CHAPTER 12

Reparation for Personal Injuries in Sweden

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INTRODUCTION

Sweden has a complicated and extensive system of medical and social security, which among other things gives aid and reparation to the victims of accidents. It is supplemented in this task by private insurance and tort liability. Comparatively little is known, however, about the actual state of reparation of personal injuries. There are several reasons for this lack of knowledge. One is the general lack of information concerning the practical effects of legal rules. Another is the fact that the rules bearing on reparation are not focused merely on accidents, but on a much broader scene. They confer benefits which do not depend on the occurrence of an accident, and which are not measured by the extent of the loss. On the other hand, there are a few rules on reparation which apply only to special kinds of losses such as automobile and industrial accidents.

This intermingling of policies and effects appears in the growth of the various means of reparation. At the beginning of this century the law of torts, based mainly on the principle of negligence, provided the chief means of reparation. Accordingly, the special circumstances under which an accident arose decided whether there was any right to indemnity. The lack of solvency among tort-feasors restricted the possibility of recovery for those entitled to indemnities. "Poor relief" was another, very unsatisfactory, means of aid, for which bare necessity alone decided how much the victim should receive. Reparation was first improved for special kinds of accidents, principally some industrial injuries and
motor accidents, on the theory that the particular risk connected with the activity demanded special indemnification. Later, the right of compensation for industrial injuries came to be regarded as part of the workman's wages, and since 1916 all employees have been entitled to it, even if their occupations involve no special risk. As a part of the same reform, the special liability of employers was also changed into a duty to contribute to compulsory insurance. In 1929 automobile third-party insurance also became compulsory.

The relative importance of insurance limited to special kinds of accidents has, however, diminished as the general system of medical security has developed. General health insurance, covering temporary disability, came into force in 1955. Compensation for permanent disability was unsatisfactory at first, but has gradually improved along with the organization of an extensive system of pensions to those who retire, who are disabled, or who are left without support by the death of the breadwinner. In 1962 the earlier statutes on general health insurance and pensions were coordinated into one "Act concerning General Insurance" (Lag om allmän försäkring den 25 maj 1962). In addition to the growth of general health insurance, there have been increases in the coverage of voluntary liability insurance, and voluntary direct loss insurance against accidents.

In the following discussion the basic system of medical and social security will first be surveyed, with some indications of its limits. Later the other means of compensation, which depend either on the injured person's own special protection or on the circumstances of the accident, will be sketched.

A. THE "GENERAL INSURANCE" PROGRAM

The system of medical security aims primarily at meeting the needs of the common man. An underlying idea seems to be that for him even small expenditures may be serious and must therefore be covered, whereas the need for compensating his whole
loss of income is less urgent. Providing care at a satisfactory medical standard is more important than maintaining a freedom of choice, and the comfort of the patient must be secondary to medical needs. On the other hand, the system is not limited to the minimum standard, and both compensation for loss of income and the contributions from those protected by the system are scaled according to the income.

1. Hospital Bills

Expenses for hospital care will not generally be of much concern to an accident victim. Most Swedish hospitals are operated by municipalities—counties or cities— which raise practically all the necessary funds by taxation. The patient who lies in a public ward in a hospital belonging to his home municipality is charged only a small sum for the care, which covers all expenses, including doctors' fees, major operations, X-ray examinations, medicine, etc. Moreover, the patient is reimbursed even for this small sum by General Health Insurance which in practice pays the hospital directly. The patient in a private ward in a public hospital pays a larger sum, corresponding to the additional cost of care in such a ward, but doctors' fees and all other treatments are included in this sum. General Health Insurance does not reimburse the patient for this additional outlay, and whether he can be indemnified from other sources will depend on special circumstances, to be mentioned later.

If the need for hospital care arises outside the patient's home municipality—as may well be the case when he is the victim of an accident—he pays a much higher sum for treatment in a public ward, but he is reimbursed for this sum by General Health Insurance. The same rule applies if there is need for hospital care within another municipality, perhaps because no home hospital has the necessary resources. If a patient for some other reason is treated in another hospital than one belonging to his home municipality, he pays the higher sum but is reimbursed only by the
lowest sum for which he could have received care at a public hospital in his home community. This is the case also when a person is treated in one of the few private nursing homes that exist in Sweden.

The freedom of choice of a patient is accordingly limited. Within his home municipality he may to some extent choose where he will be treated, but the choice is in practice restricted by the limitation of hospital resources. The possibilities of choice may also be restricted by the rules regarding reimbursement for travel to and from the hospital, which will place some of the expense for travel on the patient if he goes to a hospital other than the nearest one. As appears from what has now been said, a patient who without a special reason wants to be treated in a hospital which does not belong to his home municipality is in an economically unfavorable position. Moreover, a municipal hospital is under no obligation to receive patients from other municipalities except for emergencies. Altogether, the present shortage of hospital capacity seems to constitute the most serious defect of the system.

