

The medical-legal framework of work-related accidents in the field of social security medicine for protection from common disease in Italy: a comparative analysis of some emblematic cases

Michele Sammiceli, Marcella Scaglione

Forensic Medical Doctor, Medical Legal Department of Italian Institute of Social Security (INPS), Siena, Italy

ABSTRACT

The Authors examine the critical issues that can arise in relation to the medical-legal evaluation of impairments caused by work-related accidents if included together with common diseases, *i.e.* not due to work or war, in the assessment to qualify for ordinary incapacity benefits from INPS (the Italian Social Security Institute). After a brief introduction to the Italian laws and regulations in this sector, the Authors present some emblematic cases to highlight operational procedures and consequent practical difficulties that a correct attribution of origin to injury - whether work-related or otherwise - can entail.

RIASSUNTO

Gli Autori esaminano le criticità che la valutazione medico legale delle menomazioni conseguenti ad infortunio sul lavoro possono presentare qualora incluse, assieme alla malattia comune, cioè non riconducibile a causa di lavoro o di guerra, tra quelle valutate ai fini del riconoscimento dell'assegno ordinario di invalidità erogato, in Italia, dall'INPS (Istituto Nazionale della Previdenza Sociale). Dopo una breve introduzione della normativa legislativa italiana nel settore, gli Autori, attraverso la descrizione di alcuni casi emblematici, espongono le modalità operative e le conseguenti difficoltà pratiche che una corretta attribuzione della genesi lavorativa e non della menomazione possono presentare.

RESUMEN

Los autores examinan las críticas que puede presentar la evaluación médico-legal de los impedimentos resultantes de un accidente de trabajo, en Italia, si se incluye, junto con la enfermedades que no dependen del trabajo o de la guerra, entre los evaluados para el reconocimiento del subsidio de invalidez ordinario otorgado por el INPS (Instituto Nacional de Seguridad Social de Italia). Después de una breve introducción de la legislación italiana en el sector, los autores, a través de la descripción de algunos casos emblemáticos, establecieron las modalidades operativas y las consiguientes dificultades prácticas que puede presentar una atribución correcta de la génesis de trabajo y no de la discapacidad.

Introduction

Work-related accidents, understood as injuries to workers by violent causes occurring in the workplace or during work, are covered in Italy by the National Institute for Insurance against Accidents at Work (INAIL). Article 2 of the Consolidated Text of Presidential Decree no. 1124 of 1965¹ stipulates that “*the insurance covers all cases of accidents that occur due to violent causes during work and result in death or a permanent incapacity to work, whether absolute or partial, or a temporary absolute incapacity requiring abstention from work for more than three days*”. Medical-legal elements specific to work-related accidents include the existence of a risk, a violent cause, the occurrence at work and the consequent bodily impairments, firstly to the general capacity to work and, more recently, to psycho-physical integrity (*biological damage*).^{2,3} The INAIL Unified Text of 1965 covered temporary or permanent disability, whether partial or absolute, understood as the beneficiary's capacity to work. Legislative Decree no. 38 of 2000,⁴ with regard to protection from occupational disease, introduced a concept that became central to civil liability: biological damage. This term refers to the damage to a person's psycho-

physical integrity that is susceptible to medical-legal evaluation; therefore, biological damage does not only include the work capacity, but also mental capacity, the ability to procreate, aesthetic damage, etc. The economic relief of disability caused by work can be in the form of *capital*, in the case of biological damage between 6% and 15%, based on the tables annexed to the Ministerial Decree of July 2000, or *an annuity*, in the case of biological damage greater than 16%. The capital is disbursed in a single payment, whereas the annuity is in monthly instalments, with an initial advance of the first three months.⁵

The term “*common disease*”, on the other hand, is used by the Italian social security system to define disease that is not caused by war, work or service. Protection from common disease, in Italy, is organised by the National Social Security Institute (INPS), which is now the *de facto* manager of both *social security invalidity* (sickness cover for insured persons of working age who pay contributions to the institution⁶), and of *civil incapacity*, the social disability protection system that also protects citizens that are unemployed or under working age.⁷ Law 222 of 1984⁸ is the legislative benchmark for protection from common disease of the insured person of working age. Article 1 provides for the payment of an allowance to beneficiaries whose work capacity for ‘*employ-*

ments suitable for capabilities⁹ is reduced to less than one third. Article 2 establishes the provision of a pension for beneficiaries who have lost their ability to perform any work activity in an absolute and permanent manner.¹⁰

But how does disability not arising from common disease but from a work-related accident fit the context of INPS social security protection from a medical-legal perspective? In the civil incapacity context, work-related causes cannot be considered for the purpose of estimating the general reduction of the work capacity. As such, by specific provision of Law no. 118 of 1971,^{11,12} work-related accidents are not assessed in the context of civil incapacity. In INPS social security medicine, however, a work-related accident can be the cause, alone or together with other conditions, of a reduction of more than 2/3 of the person's work capacity in employments suitable for his/her capabilities. How, then, do we prevent a disability already covered and compensated, in economic terms, by INAIL from being further covered also by INPS? How, in other words, do we avoid the duplication of compensation?

