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Does the employee or former employee have the right to claim compensation under civil law for sickness caused by working conditions which is not an occupational disease – case study

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SUMMARY

The basic form of compensation for damages incurred as a result of an accident at work or an occupational disease are benefits provided for in the Act on Social Insurance against Accidents at Work and Occupational Diseases of 30 October 2002. If they prove to be insufficient, a person who has suffered an accident at work or an occupational disease may claim supplementary benefits from the employer on the basis of civil law. However, analyses of the health status of the working population in Poland show that occupational diseases are slowly becoming rare, which does not mean that the health status of the working population is improving. Diseases which have been indirectly affected by the development, course or prognosis of the working environment or the way in which it is performed are increasingly recognised. On the basis of the case described, a legal analysis was made in order to answer this research question: does an employee or former employee have the right to claim compensation under civil law for an illness caused by working conditions which is not an occupational disease? The case described above and the legal-dogmatic analysis allow us to conclude that in the Polish legal system it is possible to pursue supplementary claims against the employer in the event of the occurrence of not only occupational diseases, but also other illnesses related to the work performed.

Key words: *occupational disease, work-related disease, compensation, reparation*

INTRODUCTION

The possibility of claiming damages under civil law by employees changed with the legal status in force in a given period of time. The Supreme Court once held that all claims of employees may not exceed the limits set forth in the Act of 12 June 1975 on benefits in respect of accidents at work and occupational diseases [1]. This meant that the benefits specified therein were accepted as full satisfaction of all claims for damage to health or death resulting from an accident at work or occupational disease. This deprived the employees of the possibility of pursuing supplementary claims in accordance with the provisions of the

Civil Code [2]. With the entry into force of the Act of 24 May 1990 amending certain provisions on retirement benefits, employees were able to pursue supplementary claims [3].

At present, employers are obliged to pay accident insurance premiums for each employee they employ. These contributions are used to pay benefits under the Act of 30 October 2002 on social insurance against accidents at work and occupational diseases [4]. These benefits are the basic form of compensation for damages incurred as a result of an accident at work or occupational disease. If they turn out to be insufficient, i. e. do not cover the entire damage incurred, then the person who suffered such damage (an employee injured as a result of an accident at work or occupational disease or a person injured as a result of the employee's death) may claim supplementary benefits from the employer on the basis of civil law [5].

Accordingly, the payment of accident insurance contributions does not fully relieve the employer of its liability in respect of accidents at work or occupational diseases. In addition, the employer may be held liable by the civil law on the basis of fault (Article 415 and Article 416 of the Civil Code) or risk (Article 435 of the Civil Code) [6]. By fault, an employer will be liable if, in a particular situation, he has failed to do what he should have done or has made the wrong decision, which resulted in the occurrence of an accident at work or an occupational disease. In this situation, the injured party or a member of his/her family must prove before the court: the employer's fault (i. e. unlawful act or omission, as well as wilfulness or negligence), damage (damage to health) and causal link between the unlawful act or omission and the damage [7]. Some employers have more responsibility - responsibility at risk. This type of civil liability is borne by employers who run their own businesses or plants on the basis of natural forces (e. g. steelworks, mines, transport plants, power plants, industrial construction companies, bridge builders, communication facilities, pipelines).

In this case, the employer is liable for personal injury or damage to property caused to anyone by the movement of the plant or enterprise. A risk-based civil liability claimant only has to prove the damage and the causal link between the company's activities and the damage. There is no need to prove guilt or illegality (negligence of duties related to health and safety) [8].

As a result of an accident at work or an occupational disease, an employee may demand compensation for both material and non-economic damage. Compensation for

personal injury (health disorder, personal injury) includes compensation for any costs incurred as a result of the injury (e. g. medical expenses, home care, lost earnings) as well as the granting of a pension as a result of the loss of professional capacity. On the other hand, compensation for non-material damage amounts to awarding compensation, i.e. financial compensation for the non-material damage. Therefore, in the case of personal injury or health disorder, the aggrieved party may claim the following financial benefits under civil law: one-off compensation to cover any costs resulting therefrom, disability pension or health disorder, to compensate for permanent damage, compensation for non-economic damage by granting an appropriate sum of money as compensation for the non-material damage suffered. If, on the other hand, the event would result in the death of an employee, then the injured persons may claim: disability pension, one-off compensation, reimbursement of medical costs and funeral and financial compensation for the non-material damage suffered [9].

The benefits described above are complementary to those available under the Act of 30 October 2002 on social insurance against accidents at work and occupational diseases. This means that they can only be claimed after the Social Insurance Institution has granted a one-off compensation for permanent or long-term health impairment or disability pension [10]. The key issue in this work is, therefore, whether the employee or former employee has the right to claim compensation under civil law for an illness caused by working conditions if the illness is not recognised as an occupational disease. Undoubtedly, in such a situation an employee may not claim benefits under the Act of 30 October 2002 on Social Insurance against Accidents at Work and Occupational Diseases. If he is not entitled to a basic form of compensation for damage caused by accidents at work or occupational diseases, is it appropriate to grant him a right to a complementary right of material redress?

