

Subrogated claims - A comparative session on quantum across countries: Greece



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The General Rule of Double Recovery (cumulative compensation) (article 930 par. C of the Greek Civil Code) In force since 1946

The injured party (or members of his family) has a claim against the liable party NOT limited by a third party's obligation to indemnify or support the injured party and his family, even if the third party's obligation arises from the same tortuous act.
Therefore the injured party may well receive cumulatively both from the party at fault AND from the third party (eg social insurance institution, private insurer)

The exceptions to the rule of double recovery: Subrogation by law (ex lege assignment)

1. Social insurance/ welfare institutions (usually called 'Funds')
2. Private Insurers
3. The Auxiliary Insurance Fund for road accidents

1. Social insurance/ welfare institutions

- Institution for Social Insurance (known as IKA)
Law 1654/1986 art. 18
- Other social insurance/welfare institutions for farmers (OGA), free lancers, self-employed individuals
Law 3518/2006 article 47 par. 6
- All remaining social insurance funds by law 4272/2014 incorporated into the EOPYY (National Organisation for Health Services), subrogated to the claims of the injured party in case of road accidents and only when these claims concern health services.
- Foreign Social Insurance Institutions

N.B. Not all Social Insurance Institutions are subrogated in all claims (eg. The State Fund for civil servants and employees of the public sector and the NAT for seafarers are excluded from subrogation for loss of income)

2. Private Insurers

- For claims related to material damages to things or risks, not related to personal injury (eg. loss of vehicle, valuables) .
Private Insurance Law 2496/1997 art. 14
- In case of personal injury, claims corresponding *only to particular direct damages* (eg. medical costs, surgeon's fees, hospitalisation)
Art. 31 par. 3 of the Private Insurance Law 2496/1997

3. The Auxiliary Insurance Fund for road accidents
(known as 'Epikouriko Kephaleo')

A Fund specially created to indemnify damages

- caused by an unknown or not insured vehicle
- covered by an insurer who has gone bankrupt or whose license has been revoked.

- a) If the liable vehicle is unknown or not insured, the E.K. is subrogated to the claims of the victim (Art. 16 par. 5 of Law 489/1976) against the liable party and / or their insurer when and if they are posteriorly found out.
- b) No subrogation if the E.K. is called to indemnify the injured party because the insurer of the party at fault :
 - o has gone bankrupt
 - o its license has been revoked

SUBROGATION OF SOCIAL WELFARE INSTITUTIONS

NOT all claims are subrogated. Subrogation occurs only when there is congruity of the social benefits (paid to the injured party) with the injured party's claims against the party at fault.

Congruity means that Social Benefits and injured party's Claims must :

1. Serve the same purpose

Eg. Sickness wages & pensions - loss of earnings & deprivation of alimony
Medical costs & doctors' fees - medical expenses

2. Refer to the same time period

If the injured party is partially incapacitated for life and the social benefits are restricted to say 70 months, the Social Security Institution is subrogated to the claim of the injured party only to the extent of the benefits it paid for the 70 months.

3. Be equal in amount

The Social Welfare Institution cannot claim from the liable party more than it has paid to the injured party &
If Social Security benefits exceed the claim of the injured party against the liable party, the Social Security Institution cannot recover the excess it has paid to its insured.

Exclusion of subrogation

The Social Security Law 1654/1986 does not exclude subrogation in case the liable party is a family member of or lives in a common household with the injured party.

However,

The Supreme Court has recently ruled that article 14 par. 2 of the Private Insurance Law no 2496/1997 should be applicable to subrogation of Social Insurance Institutions.

According to art. 14 par. 2 of Law 2496/1997 subrogation is excluded when the liable party is :
mother/father/grandmother/grandfather/son/daughter/grandson/grand-daughter/
husband/wife of the injured party and / or other person living in a common household with the injured party.

Nevertheless,
subrogation is NOT excluded if the above persons acted intentionally.

SUBROGATION OF FOREIGN SOCIAL INSURANCE INSTITUTIONS

On the basis of Regulation 1408/1971 art. 93 subrogation is ruled by the law of the country of the social insurance, whereas the tort itself is ruled by the law of the country where the accident took place.

For non EC countries:

1. In case of bilateral convention, subrogation is applicable by the law set out therein ie the law of the country of the Social Insurance Institution

2. If there is no bilateral convention:

A) Subrogation is ruled by the law which is more closely related to the relationship of the injured party and his social insurer (art. 25 of the Greek Civil Code)

B) The tort itself (ie violation of law, concurrent / contributory negligence, extent of compensation etc) is governed by the law of the country where the accident took place (art. 26 CC)

B. SUBROGATION OF PRIVATE INSURERS

- Claims concerning material damages (NOT persons) (Art. 14 of Private Insurance law no 2496/1997)
Such as loss of vehicle, repair costs, towing costs, experts' fees, loss of personal belongings etc.
 - In case of health and accident insurance, only Claims concerning particular & direct damages of the insured injured party are subrogated (Article 31 par. 3 in combination with Art. 14 of Private Insurance law no 2496/1997)
- Such are: medical expenses, doctor's fees, nurses' fees, medicines, hospitalisation the insurance indemnity corresponds to such particular direct damages of the insured AND it has been agreed to cover such expenses up to a certain sum.