2. **Outpatient Fees**

The rules regarding medical expenses for patients who are not hospitalized are less favorable to patients. Only 75 percent of the doctors' fees are reimbursed, and only within an established fee schedule. Doctors in private practice are free to charge more than the established rate, and they often do, in which case the patient may have to cover the rest of the cost himself. But most accident victims go to the hospitals where outpatients are charged according to the established rate, so they can generally count on being reimbursed by the General Health Insurance for 75 percent of the costs.

The costs of care in a convalescent home, of physiotherapy, heat treatments, and the like are also reimbursed up to 75 percent according to specified rules. The same rate of reimbursement
applies to costs of dental care—which is not generally included in Swedish medical security—when it is caused by an accident.

3. Rehabilitation

The special expenses incurred by those who are permanently disabled are somewhat less well taken care of. Formerly rehabilitation was neglected in the general scheme of medical security, but its importance is being realized more and more, and it is now in a period of development. Medical rehabilitation—which consists of work-therapy, adaption to living as disabled, acquiring and learning to drive special vehicles—is in the charge of the municipalities. Care in special establishments for such rehabilitation is provided free of charge, whereas the costs of prothesis, vehicles, and similar expenses are reimbursed at the rate of 75 percent. Vocational rehabilitation, which consists mainly in training in a new occupation, is also provided by the municipalities, although these are partly reimbursed for the costs by the state. The delays in providing such rehabilitation constitute a serious defect in the present system.

4. Pensions and Disability Benefits

A person who because of an accident (or because of illness in general) needs permanent care can get either a sum of 1200 kronor a year (roughly $240) in addition to the disability pension, which will be mentioned later, or, if he does not receive such a pension, a special compensation for disability of 2000 kronor ($400) a year. The compensation of 2000 kronor can also be granted to persons who, because of disability, have special expenses, such as high transportation costs.

In compensation for loss of income—as distinguished from compensation for special expenses—a distinction is made between temporary and permanent disability. The patient suffering from temporary disability (whether due to an accident or to any other cause) is entitled to a certain sum per day, based on his yearly
income. The minimum income to qualify is 1800 kronor ($360), and the highest income which is taken into account in the general health insurance is about 22,000 kronor ($4400), a sum which at present covers the income of most manual workers in Sweden. The sum per day varies from 5 kronor ($1) in the lowest income group to 28 kronor ($5.50) in the highest group. The rate of compensation can be computed at about 70 percent of lost income, but since the benefits are not subject to taxes, the indemnification is in fact higher than this figure would indicate, although it is not complete.

There are special rules regarding housewives who have no money income. They receive 5 kronor a day.

The permanently disabled are entitled to so-called advance pensions. The underlying idea is that he who loses his capacity for work at an earlier age than the normal age of retirement is entitled to the same kind of pension as the aged. The amount differs according to the degree of capacity that is lost. For loss of the entire capacity the pension is the same as the corresponding old age pension. For loss of half the capacity—which is the least degree that is compensated—one-third of the full pension is paid. There are two kinds of these pensions, both included in the "general insurance."

The basic pension corresponds to the national old age pension, at present 3325 kronor ($660) a year for a single person. The right to such a pension is independent of the economic circumstances of the disabled person both before and during disability. It has thus very little of the character of indemnity for loss of income; its principal aim is to provide the means for a minimum standard of living.

As already mentioned, small additional amounts are given to those that have special need of care or special expenses. Other additional amounts are given for wife and children. Generally the municipalities give other additional sums for housing expenses, although only on a means test.
The other pension corresponds to the old age pension which is based on the earned income. Here the main idea is that the right to the pension is part of the past earnings, and the general character is therefore more retrospective than prospective. The advance pension for a fully disabled person is 60 percent of an average past earned income computed by the aid of complicated rules. It depends either on the income during the four years immediately before the disablement occurred or on the total income of the disabled since he reached the age of 16, whichever is more favorable to him. The lowest income that is taken into account is 4000 kronor ($800) and the highest income is 30,000 kronor ($6000). The maximum pension is therefore 18,000 kronor ($3600).

5. Survivors' Benefits

If a person is killed by an accident, the rights of his dependents to pensions from public funds is the same as at death from any other cause. Here also we find the distinction between a national pension and a pension based on the earned income.

