The adequacy of compensation limits stipulated by the European Union Motor Directive

Sarah Micallef

A dissertation submitted in partial fulfilment of the requirements of the Bachelor of Commerce (Honours) in Insurance at the University of Malta

May 2014
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DECLARATION

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Course: Bachelor of Commerce (Honours) Insurance

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I, hereby declare that I am the legitimate author of this Dissertation and that it is my original work.

No portion of this work has been submitted in support of an application for another degree or qualification of this or any other university or institution of learning.

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Abstract

Motor Insurance is one of the insurance coverage, which is compulsory in Malta and in all other Member States (MS). The minimum cover is Third Party (TP) liability cover, which will afford protection to Third Party Personal Injury (TPPI) and Third Party Property Damage (TPPD) in the event of an accident in which the Motor Driver is at fault.

The European Union (EU) issued Directives to ensure that adequate insurance cover is in place. The Second EU Directive (84/5/EEC) stipulated the minimum amounts for compensation with a minimum limit of 350,000 European Currency Unit (ECU) for Personal Injury (PI) per victim, which was to be multiplied according to the number of victims if, more than one victim was injured in a single claim. The compensation limit for Property Damage (PD) was 100,000 ECU per claim.

The Second EU Directive (84/5/EEC) was revised to allow for inflation and provide an increase in protection. The Fifth EU Motor Directive (2005/14/EC) increased these amounts: EUR 5 million per claim or EUR 1 million per victim for TPPI and EUR 1 million per claim for TPPD.

The main objective of this study was to analyse the adequacy of compensation limits as set out under the EU Motor Insurance Directive (MID). The primary research conducted for the purpose of this dissertation shows that although the compensation awarded to victims was constant and that there were only exceptional cases above EUR 1 million, insurers are still concerned when accidents involve foreigners. In addition, if non-pecuniary losses were to be awarded this would escalate the quantum for the injured party.
Moreover, the study finds that insurers are still exposed to having to pay awards close to or higher than the limits of indemnity, as stipulated under the MID, when awarded by a non-Maltese EU Court in respect of an accident that occurred in Malta. This is especially the case when the injured party is either a high earning individual residing in another EU state or else where the responsible party and the injured party both resided in the same EU State. Even though the accident occurs in Malta it would be the court in the country of the litigants that will determine the amount of compensation.

**Keywords:** TP Personal Injury, TP Property Damage, Compensation, Member States
Dedication

I dedicate my dissertation to my parents, Nancy and Paul, and to my boyfriend, whose presence and constant support means so much to me.

It is also dedicated to my beloved grandmother who is sorely missed. She would have loved to witness the completion of this dissertation.
Acknowledgements

I would like to thank my parents for their constant support and encouragement throughout the years, especially in my final academic year. I also owe a very big thank you to my boyfriend Paul Zammit, for standing by my side in difficult times.

I would like to take the opportunity and thank all those who were of assistance in formulating this study. First and foremost, I would like to thank my tutor, Mr. Nigel Rausi, for his kind help and patience.

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# Table of Contents

Abstract .................................................................................................................................................. i
Dedication ............................................................................................................................................... iii
Acknowledgements ................................................................................................................................. iv
Table of Contents .................................................................................................................................... v
List of Tables ........................................................................................................................................... viii
List of Figures .......................................................................................................................................... ix
List of Acronyms ..................................................................................................................................... x

## Chapter 1: Introduction ..................................................................................................................... 1

## Chapter 2: Literature Review .......................................................................................................... 4

2.1 The Scope of the EU Motor Insurance Directive ........................................................................... 5
2.2 Pecuniary and Non-Pecuniary Damages ......................................................................................... 6
2.3 Damages awarded by Maltese Courts .............................................................................................. 7
2.4 Damages awarded by UK Courts ...................................................................................................... 11
2.5 The impact of Brussels Regulation and Rome II ............................................................................ 13
2.6 Factors leading to an Increase in Compensation awards ................................................................. 16
    2.6.1 Higher Court awards .................................................................................................................. 16
    2.6.2 The Effect of Inflation ............................................................................................................... 17
    2.6.3 Medical Expenses .................................................................................................................... 19
2.7 Methods of Payment ....................................................................................................................... 20
2.8 Longevity Risk ................................................................................................................................. 21
Chapter 3: Methodology

3.1 Introduction

3.2 Methods used to collect Data

3.2.1 Primary Data

3.2.2 Secondary Data

3.3 The Structure of the Questions

3.3.1 Open and close-ended questions

3.3.2 Qualitative and Quantitative Research

3.3.2.1 Quantitative Research

3.3.2.2 Qualitative Research

3.4 Pilot Study

3.5 Ethical Considerations

3.6 Limitations

3.7 Conclusion

Chapter 4: Results and Analysis

4.1 Introduction

4.2 Results obtained from interviews with Maltese Insurance Companies

4.2.1 In and out-of-Court Settlement

4.2.2 Quantum of Court award

4.2.3 Trends during the past decade
4.2.4 Frequency of Motor Accident Claims ................................................................. 40
4.2.5 Severity of Motor Accident Claims ................................................................. 41
4.2.6 Limits imposed by the Sixth Directive ............................................................... 41

4.3 Conclusion ............................................................................................................. 42

Chapter 5: Discussion, Conclusions and Recommendations ........................................ 43

5.1 Introduction ........................................................................................................... 44
5.2 Analysis of findings ............................................................................................... 44
5.3 Stress Test for the adequacy of compensation limits ............................................ 47
5.4 Recommendations ................................................................................................. 48
5.5 Conclusion ............................................................................................................. 49

References .................................................................................................................. 50

Appendices .................................................................................................................. 56

Appendix 1: Court cases in the UK ........................................................................... 57
Appendix 2: Situation in France – Mount Blanc Case Study ......................................... 64
Appendix 3: Professionals’ Interviews post-pilot study ............................................... 66
Appendix 4: Professionals’ Interviews prior to pilot study ......................................... 71
Appendix 5: Letter of Consent to the Insurance Companies ......................................... 77
Appendix 6: Situation in Italy – Bus Plunges into Ravine ............................................ 78
Appendix 7: In Court settlement awards (above the minimum limits) ......................... 81
Appendix 8: In Court settlement awards (below the minimum limits) ......................... 83
Appendix 9: Transcript with an Insurance Company representative ........................... 93
List of Tables

Table 1 Current limits applicable in the various European Countries ........................................ 18
List of Figures

Figure 1 Quantum of Court Awards ........................................................................................................ 37
Figure 2 The number of registered vehicles ............................................................................................ 38
Figure 3 The number of road traffic accidents and casualties ................................................................ 39
## List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECU</td>
<td>European Currency Unit</td>
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<tr>
<td>EU</td>
<td>European Union</td>
</tr>
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<td>MIA</td>
<td>Motor Insurance Association</td>
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<td>MID</td>
<td>Motor Insurance Directive</td>
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<td>MS</td>
<td>Member States</td>
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<td>PD</td>
<td>Property Damage</td>
</tr>
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<td>PI</td>
<td>Personal Injury</td>
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<td>TP</td>
<td>Third Party</td>
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<td>TPPI</td>
<td>Third Party Personal Injury</td>
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<td>TPPD</td>
<td>Third Party Property Damage</td>
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<td>UK</td>
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Chapter 1: Introduction
Since the enactment of the First EU MID in 1972, legislators have sought to ensure that not only should there be compulsory insurance which compensates any innocent victim of a motor accident, but also that funds are adequate enough to provide for compensation in full.

On 20th February 2001, Gary Hart was driving his Land Rover and at one point, after a tiring night, he fell asleep at the wheel. His vehicle steered down into a ditch and came to rest on a railway track. Hart got out of his vehicle and called out the emergency rescue services. Shortly after coming to a halt on the track, an oncoming train crashed into his idle Land Rover and was subsequently derailed. Unfortunately, another train from the opposite direction carrying tonnes of coal was approaching and inevitably crashed into the wrecked train. Ten people lost their lives, and another 76 were taken to hospital. Fifty million pounds sterling worth of damage was caused. When questioned about the accident, Hart admitted that he had only slept for 30 to 45 minutes before the crash. Following this incident, a number of precautions have been taken to reduce the risk of similar events occurring again near railways. Safety barriers on roads near railway tracks were subsequently installed to avoid such accidents in future (Munchener Ruck Munich Re Group, 2002).

The main objective of this dissertation is to test the adequacy of the minimum compensation limit set by the Fifth EU MID, which is currently EUR 1 million per victim for PI or EUR 5 million per claim, and EUR 1 million per claim for PD (2005/14/EC). The requirements of the Fifth MID (2005/14/EC) with respect to revised compensation amounts spurred me to investigate the adequacy of these minimum limits. The compensation limits have been increased over and above those in the Second EU MID (84/5/EEC). The Fifth EU MID was enacted in July 2012.
In conclusion, the main objective is to investigate how EU legislation protects innocent Third Parties, the development of the EU legislation through time and the adequacy of this legislation.
Chapter 2: Literature Review
2.1 The Scope of the EU Motor Insurance Directive

The underlying objective for both the single market and the EU MID was to harmonise legislation in MS that made Motor TP Liability insurance compulsory. This harmonisation would be instrumental in removing barriers to cross border movement of vehicles, as all would have a set minimum level of cover. In addition, legislation would provide protection to victims of road accident, regardless of whether the accident took place in their country of residence or in another MS.

Since the advent of the First EU MID in 1972 (72/166/EEC), legislators have always wanted to ensure that there should be compulsory TP Liability insurance cover to compensate innocent victims of motor accidents. The Directives bind those MS who form part of the EU-27 to abide by the minimum requirements as laid down by the Directive. They are however free to make changes to their laws in excess of these minimum requirements. In instances where there is no recourse to insurance cover: compensation was to be awarded by way of the Protection and Compensation Fund that MS had to set up. Irrespective of whether vehicles are insured or not whilst being used in another MS, compensation is guaranteed by the requirement that each state maintains a Guarantee Fund, which ensures that victims of traffic accidents are compensated in all cases (2nd Dir, 1984).

Prior to 1972, many European countries had already participated in the “Green Card” system. This is an international certificate of insurance, which enabled vehicles to cross borders utilising the motor insurance policy purchased in their home country. The EU Directives improved on this by removing the need to present the “Green card” at the border as evidence of insurance and instead ensured that polices issued in MS
automatically covered the minimum statutory limits of insurance cover in each EU MS (2nd Dir, 1984).

### 2.2 Pecuniary and Non-Pecuniary Damages

To date, the EU has not attempted to harmonise civil law and compensation rules. The effect of this is that the same kind of injury in different MS may be treated differently in terms of compensation amounts. Harmonisation would be ideal, as it would bring many benefits to European citizens by enhancing protection and ensuring equal awards for the same type of injury, irrespective of which state the accident occurs in or where one resides.

By far, and in terms of quantum, the majority of large claims made against motor insurers relate to PI. Courts always attempt to provide compensation not only for the actual losses incurred (pecuniary damages) but also for other damages such as pain and suffering and loss of amenity (non-pecuniary damages) resulting from PI. Putting a monetary value to these types of damages is subjective, as they cannot be easily quantified. Unlike Mata, the UK and other European countries also award compensation for non-pecuniary losses apart from pecuniary ones (Albert, 2009).

The calculation for pain and suffering of this sum takes into account mental and physical injury, any deterioration in one’s lifestyle and any other damages a victim suffers. It is argued that all costs, including also those relating to pain and suffering, are to be awarded to the defendant. Pain and suffering compensation in United Kingdom (UK) is based on the degree of “fear, frustration, anxiety” suffered by the victim. Loss of amenity
and pain and suffering are usually compensated as a lump sum. However, if the victim is in a vegetative state or unconscious of pain, the injured party would only be awarded for non-pecuniary damages (Albert, 2009).

The enactment of the Courts Act of 2003, gave English Courts the option to compensate victims for PI with respect to future pecuniary losses. This is known as Periodic Payment Order. The purpose was to meet the needs of the clients throughout their lifetime until death occurs in order to reduce the cost on the National Health System (Albert, 2009).

