Legal consequences derived from non-payment by the policyholder of the first premium or single premium

Commentary on the Judgement handed down by the Plenum of the Supreme Court, of 10 September 2015

In the Judgement handed down by the First Division of the Supreme Court, of 10 September 2015, the following was established as doctrine of the Division, to the effects and purposes stipulated in article 15.1 of the Insurance Contract Act: "in order for the insurance company to be released from the obligation of paying compensation to the injured party, in a compulsory third-party automobile insurance contract on account of non-payment by the policyholder of the first premium or single premium, the company must provide evidence of having sent the policyholder a registered letter with acknowledgement of receipt or a communication through any other legally accepted channel providing confirmation of receipt, notifying the termination of the contract".

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1. Summary of the facts

The judgement which we are commenting upon analyses a case of the right of recourse exercised by the Consorcio de Compensación de Seguros (CCS) against an insurance company, on account of a payment made by the former in a situation of controversy foreseen in article 11.1 d) of the Motor Vehicle Civil Liability and Insurance Act (LRCSCVM). This law establishes that whenever a controversy arises between the CCS and an insurance company with respect to who is required to pay compensation to an injured party, the CCS must do so, although this entity may recover the amount of compensation paid from the insurance company, plus interest at the legal rate, increased by 25 percent, as from the date of the payment made.

In the case concerning us here, the controversy arose due to the non-payment by the policyholder/insured of the first premium of a third-party automobile insurance policy, which was interpreted differently by the two entities. The CCS was of the opinion that the insurance company should have paid the compensation since it had failed to terminate the insurance contract following the default in payment of the first premium by its insured, while the insurance company contended, in brief, that since a culpable default in payment was involved, the insurance policy had not become effective and, therefore, the vehicle was uninsured, a situation which determined the payment of compensation by the CCS.

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In the face of this controversy, the CCS, pursuant to the aforementioned article 11.1 d) of the LRCSCVM, paid the compensation to the injured party and, then, as the core issue of this decision, claimed the amount paid plus interest from the insurance company with which it was in conflict.

2. Solutions given in the first instance

Subsequent to the situation described in the preceding paragraphs, the CCS filed suit in the ordinary jurisdiction against Bilbao Compañía Anónima de Seguros y Reaseguros, S.A., in which it sought a judgement upholding its claim in full, sentencing the defendant to the payment of 369,062.34 € to CCS, together with the legal interest increased by 25% accrued since the time of the payment made by the CCS.

The claim was upheld by the Court of First Instance Number 2 of Pontevedra, Ordinary Proceedings 123/2011, which handed down judgement no. 67/2012, of 9 May 2012, sentencing the defendant to pay the claimant the amount of 369,062.34 €, in addition to the legal interest increased by 25% as from 25 November 2008, in the amount of 357,525.92 euros, and from 10 June 2008, in the amount of 11,536.42 euros.

The Court of First Instance understood that, despite the circumstance that, in effect, the first premium of the insurance policy had not been collected due to insufficient funds in the policyholder's bank account, in order for the insurer to be released from the contract, it was necessary for the insurance company to have formally notified the insured of its decision to terminate the contract prior to the occurrence of the loss.

3. Solutions given on appeal

The judgement in the first instance was appealed by the solicitors representing *Bilbao Compañía Anónima de Seguros y Reaseguros, S.A.*, while the solicitors representing the CCS opposed the appeal filed.

The Provincial Court of Pontevedra, in the judgement handed down on 24 January 2013, rejected the appeal filed by the insurance company. The Court, in its interpretation of article 15.1 of the Insurance Contract Act (LCS), concluded that, despite the fact that evidence was given of the default in payment of the premium due to insufficient funds, for which the policyholder was responsible, there was no evidence that the termination of the insurance contract had been formally notified to the insured, which is the reason why the insurance company was not released from compliance with its obligations.

In this way, the Provincial Court maintained that article 15, paragraph one, of the LCS establishes the right of the insurer to choose between either terminating the contract or demanding payment of the premium. For this reason, the judgement adds: "it becomes necessary to distinguish between the effects which the non-payment of the first premium brings to bear in the internal scope of the contractual relationship and with respect to third parties". Thus, in the first case, unless otherwise agreed, the insurance company is released from the obligation to pay compensation without the need to call for the termination of the contract, while in the second case, the company needs to provide evidence of the termination of the contract through a written notification sent to the policyholder by registered post with acknowledgement of receipt or through any other channel, as stipulated in art. 20.2 of the Motor Vehicle Civil Liability and Insurance Regulation (Royal Decree 7/2001, of 12 January), in relation to art. 76 LCS, a circumstance which the defendant was unable to prove (current article 12 of the Compulsory Third-Party Automobile Insurance Regulation, approved by Royal Decree 1507/2008, of 12 September).

