Insurance & Personal Injury

Relapse Recovery in Psychiatric Injury Cases

Psychiatric Relapse Recoverable?

Maureen, a mother, suffers from psychiatric injury after witnessing her young son, Sebastian, being hit by a car resulting in a leg fracture. She sues for her own psychiatric injury caused by Sebastian’s accident. However, the case drags on and the stress from the litigation causes Maureen to suffer a psychiatric relapse. Is Maureen able to claim for the costs of curing her psychiatric relapse?

Maybe, If Related…

In Lai Yuk Shim v Hung Ling Kwok HCPI 684/2010, the Plaintiff suffered serious injuries in a road traffic accident and was diagnosed with post-traumatic stress disorder. Her later medical notes revealed that she was distressed by the legal proceedings and by her relationship with her former solicitors. Subsequently, the Plaintiff suffered a relapse of her condition and the court found that such relapse was not due to her accident but to her anxiety over litigation. Notwithstanding such finding, the court held that a relapse of a psychiatric condition brought on by ongoing litigation is likely to be related to the accident, and that the wrongdoer may be held responsible for the relapse. In other words, the key ingredient is connectivity – whether the relapse is sufficiently related to the accident.

The court in Lai Yuk Shim cited a previous case, Fung Chun Man v Hospital Authority & Anor HCPI 1113/2006 in support of its verdict that connectivity to the accident is central to whether a subsequent injury can be claimed for. Where the wrongdoer prolongs litigation by not admitting his responsibility at the start, and the victim’s condition worsens, the wrongdoer is responsible for that worsened condition. This is as long as the worsened condition is genuine and not feigned, and the victim has sought to reduce his loss and damage caused by the worsened condition. Therefore, in Lai Yuk Shim, the Plaintiff’s relapse was an aggravated condition for which the wrongdoer is responsible.

… But Not Too Remote

The principle in Lai Yuk Shim, that a relapse may be related to the accident such that it is recoverable, was considered in the recent case of Lam Po Yee & Law Yiu Wai Ray v Dr. Chan Yee Shing HCPI 62/2011. In Lam Po Yee, the Plaintiffs were the parents of a young child who, when he was a baby, had his cut finger treated at the hospital by the Defendant doctor. Complications arose such that the finger had to be amputated. The Plaintiff parents claimed that the Defendant had been negligent and that they were secondary victims who
suffered nervous shock from the incident and were entitled to sue for damages. Midway through the litigation, however, the Plaintiffs’ psychiatric condition worsened when they received unfavourable news regarding the incident. In particular, they received a letter from the Medical Council stating that in their opinion the Defendant doctor was not negligent and that no further Medical Council hearings would be held. Updated psychiatric reports showed that the Plaintiffs experienced extreme helplessness, became deeply aggrieved and emotionally unstable after having received the Medical Council letter. They claimed that it had been a major blow to them because they thought that justice would be done but it had not.

The court refused to allow these updated psychiatric reports as evidence to support the Plaintiffs’ claim for damages for the relapse. The court was not convinced that the aggravated psychiatric condition was sufficiently linked to the amputation incident. The link was too remote. In coming to this conclusion, the court had considered that there were other events happening before the relapse which showed that the Plaintiffs’ increased distress may have been self-inflicted. In particular, the Plaintiffs had contacted Next Magazine and given a voluntary interview because they wanted to report the unfair outcome of the Medical Council to the press as the system had been disappointing them. The Plaintiff mother reported that she had cried after reading the report in Next Magazine despite being in a bus full of passengers because she found some relief that that the Defendant’s wrongdoing was finally revealed. The court held that the Plaintiffs may have brought about their relapse and thus refused to allow the updated psychiatric reports to support the Plaintiffs’ claim for damages.

**Conclusion**

The above cases demonstrate that where a person has suffered a relapse of his or her psychiatric condition as a result of litigation over the accident that caused the psychiatric injury, the relapse is likely to be recoverable as long as it is sufficiently related to the accident. There are two qualifiers however. The first is that the relapse must not be feigned. The second is that the Plaintiff must have sought to lessen the negative effects the relapse has caused.

---

For enquiries, please contact our Insurance & Personal Injury Department:

E: insurance_pi@onc.hk  
W: www.onc.hk  
T: (852) 2810 1212  
F: (852) 2804 6311  
19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

Published by ONC Lawyers © 2014