### 2.3 Damages awarded by Maltese Courts

The Maltese Civil Code regulates the awarding of civil damages. This is illustrated in Articles 1045 and 1046 of the Civil Code. The two types of damages that the Maltese Law awards compensation for are:

i) The loss of future earnings (*lucrum cessans*) and,

ii) Actual damages (*damnum emergens*) (Borg, 2011).

In *Michael Butler vs. Christopher Heard* (1967), a formula was defined and used (with some adjustments), by the Maltese Courts to quantify the loss of future earnings. This was reconfirmed in *Turner v Agius*, in which the court reaffirmed the principle that the amount of compensation in the case of fatalities should relate to the degree of dependence of the claimants on the deceased. The Article that deals with permanent disability suffered by victims is Article 1045 and Article 1046 deals with death caused to the victim. Article 1046 states that expenses as well as any actual loss incurred, shall be
awarded to the heirs. As a result of the above, the issue of “dependency” arose (Borg, 2011).

In *Turner vs. Agius*, Carmen Aguis lost her life at the age of seventeen when the car she was in crashed due to the driver’s negligence. Her family claimed compensation for the damages they had suffered. She was single and without children. Five percent of the liability was apportioned to Carmen as she had been sitting on another passenger, whilst the driver, Francis Aguis was apportioned 95% of the liability. The Court awarded Lm71,136 (EUR 165,702), in compensation which was however reduced to two-thirds on appeal to take into account the fact that the victim had no dependants (Borg, 2011).

Article 1045 defines the formula that should be used to calculate compensation as follows:

The Net annual income of the victim multiplied by the remaining working life multiplied by the percentage of the disability (partial, permanent and total disability). If a lump sum payment is made the amount is reduced by 20% (Jaccarini, 2011).

Unlike practically all other EU countries, this method excludes compensation for non-pecuniary damages. When it comes to calculating the award with regards to fatalities, a 100% incapacity figure is applied while deducting 25% for basic periodical consumption that would have ceased upon death. In cases where dependants are not totally dependent, a further deduction may be made (AXCO, 2013)
The formula used in *Butler vs. Heard* has undergone major developments to remove any ambiguity and help understand and determine the quantification of damages better. In the end, although quantifying the exact amount of compensation to be awarded in monetary terms is difficult, it does at least ease the pain suffered in the award process (Jaccarini, 2011).

An amendments to Article 1045 of the Civil Code was proposed with the aim of including damages relating to non-pecuniary nature due to permanent disability and also takes into consideration those expenses that may be incurred in future like medical treatment or support required thereto (Jaccarini, 2011).

A new sub-article was proposed in 2004 to replace Article 1046, setting down three classes of persons close to the victim who may receive compensation in case of death. These include dependents, heirs and other relatives close to the victim. The heirs would be awarded for the *damnum emergens* that is for any expenses incurred, as well as for the actual loss. However, damages in respect of future earnings of the deceased person could be awarded only to dependents (Borg, 2011).

Furthermore, the proposed amendment to Article 1046 of the Civil Code also had the aim of allowing “bereavement damages”, a form of non-pecuniary damages, but these were to be capped at a defined amount (Borg, 2011).

The criteria for compensation awarded in *Turner vs Aguis* would have been different if they had been based on these amendments, since only *damnum emergens* would have been awarded. Since Turner’s heirs were living with her at the time of death, they would have been allowed to claim for moral (bereavement) damages. The Court has only
awarded moral damages to the heirs once, as in the case of *Micallef vs. Micallef*. However, the Court emphasised that:

>“Our law does not provide for moral damage that a party may suffer”

(Borg, 2011)

These amendments are necessary to eliminate and minimise any uncertainty which may arise from tort (Borg, 2011).

Maltese Court have started to award compensation for future medical costs. In March 2011, Mr. Caruana, a young man, was awarded the sum of EUR 1.25 million after he was involved in a traffic accident in 1998. At that time, the Second Directive (84/5/EEC) was in force, and the limits were 350,000 ECU with respect to PI and 100,000 ECU per claim for PD. Since he was 100 per cent disabled, his mother had to look after him. The income from their family business was estimated at EUR 42,000 (EUR 14,000 for each family member) per year. However, it was estimated that Mr. Caruana would earn EUR 22,000 per annum. Subsequently, his mother had to stop working and her earnings were estimated at EUR 8,000. When ages were taken into account, Mr. Caruana’s earnings were multiplied by 40 years whilst her earnings were multiplied by 15 years. The total amount awarded to Mr. Caruana was to be deducted by EUR 55,905, which had already been paid by the drivers’ insurers (timesofmalta.com, 2011).
2.4 Damages awarded by UK Courts

The UK Courts also award compensation for actual losses and damages incurred, apart from which, the injured person is also compensated for related expenses including actual wages, any other earnings as well as any future income. A formula is used to determine the quantum of damages relating to the loss of future earnings. This was laid down in the case of Michael Butler vs Peter Christopher Heard, where the defendant's vehicle collided with a motorcycle. The plaintiff's motorcycle was significantly damaged and he suffered severe wounds. The First Court stated that Heard had to award Butler £6500 in total for damages due to his negligence. However, Heard objected and the case was then reconsidered by the Superior Court of Appeal. The amount of £6500 was based on Article 1045. The formula was thus used to calculate the future income of the victim, by taking his income, earned before the collision and multiplying it by the number of working years left until retirement age. This formula is known as the “multiplier”. The Court also considers the health of the victim, or what is known by the Court as “chances and changes of life”. The total or partial nature of the disability has an effect on the percentage of the sum to be awarded. If the sum is paid all at once, there would be a reduction, which is known as “lump sum payment deduction”. The first sum awarded by the First Court was revised by the Superior Court of Appeal and reduced by £1400 (Jaccarini, 2011).

The main categories considered by the UK Court to estimate the amount of compensation with respect to economic losses are; the loss of earnings earned before the date of settlement, the cost of medical treatment and that of care. Other heads taken into account are the cost of future medical treatment and care and the loss of future earnings.
However, other heads could be awarded including transport costs, housing costs and pension loss (Parsons, 2014).

The UK legal system also allows claimants to recover non-economic losses, the main ones being pain and suffering and the loss of amenity. However, the Court can award the victim amounts for disfigurement, loss of “congenial” employment as well as for sexual impairment. The degree of disability is one way of quantifying non-economic losses which can be assessed by functional tests (Parsons, 2014). However, the Judicial Studies Board has set out “Guidelines for the Assessment of General Damages in Personal Injury Cases” to allow UK judges to base awards on a range of values according to the conditions of the victim (Ward and Thornton, 2009).

In 2009, Agnes Collier aged 13, suffered serious spinal injuries. She was awarded a lump sum of £7.25 million in 2012 and also an amount of £270,000 per annum for the rest of her life to cater for the cost of care. The total payouts amounted to £23 million (Evans and Kisiel, 2012) (Appendix 1). This case happened in the UK, where payouts are unlimited. If this had to occur in other EU MS, the minimum limits would have been inadequate.

In the case of Mr. Bridge, he was awarded a sum of £1.25 million. The award also factored the cost of care of £57,500 per year as he had suffered from severe brain injury. The award also includes the pension and income. The accident occurred in October 2006, whilst he was on his way to work (burytimes.co.uk, 2010) (Appendix 1).

Furthermore, Andrew Birrell, a Dutch student injured in a traffic accident in 1994, was awarded a substantial sum of £9.2 million, reflecting his future earnings as well as cost of care (bbc.co.uk, 1998) (Appendix 1).
2.5 The impact of Brussels Regulation and Rome II

Several questions arise when disputes occur with respect to cross-border motor claims namely; which jurisdiction Court should deal with the claim, which law should be applicable to decide on the liability and quantum, and to determine which any other law should be applicable if other issues were to arise. This is dealt with under Rome II, which sets out rules with respect to the issues on the applicable law in tort (Valletta, 2012).

Although the Sixth Directive (2009/103/EC) needs to be taken into consideration to be able to address these issues, the Brussels Regulation (EC Regulation 44/2001) along with Rome II Convention (EC Regulation 864/2007) needs to be considered (Valletta, 2013).

Article 18, of the Consolidation Directive states that:

“Member States shall ensure that any party injured as a result of an accident caused by a vehicle covered by insurance...enjoys a direct right of action against the insurance undertaking covering the person responsible against civil liability”

(6th EU Motor Ins. Dir, Art. 18, 2009)

Although proceedings against the insurer can be initiated by the injured party, it does not however state which jurisdiction shall apply (Valletta, 2012).
When awarding damages, the English Courts take into consideration any unemployment periods and also any changes in level of income. This is not the case in Malta, which however takes into account inflation and its effect on purchasing power. Another factor that UK takes into consideration is the Retail Price Index (Albert, 2009).

2.5.1 The Purpose of Regulation

Rome II lays down the general rule as to which law should be applied to determine liability. It states that the applicable law is that of the country where the accident takes place, even if the victim sues in the Courts of his/her country of residence. Thus, if a UK domicile is injured in a traffic accident caused by a Maltese domicile in Malta, he may open a case in a UK Court, which is however required to use Maltese law to determine fault. If the defendant is liable, then another issue arises; this is which law is applicable to quantify damages. Non-contractual obligations that arise out of tort are covered under Rome II (Valletta, 2012).

There are two exceptions to this general rule. Article 4(2) states that the residence of both the injured party as well as that of the responsible driver is the same country, whilst Article 4(3) states that applicable law should be that of the victim’s country of residence if the responsible party also resides in the same MS. An English Court can hear the case of two individuals domiciled in the UK who were involved in a motor accident in Malta, and must apply Maltese law when determining liability as well as the quantum. In addition, the injured party can seek recourse against the Insurance Company directly (Valletta, 2013).
Thus, Rome II establishes rules to be able to determine the law applicable in circumstances where there are non-contractual disputes such as the tort of negligence. Moreover, the amounts of compensation as well as the heads of damages vary from one MS to another. However, Maltese insurers are concerned whether a particular country has the same minimum compensation limits as that required under Maltese law or higher (Valletta, 2012).

While it is currently unlikely that Maltese Court awards can be so high as to be even close to the minimum limits of indemnity set down by the Directive and Cap 104, Maltese insurers are still exposed to the risk of having to pay an award determined by a non-Maltese EU Court in respect of an accident that occurs in Malta where the injured party happens to be a high-earner living in an EU country where the cost of living is comparatively higher. Thus, the EU MID obliges insurers to pay at least the minimum limit in each MS, depending where the accident happens. Although MS are free to make changes to these limits, they must however comply with the EU minimum limits.

### 2.5.2 Brussels I and Rome II

Brussels I as well as Rome II are interrelated. The aim of Brussels Regulation is to govern “the jurisdiction of Courts and the recognition and enforcement of judgments in civil and commercial matters in EU countries.” (Valletta, 2013). The victim has two options under which a claim can be made; either in their own country of residence or that of the insurer. If a foreign injured party was involved in an accident and is seeking payment from a Maltese insurer, Brussels Regulations stipulate that the judgment should be treated by the Maltese Court (Valletta, 2013).
Another factor which Maltese insurers are concerned about is when a foreign injured party makes a claim in their own country of residence against the defendant. This could be because of higher medical costs and higher income, which may have an impact on the award. The costs to defend a case may also be more expensive (Valletta, 2013).

2.6 Factors leading to an Increase in Compensation awards

2.6.1 Higher Court awards

Courts determine the amount of compensation awarded to victims. Each Court case is built on facts. Although the facts concerning property are quite straightforward, this is not the case with PI cases. The judge assesses how long the injuries will last, how the victim feels and their impact on the circumstance of the victim. The position taken by judges varies from country to country (Albert, 2009).