There is a national pension to all widows, subject to certain conditions regarding the age of the widow, the length of the marriage, and the care of children. The amount differs according to the age at which the woman was widowed. The full pension, which is the same as the national old age pension (or full pension at disability), requires that the woman was 50 or more when she was widowed or that she has children under 16 in her care. Earlier there was a means test for widow's pensions but this has now been abolished.

Children's pensions are given to children under 16 years. The yearly sum is 1000 kronor ($200) for those who have lost one parent and 1400 kronor ($280) for those who have lost both parents.

The survivors' pensions based on the earned income are subject to somewhat different conditions. The main principle is that the
widow receives 40 percent of the pension that the deceased received or would have received, had he become entitled to a pension at the time of his death. Children under 19 may also be entitled to pensions based on the earned income of the deceased. These pensions depend on the number of children, on the fact whether there is also a pension to a widow, etc. The maximum—for one child who alone is entitled to a survivor's pension—is 40 percent of the pension of the deceased.

All pensions are subject to taxes, although those that receive only the national pensions often do not attain the lowest income on which taxes are levied.

6. Source of Funds

"General Insurance," which has now been sketched insofar as it relates to accidents, is not entirely compulsory. On specific request, it is possible to exclude earned income from sources other than employment. The effect of such a request is to lower both the sums per day received for temporary disability and the pensions dependent on such income.

General Insurance is financed from several sources. A main source is state taxes, another is contributions from the employers (which finance all of the pensions dependent on employment income, and part of the costs of General Health Insurance), and a third is contributions from those that are entitled to the benefits. Hospitals operated by municipalities are financed by local taxes.

7. Subrogation

A common feature of this system is that, with few and unimportant exceptions, all benefits received under the system mitigate the liability of a tort-feasor; there is no "subrogation." The injured person cannot claim against the tort-feasor for those expenses which have been defrayed by insurance and public health services, nor can the insurance and health services make a claim for reimbursement. If the victim of an accident that has occurred by a
tort is treated in a public hospital, his own medical expenses, which are all that he can claim in damages, will often be small.

There has never been any subrogation in favor of public hospitals against any tort-feasors. Earlier, there was subrogation in favor of the General Health Insurance against those who had caused injury intentionally or with gross negligence or by motor traffic, but it was abolished by the reform of 1962.

The reasons for this step may have some interest. Subrogation against those that had acted intentionally or with gross negligence had proved absolutely worthless. With accidents due to motor traffic the earlier subrogation rested on the idea that motor traffic should help to carry the burden of acute illness caused by motor accidents. But the sums raised were never great (altogether about 5,000,000 kronor, the equivalent of $1,000,000, a year), and the social insurers have no wish to spend time on investigating the injury victim's right to tort damages in order to get these comparatively small sums. Moreover, as the group that pays premiums for compulsory motor third party insurance is largely the same as the group that pays taxes and contributions to General Insurance, it was considered unnecessary to move money from one of their pockets to another. When General Health Insurance was merged with the national pensions and earned-income pensions—to which subrogation has never attached—the simplest and most satisfactory rule was to abolish subrogation entirely.

B. INDUSTRIAL INJURIES INSURANCE

Industrial Injuries Insurance, which is regulated by a statute of 1954 (lag om yrkeskadeförsäkring den 14 maj 1954), covers not only accidents but some occupational diseases as well. It applies to all employees but not to the self-employed. It is already partly coordinated with the General Insurance, and is at present under revision in order to conform more closely to that insurance. In case of temporary disability the victim of an industrial accident generally receives only the benefits under General Insurance. For
those that are permanently disabled and for dependents of those that are killed the benefits are on the same general level as under General Insurance, but the conditions are partly more favorable. Disability pensions arise on the loss of one-tenth of the capacity for work, the actual instead of the past income can be the basis for a pension, the costs for prosthesis are compensated fully, contributions toward funeral expenses are granted, a widow can receive a pension regardless of the length of the marriage, pensions can be granted to others than widows and children, e.g., widowers and parents, etc. If a person is entitled to a pension both from Industrial Injuries Insurance and from General Insurance, three-fourths of the former pension are deducted from the latter one. He accordingly receives a little more in this case than if the right to a pension had arisen entirely under the General Insurance scheme. Altogether, there are more features of indemnification for loss in Industrial Injuries Insurance than in General Insurance.

Industrial Injuries Insurance is financed by employers. Benefits received from this insurance are deducted from recovery in tort. There is subrogation against motorists and against those who have acted intentionally or with gross negligence (as was the case in General Health Insurance before the revision of 1962); but this rule will probably be altered in connection with the expected reform of Industrial Injuries Insurance.

