Tour Operator’s liability and road traffic accidents causing serious personal injury and/or death – making sense of the chaos

On the 11th March 2014 a microbus carrying 17 Swiss tourists crashed in Gran Canarias, killing one person and seriously injuring 7 others.

Fortunately, such accidents are rare events. But precisely because they are rare, when they occur, the foreign tour operator and their insurers need to understand what is going on in Spain in the days and weeks after the accident and make sense of the chaos, not only to better attend their respective clients, but also to measure their own potential exposure.

❖ Criminal proceedings:

Where there has been a road traffic accident (RTA) causing serious injury or death¹, and the Spanish police have been called to the scene, this will trigger a formal investigation by the police and in turn the police will notify the local criminal court to open an investigation into potential criminal liabilities.

All evidence, witness statements, accident scene photographs and forensics collected by the police will be delivered to the criminal judge.

The tour operator and their insurers will normally be allowed to appear in the criminal court’s investigation and obtain copies of all pleadings, and attend and question all witnesses.

Further, the parties can request that the court adopt particular lines of investigation to determine whether there is criminal liability.

Specifically, the tour operator and their insurers can request that the court obtain copies of all relevant insurance policies covering the liability of the coach company/driver. In addition, and where relevant, requests can be made to third parties for documents and testimony etc., that would unlikely otherwise be available to the tour operator and their insurers.

Consequently, as soon as the tour operator is made aware of the RTA, their Spanish lawyer should be speaking with the Spanish police to find out which court is in charge of the criminal investigation. Thereafter, the tour operator should consider whether to appear in those proceedings to take advantage of the potential to obtain documents as well as stay up to date with all the evidence on liability being collected by the Spanish criminal judge.

❖ Time limits

The general rule in Spain for claims in tort is one year as from the date of the accident causing the injury.

In relation to a RTA, the triggering of this time limit may vary depending on whether there is a criminal investigation (which will suspend the time limit) or whether the injury itself is sufficiently severe to take a long time to stabilize or consolidate. In both these situations, the time will not start to run until the criminal investigation is closed, or the personal injury has stabilized/consolidated.

¹ A criminal investigation will also be opened in relation to any serious injury or death that has occurred in a hotel and notified to the police.
However, general good practice is to always protect the claim by sending registered claim letters to the potential defendants, prior to the first anniversary of the date of the accident and thereafter to continue protecting the time limit on a yearly basis.

- **Limited liability:**

Compensation for personal injury and death claims arising from a RTA in Spain are limited to the quantum awarded in accordance with the Road Traffic Accident Compensation Schedules (the *Baremo*) applicable at the date of the accident. Whilst strictly speaking the *Baremo* is only a guide for compensation for road traffic accidents, for a long while now, the Spanish courts have been using the *Baremo* as a reference for personal injury and death claims in general.

The *Baremo* lists all conceivable personal injuries and provides a complicated system of points, not for the injury itself, but for the permanent and enduring side-effects. The *Baremo* awards compensation for days in hospital and days of forced confinement.

Once the basic compensation is calculated, the *Baremo* then provides for various correcting factors to apply to take into consideration the personal situation of the injured person including, the seriousness of the injury, loss of earnings, home help, adaptation of the home etc.

All proven and justified medical expenses should be recoverable in full.

- **Medical expert**

A medical expert must be appointed to assess the injury and calculate the points under the *Baremo*. All Spanish insurers have their own medical experts. It is therefore essential, on the more serious personal injuries claims, that a Spanish medical expert be retained from the outset to offer guidance on quantum. The Spanish medical expert will also be able to identify medical documentation that will exist in Spain to potentially assist in evaluating the injury in relation to any claim pursued against the tour operator directly.

Where possible, and in order to ensure that all medical information is made available to the Spanish medical expert, the injured tourist should be asked to sign a Medical Records Release and Consent Form.

- **Settling claims**

Spanish insurers will not normally settle without a) evidence of the accident giving rise to the alleged injury and triggering their insured’s liability and b) medical reports.

Spanish insurers will normally expect to see translations into Spanish of any foreign language medical reports.

- **Legal costs**

Legal costs are not recoverable for amicable settlements.

Where there is litigation in Spain, costs are at the discretion of the judge and where awarded, the regional Law Societies have fixed fee scales based on quantum of the claim.

This note is for reference only and is not intended to substitute formal legal advice.

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