In Malta, a judge determines the percentage of disability after which a final decision would then be made. It is a method commonly used when conflict arises between medical experts. In Nancy Caruana v. Odette Camilleri, the Court of Appeal held that the percentage of disability was 20%. Experts appointed by the Court estimated the percentage of disability at 7%. Based on reasons concluded by the experts, the Courts settled the percentage at 12% (Albert, 2009).
2.6.2 The Effect of Inflation

Inflation also has an effect on the amount stipulated by EU legislation. In fact, this was the reason for the increase in compensation limits from the Second (84/5/EEC) to the Fifth Directive (2005/14/EC). The current limits as stipulated by Fifth Directive (2005/14/EC) have an effect on the level of insurance cover that the insurance market is obliged to offer. In certain central and northern European countries, the impact on PI compensation levels was very low since the minimum limits were already in force before the enactment of the Fifth Directive (2005/14/EC). The impact on countries where this was not the case was greater (Bécache and Nefuss, 2008).

As shown in the figure below, certain European countries that have unlimited PI cover, would not expect a dramatic change following the latest Directive unlike the situation when it comes to damage to property. Countries like Germany and Denmark had already adopted the minimum requirements as required under the Fifth Directive (2005/14/CE) before it was enacted (Bécache and Nefuss, 2008).
<table>
<thead>
<tr>
<th>European Countries</th>
<th>Bodily Injury</th>
<th>Property Damage</th>
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<tr>
<td>Austria, Bulgaria, Croatia, Cyprus,</td>
<td>Limited</td>
<td>Limited</td>
</tr>
<tr>
<td>Denmark, Estonia, Germany, Hungary,</td>
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<tr>
<td>Italy, Latvia, Lithuania, Malta, Poland,</td>
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<td>Portugal, Romania, Slovakia, Slovenia,</td>
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<td>Spain, Sweden</td>
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<tr>
<td>Czech Republic, Greece</td>
<td>Limited per person</td>
<td></td>
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<tr>
<td>Belgium, Finland, France, Ireland,</td>
<td>UnLimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Netherlands, United Kingdom</td>
<td></td>
<td></td>
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<tr>
<td>Luxembourg</td>
<td></td>
<td>Unlimited</td>
</tr>
</tbody>
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**Table 1 Current limits applicable in the various European Countries**

Source: Your Europe, 2013.

Many reinsurers and insurers feel that unlimited cover for TPPI is not acceptable and that some pre-determined limit should be imposed. In other countries, such as France, courts are no longer awarding a fixed sum as compensation for a permanent injury but rather an inflation-adjustable pension payable throughout the injured party's lifetime. Although much fairer to the victim, this does create serious issues for reinsurers and insurers as they are unable to calculate in advance the total cost of these claims.
2.6.3 Medical Expenses

Medical expenses may also lead to an increase in limits. Medication may be needed at the place of accident, post hospitalisation and during convalescence. These include the use of the ambulance to rescue the injured person or to give first aid, other hospital fees such as meals, accommodation, medicine and professional fees, tests and any medical procedures that may be required. Other costs, which the outpatient may need for ongoing treatment would also form part of the rehabilitation cost (Máśniak, n.d.).

Medical treatment could also be required over a number of years, which in turn would increase the costs depending on how severe the injury is. Relevant data is needed in order to determine an estimate of medical costs (Máśniak, n.d.).

The national insurance system in Malta provides free hospital care for victims injured in traffic accidents. This applies only to Maltese residents. Insurers do not pay for medical costs or treatments being received in state hospitals. However, in other European Counties, the state hospital would claim back such costs from the insurer of the responsible party. This system would increase the amount of compensation paid.

In 2011, the number of injuries reported in relation to road accidents in the EU was 1.5 million, of which 250,000 were serious cases, however each MS compiles and categorises accident data differently, depending on the different treatment provided to victims. Brain and head injuries are the most likely to occur in road accidents and may cause the injured party lifetime disability (EU, 2013). Each year, it is estimated that the economic cost of these injuries to the EU's GDP as issued by the European Commission is 2%. The aim of the EU is to decrease these injuries by half until 2020 (EU, 2013).
The term used to define “serious injury” as agreed by EU countries has changed to “maximum abbreviated injury scale” and this new definition is now being used by health professionals. The current debate in the EU focuses on gathering statistics commencing from 2014, setting a target to reduce such injuries and establishing a strategy that is relevant for all the countries in the EU (EU, 2013).

Certain jurisdictions provide a disability scale that indicates the amount of compensation that is to be awarded. Unlike Germany, countries like Belgium, Spain and France make use of this point scale. An expert is appointed to examine the injury for compensation and also its severity. This would depend on the occupation of the injured victim. The earning capacity would be more significant for a bus driver than it would be for a secretary if there were a loss of a leg (Albert, 2009).

2.7 Methods of Payment

Claims handling costs would be substantial if payments were to be made periodically in small amounts over a time span rather than one lump sum. This affects both insurers as well as reinsurers. Judges may decide to make periodic payments in cases where victims are seriously injured, including those where minors are concerned or individuals are incapacitated (Waddell, 2008).
2.8 Longevity Risk

Life expectancy today is longer than it was in the past. The effect of this is that any periodic payments can extend for a longer number of years than expected leading to an increase in Court awards (Waddell, 2008).

2.9 Inflation

The inflation element needs to be factored in when payments are made over a long time span. The Retail Price Index (RPI) can be used and although this may be useful, it does not take into consideration the loss of income in terms of inflation adjustments and increased medical costs. In *Thompson v Tameside & Glossop Acute Service NHS 2006*, the RPI was rejected by High Courts when medical costs were taken into account to estimate the amount of compensation to be awarded. Having said that, this should not be linked to RPI but to earnings related index. The claim was settled by an insurer who paid a lump sum payment based on the Wages Index (Waddell, 2008).

2.10 Investments Return

Investment returns can also be risky as insurers and reinsurance companies would want to invest to provide for periodic payments when considering the duration of payments and the effects of inflation it may have (Waddell, 2008).
Claims would usually be settled soon after an injury has occurred by making a lump sum payment. The case would be closed when insurers receive their proportionate share from reinsurers. The process would be more complex when payments are made periodically, as provisions have to be made by insurers for these future payments. Funds relating to the investment of the injured party also have to be adequately managed. Administration costs would increase substantially for brokers, insurers and reinsurers. Regular payments are also expected to take inflation into account. However, lump sum payments would be discounted to reflect the present value of money worth today (Waddell, 2008).

2.11 Property Damage

In addition to PI, damage to property is also awarded as part of the compensation to the victim. Such compensation is limited on the basis of the lost property value. Reference is made by all MS that compensation made is full and fair, meaning that it is *restituito in integrum*. Damage is defined by European Jurisdiction whereby the victim is put in the same as he/she had been before the accident. However, the actual compensation would vary from one country to the other (Albert, 2009).

The values with respect to PD depend on whether it has been totally destroyed or whether it can be repaired. The cost to repair property is covered by compensatory damages, along with consequential damages. Subsequently, if the cost of repair exceeds the market value or if property is entirely damaged, actual damages would be based on the market value of the property (prior to the loss), (justia.com, 2014).
Limiting the indemnity for TPPD at EUR 1 million would seem adequate when considering the value of cars, but this would not be the case if a major accident were to occur, if for example, a car causes a major fire in a car park or a fuel tanker explodes in a tunnel (Appendix 2).

Referring back to the Selby train crash it is evident that this case caused a high incidence of PD arising from one motor accident. In this case, PD to the train carriages, railway track and other property involved in the collision contributed heavily to the total amount of the resultant losses (Munchener Ruck Munich Re Group, 2002).

2.12 Conclusion

This chapter dealt with the extent of damages and the application of the criteria leading towards an award being made. Examples emergent from the research tended to deal with cases involving injuries and death, which as expected present higher compensatory amounts than property damages.
Chapter 3: Methodology
3.1 Introduction

“How you see the world is largely a function of where you view it from, what you look at, what tools you use to help you see and what you reflect on and report to others.”

(Anderson, 1990:11)

This part of the thesis explains the methods used to retrieve existing data technically known as secondary data, and refers to how an investigative analysis by means of a questionnaire was set up to collect specific information better known as primary data.

Moreover, this section outlines the restrictions and limitations encountered and the ethical approach adopted especially when collecting first-hand information.

3.2 Methods used to collect Data

3.2.1 Primary Data

Olsen (2004) quoted Bryman as stating that although there are various techniques to obtain information, primary data is usually the main source (Olsen, 2004). To comprehend the subject matter better, data collection techniques along with analysis procedures were used.
Face-to-face interviews were conducted with market specialists who offer motor insurance to their clients. Moreover, questions relating to TPBI and TPPD were sent via email to Swiss Re.

The two most common and useful research methods are qualitative research and quantitative research. The data obtained from quantitative and qualitative research methods is analysed to compare and contrast the data collected and analysis (Galea, 2012). The use of more than one research tool constitutes triangulation. Findings are further enriched by the use of more than one research method, which minimises any shortcomings associated with a certain method (Bryman, n.d.).

Insurance companies were handed concise questionnaires. Their purpose was to identify the amount of compensation awarded, whether such compensation limits are adequate and also whether they may increase in the near future.

### 3.2.2 Secondary Data

Unlike primary data whereby information is not available, secondary data is that which has already been researched by others. The main source used to obtain more information is the Internet, mainly from online newspapers, EU MID, articles and reports. Moreover, useful information was also provided by Mr Francis Valletta, who indicated specific articles with regards to the compensation limits on TPBI and TPPD.
3.3 The Structure of the Questions

There are various types of questionnaires namely semi structured, informal, formal, focus groups and discussion groups. The research method employed for this dissertation was the informal type of questionnaire. In order to obtain accurate results in this field research both open and close-ended questions, as well as qualitative and quantitative research were used.

3.3.1 Open and close-ended questions

Open-ended questions are advantageous, as they enable the respondent to answer questions that had already been anticipated. Meanwhile, closed ended questions would enable the revelation of facts in view of the options presented. Evaluation of closed ended questions is easier; however, the disadvantage is that short answers might be too brief (Jones, et al. n.d.).

Using both close and open-ended questions, is a way of how “quantitative measurement” and “qualitative inquiry” is usually combined (Patton, 2003). The first few questions related to the claims registered during these past few years and the amount of minimum limits compensated each year. Some of the questions were in the form of a Likert-scale. The remaining were in the form of open-ended questions, which allowed the respondent the liberty of answering in their own words. The intention was to allow respondents the possibility of providing additional information.
3.3.2 Qualitative and Quantitative Research

Since “data” is an extensive term, it was further subdivided into two broad terms; Qualitative and Quantitative Research (Punch, 1998:4). Qualitative research enables the researcher to comprehend and clarify results relating to social interactions (Patton, 2003). On the down side, qualitative research is subjective.

The purpose of using quantitative data is by looking at the cause of the research and its outcome. Quantitative research “is empirical research where the data is in the form of numbers” (Punch, 2006). Thus, data is in the form of statistics and numbers. Making use of valid and statistically significant data allows for more robust results. Objectivity is extremely vital when quantitative research is used.

3.3.2.1 Quantitative Research

Specifically, quantitative questions were posed to deduce facts and figures. This was particularly in questions 1 and 2 (Appendix 3), where claims and related awards were investigated requiring actual figures and amounts. After obtaining the results, information was represented in the form of a graph.
3.3.2.2 Qualitative Research

Olsen quoted Bryman as stating that quantitative methods are complementary to qualitative methods (Olsen, 2004). As, Domegan and Fleming, 2007, maintain:

“Qualitative research aims to explore and to discover issues about the problem on hand, because very little is known about the problem. There is usually uncertainty about dimensions and characteristics of problem. It uses 'soft' data and gets 'rich' data”

(Domegan and Fleming, 2007)

Questions that required opinion or perception from a practitioner’s point of view as in the case of number 3, 4, 5, and 6 (Appendix 3) were asked in an open-ended manner. Subsequently, interviews were conducted with the main insurance companies namely; Gasan Mamo Insurance Ltd, Atlas Insurance PCC Ltd, Middlesea Insurance Ltd, Elmo Insurance Ltd and Fogg Insurance Agencies Ltd, a large local insurance agency.

A question was also sent to the Malta Insurance Association (MIA) via email.

3.4 Pilot Study

“If an item is unclear to the respondent, it may be left blank or misinterpreted, thereby biasing the results.”

(Jackson, 2008)
Questionnaires were tested for clarity and coherence prior to data collection. To this extent, a pilot study was carried out by Mr. Nigel Rausi. Following the pilot study, some of the questions were omitted from the questionnaire (Appendix 4).