4. The reasons alleged for reversal

The appeal for reversal filed by the defendant, admitted on a single ground of appeal, is based on an infringement of article 15 of the LCS, with the concurrence of reversal, stemming from the fact that the interpretation maintained is opposed to the case law established by the Supreme Court.

The appellant referred to the Judgements handed down by the First Division of the Supreme Court, of 17 October 2008, 4 September 2008 and 25 May 2005, as the doctrine infringed by the judgement appealed, which interpret article 15 of the LCS in the sense that, if the first premium or the single premium has not been paid prior to the occurrence of the loss, the insurer is released from its principal obligation of paying compensation for the loss caused. In accordance with the aforementioned judgements, as pointed out by the defendant, the insurance company is under no obligation whatsoever of notifying the policyholder, as the suspension of the contract comes about through the return of the unpaid receipt by the bank and the finalisation of the one-month time limit referred to in article 15.2 of the LCS.

The appellant argued that it suffices to prove that the insurer presented the receipt for the premium to the designated bank and that payment was not made due to insufficient funds for which the policyholder was responsible, in order for the insurer to be released from its obligation, pursuant to article 15 of the LCS.

The Government Attorney opposed the foregoing arguments; by also referring to case law, not contradicted, in the Attorney's opinion, by the three judgements invoked, maintaining that non-payment of the first premium cannot be used as an argument in opposition to third parties who bring direct action under article 76 of the LCS. According to the Attorney, the default in the payment of the first premium generates a suspensive effect but not discontinuance, as the insurer can choose between terminating the contract or demanding payment of the premium, however, until such time as it has actually exercised its right to terminate the insurance contract, the contract continues to exist.

The Government Attorney concluded that, in this case, the contract was in force, since the insurer chose to demand payment of the premium and submitted no evidence whatsoever of any notice given to the policyholder notifying the termination of the contract, in accordance with the Compulsory Third-Party Insurance Regulation. The suspensive effect, in line with this doctrine, cannot be alleged against an injured third party who brings the direct action described in article 76 of the LCS, on being immune to the exceptions.

To sum up, as tends to occur in the majority of the cases of non-payment of premiums, the controversy lies in whether such noncompliance can or cannot be raised against the injured third party, who brings the direct action against the civil liability insurer, pursuant to article 76 of the LCS.

5. Supreme court doctrine

5.1. Legal nature of the compulsory third-party automobile insurance

The Division, which rejected the appeal for reversal filed by the defendant, prior to examining the substance of the matter and perhaps in order to set forth the arguments of its final decision, referred to the nature of the compulsory third-party automobile insurance (SOA), noting that "it is a kind of insurance with socio-economic connotations, which has been subject to constant, frequent and profound legislative changes, on some occasions due to Community requirements, and on others for purposes of clarification of its regulation, leading to its consideration as a special civil liability insurance".

It then goes on to make a legislative overview of the regulation of this insurance, from its origins, through the passage of Act 122/1962, of 24 December, on the use of motor vehicles, through to Royal Decree-Law 8/2004, of 29 October, approving the revised text of the Motor Vehicle Civil Liability and Insurance Act, which was in force when the facts concerned in this case occurred.

On examining the relevant legislation, the Division referred to the transposition into our internal legal framework of the various Community Directives approved on motor vehicle civil liability. Accordingly, it referred to Royal Decree-Law 1301/1986, of 28 June, which adapted the text to Community law, by transposing the First and Second Motor Insurance Directives.

The judgement then refers to Act 30/1995, of 8 November, on the regulation and supervision of private insurance, which transposed into Spanish law the rules contained in Council Directive 90/232/EEC, of 14 May 1990 (Third Directive), which expanded the compulsory coverage program "in a very socially sensitive insurance", given the increasing importance of motor vehicles, as well as the responsibilities derived from the accidents caused through their use, and amended many other aspects which signified a profound change which the eighth additional provision of Act 30/1995, of 8 November, carried out in Title I of the Motor Vehicle Use Act, revoking it in its entirety, to bring domestic legislation into line with all three Directives.

