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European View of Heart Attack Compensation

Pieter J. Hoets*

Germany.

AT THE END OF THE NINETEENTH CENTURY, Bismarck, the Iron Chancellor of Germany, tried to wean the working classes away from socialist ideas by conferring benefits upon them. In 1883, 1884, and 1887 the Social Insurance Acts were passed in the Reichstag. These laws provided that in case of illness, accident, or old-age incapacity, the workers should be paid a sum of money on which to live.¹

In 1911 Bismarck's labor insurance measures were extended and improved and the so-called Code of Social Insurance was adopted, which became the pattern of social insurance in most of the European countries.

The German code, or the *Reichsversicherungsordnung* of 1911, as amended, is still in force. Sections 165-536 of the Second Volume, deal with insurance against illness (*Krankenversicherung*); Sections 546-914 of the Third Volume cover accident insurance (*Unfallversicherung*).

Sections 1226-1500 of the Fourth Volume provide for disability insurance, and should be viewed as the roof or dome, covering both the illness and the accident cases.

The *Angestelltenversicherung* Act of 1924 extended the provisions to white-collar workers.

This Code of Social Insurance provided for compulsory insurance for virtually all workers (including teachers and actors), receiving less than a fixed sum of money in wages a year. The necessary fund is raised by contributions from the workers, from the employers, and in some cases from the state or the local government. From this fund ill or injured workers so insured receive enough to live on while disabled; and all persons so insured receive a pension when they become permanently disabled or too old to work.²

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¹ Becker, *Modern History* 554 (1952).

² *Id.*, at 559.

The Netherlands

The German system has been adopted in The Netherlands. Suppose that a factory worker in the Ford plant in Amsterdam, upon orders from his foreman or manager, exerts himself to such an unreasonable extent that he suffers a coronary.

Will he claim under the Accident Insurance statute or under the Illness Insurance provisions? The question is academic. Whether it is the one or the other, the benefits he will receive are the same.

If an employee, whose wages are under a certain "prosperity limit," suffers in the course of his employment physical or mental injury, which is caused by a more or less sudden, exterior event,³ such employee is covered by the Accident Statute of 1921.

Certain "professional" sicknesses, such as tuberculosis in sanatorium personnel, lead poisoning in painters, etc., are also mentioned in this statute.

Controversies are adjudicated by special Administrative Courts or Lower District Councils of Appeal, whose decisions can be reviewed by the Supreme or Central Council of Appeal at Utrecht.

It is remarkable, for so well established a system, that The Netherlands' Jurisprudence does not reveal any case in which the question of heart attack has been discussed. In one case it was decided that angina pectoris was not an accident suffered in the course of employment.

Decisions of the Central Council of Appeals have so interpreted the Statute that an employee is to be insured "such as he is." If an employee has an inherent or latent defect, or symptoms of a certain sickness, the Council will decide from case to case whether the harm was attributable to a great and sudden exertion on the part of the employee or to his inherent illness.

If an employee is covered by the Accident Statute, he will receive 80% of his daily wages during the following six weeks; thereafter this amount decreases to 70%. In case of death, his widow will receive 30% and each of the children under 16 years of age will receive 15%. But total the sum for the entire family will not exceed 60% of the deceased employee's wages. However, medical expenses, costs of treatment and, in case of death, funeral expenses to a certain limit, are also covered.

³ Definition given by the Central Council of Appeal at Utrecht, A.B. 1934, p. 197 (Jan. 18, 1934).

Members of the merchant navy, sailors, farmers and forest workers come under special Statutes, which follow the same basic principles.

Under the Accident Insurance Statute the employer pays the premium.

In case an employee whose wages are under the "prosperity limit" becomes sick (to be certified by a controlling M.D.) he is immediately covered by the Illness Insurance and also by the State Health Statute which entitles him to free medical care. And under the Insurance Statute he will receive 80% of his wages, then 70%, etc. See above, under the Accident Insurance provisions.

However, a sick employee can recover from the Sick Fund over a period of 52 weeks. Thereafter he is covered by the Invalidity Statute. But whatever it is called, the benefits are the same. Another difference is that the employee pays part of the Illness Insurance premium (1% of his yearly wages). The employer here pays 2%.

To administer the Invalidity Statute, special Councils of Labor Relations have been established, which, together with the Central Council of Appeal at Utrecht (see above) have exclusive jurisdiction over these matters.

Today most employers in the Netherlands have voluntarily adopted similar insurance plans for employees whose wages exceed the "prosperity limit." This attitude seems to be prompted not only because of a gradual acceptance by management of social responsibility in modern society, but also because of labor-shortage in the Common Market area.

Since the employee does not seem to be interested whether he will be paid by the Accident Fund or the Illness Fund, one would assume that The Netherlands' Government Insurance Bank, which agency pays out the insurance, would have an interest in case the accident of the employee was caused by the tort of the employer. This interest would be the right of redress. A very recent investigation in the files of The Netherlands Department of Justice has established that no such precedents exist.

A government spokesman stated: "Although a theoretical basis for such a tort action could probably be found in some instances, the proof of negligence of the employer, in our hypothetical case, would be so difficult to establish, that no precedents exist."

France.

Here a few cases seem to indicate that the elements and indicia of a sudden, violent, exterior and other preceding cause have to exist, if a heart attack or coronary is to be brought under the definition of an accident in the course of employment. The Code de la Sécurité Sociale gives the following definition of an accident in the course of employment:⁴

Est considéré comme accident de travail, qu'elle qu'en soit la cause, l'accident survenu par le fait ou à l'occasion du travail

Thus, basically the same elements are adopted as in The Netherlands. The statutory words, "qu'elle qu'en soit," meaning: whatever may be the cause, shift the burden of proof that the harm was not caused by or in the course of employment, squarely onto the shoulders of the French governmental agency.

French jurisprudence furnishes a few cases, which are not quite exactly in point, but which come fairly close.

A truck driver, without fault on his part, ran his truck over a careless pedestrian. He climbed out of his truck and found the victim under the wheels in such a horrible and mutilated state, that he, the truck driver, suffered a severe shock. The truck driver had demonstrated a weak nervous system, during a prior accident some time before. The French court said that:

When there is question of an exterior, sudden and violent event or action, which shakes up the weak nervous system of a man, who was already predisposed as to emotional shocks, caused by a preceding accident in his employment, then such aggravation of his mental state was also an accident in the course of employment.⁵

In the following case the element of exterior cause was stressed in connection with a "syncope," which is a momentary loss of sensitiveness and of movement often seen in connection with heart and lung troubles.⁶

Here an engineer was inoculated in preparation for a business trip to foreign countries. As a result of the inoculation

⁴ Code de la Sécurité Sociale, Art. 415.

⁵ Comm. Regionale. Appel Sécurité, Socialé Toulouse (June 25, 1956); Dalloz 1957; Som. 8.

⁶ LaRousse Universel, Vol. 2, 1033.

he was momentarily paralyzed and suffered a severe concussion from a subsequent fall. The French court held that this was an accident in the course of his employment.⁷

A contrario it seems safe to conclude that a heart condition of an employee, which is aggravated from a latent to an acute stage, without a demonstrable, exterior, violent and sudden cause, in France is also not an accident in the course of employment.

⁷ Recueil Dalloz 1958 Jurisprudence, p. 119. Nov. 21, 1957, Cour de Cassation; reference: Recueil Dalloz 1955; Febr. 5, 1954; Som. 9.