

How to deal with whiplash injuries after the coming into force of the Spanish Act 35/2015.

On 1st January 2016, Act 35/2015 of 22nd September (“Act 35/2015”) regulating the quantification of damages for personal injuries in RTAS came into force. The Act amended the system for assessing damages in road traffic accidents known as the “*Baremo*”.

The reform of the “*Baremo*” was necessary to adapt it to European legislation. This new regulation has ensured that Spanish compensation is now equivalent to European levels, increasing an average of 50% in the case of compensation resulting from death, 35% compensation for the sequelae suffered and 12.8% in the case of temporary injuries.

However, the compensation for whiplash injuries was greatly affected by Act 35/2015. In case of suffering whiplash as a result of a traffic accident, the compensation for this injury has not increased, but with the coming into force of the Act 35/2015 new requirements have to be met so that the injured party is properly compensated.

Being one of the most common injuries resulting from road traffic accidents (in 2005 the Gazette of the National Department for Traffic estimated that 25% of those injured in a road tariff accident suffered whiplash) the requirements to consider this injury when it has resulted from an accident have tightened considerably.

It has been the most important difference in relation to the legal treatment of these injuries, after the reform of Act 35/2015 that as we have pointed out above, considerably increases the compensation of major injuries since, at the same time it demands a more rigorous evaluation of minor trauma injuries.

A more restricted regulation has been one of the greatest demands of insurance companies, and so Article 135 of Act 35/2015, states that in order to establish whiplash injury, it is necessary to meet 4 requirements:

Exclusion: There is no other cause that fully justifies the diagnosis of the injury.

Chronological: The symptoms have to appear within a reasonable period of time from a medical point of view. In particular, it is especially relevant for this criterion that the symptoms have appeared within seventy-two hours of the accident, or that the injured person has received medical attention within this period.

Topographic: There must be causation between the body area affected by the accident and the injury suffered, unless medical justification is given.

Intensity: The type of the injury must correlate to the severity of the accident. (Intensity of the collision).

If these criteria are not met, the Claimant will not be entitled to receive any compensation for temporary injuries from minor cervical injuries. Therefore, it is highly recommended to address these specific criteria in the victim's medical report. This last criterion of intensity is particularly relevant since insurers quite frequently use the argument of its absence to decline and reject liability, especially in low-speed Road Traffic Accidents.

However, Spanish Case law has clearly ruled that minor accidents can cause injuries, and point out the whiplash injury as common of this type of accident. This ruling can be seen in Judgment, among others, number 202/ 2017 of 12 April from the High Court of Appeal of Caceres that states that:

The entity of the injury that can cause a" whiplash "is not only based on the intensity of the collision, but also the position of the victim itself, or its physical constitution, height, weight, age or even placement or position in the vehicle.

Therefore, all these elements must be analyzed to establish whether the impact has produced abrupt movement in the victim.

Thus, road traffic accidents at a speed equal to or less than 16 km /h, despite being of a minor nature, are liable to cause whiplash injuries.

It is a clear question of evidence, as is made clear in the Judgment N° 667/ 2016 of 26 December from the High Court of Appeal of Pontevedra, which establishes that comprehensive evidence has to be obtained in minor intensity Road Traffic Accidents.

In addition to the above requirements, the general rule set out in the above mentioned article 135 of Act 35/2015 (article regulating whiplash injuries) provides for minor trauma as a temporary injury, and only in the case in which conclusive medical report proves the existence of sequels, these will be subject to compensation.

In conclusion, Act 35/2015 introduces, with respect to minor cervical injuries, requirements that make it difficult to claim as it is now necessary to obtain the adequate medical reports to prove not only the injury but also the existence of sequelae and their subsequent compensation.

If an injured party is involved in a Road Traffic Accident in Spain it is important to seek medical attention promptly to preserve the right to claim compensation.