The next step in this legislative evolution was taken due to the need for adapting the Fourth Motor Directive, which was achieved through Act 44/2002, of 22 November, on measures for the reform of the financial system, creating a new Title (III) for the LRCSCVM: "Losses occurring in a State other than the State of residence of the injured party". The purpose was to protect the "visiting victims", by establishing mechanisms enabling them to claim in their country of residence the damages suffered in another European State.

Later, considering the time transpired since the approval of the revised 1968 text, there was a need to adapt the content of the Act to the current legal framework, which was achieved by Royal Decree-Law 8/2004, of 29 October, approving the revised text of the LRCSCVM, the law in force when the facts concerned in this case occurred.

As can be observed, with this brief legislative review, the Division intended to make clear that we are concerned with an insurance characterised by a major social impact. In this regard, Badillo Arias (pg. 96) indicates that, despite the social function which this insurance has in protecting the victims of road accidents, it is in fact civil liability insurance, because it meets the criteria of an insurance of this nature. Thus, the insurance companies, in contrast to what occurs in accident insurance, are only liable when the driver is liable in civil terms, on the basis of the provisions of the Motor Vehicle Use Act (LUCVM), with the possibility of being released from liability if the reasons for exoneration contained in the Act concur: the exclusive responsibility of the victim and force majeure not related to the driving of the vehicle.

González Barrios shares the same opinion (pg. 871), on noting that, the fact that by virtue of the insurance the driver can displace the obligation of paying to the insurance company does not mean that the driver's own responsibility disappears. Maintaining the contrary –he adds-, could only be valid for a case where the compensation had as its primary purpose that of penalising the person who, through his culpable action, has caused damage or injury, as in this way the insured would remain detached from a liability which the insurance company assumes in his place.

5.2. The regulation of the legal consequences derived from non-payment of the premium

The regulation of the legal consequences derived from the default in payment of the premium in an insurance contract is addressed on a general basis in article 15 of the LCS. With respect to the non-payment of the first premium, article 15.1 of the LCS establishes that *"If due to the fault of the policyholder the first premium has not been paid, or the single premium has not been paid on maturity, the insurer has the right to terminate the contract or to demand payment of the premium owed through enforcement proceedings based on the policy. Unless otherwise agreed, if the premium has not been paid prior to the occurrence of the loss, the insurer shall be released from its obligation".*

However, given the special nature of compulsory third-party automobile insurance, article 12.2 of Royal Decree 1507/2008, of 12 September, approving the Compulsory Third-Party Automobile Insurance Regulation, when regulating the effects of the insurance proposal, stipulates in paragraph two that *"Once the proposal has been accepted by the policyholder, the contract shall be understood as concluded. In the event of non-payment of the first premium through the fault of the policyholder, the insurer may terminate the contract through a written notification sent to the policyholder by registered post with acknowledgement of receipt or through any other means admissible under the law which makes it possible to have a record of the receipt thereof, or may demand the payment of the premium in the terms of article 15 of Act 50/1980, of 8 October, on the Insurance Contract".*

This regulation is identical to that established in article 19.2 of Royal Decree 7/2001, of 12 January, approving the Motor Vehicle Civil Liability and Insurance Regulation, in force at the time when the facts under examination in this decision occurred.

As can be seen, there is a substantial difference in the regulation of the SOA and the provisions of article 15 of the LCS. In both regulations it is established that, in the face of the policyholder's culpable default in payment of the insurance, the insurer can terminate the contract or demand the fulfilment of its terms. Now then, while in the SOA Regulation, there is no reference to the release of the insurance company, in the last indent of the LCS it is noted that, unless otherwise agreed, if the premium has not been paid prior to the time when the loss occurred, the insurer is released from its obligation.

In view of the foregoing, the question we ask ourselves is which legal text should take precedence, particularly if we take into account the referral which article 12.2 of the SOA Regulation makes to article 15.1 of the LCS. There would be scope to think that this may be a mere omission in the regulation, which can be completed by referring to the LCS and, for this reason, the insurer of the SOA will be released in the terms considered in the general regulation, or it could be understood as a mechanism to ensure the payment of compensation to the injured parties, even without the payment of the premium. This option would reopen the issue of the possible confrontation of the regulatory provision with the provision with the rank of a law and of what solution should be adopted.