C. VOLUNTARY INSURANCE AND SICK-LEAVE PAY

1. Accident Insurance

There are many types of voluntary accident insurance in Sweden. The state insurance systems—including General Insurance and Industrial Injuries Insurance—can to a certain extent be supplemented by voluntary insurance from the same sources. Such insurance is generally cheaper than the corresponding private insurance. It is therefore granted to certain groups only, as when housewives and students are allowed to insure for
sums per day in case of temporary disability in order to get the same kind of protection as other citizens.

In *private* accident insurance various kinds of group insurance are prominent. An interesting species is the rehabilitation insurance which many trade unions have procured for their members. This insurance provides vocational rehabilitation on an individual basis, with the aim of enabling the injured person to be trained in an occupation that will maintain him on the same standard of living as earlier—a goal that is not easily attained. The importance of this private rehabilitation insurance diminishes as the public system of rehabilitation improves.

Most accident insurance—both individual and group insurance—is intended to cover the parts of losses that are left uncompensated by the state insurance systems. Insofar as the insurance applies to actual expenses and losses—medical, travel, etc.—it covers only expenses for which the insured is not reimbursed by state insurance, and even those expenses only insofar as they are necessary. There is always a maximum amount for such expenses fixed in the contract. Within this amount the insurers take a liberal view of what is necessary, and the insured can generally count on being reimbursed for what a specialist whom he chooses to consult will charge him (in excess of the amount that General Insurance pays), and even for the costs of care in a private nursing home. The drawback of the system is that for a slight accident the agreed sum for medical costs will suffice amply for all kinds of care, whereas for a serious accident they will often give only a minor contribution to the total costs. There has been an attempt to introduce hospital insurance of the Blue-Cross type in Sweden, but it has wholly failed to attract customers.

The benefits paid by accident insurance on account of income loss—sums per day for temporary disability and lump sums or pensions for permanent disability and death—are not affected by other indemnification that the insured will receive. There is no subrogation against a tort-feasor for sums corresponding to the
loss of income, since these sums are not taken into account when determining the loss of income of the injured person in assessing damages. On the other hand, there is a limited right of subrogation for the sums for medical costs, but few insurers seem to avail themselves of this right.

2. *Annuity Policies*

Besides, or in addition to, what is known as accident insurance in a strict sense, there are also various forms of private insurance that provide pensions at disability or death, regardless of the cause. Such pensions have existed for a long time for white collar workers and also for many foremen. Their importance is, however, diminishing as the general pensions are improving. Like similar sums from ordinary private accident insurance, pensions are not deducted from tort recovery, and there is no subrogation against tort-feasors.

3. *Sick Leave*

Contracts of employment for better paid employees of private enterprises often provide some kind of protection against the consequences of temporary disability, in addition to what General Insurance affords, but it is impossible to generalize on this point. State employees and many employees of cities and other municipalities may be protected against the consequences of both temporary and permanent disability by their contracts of employment. Most state officials are entitled to this kind of protection.

Sick-leave payments and pensions from employers are deductible from tort recovery, and the employers are entitled to subrogation. The state makes use of its right to subrogation, at least when considerable amounts are involved.

4. *Life Insurance*

Life insurance is widespread in Sweden, although the amounts are not comparable to those current in the United States. A novel feature is the rapid growth of group life insurance, largely under
collective contracts between employers and employees, which give considerable sums to the dependents of those who die while still in the age of employment. Since accidents are among the principal causes of death at these ages, group insurance must be counted partly as a means of protection against accidental death. Life insurance does not affect other benefits to which the dependents of the deceased are entitled, except that it is taken into account in assessing tort damages for fatal injuries.

D. TORT LIABILITY

In view of the extensive system of public and private protection against illness and death, it might be expected that tort liability would play only a minor role in the reparation of losses due to accidents. No doubt this is true as far as the most basic needs are concerned, and the importance of public insurance will probably increase in the future. But since the system of General Insurance does not aim primarily at the indemnification of losses, there are many gaps left in its reparation. Even those who lose small incomes may be insufficiently indemnified for disability or death, and for the higher income groups the sums per day on temporary disability cover only a small part of the loss of income. No existing kind of insurance gives sufficient protection when an injured person is in need of expensive permanent care. Another important field which is not affected by insurance is compensation for pain and suffering. In any event, benefits and pensions from private insurance are not deducted from damages for loss of income, and do not affect tort liability.