### 3.5 Ethical Considerations

In view of the fact that the interviewees were representatives of insurance companies and/or professionals, the need to present an ethics form was waived in line with the University Research Ethics Committee regulations. However, a letter of consent (Appendix 5) was sent to all the interviewees who were guaranteed confidentiality and anonymity. Consequently, their identity was not disclosed.

### 3.6 Limitations

Although face-to-face interviews are advantageous as they allow the interviewer to identify any issues that require further clarification, setting up a meeting is time consuming. In addition, meetings are cumbersome in that they involve the co-ordination of meetings at a suitably convenient time and place and the meeting itself is one which involves a lengthy process.

Practitioners are not all willing to be available for an interview as this disturbs their working schedule and momentum of the day-to-day activities. There are instances where
the manager is not willing or available and the meeting is delegated to a junior who might not have the experience or expertise as much as desired by the questions.

Given that the dissertation is a research restricted by time, a few months to gather all the primary and secondary information is certainly not enough and it is a barrier to obtaining exhaustive data in this regard.

Confidentiality is also a limitation since some respondents would not be willing to disclose full details and stop short of providing facts. This limitation is also highlighted by the fact that practitioners are bound by data protection regulations prohibiting them from disclosing certain information.

Out of the interviews carried out, only one insurance company consented for the interview to be recorded. Consequently, a single, complete transcript is at hand.

3.7 Conclusion

A description of the methodology used was outlined in this chapter. Ethical considerations as well as limitations were taken into account. This research was the result of the current findings in the motor insurance sector. Given a span of time longer than the given period, the interviews could have been repeated on an annual basis giving a more accurate outlook of the studied situation. However, given the nature of qualitative questions asked during the interview the investigative method used seems to be reflective of the intended research. The following chapter presents the results and analysis obtained.
Chapter 4: Results and Analysis
4.1 Introduction

Further to the secondary data on the subject compiled in the Literature Review section (Chapter 2) of this dissertation, this chapter analyses information obtained though face-to-face interviews carried out for this dissertation. Data was collected with respect to the minimum compensation limits for TPBI and PD and subsequently, this chapter provides results and analysis to support the information gathered from the secondary data and face-to-face interviews with practitioners.

4.2 Results obtained from interviews with Maltese Insurance Companies

Results obtained from personal interviews held with the main local insurance practitioners revealed that motor insurance is the largest in terms of market share when compared to other classes of business. It is meant to protect Third Parties against PI and PD and the insured vehicle itself.

Society has become more litigious due to the increase in media exposure to victims of serious accidents and also it is becoming easier to start legal action.

Malta has chosen to set its compensation limit to “per event” rather than “per victim”. There will be an increase in limits from EUR 5 million to EUR 5.6 million with respect to TPBI and from EUR 1 million to EUR 1.12 million with respect to PD with effect from 2017.
4.2.1 In and out-of-Court Settlement

From the market specialists perspective research indicated that insurance companies try to settle claims large injury claims out-of-court which reduces legal fees and other expenses but also allows for compensation at lower levels. Nonetheless, the amount awarded to victims varies from one to another and the amount set will not put the injured party at a disadvantage. Moreover, going to Court entails taking years until a judgment is reached. Participants confirmed that the minimum limit could be easily reached with respect to PI. However, this is rarely the case with PD. The table sent to insurers did not report even one claim that reached the lowest limit (Appendix 3 - Question 1).

Two respondents were aware of several out-of-court settlements, some of which are still outstanding. The limit may be insufficient in an accident involving multiple victims such as the one that happened at Ħaż-Żebbuġ in 2005, when five young victims died in a road traffic accident. The driver crashed the vehicle into a wall and the amount of compensation awarded also took into account the driver’s negligence as he had more passengers in the vehicle than it was intended to carry. The amount paid in total is likely to have exceeded EUR 2 million. In the second case, the parties involved, settled for around EUR 2.3 million. The child concerned, who suffered brain damage from an accident which took place in Cospicua, lives in the UK, where salaries and medical costs are much higher than they are in Malta.

The second respondent indicated another out-of-court settlement where two pedestrians who were crossing the road were hit by a vehicle. The driver suffered mental disability and both victims died on the spot.
In 2007, the Court awarded EUR 45,571 to a victim who suffered permanent injuries and was thus unable to continue performing his regular work. The Court found that the driver was 75% responsible for the accident whilst 25% attributed to the victim, since the latter had crossed the road without taking appropriate precautions.

Another participant confirmed that in 2011, the Court awarded EUR 1.25 million and this was the only case that exceeded the limit during the Second Directive (84/5/EEC). The victim became completely dependent on medical support systems and his mother had to stop working to take care of him.

In another case, which is currently still pending, it was reported that a Maltese vehicle was involved in an accident in Sicily where the driver ran over a man on his motorcycle. The award is estimated to be in the region between EUR 1 – 2 million. Also in Italy, the driver of a Maltese registered truck killed the victim, when driving the vehicle in reverse. This case is still outstanding and the amount of compensation is estimated to be EUR 1.2 million. On the other hand, there are very few awards with respect to TPPD. A claim, which is also outstanding and amounting to EUR 350,000, is where the insured crashed into an expensive Bentley.

An insurance representative claimed that the quantum would increase if Courts had to award for non-pecuniary losses. People will start claiming for pain and suffering when they become aware of such possibility. Furthermore, certain doctors have more expertise in particular injuries, which would aid in providing a precise percentage.

The same respondent also identified a claim which was filed in Ireland although the accident happened in Malta. Lawyers were appointed to determine the cost and settle
the claim. As fees in Ireland are relatively expensive, legal costs amounted to EUR 40,000. Calculations with respect to injuries also differ. Had the claim been settled in Malta, the award would have been in the region of EUR 67,000 but instead it amounted to between EUR 250,000 and EUR 300,000.

An accident occurred in another EU country where a truck emerging from the traffic lights hit a vehicle. Medical professionals and investigations confirmed that the party injured in the vehicle had already suffered from a defective spine and the accident did not help. To date, this case has almost reached the EUR 5 million.

A TP who suffered physical and mental injuries was awarded EUR 87,644 by the Court in an accident which occurred in 2006. In another accident in 1993, the driver lost control and as a result, the passenger who was in that same vehicle died. The heirs of the victim were awarded EUR 149,371 in 2010 (AXCO, 2013).

4.2.2 Quantum of Court award

Due to the inconsistency in some Court decisions, government has been considering the formulation of guidelines regarding awards. Some of the most significant changes proposed were that awards should no longer be based on gross but rather on net earnings. Following a fatality, awards will be made to dependents of the deceased rather than to the heirs. Pain and suffering is not yet recognised by the Civil Code and since it is expected to be introduced in the near future, stakeholders together with insurers should support the inclusion of this non-pecuniary damage. Awards with respect to injury will be based on the degree of incapacity and if any, the loss of future earnings (AXCO, 2013).
Figure 4 hereunder shows the factors that influence the Court award, is equally related to age of victim, working life (number of years to retirement), nature of profession and current income. An interviewee pointed out that the Courts award higher amounts where fatalities are concerned and were the number of dependents is high. For PI, it would be ranked as 1. The award would vary substantially between a 50-year old person with no dependents and a victim aged 30 years with three kids. The current income is used; however, Courts may opt to use the future income.

![Factors that influence the quantum of Court award](image)

**Figure 1 Quantum of Court Awards**

A participant referred to the Percentage Disability Scale, wherewith Courts would be able to quantify the disability percentage according to predetermined guidelines. Thus far, this is not effective.
4.2.3 Trends during the past decade

Interviewees indicated that awards in the last decade have tended to increase. These are however, still low when compared to other EU MS, although the standard of living and inflation are increasing.

Market specialists confirmed that roads in Malta are of a poor quality and overcrowded while drivers are also inexperienced. Statistics show that there was an increase in the number of registered vehicles during the five years leading to 2012 (Figure 4.3).

<table>
<thead>
<tr>
<th>Type of vehicle</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private cars</td>
<td>229,141</td>
<td>233,238</td>
<td>239,247</td>
<td>244,979</td>
<td>249,612</td>
</tr>
<tr>
<td>Commercial vehicles</td>
<td>14,413</td>
<td>14,380</td>
<td>14,831</td>
<td>15,507</td>
<td>15,815</td>
</tr>
<tr>
<td>Motorcycles</td>
<td>1,176</td>
<td>1,186</td>
<td>1,241</td>
<td>1,169</td>
<td>1,740</td>
</tr>
<tr>
<td>Coaches and buses</td>
<td>49,928</td>
<td>48,972</td>
<td>49,386</td>
<td>50,292</td>
<td>47,343</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>294,658</strong></td>
<td><strong>297,776</strong></td>
<td><strong>304,705</strong></td>
<td><strong>311,947</strong></td>
<td><strong>314,510</strong></td>
</tr>
<tr>
<td><strong>Growth (%)</strong></td>
<td><strong>2.63</strong></td>
<td><strong>1.06</strong></td>
<td><strong>2.33</strong></td>
<td><strong>2.38</strong></td>
<td><strong>0.82</strong></td>
</tr>
</tbody>
</table>

Figure 2 The number of registered vehicles

*Source: AXCO, 2013*

Respondents indicated that the amount of road accidents is increasing. In fact, the table below (Figure 4.4) shows that the number of accidents rose by 537 in 2011. On the other hand, the number of deaths declined by 8 in 2012 while injuries increased by 65 (AXCO, 2013).
Insurance representatives noted a slight improvement with respect to the frequency of motor accidents. This is probably due to the improvement in the road infrastructure following the installation of traffic lights, speed cameras and sleeping policemen. Breathalyser tests have not been successfully employed and it is only being used to test whether an accident was caused by alcohol consumption rather than a preventive measure. The main reason seems that drivers under the influence of alcohol resist undertaking the breathalyser test. This also means that the police can avoid going to Court to testify the breathalyser readings. However, insurance companies still have to compensate third parties, irrespective of whether the driver was under the influence of alcohol or not. A practitioner also mentioned that the driving test has recently been improved and is now more difficult to pass than it was in the past.

Practitioners stated that the severity of damages claimed has increased. One of the practitioners blamed the lack of road markings for certain accidents. On the other hand, the improvement in the road infrastructure is seen as causing drivers to accelerate and
drive faster. It was also claimed that narrow roads do not allow for pavements and pedestrians are forced to walk on the road. Moreover, in hot temperatures, the road surface becomes slippery, and as a result, effective grip is lost.

It has become more expensive to repair damaged vehicles, and where the repair cost is more than the value of the car, the vehicle is written-off. Moreover, smaller vehicles are lighter but still powerful, thus posing a greater risk and causing more accidents. On the other hand, new vehicles have enhanced their safety features, including, airbags and an improved structure, amongst other things, to protect passengers. A participant noted that people are importing in Malta luxurious vehicles like BMWs and Mercedes at a cheaper price, and the premium rates have not changed.

4.2.4 Frequency of Motor Accident Claims

Insurance company officers were also asked whether the limits imposed by the Sixth EU directive, to be transposed into the Maltese legislation in 2017 are adequate or not. It was affirmed that the current limits are adequate as they are low, and that the enforcement of the Sixth EU Directive would have an effect on the market. On the other hand, another interviewee indicated that although there has been an improvement from the Second (84/5/EEC) to the Fifth Directive (2005/14/EC), the limits are still low when considering severe injuries. Compensation limits were unlimited before accession to the EU in 2004. Insurers were required to purchase reinsurance. However, insurance coverage is still being purchased, to mitigate the risk of settling a huge claim.
4.2.5 Severity of Motor Accident Claims

Malta has adopted the minimum limits, and an increase in these limits would require a commensurate increase in insurance premiums. Practitioners stated that premiums paid since the transposition of the Fifth Directive (2005/14/EC) have remained relatively the same, mainly due to competition. Interviewees added that the limits had not been adequate because if they were, they would not have been increased.