As we will see, the Supreme Court chose this second option, at least in the context of motor vehicles, in the sense of understanding that the insurer, in order to be released from its obligation, must formally terminate the insurance contract, and this is the reason for the rejection of the appeal for reversal filed by the defendant.

5.3. The termination of the insurance contract as a requirement for releasing the insurer

As discussed above, the high court, in the scope of compulsory third-party automobile insurance and interpreting article 19.2 of the SOA Regulation (at the present time, article 12.2 of Royal Decree 1507/2008) and article 15.1 of the LCS, considered that, in the situation of a culpable default in payment of the first premium by the policyholder, the insurer can only be released if it formally terminates the insurance contract in the terms established in both legal provisions.

The Division makes it clear from the start that, for this purpose, there must be evidence of the policyholder's responsibility for the non-payment, whereby proof of the insufficient funds in the bank account designated for direct debit of the premium payment suffices. This criterion was already maintained by the Division in its Judgement of 4 September 2008.

In the matter analysed in the Supreme Court Judgement (First Division) of 4 September 2008 (RJ 2008, 4642), the decision in the first instance considered that failure to pay the premium prior to the loss exempts the insurance company from payment of the benefit. However, for the high court, in the case examined, this legal limitation of liability must not be considered applicable, since "the default in payment of the premium prior to the loss, referred to in article 15.1 of the LCS, can only bring about the effect of releasing the insurer from its obligation in the event that the lack of payment is attributed to the policyholder, as this is so inferred, in a systematic interpretation, from the relationship of this precept with the indent that precedes it, referring to the responsibility of the policyholder in the non-payment of the premium; and, in a logical interpretation, the end pursued of exempting the insurer from fulfilling the contract on the basis of noncompliance with the principal obligation of the other contracting party. The case law considers that the effect of the suspension of the insurance contract due to default in payment of the first premium or of the single premium is tied to a situation of «non-payment» of the premium (Supreme Court Judgements 14 April 1993, 14 March 1994 [RJ 1994, 1781], 7 April 1994 [RJ 1994, 2730], 25 May 2005, rec. 4683/1998 [RJ 2005, 6391])".

The Supreme Court Judgement (First Division) of 15 July 2009 (RJ 2009, 4707) is of the same opinion, quoting the previous judgement, on indicating that "the relevant case law has interpreted that the lack of payment of the premium prior to the loss referred to in article 15.1 of the LCS can only bring about the effect of releasing the insurer from its obligation in the case where the lack of payment is attributable to the policyholder. It is thus inferred, in a systematic

interpretation, from the relationship of this precept with the indent that precedes it, referring to the responsibility of the policyholder in the non-payment of the premium; and, in a logical interpretation, the end pursued of exempting the insurer from fulfilling the contract on the basis of the noncompliance with the principal obligation of the other contracting party. (Supreme Court Judgement 4 September 2008 (RJ 2008, 4642)".

In terms of the formal termination of the contract, the judgement maintains that non-payment of the first premium prior to the occurrence of the loss does not bring about the "ope legis" effect of releasing the insurer from its obligation of paying compensation, as contended by the appellant. It does not suffice for terminating the compulsory third-party insurance due to non-payment of the first premium to demonstrate the policyholder's fault, but rather, as stipulated in the regulatory text transcribed (art. 19.2), with respect to third parties the insurer must also provide evidence of the notice sent to the policyholder, declaring the contract terminated and null and void, and of the receipt thereof, thereby meeting the legal requirements for releasing the insurer from its obligation of paying compensation. Until such time as proof of having given such notice can be provided, in respect of third parties, the non-payment of the first premium or single premium cannot be raised against the party bringing direct action pursuant to art. 76 LCS, by subrogation, which is the situation considered in the case concerning us here.

The Division added that it is aware that there is contradictory case law on the level of the Provincial Courts as to whether or not the insurance company is required to notify the culpable policyholder of the termination of the contract due to the non-payment of the first premium or single premium of the compulsory insurance, in order to be released from its obligation to pay compensation and, for this reason, it has established the following doctrine: "in order for the insurance company to be released from the obligation of paying compensation to the injured party, in a compulsory third-party automobile insurance contract, on account of non-payment by the policyholder of the first premium or single premium, the company must provide evidence of having sent the policyholder a registered letter with acknowledgement of receipt or a communication through any other legally accepted channel providing confirmation of receipt, notifying the termination of the contract".

