Insurance & Personal Injury

Can I Claim for Extra Expenses in Obtaining Insurance Coverage Following My Injury?

Introduction

Insurance allows individuals to protect themselves against certain risks. Targeting different needs, the insurance industry has derived a wide variety of insurance products ranging from the voluntary options of life insurance, travel insurance etc. to the mandatory 3rd Party Liability insurance for car owners. The premium payable for different people for same insurance coverage can vary significantly. It is no secret that life insurance is calculated by complex formulas taking into account of age, sex and personal circumstances of the insured. In the case of personal injury victims, it is possible that their insurance premiums would be increased due to their medical problems resulting from the injuries sustained. In extreme cases, their insurance coverage application may even be rejected. This article aims to discuss the extent that the personal injury victim may be able to claim extra premium spent on insurance products after he/she sustained the injury.

UK Authority on claiming extra premium spent

Summary of facts

In A and others v The National Blood Authority and others [2001] 3 All ER 289, the claimants are initiating a class action against the National Blood Authority for recovery of damages arising out of their infection with Hepatitis C from blood and blood products through blood transfusions from 1 March 1988. The UK Court found in favour of the claimants and decided that the blood products were defective within the meaning of Consumer Protection Act 1987. Upon establishing liability, the UK Court then proceeded to determine the damages to be awarded to each claimant.

One of the Claimants, Ms. V, sought damages for two types of insurance handicap. The first type was life assurance by way of mortgage protection. It was submitted that she and her partner had obtained a life cover for their house in late 1998. Upon the infection, the premium increased from £11.61 per month to £24.53 per month and the extra Premium amounted to £284.24 (the “Extra Premium”). It was further submitted that she and her partner had recently remortgaged their house and the new premium was £30.12 per month, an increase of £216.96 annually. Therefore, Ms. V claimed the Extra Premium and a future loss of £216.96 per annum at an agreed multiplier of 17.19, i.e. £3,729.54 (the “Future Premium”).
The second type of insurance handicap claimed by Ms. V was the refusal of critical illness coverage and also possible handicap in respect of permanent health insurance and/or employee benefit. It was submitted that Ms. V has sought a critical illness cover but was refused, such claim was also supported by relevant expert in the insurance industry. Ms. V thereby claimed £3,000 in relation to this insurance handicap.

**Decisions of the UK Court**

As in any personal injury claim, the loss suffered by the claimant cannot be too remote. In this connection, the Court laid down the following three principles:

1. The claim shall identify a specific area of additional expense or loss resulting from the unavailability or more restricted availability;
2. There must be evidence to show that the product would be sought and obtained by the Claimant;
3. There must be evidence that such products sought by the Claimant were not available or were available at a disadvantage to the Claimant.

In the case of Ms. V, since she had already taken out the life cover and the facts showed that but for her condition, her premium would not have increased, therefore, the Extra Premium claim was not disputed by the Defendant. However, the Defendant disputed the Future Premium claim. Relying on the joint expert report, the Defendant alleged that Ms. V should be able to obtain other insurance coverage at a lower premium. Further, there was a chance of her cure in the future and a review upon her cure would likely result in better underwriting terms. The Court considered both parties' submissions and awarded a figure of £2000.

In relation to the critical illness coverage and possible permanent health insurance and/or employee benefit handicap, the Court considered the employee benefit handicap was entirely hypothetical on the basis of present evidence. The permanent health insurance claim was also rejected by the Court as there was no indication that Ms. V was considering or able to afford permanent health insurance. Even though the critical illness coverage was in the realm of hypothetical, Ms. V did seek such cover but was rejected. In the circumstances, a sum of £1,000 was awarded solely for loss in the critical illness coverage.

**Implications**

The UK Court's decision in *The National Blood Authority* confirms that a claim in insurance handicap is recognised in law. As usual, potential personal injury claimants who wish to claim damages always bear the burden to prove their loss. The three principles laid down in *The National Blood Authority* serve as a good starting point to assess whether a claim in insurance handicap is likely to succeed.
It is also worth noting that bare assertions that a number of unsuccessful attempts were made by the claimants to obtain insurance may not suffice. Since most insurance is taken out voluntarily, the court might be slow to accept there is a genuine loss without concrete proof. For claimants who had already taken out certain insurance before the injury and the premium had gone up after the injury, this hurdle is relatively easy to overcome by producing relevant documentary evidence.

However, for claimants who intend to take out new insurance coverage after sustaining the injury but are “discriminated” such that higher premium are quoted or applications are rejected outright, expert evidence should be sought to support their case. Further, there is an inherent difficulty to quantify this type of claim. Essentially, insurance is available for people to mitigate risks. Even if the Court accepted that the claimants do suffer insurance handicap, it may be difficult to put a just figure to represent how one should be compensated for the inability to mitigate risks. As we have yet to see any Hong Kong Courts’ decisions on this point, it is uncertain whether the Court will accept this type of claim and if so, how this claim will be assessed.

**Conclusion**

To conclude, there is a good chance for personal injury victims to recover the extra insurance premium on showing proper documentary evidence. For claims base on new insurance application being refused, it might not be as straightforward. From a practical point of view, claimants should be aware that time and resources will need to be spent to secure the necessary evidence to substantiate such claim. The time and resources should be weighed carefully against the sums that he/she can be awarded under this head.

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**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.

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