Insurance & Personal Injury

Got Injured During a Sport Game – Whom May I Sue?

Introduction

Sport is an important part of life to many people, and people may be injured during the sport events. This newsletter aims at providing a general overview of the potential claims for injuries arisen from sport competitions or games.

Suing co-participants

The most common claim would be against co-players for negligence, especially in contact sport such as rugby and football. The claimant needs to prove on a balance of probabilities that the defendant owes a duty of care to the claimant and such duty was breached causing injury to the claimant. A case against co-players may not be easy to establish.

For example, in the recent case of Ma Yong Mei v Cheng Muk Lam [2015] HKEC 2580, the plaintiff sued his co-player for negligence when the defendant inadvertently extended his hand over the net and hit the plaintiff’s eye during a water volleyball game. The defendant denied liability and argued that jumping to reach the ball and attempting to hit it over the net is part and parcel of the game of volleyball. In examining a duty of care owed by co-players, the Court referred to Blake v Galloway [2004] 1 WLR 2844, which Dyson LJ said that

“… participants in sport games generally owe each other a duty of care …, and that the threshold for liability is high. … there will be no liability for errors of judgement, oversights or lapses of which any participant might be guilty in the context of a fast-moving contest. Something more serious is required.” (emphasis added)

The Court also followed Woolridge v Summer & another [1963] 2 QB 43 and held that to determine if a co-player might be found liable, the judge must be satisfied that the co-player’s conduct is recklessly disregarding the other’s safety. In Ma Yong Mei, the Court found that the defendant did not act recklessly and it was at most an error of judgement or lapse of skill on the defendant’s part. Therefore, the defendant is not liable.

Suing organizers

Another common defendant is an organizer of games / competitions. Generally, an organizer owes a duty of care to participants in ensuring that games are properly supervised and manned by professionals (e.g. qualified referees and standby medical teams). Organizers are expected to put sufficient safety measures in place. For example, in the famous case of
In sport negligence Company made. In minimising plaintiff flanker prop players In plaintiff (QB) etc properly sport. Other suitable have Liability sued F immediately that Boxing Watson

Further, organisers should ensure that the venue is properly maintained, otherwise, it may be sued for (a) negligence and/or (b) breach of the occupier’s liability pursuant to Occupiers’ Liability Ordinance (Cap 314). Although organizers may not be venue owners, they would have control over premises and hence owe a duty of care to all lawful visitors of the premises. Sport venues should be properly constructed, maintained and repaired to ensure they are suitable for games or competitions.

Other potential defendants

Other than the above, potential claims may also be made, though less commonly, against sport-instructors (for insufficient supervision or guidance given to claimants; or failure to properly assess the skill and ability of claimants; or failure to warn them of potential risks etc.). For example, in Anderson v Lyotier and another (t/a Snowbizz) [2008] EWHC 2790 (QB), the ski instructor was found negligent in failing to take into account the needs of the plaintiff who was the weakest in the class and yet he asked the plaintiff to ski in the slope which was beyond his capabilities.

In rare occasions, referees may be sued for failing to enforce the rules of a game to protect players (such as in the case of Vowles v Evans [2002] EWHC 2612 (QB)). In that case, a prop forward (a player) left the rugby game and the referee, in breach of the rules, allowed a flanker to take his place but the scrum collapsed, causing serious injury to the neck of the plaintiff who has become wheelchair bound. The Court held that some rules are designed to minimise the risk of the game and it is for the referees to enforce them with reasonable care to ensure the safety of players. Therefore, the referee was found negligent.

In some professional competitions, sport clubs are usually covered by insurance, and claims against sport clubs for vicarious liability of the negligent acts of their employees have been made. In the case of Benjamin Collett v Gary Smith, Middlesbrough Football and Athletics Company (1986) Ltd [2008] EWHC 1962 (QB), the defendant football player was sued in negligence for tackling fracture to the tibia and fibula of the plaintiff. The sport club of the defendant, Middlesbrough FC, was held vicariously liable.

Conclusion

In sport injuries, the defence of volenti non fit injuria, that is, by willingly attending a sport game, participants have consented to assuming certain risk of injury, is a difficult hurdle to
overcome. Nonetheless, reckless co-players, negligent organizers or sport clubs may still be pinned by the law.

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

<table>
<thead>
<tr>
<th>E: <a href="mailto:insurance_pi@onc.hk">insurance_pi@onc.hk</a></th>
<th>T: (852) 2810 1212</th>
</tr>
</thead>
<tbody>
<tr>
<td>W: <a href="http://www.onc.hk">www.onc.hk</a></td>
<td>F: (852) 2804 6311</td>
</tr>
<tr>
<td>19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong</td>
<td></td>
</tr>
</tbody>
</table>

**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 © 2016**