A respondent who claimed that the state had the option to compensate either on a “limit per victim” basis or “limit per accident” basis, showed a strong preference for the former. If, for instance, a coach carrying fifty passengers were involved in an accident, only EUR 5 million would be awarded per event irrespective of the number of those injured. If the limit of indemnity were set per victim the total limit of indemnity would be much higher in accidents involving several victims (Appendix 6). Greece like some other European countries has a “limit per victim”.

4.2.6 Limits imposed by the Sixth Directive

Insurance company officers also identified various factors, which could escalate costs related to motor accidents. The income earned by a victim is one such factor. The higher the value of a vehicle, the higher the cost. Moreover, the cost of motor repairs, which includes labour, spray and other consumables, has become more expensive, especially with regards to expensive vehicle marques which are currently being purchased at significantly low prices from the UK. Although the purchase price is comparatively lower,
cost of repair remains high. To lessen these costs, insurers try to obtain discounts from suppliers or purchase cheaper parts. An interviewee also indicated that hybrid cars are sophisticated, and since there are no local repairers who are competent to do the job, a serious accident involving one would definitely increase costs.

Another practitioner commented that an increase in retirement age would have a bearing on Court judgement. Although legal fees in Malta are low, it would have an impact on costs if they were to increase. Legal fees in other countries vary substantially. It was indicated by interviewees that costs would certainly increase when non-pecuniary damages are awarded in the near future. If the Disability Percentage Table were to be issued, it would have stated that insurers would still appoint consultants to determine the level of disability and whether the victim was already suffering from other injuries.

Other factors which would escalate costs as identified by another practitioner include psychological repercussions and the increase in higher skilled, better paid workers entailing higher compensation awards.

4.3 Conclusion

Results acquired from the main local insurance companies and MIB were evaluated in this chapter. It emerged that costs increase when drivers cross borders into other MS with their vehicles and injure a foreign person, or are otherwise involved in an accident with a foreigner in Malta. Insurers, however declared that throughout the years, compensation awarded to injured victims were adequate, with a rare exception. However, the increase in compensation limits needs to be reflected in a corresponding increase in premiums.
Chapter 5: Discussion, Conclusions and Recommendations
5.1 Introduction

An overview of the objectives was given in the first chapter. In section 2, a detailed description of determining factors that affect civil damages awarded by Maltese Courts was provided. To reach these objectives, practitioners and MIA were consulted and their views and perspectives analysed to be able to draw conclusions and make recommendations.

5.2 Analysis of findings

During the period from 1984 to 2005, when the Second EU Directive (84/5/EEC) was in force, the stipulated limits were of ECU 350,000 for TPBI per victim or ECU TPBI 500,000 per event and ECU 100,000 per event for TPPD. At the time these seemed to be largely adequate since, as the research has shown, only rare and exceptional incidents was a sum higher than these limits awarded (see Appendix 7). The award mentioned meant that there was a shortfall of nearly EUR 1 million which although is considered to be a one-off award, one cannot exclude the possibility of similar happenings. In addition, we need to factor in the fact that the cost of such a claim will be affected by increased court costs increased salaries, more complex repair methods for instance. Moreover, people have become more aware of their legal rights and are willing to exercise then fully to maximise their potential gains. Coupled with this, one has to consider that cross border driving has become more frequent, increasing the likelihood of compensation being determined in foreign courts where higher litigation costs are experienced and where higher compensation awards could result.
Within the ambit of the Fifth Directive (2005/14/EC), which sought to respond to factors that saw an increase in possible awards being made for TP death, injury or PD, it seems that the higher limits under this Directive namely; EUR 5 million for TPBI and EUR 1 million for PD, proved to be adequate for cases in Malta as evidenced in Appendix 8.

When considering the different limits for injuries and PD as stipulated the research reveals that in the EU Directive, those for PD were always more than adequate. The same may not be said for PI where from time to time, exceptional circumstances lead to awards exceeding the said limits (Appendix 7).

Findings indicate that the majority of claims with high award compensation arise in TPPI, when an accident involves a foreigner in Malta or a Maltese in another MS. Although insurers would expect the premium to increase especially through the enforcement of the Sixth Directive, it will very unlikely happen due to competition.

Two options are available for insurance companies with which to settle litigation, namely, in-court and out-of-court settlement. However, practitioners try to settle out-of-court to reduce costs and make the process more expeditious. In addition, both insurers and the injured party can settle for a lower compensatory award. If however, even if a lawsuit is brought to Court, the defendant may still ask the judge to settle out-of-court.

Compensation limits are based on the “occurrence” trigger. Each motor insurance policy expresses the time limit allowed to notify the insurer with a claim. Compensation limit is based on “per event”, irrespective of the number of injured parties.
The heirs of the deceased person is one of the factors used to compute the formula in cases involving a fatality. On the other hand, dependency is taken into account when there is PI. Insurers also mentioned the usefulness of the proposed law about non-pecuniary damages as well as the disability scales in arriving at the appropriate amount to be awarded.

On the other hand, an advantage mentioned by two interviewees was that in Malta, injured parties are treated for free under the National Insurance Scheme, in contrast to other countries where the treating hospital has the right to claim compensation from the responsible party.

A problem faced by insurers is that driver's premium calculations are based on the sum insured. Two practitioners complained that replacing a part, such as a bonnet, of a BMW purchased in Malta for EUR 40,000 and insured at a premium of EUR 2,000 cost the same as that of one imported from the UK for EUR 20,000 and insured at a premium of EUR 1,200.

The increasing occurrence of augmented awards and rising costs in general are putting pressure on the Directive to reflect such changes, which may in turn affect premiums charged. This could be evidenced by respondents who stated that premiums could be subject to increases, although competition makes this very unlikely.

When one considers the criteria on which Court awards are based in current practice, one finds that awarding is mainly dependent on the income which has increased not only on the merits of jobs specialisation but also on the basis of an increase in salaries overall. Another factor that affects awards directly is that of inflation, which has an impact on
prices in general and on salaries in turn. Moreover, such awards are tending towards the inclusion of pain and suffering, an element being considered for inclusion in the existing EU Directive limits.

5.3 Stress Test for the adequacy of compensation limits

Following the Second EU MID (85/5/EEC) the largest claim awarded was that of EUR 1.25 million (Appendix 7). The accident happened in August 1998, and had left the victim totally disabled. The formula used to quantify damages and which is set out under the Maltese Civil Law, Article 1045 is; Net annual income of the victim multiplied by the number of years remaining working life of victim. The percentage of the disability set down by medical experts is then applied to this sum. Following which a deduction of 20% for the lump sum payment of 20% is made (Jaccarini, 2011). If two lawyers both work in an established legal firm were to be injured in a traffic accident, when both are aged of 30 and with an income of EUR 50,000 per annum, the amount of compensation, when using the multiplier would total EUR 2.8 million (EUR 50,000 x 35 x 100% x 2 - 20%). Since the victim in the first 1998 case, along with his mother and brother had been planning to take over the running if a restaurant, his future earnings was estimated by the Court to be EUR 22,000. In the example of the victim being a lawyer, the income earned would be comparatively much higher due to the nature of employment. This example thus shows that the limits stipulated under the Second EU MID (85/5/EEC) are adequate.

The limits were subsequently increased within the enacting of the Fifth Directive (2005/14/EC). In a recent judgement; the victim was awarded the sum of EUR 47,600 (Appendix 8). At the time of the accident, the victim was 14 years old. The percentage of
the disability was assessed at 8% and a sum of EUR 45,000 estimated as future earnings. The estimated working life was offset at 35 years. Taking an example where three lawyers, all aged 35 were (30 years working life) to be involved in a traffic accident and all three suffer a with a 50% permanent disability each earning EUR 80,000 per annum, the amount of compensation awarded (less 20% discount for lump sum payment) would be EUR 2,880,000. When high net earners (such as lawyers, doctors, architects) are involved in an accident, the awards are bound to obviously increase substantially. The limits stipulated under the Fifth Directive (2005/14/EC) prove to be inadequate when the above test was carried out.

5.4 Recommendations

The findings of this study look closer at the adequacy of awards being offered by the market in general. This calls for a market-wide effort to establish relevant limits and to achieve such an objective. The Malta Insurance Association could outline a set of guidelines establishing motor insurance liability limits that apart from satisfying EU Directive requirements, also reflect the current compensatory scenario. For this reason, a relevant recommendation would be the setting up of a committee established by the Association that meets periodically to monitor and propose changes to motor insurance liability wording and limits. This would address previous shortcomings such as when a victim suffered damage beyond what was provided under the law and the policy at the time.

Furthermore, this subcommittee could act as a pressure group to draw the attention of the Authorities, particularly that of the legal fraternity, to the practicality of limits that are pre-
calculated and reflective of various suggested compensatory sums, enabling insurers to reserve more accurately and avoid spikes in awards.

5.5 Conclusion

This research has investigated and tested the adequacy of compensation limits set by EU Directives that attempt to safeguard the interests of the affected victims following an accident involving motor vehicles. The results have shown that EU Directives and consequently insurance policies that have endorsed these Directives were largely successful in eliminating situations where the innocent victim was left uncompensated following a shortfall in insurance limits. This does not mean that exceptions did not occur, but then again, legislators and insurance policy writers have been vigilant to respond and counteract such gaps when and as they arose through increased compensatory limits. This research identified this reactive response by the relevant practitioners and made its recommendations for a more pro-active approach.
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Appendices
Appendix 1: Court cases in the UK

Girl, 17, who rebuilt her life after being paralysed in crash that killed mother is awarded £23m compensation payout

November, 2012
Source: daily.co.uk

A public schoolgirl who suffered devastating injuries in a car crash that killed her mother has won a record £23 million in compensation.

Cheltenham Ladies’ College pupil Agnes Collier, 17, was left paralysed after her family’s car was forced into the path of a lorry when another car pulled out of a side road. Agnes, who was 13 at the time, suffered catastrophic spinal injuries. Her mother Karen Hood, a teacher, was killed.

Despite the tragedy, Agnes returned to her school and battled chronic fatigue to pass her A-levels with flying colours.

Forced into path of lorry: Agnes’s mother, Karen Hood (left), a 48-year-old teacher at Cheltenham Ladies’ College, was killed in the smash on the A40 in Gloucesstershire, in March 2009. Anthony Norton (right) was convicted in November 2009 of causing death by driving without due care and attention.

The ‘very bright’ teenager, who now hopes to study at Oxford or Cambridge, was praised by a High Court judge as she was awarded a £7.25 million lump sum yesterday.
She will also receive £270,000 a year to cover the costs of her care for the rest of her life. It is the highest PI case payout in British history. Mr Justice MacDuff told her: ‘It never ceases to amaze me how people can deal with this type of adversity.

‘I can’t turn back the clock, but what I can do is to wish you all the very best for your future.’ Agnes’s solicitor Paul Paxton said that, given a normal life expectancy, the total payout is expected to reach £23 million.

Her lawyer William Norris QC described Agnes as a ‘truly remarkable lady’, adding: ‘These injuries have had a catastrophic impact on her life but she has done remarkably well with the support of her marvellous family.

‘Her determination is extraordinary, but she has been blessed with a family who are thoroughly supportive, and her stepmother has been a tower of strength.’

The court heard Agnes, who has some use in her arms, has surpassed expectations with the support of her father Dominic Collier, 57, an investment banker, and stepmother Jannene.

The teenager’s life was changed forever in March 2009 when BMW executive Anthony Norton pulled out of a side road, causing 48-year-old Cheltenham College teacher Mrs Hood to be hit by a lorry on the A436 in Gloucestershire. Agnes’s brother Rufus, 15, was also badly hurt when he suffered a head injury but has since recovered.

Norton, 48, pleaded guilty to causing death by driving without due care and attention and was given a six months’ suspended prison sentence, banned from driving for 18 months
and sentenced to 300 hours' unpaid community work. The court heard at the time that Mr Collier and Agnes had forgiven him and did not want to see him jailed.

Benjamin Browne QC, defending, paid tribute to the family for their determination in rebuilding their lives after the loss of “the most devoted wife and mother” and the injuries suffered by Agnes, which were ‘at the very highest level of severity’. He added: ‘It is difficult to imagine how a family could cope with such a heavy double blow as this one has done.’