CASE STUDY

A miner working for 24 years in a mine retired in 1997. During his working life, he was exposed to noise. Personal protective equipment in the form of earmuffs was not granted to him until the 1990s, the end of his employment. But before he retired, he had a hearing loss. The health problems of the hearing system increased significantly after the termination of employment and retirement. In the years 2003-2005, a miner tried to recognise hearing loss as an occupational disease, however, both the State Sanitary Inspectorate, the State Sanitary

Inspectorate and the Voivodship Administrative Court assumed that the hearing loss diagnosed by a miner did not give rise to the finding of an occupational disease. Despite the fact that the disease was not considered to be occupational, the miner filed an action with the Regional Court for compensation from the mine for permanent hearing loss, demanding PLN 50 thousand.

The Court of First Instance, on the basis of the expert opinion of the Ophthalmologist, found that, at the time of his retirement, the miner had a minimal hearing impairment, but that this did not affect his family and society, nor did it cause him any significant hearing impairment. The court found that working conditions could have been one of the causes of the disease in question, but that the hearing loss observed between 1997 and 2005 could not have been the result of excessive noise in the mine, as the miner was already retired at the time. Referring to Articles 444 and 445 of the Civil Code, the court established that the claimant did not suffer any personal injury or health disorder which could cause him harm, but only this fact would give rise to awarding him adequate financial compensation from the respondent. The Regional Court therefore dismissed the action brought against the mine. He decided that the miner had not demonstrated any harm resulting from personal injury or health problems caused by the harmful effects of working conditions.

The miner appealed against the above verdict. The court of second instance divided the findings of fact of the Regional Court as correct, precise and based on convincing evidence, thus dismissing the appeal. The miner's attorney, filing a cassation appeal, referred the case to the Supreme Court.

The Supreme Court noted that it was a mistake for both the Regional Court and the Court of Appeals to focus on the determination of the claimant's hearing loss at the end of the employment relationship. After all, the miner was openly signalling a clear deterioration in his hearing and an increase in his hearing problems during his retirement. According to Article 316 of the Code of Civil Procedure [11], findings should be made with reference to the time when the claimant made a claim or even to the time of the judgment. Therefore, the current ailments of the miner - his or her mental and physical suffering, limitations on his or her functioning in family and social life - are important. The fact that health problems were previously so small that they were not recognised as an occupational disease does not alter the fact that the effects of work on exposure to noise may subsequently have intensified.

It is a mistake to assume that, since health has deteriorated during retirement, it cannot be regarded as a consequence of working in a mine. The effects of exposure to noise can be felt after many years. A causal link may also be normal where an event has created conditions for the occurrence of other events, only the latter of which have become the direct cause of damage. Even a minor damage to health requires compensation for the damage caused (the compensation granted will then be small). With this in mind, the Supreme Court ruled: "The employer's liability to compensation pursuant to Article 435 of the Civil Code cannot be excluded also if the employee's current state of health is only an indirect consequence of many years of work in conditions harmful to health, and working conditions were only one of the causes of health disorders". [12]. The case was re-examined by the Court of Appeal.

DISCUSSION

The case described above proves that in the Polish legal system it is possible to effectively pursue claims for compensation under civil law for an illness caused by working conditions which is not an occupational disease. The employer is responsible for the occurrence of any work-related illness in the employees, and not only for occupational illnesses. The legal basis for this thesis are the provisions of the Labour Code, i. e. Article 227, paragraph 1: "The employer must apply measures to prevent occupational and other work-related illnesses" and Article 236: "The employer must systematically analyse the causes of occupational accidents, illnesses and other illnesses related to the working environment and, on the basis of the results of these analyses, apply appropriate preventive measures". [13]. The second legal act proving the validity of the thesis put forward is the Act of 27 June 1997 on the service of occupational medicine. In accordance with Article 6, paragraph 1 1, point (a) and (b). 2 (e,h) the occupational health service is competent to "the provision of active counselling to patients with occupational or work-related diseases and the provision of early diagnosis of occupational and work-related diseases [14].

Insofar as the term "occupational disease" is defined in Article 235 of the Labour Code: "an occupational disease shall be considered to be a disease included in the list of occupational diseases if the assessment of the working conditions undoubtedly shows, or is likely to show, that it was caused by factors detrimental to health in the working environment or as a result of the way in which the work was carried out'. [13], the remaining work-related

illnesses were not precisely defined. These are all diseases which are not included in the list of occupational diseases or which do not meet the definition of a specific occupational disease, and the development, course or prognosis of which has also been affected by the working environment or the way in which it is carried out. In court rulings and resolutions, these diseases are referred to interchangeably as follows: parasitic diseases [15], occupational diseases [16-19], diseases caused by working conditions that are not occupational diseases [16, 19-20].

The case described and legal basis cited leave no doubt as to the validity of the thesis put forward that an employee or former employee has the right to claim compensation under civil law for an illness caused by working conditions which is not an occupational disease. In accordance with the Supreme Court ruling: "The employer's liability towards an employee in respect of a tort consisting in causing health disorder (Article 444, paragraph 1 and Article 445, paragraph 1 of the Civil Code) also covers the effects of an illness caused by working conditions which are not occupational diseases (an occupational disease) [19].

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13. Ustawa z dnia 26 czerwca 1974 r – Kodeks pracy (Dz.U. 1974 nr 24 poz. 141).

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