

The Law in Spain

YOUR PERSONAL INJURY CLAIM IN SPAIN

by *Sandra Wrightson, Barrister & Lawyer & her team at De Cotta McKenna y Santafé*

Anyone who switches on the Spanish news from time to time will be alarmed to see that after each holiday weekend or fiesta there is always a high death toll on the Spanish roads. Whilst steps are being taken by the Spanish authorities to clamp down on drunken drivers and reckless driving which are welcome, enforcement of the traffic laws is not yet having a direct impact on reducing the high number of deaths on Spanish roads as compared to the UK. If you have been involved or know someone who has been involved in a road traffic accident then set out below is some general advice on how to recover compensation. However it is always advisable to instruct a lawyer, preferably someone who speaks your language, as soon as possible after the accident.

The accident

Similar to the UK there is an obligation on the drivers to remain at the site of the accident until the police arrive. If the injuries suffered and damage to the car is minor then the other driver may ask you to sign a form accepting who was responsible for the accident. This is known as a "declaracion amistosa" and should not be signed unless you are absolutely certain of what you are signing and accepting. If the other driver wishes to leave the scene try and obtain, as far as possible, his insurance details, full name, identity card number and details of the vehicle before he does so. If the injuries suffered require

hospitalisation then on leaving the hospital ensure that you obtain a discharge certificate, which will set out the injuries that you have suffered, the amount of days in hospital and the treatment prescribed.

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 drivers insurance companies, names of the drivers, witnesses, if any, statement from the parties involved and an objective assessment of how the accident occurred.

Post-accident

Once you have been discharged or in the event of a death after the funeral, the relatives or victim should seek legal advice as the claim has to be brought within 1 year of the accident. If you have a valid motor or other insurance policy then read the policy carefully to see if you have legal expenses cover. If you do then contact the insurance company, notify them of the claim (if they have not already been notified) and ask them how much cover you have and whether or not you are permitted under the terms of the policy to use your own lawyer rather than their huge claims department, which may not offer personalised service.

When instructing a lawyer ask him for details of his charges and an explanation of the action that he will take on your behalf.

The first steps a lawyer will take is to contact the Court and obtain a copy of the Police report which will contain some important information. He will also notify the Court if proceedings are ongoing that his Firm is instructed and appoint a Procurador. A Procurador is a Court Official employed by the lawyer to present documents to the Court and notify the lawyer of progress

of the claim in the Court.

The Claim

After the review of the Police report and legal proceedings the victims injuries should be valued to assess the amount of compensation that will be sought. The valuation can either be based on the hospital discharge report or on a report prepared by a Court appointed doctor. The value of the claim will be assessed using what are known as the Baremo tables. These tables split the valuation of the claim into two. The first part is for loss of earnings, time spent in hospital and recovering for which a fixed daily amount is awarded. The second part is for long lasting injury and physical loss. In addition if the victim has receipts for the costs incurred then these can also be claimed so long as they were incurred by the victim or on behalf of the victim. Flights for visits by relatives will usually not be recoverable.

Once the value of the claim has been prepared and agreed with the victims or relatives then a settlement can be negotiated with the other side, usually their insurance company also known as the defendant insurer. If negotiations fail then legal proceedings should continue in parallel with any negotiations. If an out of court settlement is reached then bear in mind that legal costs will usually be met by each party.

Sandra Wrightson is a Barrister at De Cotta McKenna y Santafé, a law firm specialising in all aspects of Spanish Law for English speaking clients, including personal injury. Centro Comercial Valdepinos 1 y 3^a Urb. Calypso 29649 Mijas Costa (Málaga) Tel.: +34 952 931 781 Fax: +34 952 933 547 Email sandrawrightson@decottalaw.net