He said Agnes, who is cared for at the £850,000 family home in Cheltenham, is a ‘very bright’ teenager who has done so “astonishingly well” in her exams. Ben Browne, QC for Norton’s insurer, said of the award: “While it is a lot of money, Agnes’s needs are great and she needs those for the rest of her life.”

Mr Collier, a former investment director with the English National Ballet School, paid tribute to his wife after her death, describing her as “an extraordinarily cheerful, energetic person”.

Cheltenham Ladies’ College, founded in 1853, is one of the most prestigious schools in the country, with 78 per cent of students achieving A* to A grades in their A-levels last year.

It is the biggest all-girl boarding school in Europe, with 870 pupils, and houses a sports centre, swimming pool, 17 netball courts, 24 tennis courts and an art block with an artist-in-residence. The school charges £29,000 a year for boarders and £6,455 for day students.
Former students include St Trinian’s actress Talulah Riley, MP Cheryl Gillan, businesswoman Nicola Horlick and fashion designer Katharine Hamnett.

Agnes’s payout tops the previous largest accident compensation award of £13.5 million, to former Commonwealth Games cyclist Manny Helmot in 2010.

Mr Helmot rode for Guernsey in the 1998 Kuala Lumpur Games, but in November of that year he was struck by a car while training on the Channel Island. He permanently lost the use of his right arm, as well as being registered blind and needing 24-hour care.
Crash victim awarded £1.25m plus care costs

March, 2010
Source: burytimes.co.uk

A grandfather who suffered serious injuries after being knocked off his motorbike has received a massive compensation payout.

Stuart Bridge, aged 53, will receive a lump sum of £1.25 million, plus £57,500 a year, to pay for his care after suffering a brain injury. He was travelling to work along Deansgate, in Manchester city centre, at 6.45am on October 13, 2006, when he was hit by a Vauxhall Corsa.

He was thrown across the bonnet, before his head struck a bollard.

Despite wearing a helmet, Mr Bridge, who lives in Radcliffe, suffered severe head injuries which led to months of rehabilitation. He also had a fractured spine and pelvis, and was left with slurred speech, poor concentration and balance problems.

He was forced to give up his job as head green keeper at Withington Golf Club and his role as an amateur football referee in the Bury Sunday League.

Speaking on behalf of Mr Bridge and his wife Anne-Marie, Warren Maxwell, a lawyer at injury claims specialists Stewarts Law, said: “This crash has had a devastating effect on Mr Bridge and his family. Their lives will never be the same again.

“Mr Bridge is fully aware of his health problems and becomes angry, upset and frustrated by what has happened to him.”
After the accident, the driver of the car, Carli Bates, then aged 21, pleaded guilty to driving without due care and attention and driving without insurance.

She was fined £200 and received six penalty points on her licence.

As she was uninsured, the Motor Insurers’ Bureau (MIB) accepted liability on her behalf. A claim against the MIB at the High Court last Wednesday ordered them to pay Mr Bridge a lump sum of £1.25 million, plus £57,500 a year.

It includes the cost of buying a new home and car, lost income and pension, and for the care, therapy and specialist equipment, he will need. He will also receive payment for a Bolton Wanderers season ticket for life and a Skype-enabled computer so he can talk to his sister in New Zealand.

Mr Maxwell said: “For anyone, to go from enjoying an active and sociable lifestyle to one where you are dependent on others for almost all of your needs must be very difficult and traumatic to come to terms with. Mr Bridge has a tremendous support network around him in his wife and family and care team. The settlement received will go some way towards making Mr Bridge’s life as comfortable and enjoyable as possible.”

Mr and Mrs Bridge declined to comment.
£9.2m for road crash victim

December, 1998
Source: bbc.co.uk

A Dutch student completely paralysed in a road accident has been awarded damages of £9.2m.

Martijn Biesheuvel had hopes of a high-flying career in business destroyed by the crash, the High Court in London was told.

The payout is the largest PI award made by an English court.

Mr Biesheuvel was 22 and had just finished final exams in business administration at Bath University in May 1994 when a car in which he was travelling with four friends collided with parked vehicles.

Nobody else was seriously hurt in the crash in the city.

Insurers will pay award

The insurers of driver Andrew Birrell will pay the award, which includes loss of future earnings and the cost of care. It was accepted that Mr Birrell's negligence caused the crash.

Mr Biesheuvel was not wearing a rear seatbelt but in court, Mr Justice Eady said: "I am wholly unpersuaded that I should make a finding of contributory negligence against Mr Biesheuvel."
Appendix 2: Situation in France – Mount Blanc Case Study

The Fire of 1999: The facts
Source: atmb.com

24 March 1999: a duty to remember a fire of unprecedented scale in this type of structure

On the 24 March 1999, a heavy goods vehicle carrying flour and margarine came to a stop in the Mont Blanc Tunnel. The lorry was on fire – a fire that then spread to the vehicles behind. It took two days to bring it under control. The fire was on an unprecedented scale, claiming 39 lives (37 customers, an employee of the Italian company and a fireman from Chamonix).

A compensation fund for families of EUR 27 million

A memorandum of understanding was signed by all parties, including ATMB, to enable all those with a claim to receive fair compensation. A fund of EUR 27 million was set up.

Criminal proceedings: ATMB accepts its responsibility, it did not ask for charges to be dropped nor appeal the verdict

Following the criminal investigation, 13 individuals and 4 companies including ATMB and SGTMB appeared in court. The trial took place between 31 January and 29 April 2005 at the High Court in Bonneville. Seven ATMB and SITMB employees, the driver of the HGV, Volvo, the mayor of Chamonix and a senior official of the Ministry of Public Works were also found guilty. ATMB did not appeal the verdict.
ATMB has a duty to the families of the victims to accept its responsibility. It also owes it to the 600 members of staff that are employed today on motorway and tunnel safety”, Jean-Paul Chaumont, Managing Director of ATMB, explains.

The New Mont Blanc Tunnel : a rebuilt structure, and personnel working with one aim constantly in mind: safety

“All the work undertaken by ATMB and its staff is guided by one constant concern: safety. Bringing the tunnel under the guardianship of a single French-Italian entity, appointing a new management team… all these changes have been brought about through learning the lessons of the past. As well as restructuring the company, safety standards in the tunnel have been completely overhauled. Today, putting safety top of the agenda means constant reassessment and constant vigilance at every level of ATMB”, Jean-Paul Chaumont adds.
The data in the table hereunder is ONLY related to awards made by judgements in the Court of Malta. Please complete in the blank spaces accordingly.

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<tr>
<th>Directive</th>
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<th>Limits</th>
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<th>Number of claims between 26% - 50% of limit</th>
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<td>Bodily Injury 350,000 Euros per victim 500,000 Euros per claim</td>
<td>0 to 87,500 87,501 to 175,000 175,001 to 262,500 262,501 to 350,000 &gt; 350,000</td>
<td>0 to 125,000 125,001 to 250,000 250,001 to 375,000 375,001 to 500,000 &gt; 500,000</td>
<td>0 to 25,000 25,001 to 50,000 50,001 to 75,000 75,001 to 100,000 &gt; 100,000</td>
<td>0 to 150,000 150,001 to 300,000 300,001 to 450,000 450,001 to 600,000 &gt; 600,000</td>
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<td>2005</td>
<td>Bodily Injury 1,000,000 Euros per victim (not applicable) 5,000,000 Euros per claim</td>
<td>0 to 250,000 250,001 to 500,000 500,001 to 750,000 750,001 to 1,000,000 &gt; 1 million</td>
<td>0 to 1,25m 1.25m to 2.5m 2.5m to 3.75m 3.75m to 5m &gt; 5 million</td>
<td>0 to 250,000 250,001 to 500,000 500,001 to 750,000 750,001 to 1,000,000 &gt; 1 million</td>
<td>0 to 250,000 250,001 to 500,000 500,001 to 750,000 750,001 to 1,000,000 &gt; 1 million</td>
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2. Rank the factors that influence the quantum of a court award where 1 is the lowest and 5 is the highest

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3. What in your opinion has been the trend during these past 10 years in terms of compensation and court awards?

3.1.1. Has there been marked increased / decreased in the amount of awards?

Increase   |

Decrease  |
3.1.2. Comment

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3.2.1. Has there been an increase / decrease in the frequency of Motor Accidents claims recently in view of the major improvements in the roads infrastructure?

Increase □
Decrease □

3.2.2. Comment

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68
3.3.1. Has there been an increase / decrease in the severity of Motor Accidents claims recently in view of the major improvements in the roads infrastructure?

Increase

Decrease

3.3.2. Comment

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4. Do you think the current limits imposed by the Sixth EU directive are adequate?

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5. Do you think that the limits were always adequate throughout the years as the limits were increased from one Directive to another?

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6. In your opinion what are the factors that could escalate costs in motor related accidents?

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### Appendix 4: Professionals’ Interviews prior to pilot study

1. Please complete the table below.

   a. In Court Settlement

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<th>Limits</th>
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<th>Number of claims between 76% - 100% of limit</th>
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<td>Bodily Injury</td>
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<td>250,000 to 500,000</td>
<td>750,001 to 1,000,000</td>
<td>&gt; 1 million</td>
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<tr>
<td>Property Damage</td>
<td>500,000 Euros per claim</td>
<td>250,000 to 500,000</td>
<td>750,001 to 1,000,000</td>
<td>&gt; 1 million</td>
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<tr>
<td>Bodily Injury &amp; Property Damage</td>
<td>500,000 Euros per claim</td>
<td>250,000 to 500,000</td>
<td>750,001 to 1,000,000</td>
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   **Second EU Motor Insurance Directive**

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<tr>
<td>Bodily Injury</td>
<td>250,000 to 500,000</td>
<td>750,001 to 1,000,000</td>
<td>&gt; 1 million</td>
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<td>Property Damage</td>
<td>250,000 to 500,000</td>
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<td>&gt; 1 million</td>
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<tr>
<td>Bodily Injury &amp; Property Damage</td>
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   **Fifth EU Motor Insurance Directive**
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Increase □

Decrease □
3.1.2. Comment

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3.2.1. Has there been an increase / decrease in the frequency of Motor Accidents claims recently in view of the major improvements in the roads infrastructure?

Increase  

Decrease  

3.2.2. Comment

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74
3.3.1. Has there been an increase / decrease in the severity of Motor Accidents claims recently in view of the major improvements in the roads infrastructure?

Increase  

Decrease  

3.3.2. Comment

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4. Do you think the limits imposed by the Sixth EU directive are adequate?

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5. Do you think the current limits imposed by the EU directive are on the low/medium/high side?

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6. In your opinion what are the factors that could escalate costs in motor related accidents?

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Appendix 5: Letter of Consent to the Insurance Companies

Dear Respondent,

I would like to invite you to participate in a research project that I am carrying out to study the adequacy of compensation limits stipulated by the European Union Motor Directive.

With your contribution, I would like to analyse the adequacy of the minimum amounts of cover stipulated by the EU Motor Insurance Directive 1 to 5, as well as understand the variables which influence court awards in the event of Motor accidents.

The information given in the questionnaire will be fully confidential. I would very much appreciate your time to complete this survey. Participating in this research study is voluntary. However, I would be very grateful.

If you have any questions or concerns about completing the questionnaire or about being in this study, you may contact me at saramicallef@hotmail.com. This project has been approved by the University of Malta.

Thank you for your consideration.

Yours Sincerely,

Sarah Micallef
Appendix 6: Situation in Italy – Bus Plunges into Ravine

Italy Bus Accident: At Least 38 Dead After Bus Plunges Into Ravine
D’Emilio, 2013
Source: huffingtonpost.com

ROME -- An Italian tour bus plowed through cars, crashed through the sidewall of a highway bridge and plunged into a ravine, killing at least 38 people, authorities said Monday.

Rescuers wielding electric saws cut through the twisted wreckage of the bus looking for survivors overnight, and state radio quoted a local police chief as saying the bus driver was among the dead.

The bus lost control near the town of Monteforte Irpino in Irpinia, a largely agricultural area about 60 kilometers (40 miles) inland from Naples and about 250 kilometers (160 miles) south of Rome, hitting several cars before plunging some 30 meters (100 feet) off a viaduct on Sunday night.