5.4. Legal effects of the doctrine of the First Division on other kinds of civil liability insurance

The first legal effect of the doctrine set out above is that, if the insurer does not terminate the insurance contract following the culpable non-payment by the policyholder, it is not released from its obligation to compensate the injured party, through the exercise of the direct action pursuant to article 76 of the LCS.

There appears to be no doubt that the judgement we are commenting upon refers solely to compulsory third-party automobile insurance, in which, on interpreting the content of article 19.2 of the SOA Regulation in force at the time of the facts, in relation to article 15.1 of the LCS, the solution arrived at is what we have just explained above.

For this reason, it is evident that this doctrine is not applicable to the voluntary covers which the policyholder may contract outside of the SOA, such as windscreen breakage, theft, legal defence, own damage, etc. In these cases, in which the relationship is between the insurer and the insured, although not expressly stated in the judgement, there is scope to believe that the insurer would be automatically released in the event of the non-payment of the first premium, without the need for formal termination of the insurance contract, in view of the previous case law of the Division and since the provisions of article 76 of the LCS would no longer come to bear. Consequently, the non-payment of the first premium could be raised against the insured, on the basis of the second indent under article 15.1 of the LCS, which establishes that, in the case of a loss without having paid the premium, the company is not required to pay compensation.

Along the same lines, for Gómez Ligüerre the First Division has simply confirmed that the regulatory provision, by virtue of which a motor vehicle insurance policy is only terminated by default in payment following a formal notification of termination, is applicable on a general basis to compulsory third-party automobile insurance. In other words, the regulation imposes an additional duty upon the insurance company which the General Insurance Act does not include. The reasons for this extension of the validity of the contract may be disputable, however, the fact remains that it concerns

an effect provided for in the specific regulation of this type of insurance. And the First Division, therefore, could not hand down a decision without taking such regulatory provisions into account.

Now then, the question that comes to mind is whether this doctrine is also applicable to other kinds of civil liability insurance outside of the SOA, where the injured party, to claim his or her rights, brings direct action against the insurer, pursuant to article 76 of the LCS. In other words, we ask ourselves whether culpable non-payment by the policyholder is or is not an exception which can be raised against the injured party who brings direct action against the insurer of any kind of civil liability insurance.

As Badillo Arias states (LCS, pg. 373), the payment becomes a condictio legis for the commencement of the coverage whereby, until such time as the payment is made, the contract does not bring about effects. That is, once the contract has been concluded, the payment of the first premium becomes a resolutory condition of the coverage. The author puts forth this thesis by referring to the most recent case law of the Supreme Court, quoting its judgements of 14 April 1993 (RJ 1993, 2879), 14 March 1994 (RJ 1994, 1781), 7 April 1994 (RJ 1994, 2730) and, above all, 25 May 2005 (RJ 2005, 6391), together with the Judgement of the Provincial Court of Cantabria (Section 3) of 5 December 2005 (AC 2005, 2383).

This thesis could be supported by the dynamics of the insurance contract itself, as a reciprocal and bilateral agreement, giving rise to obligations for both parties. Accordingly, if one of the parties fails to meet any of its obligations, pursuant to article 1124 of the Civil Code, the other may raise the defence of breach of contract, without having the duty to comply with his obligations until the other party does so as well.

Thus, Badillo Arias (LCS, pg. 372) considers that the fact that the first paragraph of art. 15 LCS refers to the occurrence of the loss, while the second paragraph does not, can lead us to think that, in effect, in the first case there is no coverage if, due to the policyholder's fault, the first premium has not been paid, this being an objective situation of the contract preventing it from becoming effective and even enabling the insurer to raise defences against an injured third party, considering that an objective exception is involved, as it is closely tied to the contract.

Nevertheless, this is not a peaceful issue in our doctrine and case law, at least in terms of civil liability insurance, when a loss occurs without the first premium having been paid and the injured party or the injured party's heirs lodge a claim. The judgement handed down by the Provincial Court of Cantabria (Section 3), of 5 December 2005 (AC 2005, 2383) refers to this hypothesis in which insurance companies must provide coverage with respect to third parties in the event of the non-payment of the first premium.

