

# **The Nordic Concept of Indemnity to Drivers**

by **Tomas Köhler**, Swedish Motor Insurer's Bureau (Trafikförsäkringsföreningen)

---



**Severe personal injuries and fatal claims due to traffic accidents are tragedies in the ordinary daily life. Tragedies that do not cause any headlines in the newspapers. In the modern society of course there are a lot of work going on to keep up road safety etc., but in the end there is a common acceptance of the fact that accidents occur and, at least if the accident is not spectacular, that these tragedies are more or less unavoidable.**

*Tomas Köhler*

These severe injuries or fatal claims are caused by a moment of lack of attention resulting in lifelong problems to injured people and heirs. With this aspect in mind there has been an ambition to construct a better compensation system for the driver. Earlier the driver, who was at fault, could only get some compensation if he had a voluntary accident insurance and this protection was not enough. There was a growing dissatisfaction with the traditional tort law system. The *culpa rule*, or the principle of liability for negligence was the predominant rule in tort law. For unprotected persons as pedestrians and cyclists there was introduced a *strict liability* for the driver of a motor vehicle, but even this was not enough and certainly did not help the driver himself when he was injured.

The development in other fields is also important to notice. Different ways are used to aim better compensation for industrial or patient injuries. In general the traditional tort system is then deleted. Furthermore the situation is the same when it comes to social insurance.

## **Finland, Norway and Sweden**

In the Nordic countries there has been a common understanding to include the driver in the compensation system for personal injuries. The technical solution is mainly the

---

The article is based on a lecture given at *Meeting of AIDA's Motor Insurance Working Party* 28 November 1996 in Budapest. The title of the lecture was "The concept in the Nordic countries of indemnity to the driver for personal injuries – compensation to first party".

same in Finland, Norway and Sweden. In those countries the legislation concerning road traffic accidents includes compensation for personal injuries to the driver and the compensation is given directly from the Third Party Motor Insurance, T.P.M.I. There is a *strict or objective liability* to passengers including the driver. The main points are as follows:

- The driver is due to objective liability entitled to indemnity for his personal injuries
- The indemnification is in the first place given from the driven vehicle's T.P.M.I.
- The injured driver has a direct right against the insurer

In the end the insurance company has a right to recourse against the insurer of a party who was at fault or against the Guarantee Fund if the injury was caused by an uninsured or unidentified motor vehicle.

The principle is that any person who suffers a personal injury as the result of a traffic accident has a right to compensation. If the vehicle is uninsured the claim is settled by the Guarantee Fund.

There are important differences between the legislation in the three countries. The possibility to reduce the compensation due to the claimants part in the accident are different and in this respect Finland and Norway are more alike and have a more restrictive system than Sweden. There are also differences when it comes to recovery possibilities against drunken drivers etc.

### **Finland and Norway**

---

In both Finland and Norway a driver is not compensated if he is driving a stolen car or the car is used for criminal reasons. Nor is he compensated if the accident was caused intentionally or through gross negligence. The indemnification can also be deleted or strongly reduced if the driver was guilty of drunk

driving. Furthermore, when it comes to uninsured vehicles there is no compensation given to the owner who have caused the accident and the same situation goes for another person driving an uninsured vehicle knowing – or ought to have been knowing – that the vehicle was not insured.

In Finland the driver of a foreign registered car is only compensated if there is a counterpart who was at fault, or if he has taken out a Frontier Insurance. However, in the case of reciprocity between Finland and the foreign country assessment is given in the same way as to the driver of a Finnish car. Consequently this possibility concerns only drivers from Norway and Sweden.

### **Sweden**

---

Compared with the situation in Finland and Norway, drivers right to assessment is much more extended and is more closely related to the social insurance system. The assessment can be reduced if the accident was caused intentionally, or through gross negligence, or in regard to compensation for a driver who was guilty of drunk-driving in combination with reckless driving. Even if the reckless driving can be proved it is very seldom, in practice, that the injured party is left completely without compensation. Usually the amount is reduced to 2/3 or 1/2 of the normal compensation, and when it comes to loss of income he will more or less get full compensation. This depends on a voluntary undertaking from the insurance market to give compensation in correspondence with principles in the social insurance.

Remarkably, there are no abatement for driving a stolen vehicle or a car used for criminal reasons. That means that a drunken thief in a stolen car transporting a stolen safe is entitled more or less to full compensation for personal injuries due to an accident that he himself has caused!

## **Denmark**

---

In Denmark there also is an *objective liability* but this is in principle linked to the drivers personal responsibility. Unlike what is stated above, the driver is not included in the own vehicle's insurance.

To make it possible to give compensation in an extensive way to drivers, the legislator has chosen a different way than in the other Nordic countries. The objective liability is combined with that damages to the injured driver, will only be reduced if the injured person intentionally or grossly negligently contributed to the accident. If e.g. two cars collide, resulting in injury to the driver in one of the cars, tort damages will be paid by the insurance company in which insurance for the other car was taken out. If the collision was caused solely by negligence of the injured driver, damages for personal injury to him may be reduced, but only according to the restrictive rules regarding contributory negligence.

The Danish model for compensation to the

driver is consequently based on the counterpart's objective liability and formally it is not a question of compensation to first party. With this concept drivers involved in solo accidents are not entitled to compensation.

## **Comments**

---

In Sweden, as well as in the other Nordic countries, we have very positive experience of the fact that even the driver is covered by personal injury compensation. Sometimes it can be regarded as offensive, but this is marginal. Personally I think the legislation in Finland and Norway is the best solution.

As Sweden and Norway are not recovered for compensation given to drivers of foreign cars it is essential to have a stipulation about reciprocity as in the Finnish legislation.

The Danish solution may give a reasonable compensation to injured drivers, but the economic result for involved insurances seems a bit odd. It is also to note that drivers in single accidents are not protected.