It was not immediately clear why the bus driver lost control of the vehicle, but prosecutors were investigating technical problems and had ordered an autopsy on the driver.

Italy’s Prime Minister Enrico Letta described the crash as a "dramatic moment" for his entire country.
“We are deeply pained by this tragedy that has touched many families and many children,” Letta said from Athens, where he met with Greek Prime Minister Antonis Samaras.

A reporter for Naples daily Il Mattino, Giuseppe Crimaldi, told Sky TG24 TV from the scene that some witnesses told him the bus had been going at a “normal” speed on the downhill stretch of the highway when it suddenly veered and started hitting cars. Some witnesses thought they heard a noise as if the bus had blown a tire.

“All possible causes are under examination. It could be a combination of causes,” Avellino Highway Police Chief Salvatore Imparato said on Sky TG24.

The bus was carrying a group of weekend holidaymakers from the town of Pozzuoli, on the coast east of Naples. The group had arrived at a hotel on Friday afternoon, and had spent the weekend visiting the spa and an early home of Padre Pio, a late mystic monk popular among Catholics, Michele Montagna, the manager of the hotel, told Sky TG24.

Relatives visited a makeshift morgue in a middle school to identify the dead on Monday.

The bus, meanwhile, was towed from the site to be examined for possible malfunctions.

Firefighters extracted 37 bodies from the wreckage. Most of the dead were found inside the mangled bus, which lay on its side, while a few of the victims were pulled out from underneath the wreckage, state radio and the Italian news agency ANSA reported. One person died at the hospital.

At least 10 people, including five children, remained hospitalized on Monday.
Cars that were hit by the bus stood on the highway. One car's rear was completely crumpled, while another was smashed on its side. It was not immediately known if anyone in those cars had been injured.
Appendix 7: In Court settlement awards (above the minimum limits)

Motorbike victim awarded EUR 1.25 million in compensation
March, 2011.
Source: Times of Malta.

A young man who became a quadriplegic following a traffic accident 13 years ago was awarded EUR 1.25 million in damages yesterday.

Alan Caruana, now 30, was riding pillion on a Honda CBR motorbike driven by Daniel Bonnici, 33, on the morning of August 23, 1998. Driving along Notabile Road, Attard, towards Rabat, Mr Bonnici lost control of the machine and crashed into an electricity pole and a tree.

As a result of his injuries, Mr Caruana was totally incapacitated by quadriplegia, which is a paralysis of all the limbs.

In a previous judgment, Mr Bonnici was declared to have been solely responsible for the accident. The First Hall of the Civil Court, presided over by Mr Justice Giannino Caruana Demajo, yesterday ruled on compensation.

The judge said that, prior to the accident, Mr Caruana, then 19, his brother and his mother had planned to set up a commercial enterprise to take over the restaurant business of their father, who was retiring due to ill-health. However, the plan could not go
ahead because Mr Caruana suffered a 100 per cent permanent disability as a result of the accident and his mother had to stop working to look after him.

The projected income from the planned business was about EUR14,000 per annum for each of the three family members. This figure was reasonable and quite conservative, the court noted.

Mr Justice Caruana Demajo calculated that Mr Caruana would have gone on to earn some EUR 22,000 a year, assuming an increase in business. His mother had to look after him though and although she did not completely lose the faculty to work again, her earnings would be more like EUR 8,000.

Taking into consideration their ages, the judge multiplied his earnings by 40 years and hers by 15.

Mr Justice Caruana Demajo ruled that, due to Mr Caruana's young age at the time of the accident, Mr Bonnici was to award him EUR 1,250,000 damages. However, EUR 55,905, which had already been paid to Mr Caruana by Mr Bonnici's insurers were to be deducted.
Appendix 8: In Court settlement awards (below the minimum limits)

Mother who lost child in traffic accident awarded EUR 208,477 in damages
March 2014.
Source: timesofmalta.com

A woman who lost her two year old daughter and who was herself seriously injured in a traffic accident in January 2005 has been awarded EUR 208,477 in damages.

Marthese Vella in her own name and as heir of her late daughter Hayley Anne Briffa filed for damages against Karl Micallef and Joseph Azzopardi. The Protection and Compensation Fund (set up in terms of the Insurance Business Act) and the Motor Insurers' Bureau intervened into the suit in 2008.

Ms Vella told the court that while she was pushing her daughter in a pushchair on the pavement of Ghammieri Street, Qormi, they were hit by a car driven by Mr Micallef. The car belonged to Mr Azzopardi but was not licensed nor was it covered by insurance.

Her baby died as a result of the collision while she suffered a permanent disability.

Mr Justice Mark Chetcuti heard that at the time of the accident Mr Micallef was 18 - and had got his driving licence some two months previously. He had just started working for Mr Azzopardi on a trial basis as a flower delivery man.
The car’s licence and insurance had expired in October 2004 and Mr Azzopardi told the court that he had not renewed them for financial reasons.

The court heard that a few minutes before the collision Mr Azzopardi had called Mr Micallef to ask why he was not yet at his place of work. Mr Micallef then skidded on the road and collided with Ms Vella and the child.

In its judgment, the court pointed out that the road was wet with dew but that the court expert had found that the damage caused to the wall bordering the pavement indicated that Mr Micallef was driving at excessive speed.

Mr Justice Chetcuti dismissed Mr Micallef’s claim that the accident had been caused by circumstances beyond his control.

The court also found Mr Azzopardi equally responsible for the accident. He had allowed Mr Micallef to use the car even though he knew the car was not licensed or insured. He was also aware that Mr Micallef was only 18 years old and had, therefore, only recently learned how to drive. Mr Azzopardi had not exercised the diligence of a good employer.

In liquidating the damages suffered by Ms Vella the court noted that the medical experts who had examined her had concluded that she had sustained a 40 per cent permanent disability as she had suffered serious injuries to her legs. At the time of the accident Ms Vella was 28 years old and had two children. She was no longer fully physically independent and would find it difficult to work in the future.

The court assessed the damages suffered by Ms Vella at EUR 133,477.
When assessing the damages suffered as a result of the death of Hayley Anne Briffa the court declared that in terms of law if a minor child died her parents would inherit half of her estate and her siblings the other half.

Ms Vella and her husband Mario Briffa had separated 10 months after the accident and, in the deed of separation, Mr Briffa had assigned to his wife any compensation he might receive as a result of the death of their child.

Their other daughter, Celine, was the heir to the other half of Hayley Anne's estate, but the court noted that unfortunately she had not been legally represented in the court case by her parents and could not, therefore, be awarded any damages.

The court added that the damages due in respect of Hayley Anne's demise were in the sum of EUR 600,000 but that a deduction had to be made to cover the period of her dependency on her parents and for consumption.

As a result, the damages were reduced to EUR 150,000. As Ms Vella was the heir of one half of her daughter's estate she was awarded EUR 75,000 in damages.

The court condemned Mr Micallef and Mr Azzopardi jointly to pay a total of EUR 208,477 to Ms Vella.
Young man wins compensation for traffic accident damages
March 2014
Source: timesofmalta.com

A young man who was injured in a traffic accident when he was 14 years old has been awarded EUR 47,600 in damages by Mr Justice Anthony Ellul in the First Hall of the Civil Court.

Jean Marc Zammit told the court that he was involved in a traffic accident in 2008 when he was a passenger in a car driven by John Agius. Mr Agius lost his life in the accident and Mr Zammit claimed to have suffered a permanent disability.

Middle Sea Insurance plc accepted responsibility to pay damages to Mr Zammit but claimed that the latter's expectations of payment were exaggerated and did not reflect the injuries he had sustained. The court heard that Mr Zammit was suffering from narcolepsy and cataplexy and had also suffered facial scarring. This led the court to assess the permanent disability suffered at the rate of eight per cent. Mr Zammit told the court that he was studying international business and that he expected to earn EUR 45,000 per annum when he completed his studies and found a job. But the court said that there was no certainty that Mr Zammit would earn this sum of money over the estimated 35 year period of his working life.

A salary of EUR 45,000 was very high by Maltese standards and in the circumstances the court ruled that a prospective salary of EUR 20,000 per annum was more realistic. The court awarded Mr Zammit EUR 47,600 in damages
Accident victim granted compensation of EUR 18,000

February 2013
Source: timesofmalta.com

A woman who was injured in a traffic accident in 2007 has been awarded almost EUR 18,000 in damages by the First Hall of the Civil Court.

Emmeline Cini filed her action for damages against Antoine Cachia. She told the court that while she was driving in Ghajn Dwieli Road, Paola in November 2007 she was involved in a collision when Mr Cachia's car did not stop at a stop sign and instead collided into her car. The court case was limited to the award of damages as Mr Cachia, and his insurance company, admitted liability for the accident.

Mr Justice Lino Farrugia Sacco heard that Ms Cini, a former croupier at the Dragonara Casino, was 27 years old at the time of the accident. She had suffered a flexion and extension injury to her neck and the court-appointed medical experts estimated that she had a four per cent permanent disability as a result of the accident.

After taking into account Ms Cini's salary at the time of the accident the court awarded her damages of EUR 17,948.84.
Driver ordered to pay EUR 73,375 to accident victim
October 2011
Source: timesofmalta.com

A man who caused a traffic accident in March 2001 was today ordered by a court to pay EUR 73,375 as compensation to a passenger.

Duncan Galea had already been convicted by the Criminal Court for having caused the accident in Triq Buqana, Rabat. Galea had been driving a Hyundai Accent with Paul Zammit in the passenger seat. They were on their way back from a disco when the car smashed into a wall and crashed into a field. Mr Zammit suffered a permanent neck disability and the car, belonging to his father, was a write-off.

The Court in 2003 found that Mr Galea as having caused the accident when he drove while under the influence of alcohol. He was also convicted of having caused the injury to Mr Zammit. The court established Mr Zammit's disability at 15% In considering compensation, the considered that at the time of the incident Mr Zammit was 27 years old and was paid a salary of Lm5,500. Mr Galea was also ordered to pay the owner of the car, Joseph Zammit, EUR 5,853.
Accident victim awarded damages of EUR 66,000

June 2011

Source: timesofmalta.com

A court has awarded damages of EUR 66,000 to a man who suffered a 10 per cent disability in a traffic accident in Floriana in 2003.

Alfred Ciantar filed his action for damages against Godfrey Camilleri and against their insurance company. The accident took place when Mr Ciantar was driving along Great Siege Road towards Floriana. He collided with Mr Camilleri's car which was emerging from Sir Hannibal Scicluna Street on to Great Siege Road.

Mr Ciantar was the main road user while Mr Camilleri was emerging onto a main road from a side street where there was a stop sign. The court found that Mr Camilleri was responsible for the accident as a result of which Mr Ciantar suffered a ten per cent permanent disability.

The court, presided by Mr Justice Mark Chetcuti ordered Mr and Mrs Camilleri to pay Mr Ciantar EUR 66,103 in damages.
Pedestrian wins over EUR 22,000 damages

December 2008

Source: timesofmalta.com

A woman who was run over in a traffic accident in September 1997 was yesterday awarded over EUR 22,000 in damages.

Simone Zammit filed for damages against Doreen Portelli and Tarcisio Azzopardi. Ms Zammit told the court that she had been run over in Msida on September 26, 1997 by Ms Portelli and that she had suffered a permanent disability as a result of the accident. She requested the court to order either Ms Portelli or Mr Azzopardi to pay her damages. Ms Portelli pleaded that the accident had not been caused by her but was the result of negligent driving by Mr Azzopardi.

The court heard that the accident had occurred in Tower Street, Msida where the firm Vivian Corporation was unloading goods from a container to be placed in its warehouses.

A fork lifter was being driven by Mr Azzopardi who was unloading the goods and carrying them into the warehouses. Ms Portelli had driven into Tower Street and an eyewitness told the court that as Ms Portelli drove past the warehouses her car mounted the pavement and had run over Ms Zammit. Ms Zammit had fallen down and the witness told the court that he had seen both the front and back wheels of Ms Portelli’s car go over Ms Zammit.

