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How does the new motor vehicle accident legislation affect bike riders?

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Over the past nine to twelve months the Government of South Australia has evidenced its intention to significantly amend the compensation system as it applies to the victims of motor vehicle accidents. A new system came into effect from 1 July 2013. There have been many suggested reasons for their wish to do so with the most likely being that, in an endeavour to fund their portion of the National Disability Insurance Scheme they have had to raise money from somewhere and that somewhere is from the Motor Accident Commission paying out less in claims.

To achieve this they have created an entirely new and, in our opinion, an unnecessarily complicated system of assessing claims.

In some respects it seems that they have approached the task from a statistical basis and notice that the most common car accident is a rear end collision giving rise to "whiplash" type injuries. They have targeted those so that the majority, in a numerical sense, of whiplash claims will not reach the new threshold imposed by the new legislation.

This of course has little or no effect on claims brought by injured bike riders as your average bike rider is unlikely to sustain a whiplash type injury.

The new system

We do not propose in this article to provide detail about the new system. It is complex and it is radically different than the previous system and, given it only commenced from 1 July 2013, there has not been sufficient time to properly analyse all implications.

To give you some idea though, we now have to deal with what are called injury scale values (ISV). The Regulations provide us with approximately 150 types of injury.

Claiming non-economic loss

The scale for ISV runs from 0 to 100. For a person to bring a claim for non economic loss (pain and suffering) they need to attain an 11 on the ISV scale. For that same person to bring a claim for future economic loss they need to achieve an 8 on the ISV scale.

To put this in some context, they have borrowed this ISV system from Queensland; the main difference being that in Queensland an injured person only needs to score 1 point on the scale before they achieve compensation.

We will try and provide an example which may be relevant to bicycle riders. It would not be unusual for a bike rider to suffer a wrist injury. When you go to the Regulations you find that wrist injuries are defined as follows:

1. Minor wrist injury:

A fracture from which the injured person almost fully recovers; an ISV 0 to 5.

2. Moderate wrist injury:

A wrist injury that causes some permanent disability leading to a whole person impairment of 10%; an ISV 11 to 15; or

A wrist injury that is not serious and causes some permanent disability with some persisting pain and stiffness; an ISV of 6 to 10.

3. Serious wrist injury:

An injury causing significant permanent loss of wrist function; an ISV of 16 to 24.

4. An extreme wrist injury:

The injury will involve severe fractures or a dislocation causing a high level of permanent impairment; an ISV of 25 to 40.

It should be noted that assessments of a person's ISV can only be made once their condition has stabilised. That may well be a considerable amount of time after the accident has occurred. One change to formalities is there is now a new Injury Claim Form which needs to be completed within six months of an accident occurring.

Claiming economic loss

The issue of economic loss is broken up into two areas with the first being for past economic loss, that is economic loss that occurs from the date of an accident until the date of conclusion of the claim. There is no ISV requirement for that loss presumably because it is sufficient for a person with a suitable medical certificate to prove economic loss in that manner.

As to future economic loss, there are some restrictions brought in under the legislation which will require judicial testing in due course. Nevertheless, there is more of a burden on an injured plaintiff proving his/her inability to continue working. In each case,

(that is both past and future economic loss) for reasons best known to those drawing up the legislation, they have reduced the amounts of entitlements by 20% across the board. For example, if your wage at the time of the accident was \$1000 per week, your benefit payable under the scheme would be 80% of that amount; \$800 per week. It should be noted that economic loss is not necessarily only restricted to lost wages but again, this is a complex area and your specific circumstances need to be carefully considered.

Claiming medical expenses

You should be aware that medical expenses will be met in the normal course of events as they are incurred.

Often in an accident a person will suffer from more than one injury. The sections dealing with multiple injuries are, to say the least, somewhat complex.

Because of the technical nature of this legislation, we cannot suggest strongly enough that bike riders who suffer injuries in motor vehicle accidents after 30 June 2013 seek early and experienced legal advice to try and put some context around their own particular situations.

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