In this context, Law no. 335 of 1995,^{13,14} comes to our aid. In article 1, paragraph 43, the Law determines that "... disability pensions, survivor's pensions or the ordinary invalidity allowance covered by the general mandatory insurance for disability, old age and survivors, paid as a result of a work-related accident or occupational disease, cannot be accumulated with an annuity paid for the same incapacitating event, in accordance with the consolidated text of the provisions for insurance against work-related accidents and occupational diseases, approved by decree of the President of the Republic no. 1124 of 30 June 1965, up to the amount of the pension itself. The most favourable social security benefits received at the time of entry into force of this law shall be retained, with adjustment made in relation to future improvements". The article of the law basically defines the conditions under which INPS allowance payments do not accumulate with the INAIL annuity. Paragraph 43 of this article can be applied in an INPS social security disability evaluation, which allows deduction of the INPS allowance from the INAIL annuity, when:

- a. The incapacitating event that led to the INAIL annuity and the INPS pension benefit is similar;
- b. The incapacitating event caused by a work-related accident is subsequent to a common disease and is such as to aggravate the INPS impairment up to the medical-legal threshold (over 2/3 in employments suitable for capabilities);
- c. In the case of multiple infirmities, when the incapacitating event from a work-related accident suffices by itself to determine recognition of a work capacity reduction over 2/3 in employments suitable for capabilities.

On the contrary, paragraph 43 of article 1 of law 335/95 is not applicable when:

- a. The INAIL incapacitating event precedes the INPS common disease;
- b. The INAIL event does not suffice by itself to determine a working capacity reduction of over 2/3 in employments suitable for capabilities.

Case Reports

The concepts expressed above may be illustrated with practical cases taken from routine medical-legal evaluation activities:

Case #1

A 55-year-old male construction worker with injuries from a work-related accident caused by a fall from height while using

self-propelled machinery. Following the fall, which occurred from a height of about three meters, the man suffered a traumatic lesion of the cervical rachis at the C5-C6 level with consequent spastic tetraparesis and a contusive-lacerative trauma of the tendons on the long head of the biceps and the supraspinatus on the right shoulder, both of which were treated surgically. INAIL granted an 80% recognition of biological damage pursuant to Law 38/2000. The INPS doctor recognised the patient as invalid under Article 1 of Law 222 of June 1984; the doctor determined the applicability of paragraph 43 of article 1 of Law 335/95 since, as stated in the concluding remarks of the medical-legal expert's report, the "*debilitating conditions lie completely within the competence of INAIL*".

Case #2

A 47-year-old male farmer employed in his family winery, with injuries resulting from crushing by a tractor following a fall from the vehicle whilst working. The crushing of the worker's body caused fractures in the D10, D11, D12, L1 and L2 vertebral bodies, with consequent mild paraparesis of the lower limbs and neurogenic bladder. INAIL recognised 74% biological damage due to the accident.

A few years after the INAIL assessment, the man applied for an ordinary INPS disability allowance, as he was suffering from chronic obstructive pulmonary disease with dyspnea. The medical officer in charge of the INPS medical examination recognised the patient as invalid under article 1 of Law 222 of June 1984 and confirmed the applicability of paragraph 43 of article 1 of Law 335/95 as "*the pathology from a work-related cause is sufficient, by itself, to cause a work capacity reduction of more than 2/3 in employments suitable for his capabilities*".

Case #3

A 52-year-old male mechanical worker assigned to the repair and maintenance of heavy goods vehicles who, while working, suffered a blunt trauma to the lumbar spine with subsequent collapse of the body of the second lumbar vertebra (L2). INAIL recognised the beneficiary as having biological damage of 11%, in accordance with the tables annexed to Law 38/2000.