As a result of the accident Ms Zammit suffered fractures to her pelvis and leg and had severe friction burns. She was also scarred. The court-appointed medical experts found
that Ms Zammit had a physical disability of 33 per cent and psychological damage of 50 per cent.

Madam Justice Abigail Lofaro found that the accident had not been caused by the operation of the fork lifter but by Ms Portelli’s driving and the fact that she had totally lost control of her car. The court therefore ordered Ms Portelli to pay Ms Zammit EUR 22,035.45 in damages.
Woman wins Lm15,000 damages

January 2006
Source: timesofmalta.com

A woman injured in a traffic accident in 2003 was yesterday awarded over Lm15,000 in damages by Mr Justice Lino Farrugia Sacco sitting in the First Hall of the Civil Court. Jacqueline Cauchi filed her writ for damages against Bridget Formosa and Joseph Vella.

She claimed that while crossing the road in Kirkop on a zebra crossing, she had been run over by a car driven by Ms Formosa. The car had been involved in a traffic accident with another vehicle driven by Mr Vella.

Ms Cauchi said she had sustained permanent injuries as a result of the accident and asked the court to order defendants to pay her damages.

The court heard that Ms Formosa had stopped her car so that Ms Cauchi could cross the road on a pedestrian crossing. While she was crossing the road, the car driven by Mr Vella hit Ms Formosa's vehicle from the rear and the vehicle in turn hit Ms Cauchi.

Mr Vella admitted liability for the accident in question and the court had therefore to evaluate the damages sustained by Ms Cauchi.

The court heard that Ms Cauchi was 26 years old at the time of the accident and that she had sustained a permanent disability of eight per cent. The court awarded Ms Cauchi Lm15,413.25 in damages. Mr Vella was ordered to pay all the expenses of the litigation and Ms Formosa was declared not to be responsible for the accident.
Appendix 9: Transcript with an Insurance Company representative

Dear Respondent,

I would like to invite you to participate in a research project that I am carrying out to study the adequacy of compensation limits stipulated by the European Union Motor Directive.

With your contribution, I would like to analyse the adequacy of the minimum amounts of cover stipulated by the EU Motor Insurance Directive 1 to 5, as well as understand the variables which influence court awards in the event of Motor accidents.

The information given in the questionnaire will be fully confidential. I would very much appreciate your time to complete this survey. Participating in this research study is voluntary. However, I would be very grateful.

If you have any questions or concerns about completing the questionnaire or about being in this study, you may contact me at saramicallef@hotmail.com. This project has been approved by the University of Malta.

Thank you for your consideration.

Yours Sincerely,

Sarah Micallef
1. The data in the table hereunder is ONLY related to awards made by judgements in the Court of Malta. Please complete in the blank spaces accordingly.

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I would not be able to give you my figures but I would be able to get them for you. You should also communicate with the MIA. I keep track of my figures on personal injuries and not so many people like disclosing the amounts they settle on personal injuries. With regards to out of court settlement, the information is less available. Usually, there are cases, which I would prefer to settle out of court and at a lower amount. This has to be agreed by both parties.

A formula is used to quantify the loss of future earnings. The injured party goes to the doctors/specialists to obtain a medical report. The wages are applied to the formula based either on the future earnings or those at the time of the accident. Legislations vary and some would require taking current earnings instead and vice versa.

There are very few cases of injuries with an amount of over EUR 350,000, and there would be very few above EUR 1 million. However, there was a case where the percentage of disability was so high that the amount of compensation awarded was EUR 1.25 million. The victim was completely dependent on machinery and his mother had to stop working.

Injuries are on the increase and so are awards. Courts do not compensate for pain and suffering. This is difficult to calculate but notwithstanding that, many people seek to claim for pain and suffering. Psychologists are involved and they determine whether it is a short term or long term issue, whether they are exaggerated or not and whether the affected parties are taking any medication. If courts award non-pecuniary losses it would lead to an increase in premiums and when people become aware that they can claim for pain and suffering they would be more likely to make a claim. However, questions arise as to whether they were suffering from any illnesses or pre-existing injuries.
Due to the data protection, information cannot be obtained directly from hospital. Another concern is whether doctors are writing the correct report or whether clients are exaggerating - or whether they are seeing appropriate doctors. Some doctors have more expertise in certain particular injuries. These play a very important part when it comes to finalising the figures. Another aspect is that very few lawyers do understand the motor insurance industry practice with respect to PD and PI. This would thus lead to settling claims out of court.

With respect to PD, the storm that happened on the 15\textsuperscript{th} of September 2012 caused millions worth of damages. Malta is not accustomed to that amount of rainfall at once which flooded basements and damaged machinery, property and other assets. In certain instances, water went up to 3 meters.

The limits are the minimum required by European law and these are the limits applied in Malta. Other EU countries provide higher amounts. Some of the PI cases are caused intentionally. For instance, one person of the vehicle affects all the family and all claim whiplash. This is fraud. There is currently a claim were there was only one person in the vehicle and the client is saying that there were more. This is hard to prove.

An accident that happened in Malta was claimed in Ireland. Lawyers were appointed in Ireland to determine how much it would cost to settle a claim. Fees were high and the way injuries are calculated are completely different. It could have been settled for EUR 67,000 in Malta but was settled for EUR 250,000/EUR 300,000. Moreover, fees that could have amounted to EUR 5,000 in Malta amounted to EUR 40,000 in Ireland. Different jurisdictions have different expenses.
Drivers are going outside Malta with their vehicles within Europe; however, the increased risk is not taken into consideration. The expense with regards to PI will outweigh premiums and reinsurance needs to be involved. It is easy for compensation to be higher than EUR 200,000 when a person is the breadwinner of the family, has a good salary, is in his 40’s; as the formula takes into account the years to retirement. A deduction is applied when payment is paid as a lump sum.

Courts tend to favour the injured party and hardly ever take into consideration the contribution towards the injuries and the accident itself; whether they are blindly crossing the road or were negligent from their end, were not wearing a seatbelt, whether they were not taking proper precautions, or were driving at a higher speed. These are some of the aspects, which need to be taken into account.

Limits do not change overnight. It allows sufficient time to ensure MS to transpose a directive in time. Premiums are affected, documentation needs to change and customers need to be informed about such changes upon renewal. Awards are calculated on previous judgements. For instance, the Butler vs. Heard case.

2. Rank the factors that influence the quantum of a court award where 1 is the lowest and 5 is the highest

Age of the victim and the working life are highly relevant along with the nature of profession and current income. The number of dependents and inflation also influence the quantum of court award, however, potential career progression is not that affected.
3. What in your opinion has been the trend during these past 10 years in terms of compensation and court awards?

3.1 Has there been marked increased / decreased in the amount of awards?

The trends in the past ten years show that the awards are increasing and it would keep on increasing. There are more people suing for injuries, whether it is an injury on site where they work, whether it is a car accident, or whether it is compensation for some improper operation. People’s mentality has changed and the more they know that they can claim from insurance company, the more they will. Malta is a very litigious country. Legal expenses are cheap compared to overseas and to go to court is not that expensive. If there is no agreement between the insurer and the claimant, the client will go to a lawyer. Fees are very expensive.

Since Fogg Insurance represents foreign companies, they could not understand why cases were taken to court. If there is no agreement, lawyers who lack expertise advice both parties to go to court. Insurers know what is right for the client and will not compensate less than the client deserves.

3.2 Has there been an increase / decrease in the frequency of Motor Accidents claims recently in view of the major improvements in the roads infrastructure?

Due to the volume of vehicles, there has been an increase with respect to motor accidents.
3.3 Has there been an increase / decrease in the severity of Motor Accidents claims recently in view of the major improvements in the roads infrastructure?

There has not been any major improvements in the road. When there is an improvement in a road, it would mean that drivers are accelerating more and driving faster. The may be due to the lack of the authority. Speed cameras are installed on roads after someone has died. Thus, the problem is that after there has been an accident, actions are taken. As a country, it is not proactive but reactive to what occurs in a particular road. For instance, putting a speed camera in the Mrieħel by-pass after two were killed whilst crossing the road.

Roads do contribute towards an accident due to the improper marking, there is no grip and when it is very hot the tarmac acts like oil, unlike proper tarmac. Another reason may be that there is no pavement and after an accident, they construct a pavement. People may need to walk further out in the street to avoid a bush. Thus, everything contributes to an injury and this is what courts need to consider. The court on the other hand, does not consider that it is not the driver’s fault but that of the local council and instead say that there is negligence by the victims. Courts feel that insurance should compensate the injured party no matter what. In the UK, they tend to understand better the work of insurers.

Injuries may arise where drivers are under the influence of alcohol. Police officers’ efforts fall short in effective breathalyser tests, especially since this requires accompanying proof before a court.
4. Do you think the current limits imposed by the Sixth EU directive are adequate?

At this point in time the limits are adequate as they are low, and if they increase the market will suffer. The premium needs to reflect the higher amount. There were very few judgements over and above the EUR 1 million with respect to PD and EUR 5 million with respect to PI.

A couple of years ago there was an accident were six students were leaving Gianpula and five of them died. Since it was relating to one accident, it was quite a big claim. It went over EUR 500,000 for all of 6 of them, that is 5/6 fatalities. They were students. Had they been working, it would have been much higher. Amounts vary depending on wage and make a distinction between an injured party who is still studying and someone who is employed, especially if he is in the professional field.

For instance, there was a case in Europe were a person got injured and his scoring at school was so high that he was classified of becoming one of the most prestige's accountant/lawyer. The figures/marks/results were so high that showed that he would be getting a good job and earning hundreds of thousands. He was about 16/17 years old and was totally disabled. He is still alive. Marks were so high that the judgement was based on the potential of that person. In Malta, compensation is heavily focused on the current earning.

If the new legislation comes into effect with respect to pain and suffering, insurers would be more cautious as judges would have no experience. If a mistake is made, the whole market will suffer. There is a monetary capping however; for instance in pain and
suffering up to a maximum “X” amount. The problem being how one quantifies pain and suffering.

If for instance, a person works in IT and he/she has damaged his/her finger, there is more way to the disability. However, if for example, an employee is working in a construction site, there is more weighting on the disability. Another instance is where someone who tears a ligament. Even a scar; the percentage disability is of 3%. If the victim is a female, you could be looking at 3% to 4% because women are more sensitive about their looks.

There was a claim where a person could not wear a skirt anymore because she had stitches due to the bad scar. She could not go to the beach and it affected her badly because of a simple scar. That is another reason why award are increasing and judges are getting more knowledge about physiological damages. Insurers receive reports from different doctors and after they come out with a percentage.

5. In your opinion what are the factors that could escalate costs in motor related accidents?

The higher a person’s income is, the higher the award. Also, the higher the value of the vehicle the higher the cost. The cost of repairing cars is more expensive now because of competition and they are getting cheaper cars from UK. However, the cost of the parts remains the same.

If the retirement age increases, this will have a bearing on the court judgement by way of the multiplier. If wages increase, one has more to add to the multiplier increase.
Psychiatric disability is very hard to proof. If a student is injured and is unable to continue studying at university and as a result fails the respective exams, then the student is unable to become a professional.

The awards are very high and on psychiatric level, it can easily go up to 40, although this is very hard to prove. The new proposed settlement awards may have an impact on insurers. It may be positive or negative - positive because you will know what the cost will be but then there is the unknown factor, which is the moral damage. This is what escalates costs.

Currently legal fees are cheap but would have an impact if they had to go up. If from EUR 30 court, fees had to go up to EUR 200 that would be substantially high. A lawyer would be appointed to negotiate the case. If lawyers do not agree with what the client is saying, they tend to go to different lawyers to find someone who agree with them. They would thus get three different opinions.

Moreover, there is a lot of fraud and theft, which leads to an increase in costs. Fraud amounts to 5% to 10% of the total claims paid.

6. **Do you think that the limits were always adequate throughout the years as the limits were increased from one Directive to another?**

Malta, unlike certain countries, adopts the minimum limits. Higher amounts means that premiums need to increase. The local market may not be ready for that impact. However,
if limits continue to increase, premiums would need to increase as well. This would not only have an effect on the market but also on other stakeholders, including judges.