However, the Supreme Court Judgement (First Division), of 25 May 2005 (RJ 2005, 6391), in a case of non-payment of the first premium in which the injured third party lodged a claim against the civil liability insurer -not under a compulsory third-party automobile insurance policy-, interpreted article 15.1 by specifying that "this rule, valid in general for all kinds of insurance, establishes the consequences derived from culpable delay in the fulfilment of an obligation: until such time as payment of the premium commences, as a general rule the material effects of the contract do not commence for the insurer, in the sense that its coverage does not begin and, consequently, if a loss occurs, the insurer is released from its obligation. If not stated otherwise in the policy, in the event that a loss occurs without the first premium or the single premium having been paid due to the policyholder's fault, the insurer is free from the obligation of paying the compensation".

In the same way, the Supreme Court Judgement (First Division) of 14 April 1993 (RJ 1993, 2879) maintained: "it is unquestionable that, unless otherwise agreed, if the first premium or the single premium has not been paid prior to the occurrence of a loss, the insurer will be released from its obligation, as established in article 15 of the Insurance Contract Act, this Division having declared, through application of the aforementioned rule, that in such a situation of default in payment of the first premium or of the single premium, the insurance contract is suspended and the insured lacks the right to claim compensation".

Therefore, there is scope in the case concerning us here to think that the interpretation by the Supreme Court of article 15.1 of the LCS refers solely to motor vehicle civil liability insurance, which it does by referral to article 19.2 of the SOA Regulation (current 12.2). Thus, in the judgement which we are commenting upon here, reference is made at all times to this civil liability insurance without generalising to include other kinds of civil liability insurance outside of the SOA, having been able to do so, at least, as an obiter dictum.

Álvarez Olalla gave an opinion in this regard, noting that "there is no harm in insisting that such doctrine is only applied to the non-payment of the first premium of compulsory third-party automobile insurance and not to other insurance, not even other civil liability insurance, or to the non-payment of successive regular premium payments".

However, the argument used by the Division with respect to the impossibility of raising the default in payment against the injured third party, who takes direct action against the insurance company, could be predicated with respect to any other civil liability insurance. To sum up, the high court does not fail to interpret article 15.1 of the LCS in relation to article 76 of that Act, in order to note that the non-payment of the first premium is an exception which cannot be raised against the injured third party, whereby such action is immune to the exceptions which may pertain to the insurer against the insured.

A good part of the doctrine is being understood in this sense by others, such as Elguero Merino (pg. 1330) who, on referring to the default in payment of premiums, contends that this can be raised by the insurer against its insured, but not against the injured party.

In any case, we cannot say categorically that the Supreme Court intended to extend the doctrine set out in this judgement to other kinds of civil liability insurance outside of the SOA. Perhaps, in view of the controversy to which the legal consequences derived from the non-payment of the first premium have given rise in minor case law, the Court should have made an explicit pronouncement.

Conclusion

As we have seen, the judgement commented upon analyses the legal consequences for the insurer of the culpable default in payment by the policyholder of the first premium or the single premium in compulsory third-party automobile insurance.

For this, the Division analyses and interprets the provisions of article 19.2 of the Motor Vehicle Civil Liability Insurance Regulation (Royal Decree 7/2001, of 12 January), in force at the time of the facts, and articles 15.1 and 76 of the Insurance Contract Act.

The Plenum of the First Division, aware of the difference existing on this issue in the case law of the Provincial Courts, establishes its doctrine with respect to this kind of insurance.

In the first place, it provides an overview of the legislation of this insurance, in order to make clear that we are looking at a type of insurance which has a clear social function, characterised, from its origins, by giving a high degree of protection to the victims of road accidents. We must draw attention to the fact that this social protection of the victims of road accidents, on which the high court appears to want to base its arguments, does not disappear, considering the fact that the exception of the non-payment of the first premium could still be raised against the injured party since, in such an event, the victims would also be protected by the CCS, under the provision made in article 11.1 b) of the LRCSCVM.

It then goes on to establish its doctrine on the interpretation to be given to the above-mentioned articles of the SOA Regulation and of the LCS, in the sense that "in order for the insurance company to be released from the obligation of paying compensation to the injured party, in a compulsory third-party automobile insurance contract, on account of non-payment by the policyholder of the first premium or single premium, the company must provide evidence of having sent the policyholder a registered letter with acknowledgement of receipt or a communication through any other legally accepted channel providing confirmation of receipt, notifying the termination of the contract".

In view of this doctrine, and considering that this continues to be controversial in the relevant doctrine and case law as well, the question we could ask is whether this thesis is also applicable to other kinds of civil liability insurance, in which the injured third party takes direct action against the insurance company, on the basis of article 76 of the LCS.

