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RTA AND OTHER INJURY CLAIMS IN SPAIN **INFORMATION FOR LAWYERS**

If you are acting for someone who has been involved in a road traffic accident then set out below is some general advice on the Spanish legal system.

The accident

There is no obligation on the police to visit the site of the accident unless the parties involved have suffered injuries, there is damage to the vehicles involved or one of the parties refuses to identify themselves. The only obligation an involved party has is to assist the injured party and exchange contact and insurance details. If the injuries suffered and damage to the car is minor then the drivers can sign a form accepting who was responsible for the accident. This is known as a “declaracion amistosa”. It is a form where the parties set out how the accident happened, if they are both in agreement to the facts of the accident, after which the insurance companies would apportion blame.

If the injuries suffered require hospitalisation then on leaving hospital a discharge certificate should be obtained, which will set out the name of the patient, the injuries suffered, how they were inflicted, the amount of days in hospital and the treatment prescribed. If appropriate the insurance details of the other driver should be provided to the hospital so that they can contact the insurance company for payment of the treatment.

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The Police

Usually after a road accident the Police will visit the scene, prepare a report and then send it to the local Court. The report will contain details of the driver's insurance companies, names of the drivers, witnesses, if any, statements from the parties involved and an objective assessment of how the accident occurred. The Police will generally only release the report directly to the claimant if they attend the police station in person. Alternatively a lawyer can obtain the police report from the Court with a power of attorney signed by the claimant. Unfortunately, this is a lengthy and costly procedure but often unavoidable.

Post-accident

All police reports will be reviewed by the Court and if the judge considers that there has been a serious criminal offence then a prosecutor will be instructed and criminal proceedings will commence where the burden of proof is 100%. If the incident is classed as a lower level criminal offence has been committed and parties to the action have not notified the court of their intention to join in the proceedings, then the Court will archive the file. The criminal procedure could be reopened at the discretion of the Court if an application is submitted to the Court requesting the reopening of the file if the claimant has been medically discharged and the application is submitted within six months of the discharge date.

The advantages of criminal proceedings are that rarely are legal costs awarded (useful if the case is not absolutely clear), it is usually quicker than civil proceedings and the Court will appoint a doctor to examine the claimant and value their injuries, compensation can then be awarded by the criminal court.

Limitation period

All civil claims have to be issued within one year of the accident or within one year of when the claimant is discharged from medical care or within one year of when the criminal file was archived.

The limitation period in civil claims can be interrupted by sending a letter to the defendant. However the claimant may have to prove sending the letter if limitation was ever disputed and therefore to overcome this a burofax, which is a letter delivered personally by the Spanish post office should be issued as the post office issue a certificate which is recognised as a valid document in the Spanish Courts confirming when the letter was sent and when delivery was completed.

The limitation period against town halls and government bodies is one year from the date of the accident or from the date that the claimant is medically discharged.

The Claim

After a review of the medical evidence the claimant's injuries should be valued to assess the amount of compensation that can be sought. The valuation can either be prepared by the Court appointed doctor or a private doctor who specialises in producing injury valuation reports.

The value of the claim will be assessed using what are known as the Baremo tables. The tables have three parts, which cover, compensation for cases where death has occurred, compensation for permanent injuries and compensation for temporary injuries.

In cases where compensation for temporary injuries applies, the tables which are updated on an annual basis by the Ministry of Finance, award a set figure of compensation for days spent in hospital, days recovering at home but absent from work and days back at work but still suffering. For 2010 these figures are 1) 66 euros for each day in hospital 2) 53.66 euros for each day off work but still recovering 3) 28.88 euros for each day still suffering but back at work. The total amount can then be uplifted on a percentage basis depending on the claimant's annual earning.

If the claimant has original receipts for the costs incurred as a result of the accident then these reasonable costs can also be claimed so long as they were incurred by the claimant or on behalf

of the claimant. Loss of earnings are not fully recoverable but an amount is paid according to the number of days off work and a multiplication factor applied according to salary level.

Costs

If an out of court settlement is reached in civil proceedings then each party generally pays their own legal costs. If the case proceeds to trial then if the claimant wins on everything claimed (i.e. on 100% of the amount claimed) then costs can be awarded in the claimant's favour this usually only include the local lawyer's costs according to a scale rather than the time incurred and would not include instructing solicitors' costs. In criminal proceedings there are no awards in respect of costs unless appeals are submitted in higher courts.

Legal costs in Spain are assessed by using a guide table issued by the local college of lawyers and tend to be less than the market rates charged by lawyers so even if successful in a claim the costs awarded to the winning party may not pay all legal costs.

Two further points to bear in mind for road traffic accidents. The claimant maybe entitled to legal expenses cover under the insurance policy and could instruct an independent lawyer not employed by the insurance company.

A Procurador is used in Court proceedings and they are independent professionals employed by clients and instructed by lawyers to present to and receive documents from the Court.

Jurisdiction and applicable law

Because of the length of time disputed claims take to come to trial in Spain and because of the adverse situation in respect of costs, it may be to you and your client's advantage to bring the claim in the UK courts directly against the insurers pursuant to (EC) 44/2001 and the case of *FBTO Schadeverzekeringen NV v Jack Odenbreit*. This may even be extended to non road traffic accident claims, such as claims against hotels, water parks etc. Where the defendant has a Public Liability insurer who can be sued directly (which is permitted under Spanish law) , the case of *Thwaites v Aviva* allows the insurer to be sued in the English Courts.

Although the situation regarding applicable law is rather confused and complex, it is understood that pursuant to Rome II, the applicable substantive law, principally liability and quantum is the law of the country where the accident occurred. The procedural law however, such as rules of evidence is the law of the country where the proceedings are issued. One would assume that this includes the award of costs. This is understandably being challenged by the insurers.

How we can help you

If you or your client elects to bring the claim in the courts of the UK or other home country, we can assist you as follows :

- 1) Obtaining a police report if applicable to help determine liability and obtain details of the insurers and witnesses.
- 2) Send a burofax to interrupt prescription (limitation). The case will be entered into our prescription diary so that we can remind you when the 12 month extension is about to expire. We can interrupt prescription on an annual basis until the claim is settled or proceedings have been commenced.
- 3) Assist in obtaining evidence in Spain such as witness evidence or locus reports.
- 4) Assist with the wording of the instruction letter to the medical expert so that the report provides sufficient information to value the claim according to Spanish law.
- 5) Advise which heads of damage are recoverable under Spanish law.
- 6) Provide expert reports on Spanish law in respect of both liability and quantum which will be CPR Part 35 compatible.

If you wish to instruct us or discuss Spanish personal injury claims in general, please contact Jon Sutton on 0034 951315161 or jonsutton@decottalaw.net