish or strengthen liability by imposing new sanctions, do not have retroactive effect.

28. In the event of arising dispute on account of the employee’s guilt when determining the amount of damage associated with loss of earnings (income) upon the established degree of loss of professional ability to work, paragraph 2 of Article 935 of the CC shall be applied, which prescribes reduction in the compensation amount depending on the degree of fault of the victim and the harm-doer. In this event, only gross negligence of the employee shall be taken into account, the presence of which must be reflected in the accident report.

When reimbursing additional expenses, compensating harm to persons who have suffered damage by the death of a citizen, also when reimbursing the burial expenses, the victim’s fault shall not be taken into account.

29. With enforcement on February 20, 2010 of the relevant provisions of the Law of December 30, 2009 № 234-IV “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Compulsory and Mutual Insurance, Taxation” the insurance object under the Law on insurance of an employee from accidents is the property interest of an employee whose life and health is injured by an accident, that is, property insurance has become related to personal insurance, to which subrogation does not apply.

Therefore, given the exclusion of Article 21 from the Law on insurance of an employee from accidents, which provided for subrogation, and by virtue of the hierarchy of regulatory legal acts established by Articles 10,12 of the Law of the Republic of Kazakhstan dated April 6, 2016 № 480-V “On Legal Acts”, it shall be imperative to recognize as illegitimate the insurers’ assertions of the right of recourse with reference to subparagraph 8) of paragraph 1 of Article 9 of the Law on insurance of an employee from accidents, as contrary to Article 840 of the CC.

30. Excluded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 8 of 29.09.2022 (shall become effective on the date of first official publication).

31. Excluded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 8 of 29.09.2022 (shall become effective on the date of first official publication).

32. Excluded by Regulatory Resolution of the Supreme Court of the Republic of

Kazakhstan № 8 of 29.09.2022 (shall become effective on the date of first official publication).

33. Excluded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 8 of 29.09.2022 (shall become effective on the date of first official publication).

34. Voluntary insurance - insurance carried out by the will of the parties.

The types, conditions and procedure for voluntary insurance shall be determined by agreement of the parties.

If a voluntary insurance contract is concluded in the form of an affiliation agreement with the issuance of an insurance policy to the insurant, the insurer is obligated to inform the insurant of the insurance rules and provide a copy of the rules (subparagraph 1-1) of paragraph 1 of Article 828 of the CC).

If the insurer has not provided evidence that the insurant has been informed of the insurance rules, all the disagreements shall be interpreted in favor of the policyholder (insurant).

In interpreting the terms of a voluntary insurance contract, requirements of Article 392 of the CC shall be abided by.

35. A beneficiary -an individual who, in accordance with an insurance contract or legislative acts of the Republic of Kazakhstan, is the recipient of an insurance payment.

For voluntary types of insurance, the beneficiary shall be appointed by the insured. If the insured is not insured, then the insured must be the beneficiary or he is appointed with the written consent of the insured.

Under the contract of voluntary insurance of a vehicle purchased with borrowed funds, the beneficiary, as a rule, shall be appointed a bank that is simultaneously the pledgee under the contract of pledge of the vehicle. The Borrower (pledger), being insured and joining the voluntary insurance agreement, hereby agrees to its terms and conditions.

By virtue of paragraph 2 of Article 306 of the Civil Code, upon the occurrence of an insured event, the right to claim under an insurance contract for pledged property from the pledger arises only if the pledgee refuses it.

Therefore, in suing for recovery of the insurance payment, the pledger (insured) must present evidence that the bank has waived its right to receive the insurance payment.

Footnote. Paragraph 35 - in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

36. A person who is permitted to drive a vehicle in accordance with a voluntary insurance contract is subject to the rules of insurance as the insured, therefore, the insurer who made the insurance payment shall not be entitled to subrogation, (Article 840 of the CC) to demand recovery of the paid insurance amount from this person.

Possession by spouses on the right of common joint ownership of property that is the object of voluntary insurance does not mean that the spouse of the insured person is also recognized as insured, if it is not indicated in the insurance contract.

37. In accordance with article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution shall be included in the current law, shall be generally binding and shall be enforced from the date of its first official publication.

Chairman

of the Supreme Court

of the Republic of Kazakhstan

K. Mami

Judge

of the Supreme Court

of the Republic of Kazakhstan,

secretary of the plenary session

K. Shaukharov