After a few years, the man applied for an ordinary INPS disability allowance: over the years, he had developed a right shoulder tendinopathy with a moderate functional limitation (the arm can be raised to about half the normal height) and spondyloarthrosis of the cervico-dorsal rachis with a mild-medium degree of functional limitation (flexion-extension and lateral spinal movements are reduced overall by more than 1/3). The INPS doctor recognised the subject as invalid under article 1 of Law 222/1984; paragraph 43 of article 1 of Law 335/1995 was not applied as the pathology covered by INAIL played a secondary role in reducing the insured person's working capacity in employments suitable for capabilities by over 2/3.

Case #4

A 55-year-old man employed as a pastry chef in a confectionery company. Following a fall at work, the man suffered a tri-malleolar fracture of the right ankle, which resulted in ankylosis of the ankle joint and subtalar-mediotalar complex. INAIL recognised 16% biological damage in accordance with the tables annexed to Law 38/2000.

A few years later, the insured person applied for an INPS medical examination to qualify for the INPS ordinary invalidity allowance. He had suffered from pancreatitis and post-thrombotic syndrome, which was treated with surgical recanalisation. Based on the positive evolution of the phlebotic picture and the pancreatic condition, the INPS doctor assessed the subject as

non-invalid under article 1 of Law 222/1984. Obviously, paragraph 43 of article 1 of Law 335/1995 was not applied.

Discussion

The cases examined illustrate the practical operational procedures to be implemented when the medical-legal evaluation of common diseases, under the INPS social security scheme, must deal with one or more work-related disabilities. The application of paragraph 43, article 1 of Law 335/1995 essentially prevents disabilities already compensated by INAIL from receiving further compensation from INPS.¹⁵ In other words, the legislator has sought to prevent multiple benefits being paid by different social security institutions for the same incapacitating event.^{16,17} Some legal decisions have been made in this context, which we could define as containment of public spending, such as that of the Court of Cassation no. 16137 of December 2000.¹⁸ This ruling showed that the legislator's decision was "essentially inspired by considerable financial strictness and justified by the need to contain social security spending, which had increased at the time of the pension reform. Without this express provision, accumulation would normally occur since these are two separate insurance schemes (...) funded by separate contributions (...). In a contingent moment of difficulty in public finance, the legislator can lay down the rule according to which the insured party or their survivors can (...) receive the compensation resulting from a work-related accident or occupational disease once only, without the consequence in social security terms of two distinct allowances deriving from that disability broadly compensating the same reduction in the capacity to work and to earn a living".

In a different jurisprudential orientation, the subsequent rulings of the Court of Cassation no. 5494 of March 2006¹⁹ and no. 22872 of September 2008.²⁰ Specifically, the first sentence concerned a worker who had been known to be an invalid INPS for a series of accident-related diseases already protected by INAIL, combined with a common disease, blepharospasm. The merit Judge denied the INPS ordinary invalidity allowance to the worker because blepharospasm alone was not enough to reduce his working capacity, in employments suitable for capabilities, to less than a third. The Court of Cassation, however, had invalidated the previous ruling by claiming that the two invalidities were not entirely overlapping.

This jurisprudential orientation has been confirmed, furthermore, by the recent ruling of the Civil Cassation, Labor section, no. 27510 of October 2019.²¹

Leaving aside the jurisprudential diatribes that have occurred over the years, however, in practical terms, with regard to the monetary liquidation of the claim, what can be done to ensure that the INAIL disability is not compensated by INPS as well? Practically, when INPS grants an ordinary disability allowance of a monetary value higher than that of the INAIL annuity, INPS will only be required to pay the difference between the INPS ordinary invalidity allowance and the INAIL annuity.

Conclusions

In these few pages, the Authors sought to explain in simple terms, through the use of case studies, the procedures for the medical-legal evaluation of disabilities resulting from work-related disease in the context of the Italian social security system for protection against common diseases. In the ten-years of experience acquired by the Authors in the sector, this has emerged as one of

the most sensitive and risky aspects, for medical examiners and for pension liquidation officers, in the routine social insurance evaluation procedures at the INPS Medical Legal Centres (CML).

Failure to indicate the applicability of paragraph 43, article 1 of Law 335/1995, which is not a rare occurrence, can lead to a duplication of compensation, placing a non-negligible economic burden on the Italian Social Security Institute. In other words, the risk is that the INAIL disability, and the resulting allowance that compensates it, are not adequately highlighted during the INPS medical-legal examination; as a consequence, the work-related disability is further compensated as a common disease.

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Correspondence: Michele Sammiceli,
 sammicheli@alice.it / michele.sammicheli01@inps.it

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