1. Measures of Damages

The Swedish rules of assessing damages for personal injuries aim at giving full indemnification for economic losses of the individual injury victim. There is thus no limitation of damages to the level of the "average citizen" (as is generally the case in Denmark and Norway). Damages are assessed very carefully, usually
down to the last penny of every single item. Damages for medical expenses are measured by actual expenses, provided that these are normal for the person under the circumstances. The usual compensation for permanent disableness and for fatal injuries consists of annuities. Lump sums are awarded only in special cases, particularly when the amounts are small. For fatal injuries, those who were legally entitled to support by the deceased become entitled to damages, but in this case the economic circumstances of the dependents are taken into account, and life insurance will often mitigate the liability of the tort-feasor. Damages for pain and suffering are high by Scandinavian standards, but low by American. Ten thousand kronor ($2000) is an unusually high amount. None but the victim himself is entitled to damages, except for fatal injuries.

2. Automobile Injuries

The two most important groups of accidents are—in Sweden as in most other countries—automobile accidents and industrial accidents. For automobile accidents there is, as has been indicated earlier, a compulsory third party insurance, covering damages which are computed according to the rules of the law of torts. The maxima are so high that it is in practice an open-end insurance. The victim of an uninsured or unidentified motorist is entitled to claim damages from any licensed automobile liability insurer; in practice such claims are handled by an association comprising all insurers of this class.

The prerequisites of tort liability for motor accidents are laid down by a statute of 1916. The motorist has the burden of proving that he has not been negligent, but it is comparatively rare that he can escape liability in this way. More important is the reduction of damages due to contributory negligence by the injured person. In cases of very serious contributory negligence, the injured person may lose his right to damages entirely, but more
often the damages are reduced to a fraction between three-fourths and one-fourth.

It has been estimated (in 1955) that between 40 and 45 percent of the total indemnities paid out from motor third party insurance are for personal injuries, but it remains to be seen what this proportion will be in the future when General Insurance has been fully developed and when Industrial Injuries Insurance may also have been reformed. Most claims based on automobile accidents are settled promptly, but suits for damages for such accidents are among the most common of all civil law suits in Sweden. Often they are tried together with the criminal prosecutions for negligent driving.

3. *Industrial Injuries*

In industrial injuries the employer is liable in tort for his own negligence and for the negligence of an employee in a superior position but not for the negligence of a workman of the same status as the injured person. Indemnities from Industrial Injuries Insurance (and from General Insurance) are, however, deducted from the damages, and subrogation is very restricted, as mentioned earlier. Since most employers have liability insurance covering industrial accidents, the victims can be fairly sure of receiving the damages to which they are entitled. Law suits are neither rare nor particularly common. The importance of the employers' tort liability for negligence is not economically great. Their costs for liability insurance—covering not only industrial accidents but also general tort liability—are only a small fraction of their costs for General Health Insurance and Industrial Injuries Insurance.

For accidents other than automobile and industrial, the main rule of tort is about the same as for industrial accidents. There is no general rule of vicarious liability at present, but the employer is liable not only for his own negligence but also for the negligence of employees in superior positions. Under the usual terms of liability insurance, the employer's insurance covers the
employees' liability for negligence against strangers (although not against employees), with the result that the nonemployed injury victim has the same protection as if the employer had been liable. The state has, however, no liability insurance, and if a man in military service negligently causes an injury, the victim will have a right to damages in tort only against the tort-feasor. There have been complaints that even where the state is responsible, as when a state employee in a superior position negligently causes damage, the state is slower in acknowledging and settling claims than private employers and their insurers generally are.

E. PUBLIC ASSISTANCE AND CHARITY

It remains to mention the role of poor relief, or rather of "public assistance" (socialvård) which is the term used at present, and of charity. The importance of public assistance in mitigating the consequences of accidents lies mainly in those cases where the limited compensation provided by social insurance is insufficient to maintain even a low standard of living because of the large family, or similar circumstances, of the injured person. There are also cases where a person, although he receives pecuniary compensation, fails to make such a use of this compensation that he can make a living. Charity has never been important in Sweden from a quantitative point of view, but it can provide relief where other means fail, for instance when a person who needs help in his home cannot get anyone to take care of him, and also in some special cases of rehabilitation.

F. CONCLUSION

Although much is being done for the victims of accidents in Sweden, few people would claim that it is enough. There are still too many people who suffer economic loss more or less permanently because of injuries. But one of the difficulties both in assessing the effect of reparation and in improving the future state is that some of those who are disabled suffer not only from the direct
consequences of the accidents but also from constitutional and environmental drawbacks. Even if they could make a living before the accident, the mental and physical strain of illness and disability affects them permanently and cannot be remedied by pecuniary compensation. Mitigating the consequences of accidents must therefore take the form of active rehabilitation and of improvement of the general conditions of living.