In our opinion, in this judgement the Supreme Court refers only to compulsory third-party automobile insurance, which was the subject of the debate. Now then, by using the same arguments with respect to the interpretation of articles 15.1 and 76 of the LCS, we believe that this doctrine could also be applicable to other types of civil liability insurance and we feel certain that judgement of the First Division is going to be used in the context of such insurance. If the default in payment of the first premium or the single premium by the policyholder cannot be raised by the insurer against the injured third party, who takes direct action against the insurer of the motor vehicle civil liability, we see no obstacle in the way of using this same line of reasoning against the insurer of any other kind of civil liability insurance.

Finally, it appears evident that this doctrine should not be applied to the voluntary covers which the policyholder may contract outside of the SOA, such as windscreen breakage, theft, legal defence, own damage, etc. In these cases, in which the relationship is between the insurer and the insured, although not expressly stated in the judgement, there is scope to believe that the insurer would be automatically released in the event of the non-payment of the first premium, without the need for formal termination of the insurance contract, in view of

the previous case law of the Division and since the provisions of article 76 of the LCS would no longer come to bear. Consequently, the non-payment of the first premium could be raised against the insured on the basis of the second indent under article 15.1 of the LCS, which establishes that, in the case of a loss without having paid the premium, the company is not required to pay compensation.

If this were not so, in the relations between the parties, the understanding should be that the insurer should cover the losses of the insured himself and could only claim the unpaid premium from the policyholder. However, we believe that in the case analysed in the judgement which we are commenting upon, the insurance company could file a claim against the policyholder/insured for the compensation paid to the third party, on account of breach of contract.

In this regard, Marín López (pg. 27), on analysing the referral made by article 10 c) of the LRCSCVM to the LCS, with respect to the proceedings for recourse against the policyholder/insured for reasons derived from that Act, which, "if we circumscribe ourselves to the literality of that expression, the sole ground which that Act stipulated as the basis for hypothetical proceedings for recourse by the insurance company is the wilful misconduct of the insured (article 76 LCS). In accordance with a strictly literal interpretation of the aforementioned letter c), this would have to be the sole ground for recourse admissible. However, for the purpose of preventing conducts by the policyholder or the insured constituting fraud for the interests of the insurer, the doctrine has no difficulty in admitting other causes which, although not stipulated in the LCS as grounds for recourse, do constitute a derivation of the rules of the LCS", as would be, in our opinion, the case of non-payment of the first premium due to the policyholder's fault.

Bibliography

ÁLVAREZ OLALLA, "Repaso a la jurisprudencia del pasado año en materia de impago de primas de seguro" *Revista Doctrinal Aranzadi Civil-Mercantil, nº. 4/2016.*

BADILLO ARIAS, *La responsabilidad civil automovilística. El hecho de la circulación.* Aranzadi, Cizur Menor (Navarra), 2016.

BADILLO ARIAS (Coord.), *Ley de Contrato de Seguro. Jurisprudencia comentada.* Aranzadi, Cizur Menor (Navarra), 2013.

ELGUERO MERINO, "Comentario del artículo 76", en BADILLO ARIAS (Coord.), *Ley de Contrato de Seguro. Jurisprudencia comentada.* Aranzadi, Cizur Menor (Navarra), 2013.

GONZÁLEZ BARRIOS, "Seguro de Daños. El seguro de automóviles", en YZQUIERDO TOSADA (Director), C*ontratos aleatorios, Tomo VIII,* Editorial Aranzadi, Cizur Menor (Navarra), 2014.

GÓMEZ LIGÜERRE, "La nueva doctrina jurisprudencial sobre la resolución por impago del seguro obligatorio de automóviles", comentario a la Sentencia de 10 de septiembre de 2015 (RJ 2015, 3617). *Cuadernos Cívitas de Jurisprudencia,* nº 100/2016, January-April 2016.

MARÍN LÓPEZ, "La facultad de repetición de la aseguradora, por causas establecidas en el contrato, en el seguro de responsabilidad civil derivado de la circulación de vehículos a motor (Sobre la Sentencia del Tribunal Supremo, Sala Primera, de 20 de noviembre de 2014), *Revista de Responsabilidad Civil, Circulación y Seguro,* Inese, 1951, nº 3, March 2015.