

Overview and new trends in the Italian compensation regime for accidents at work and occupational diseases



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This article looks at the compensation regime in Italy in respect of accidents at work and occupational diseases, and considers the widening of exposure to members following recent trends in the decisions of the Italian courts.

Our outline of the legal framework and benefits in respect of work accidents and occupational diseases does not include claims, benefits and potential exposure to the member arising from asbestos-related diseases, which is beyond the scope of this article.

Introduction

The Italian Constitution guarantees to all workers the right to a safe and healthy working environment. In accordance with this constitutional guarantee, the Italian government imposes the obligation upon all employers in Italy to insure their workers who are involved in hazardous activities against the risk of accidents in the workplace or diseases caused by work activities. This includes seafarers.

IPSEMA¹ (the Seafarers National Social Insurers) merged with INAIL² (Italian Workers' Compensation Authority) in 2010. Today, INAIL, as the nationally appointed social insurers, is responsible for providing compulsory insurance on behalf of all Italian crew members and shore staff against accidents at work and occupational diseases.

The legal framework and benefits

The current system of compensation in favour of workers provides for a public insurance scheme covering work-related accidents and occupational diseases.³

Pursuant to this scheme, seafarers enjoy comprehensive protection, ranging from the prevention of

incidents in the workplace to health and economic benefits, medical treatments, rehabilitation and reintegration into social and working life following a work-related accident or injury.

Compensation for permanent injury

In the event a crew is injured at work, he is entitled to payment from INAIL either as a *lump sum*, if the degree of permanent disability is assessed at between 6% and 15%, or an *annuity*, by monthly accruals, if the degree of disability is between 16% and 100%. The annuity level is in proportion to the percentage of permanent disability and the level of the crew's salary. No compensation is payable by INAIL in the event that the degree of permanent disability is assessed to be less than 6%.

As a matter of Italian law, the value of a permanent disability differs for the purposes of:

- a) compensation payable pursuant to the INAIL insurance scheme; and
- b) third-party liability claims which are pursued in the Italian courts against the wrongdoer or the employer.

¹ *L'Istituto di previdenza per il settore marittimo*

² *Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro*

³ The governing legal provisions are set out in Presidential Decree 30 June 1965 no. 1124, as amended by Legislative Decree 28 February 2000 no. 38

Overview and new trends in the Italian compensation regime for accidents at work and occupational diseases continued

The Italian Civil Code distinguishes between *patrimonial* damages and *non-patrimonial* damages in awarding damage for injury or occupational illness. Patrimonial damages relate to financial losses (e.g. medical treatment, loss of income), whilst non-patrimonial damages refer to personal injury suffered, which could be either of a physiological (e.g. permanent or temporary disability) or psychological (e.g. stress and anxiety) nature.

Age and degree of permanent disability	INAIL criteria	2014 <i>Tabella di Milano</i> criteria	Difference
40 years old 6%	€3,966.39	from € 9,699.00 to €14,549.00	144.5% 266.8%
40 years old 9%	€7,065.13	from €18,517.00 to €27,776.00	162.0% 293.1%
40 years old 15%	€18,592.45	from €42,600.00 to €61,344.00	129.1% 229.9%

The table above illustrates the differences in compensation payable pursuant to the INAIL scheme and the likely sums recoverable pursuant to a claim for third-party liability before the Italian courts arising from a permanent disability at work. The most widespread criteria applied by the Italian courts are found in the *Tabella di Milano* issued by the Tribunal of Milan.

According to Italian law, a crew member who suffers permanent disability equal to or greater than a 6% degree is entitled to receive compensation directly from the social insurers pursuant to the INAIL scheme.

However, and as illustrated above, the compensation payable pursuant to the INAIL scheme is limited. There remains a sizeable difference between the compensation that a worker receives pursuant to the INAIL criteria and the amount he would be entitled to receive following a successful claim in court, applying the general principles of Italian tort law.

The employer remains directly liable in law to compensate its crew in respect of the difference between these two sums (the differential damages) and other additional damages not covered by the social insurers scheme. In any case, part of such additional damages are subject to proof by the claimant.

Right of recovery by the Italian social insurers

Social insurers have a right of recovery or a right to seek an indemnity:

- (i) against the employer, whenever the employer has been held liable for a crime subject to the action of a Public Prosecutor.⁴ Indeed, the commencement of criminal proceedings is strictly unnecessary to facilitate such a recovery. A civil court has the competence to recognise the criminal liability of the employer for an injury suffered by the seafarer without prior commencement of criminal proceedings for this purpose. In such cases, the social insurers may recover against the employer all benefits paid out to the crew member by bringing a so-called *azione di regresso* (action of recourse); and
- (ii) against third parties, according to general rule laid down in Article 1916 of the Italian Civil Code, which provides for the so-called *azione di surroga* (action of subrogation).

⁴ Pursuant to Article 11 of Presidential Decree 30 June 1965 no. 1124

New trends in the Italian courts

Recent developments in the Italian courts may lead to a substantial increase in the exposure of members who are employers for liabilities arising from injury, illness or death of their crew.

First, the imbalance between the INAIL criteria and the third-party liability criteria used by the courts in compensating personal injuries suffered by a crew member is expected to increase in favour of the crew member. Whilst the INAIL compensation scheme tends to be fixed over the years and is not subject to increments save to reflect currency fluctuations, the third-party liability compensation scheme tends to be revised every two to three years, hence the increasing divergence between the two regimes. The quantum of patrimonial and non-patrimonial damages in the case of occupational diseases and injury is also set to increase.

Second, it is now easier for social insurers to protect lapsing time-bars in respect of a claim for indemnity by the social insurers against the employers for benefits paid out by the social insurers in the first instance. The usual three-year time bar commences from the date of a final and non-appealable order of a criminal court, or from the due date for payment by the employer of the indemnity set down by the social insurers. The Italian courts have recently ruled that the three-year time bar may now be interrupted by INAIL simply by issuance of a written demand to the employer, preserving INAIL's right to bring a recovery against the employer for the said sum.

Finally, a recent ruling of the Italian Supreme Court rendered in January 2016 has limited the scope against which the employers may claim a set-off against benefits already paid out by the social insurers when computing an award of damages payable by the employers. Clearly, this precedent favours the workers and increases a member's potential exposure in respect of the differential damages.

Conclusion

Due to the significant and increasing difference in compensation levels between the INAIL criteria and the third-party liability criteria, workers are expected to be more inclined to claim against their employers in respect of the difference in compensation between the two regimes. At the same time, employers may expect to be subject to more frequent claims initiated by the social insurers. It may not be easy to defend or limit the exposure of employers to such actions in the majority of circumstances. With a view to limiting the attendant legal costs and delays in defending such claims before the Italian courts, we suggest that members attempt to properly settle such claims in advance.