Meaning that Subrogation is excluded when :

1. The insurance indemnity has been agreed as a fixed sum (lump sum or in installments) ie where it has been agreed that the insurer is obliged to pay a particular sum if the risk occurs, WITHOUT examining the actually incurred loss/damage (eg life insurance in lump sum or installments).
2. The insurance indemnity has been agreed in medical and surgical SERVICES (instead of money)

Then the beneficiary is entitled to DOUBLE RECOVERY (eg. Loss of income from the party at fault and life insurance indemnity)

Exclusion of subrogation

According to art. 14 par. 2 of Law 2496/1997 subrogation is excluded when the liable party is : mother / father / grandmother / grandfather / son / daughter / grandson / grand-daughter / husband / wife of the injured party and / or other person living in a common household with the injured party.

Nevertheless, subrogation is NOT excluded if the above liable persons acted intentionally.

CLAIMS for moral damages and pain & suffering are not subrogated by law (art. 933 C.C.).

Because:

1. In social insurance : no benefits are granted for that reason, so there can be no congruity of this claim with the social benefit
2. In private insurance: it is not allowed by the private Insurance Law no 2496/1997

HOWEVER, they can be subrogated by contract only :

- after they have been contractually agreed by the injured and the liable party or
- a lawsuit concerning this claim has been served upon the liable party.

The claims for compensation are subrogated only to the extent of the injured party's claim.

Meaning:
If there is concurrent negligence, the claim is proportionately reduced.

SOCIAL INSURANCE SUBROGATION & PRIVATE INSURANCE SUBROGATION:
A COMPARISON

DIFFERENCES

1. Social Insurance : Subrogation mandatory
Private insurance: Subrogation may be excluded by agreement expressed in the insurance policy
2. Social Insurance: Immediate and unconditional subrogation (at the time of accident)
Private Insurance : Subrogation occurs when the insurance indemnity has been paid (not before)

SIMILARITIES

1. Subrogation only to the extent of the injured party's claims
2. Insurers do not have a claim of their own, they step into the shoes of their insurers
so if there is concurrent negligence of the insured, the claim is proportionately reduced.

SUBROGATION BY CONTRACT (contractual concession or assignment)

- Governed by the relative provisions of the Civil Code
- Parties are free to determine by agreement the extent and nature of the claims to be assigned to the insurer.

•Nevertheless, claims for moral damages/ pain & suffering may be subrogated by contract ONLY :

- After they have been contractually agreed by the parties (as to their nature and quantum) or
- After a lawsuit containing such a claim has been served upon the liable party

SUBROGATION BY LAW & SUBROGATION BY CONTRACT COMPARED

- By law (ex lege assignment /concession)
- ▶ Claims linked to certain and particular damages
 - ▶ The injured party receives from insurer and does not need to claim in Court against the liable/responsible party
 - ▶ No obligation for the injured party to announce to the insurer the existence of the claim against the liable party
- By contract (contractual assignment / concession)
- ▶ Claims usually refer to the total amount of the recovery/compensation
 - ▶ The injured party claims against the liable party for payment to the assignee or otherwise announces to the liable party the existence of the contractual subrogation.
 - ▶ Mostly concerns claims not subrogated by law such as (indicatively mentioned) Experts' fees, Lawyers' fees and judiciary expenses & Moral damages, pain & suffering (art. 933 of the Civil Code) only :
- ▶ After they have been contractually agreed between the injured and the liable parties or
 - ▶ After a lawsuit containing such a claim has been served upon the liable party

To summarise - which are the claims, for which there is no subrogation by law?

1. Voluntary and unpaid services rendered to the victim by a family member or friend.
2. Voluntary contributions of third parties
 - ▶ Donations from individuals or organizations, hospitalization free of charge, payments for medicines/surgeons etc, deductions in the official price list offered by the Hospitals or Medical Centers (Supreme Court Judgments 34/2003, 86/1962).
3. Salaries, wages, allowances, bonuses, social insurance contributions etc paid by the employer of the injured party
 - ▶ 15 days - one month
4. Salaries, wages, allowances, bonuses, social insurance contributions etc paid by the GREEK STATE as employer of the injured party
 - ▶ Art. 94 par. 1 of the Civil Servants' Code, Judgments 1127/2002, 1332/2003, 1005/1990 Supreme Court.
5. Pensions paid by the Greek State as employer to civil servants or by the NAT to seafarers
 - ▶ This still holds, even after the recent Law 4272/2014, which provides for subrogation only for medical expenses - modifications expected.
6. Alimony and medical expenses paid by third party having a legal obligation to support the injured party
 - ▶ Articles 1389 s. and 1485 s. of the Civil Code
7. Moral damages & pain and suffering as explained above

Thank you for your attention.



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