Unexpected Consequences of Compensation Law
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Beyond the Fault/No-fault Divide Between Compensation Systems: The Need to Address the Emotional Dimensions of Suffering a Wrong

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Beyond the fault/no-fault divide

- Why would no-fault systems necessarily be less anti-therapeutic?
- Payments trigger need not decide procedure?
- Many claims and entitlements not based on fault are dealt with in the most adversarial way
- And a fault-based claim can be resolved in a non-adversarial manner
- Facts need not be established by process of submission and refutation, in which both the initiative and the burden of proof lie with the plaintiff
- Agency or insurer might actively investigate all aspects relevant to the claim, take initiative in discovery of facts, an complement or even correct in good faith presentations made by the claimant
- [in any system it can be problematic to establish that the claimant is continuing to experience significant disability]
The impact of suffering harm from a wrong

- Empirical research: suffering a wrong disrupts moral and emotional balance between wrongdoer (WD) and victim (V)

- Relational: restoration of status
  Being a victim is associated with a threat to one’s status and power
  => victims want restoration of their status (Schnabel & Nadler, 2008)

- Moral: confirmation of violated norm
  Victims want confirmation of the social values underlying the norm that was violated (Tyler & Lind 1992, Okimoto & Tyler 2007)
Components of apology

- **Affirmation**: acknowledgment of responsibility for wrongdoing and its consequences
- **Affect**: expression of remorse and sympathy for the victim
- **Action**: compensation and prevention

Perceived Injustice and Adverse Recovery Outcomes

Michael J. L. Sullivan - Esther Yakobov - Whitney Scott - Raymond Tait

Abstract Research is accumulating highlighting the negative impact of perceptions of injustice on health and mental outcomes associated with pain. To date, the relation between perceived injustice and adverse pain outcomes has been demonstrated with individuals suffering from a wide range of debilitating pain conditions. This paper summarizes what is currently known about the negative impact of justice-related appraisals on recovery trajectories following injury. This paper also addresses the processes that might underlie the relations between perceived injustice and adverse pain outcomes. Given the research indicating that perceived injustice is a powerful predictor of disability, it follows that interventions that yield reductions in perceived injustice should be associated with reductions in disability. (Of concern, however, is that perceptions of injustice do not appear to respond to current treatment approaches used in the management of pain and disability consequent to injury. It is argued that a paradigm shift in approaches to evaluation and treatment might be required in order to yield meaningful reductions in perceived injustice. Such a paradigm shift might entail broadening the targets of assessment and intervention beyond the 'perceptions' of the injured individual to include potential external sources of injustice (e.g., employer, insurer, health care provider) in the treatment plan.

Keywords Perceived injustice - Injury - Compensation - Disability

The potentially devastating consequences of musculoskeletal injury have been described in numerous reports (Chapman & Gostin, 1999; Knoke, 1999; Nuesch, 2000). For some individuals, the following injury will be characterized by significant and persistent physical and emotional suffering (Berghold, Riddick, Jensen, Wiklander, & Albrethsen, 2006; Nuesch, 2000; Nuesch, 1999; Nuesch, 2000). In addition, post-injury life might be replete with loss experiences, including the loss of employment, the loss of financial security, the loss of independence, and the loss of sense of identity (Harris, Monk, & Barton, 2000; Lyons & Sullivan, 1993). While some of these losses might be temporary, others might be permanent (Evans, Mayer, & Getchell, 2001; Sainsbury, 2003; Watson, 2003; Warner, 2003; Warner, 2003). Clinical anecdotes abound of persistent pain sufferers who feel they have been victimized rather than a direct result of their injury, or indirectly by injury-related sequelae (Aeschenbacher, Ferreira, & Ramos-Remus, 1991; Bigos & Brazeau, 1997; McParland, Eddleston, Osborn, & Horsley, 2011; Wang, Byrne, & Nicholas, 2014). An Internet search quickly reveals numerous statements that emphasize the injustice of living with pain: “What did I do to deserve this?”, “I wish he could see what he has done to my life”, or “Nothing will ever make up for what I have gone through.” Such statements reflect at once elements of the magnitude of loss, the irreversibility of loss, and a sense of unfairness (McParland & Whyte, 2008; Sullivan et al., 2008).}

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The symbolic message inherent in claims resolution procedure

Characteristics of claims resolution:

- V must take initiative, supply info, A more powerful, V suffers the burden of proof
- A appears to be able to allow himself a passive attitude
  => carries across implicit message that not WD/A but V is responsible for solving problem of damage caused
- WD doesn’t pay compensation himself, generally no direct communication between WD and V, WD often not even aware of consequences for V
  => V experiences that WD does not take responsibility
- Out of court resolution – no decision by judge
  => no authoritative proclamation of moral responsibility of WD for accident
- Also no symbolic acknowledgement of moral responsibility of WD by A
- ‘Taboo trade-off’: impairment cannot really be compensated by money
Emotional Dimensions of Suffering a Wrong
Making claims resolution emotionally intelligent

- Acknowledgment by agency or insurer
- The symbolic message implicit to proactive claims resolution
- Promoting personal contact between the responsible party and the victim
- Promoting procedural justice
Two ways to promote emotional recovery

- Apologies by wrongdoer
- ‘Acknowledgement’ by WD’s agents
Components of apology by wrongdoer

- Affirmation: acknowledgment of responsibility for wrongdoing and its consequences
- Affect: expression of remorse and sympathy for the victim
- Action: compensation and prevention
Components of ‘acknowledgement’ by wrongdoer’s agents:

- Affirmation: acknowledgment of responsibility for wrongdoing and its consequences
- Affect: expression of remorse and sympathy for the victim
- Action: compensation and prevention
The symbolic message implicit to proactive claims resolution

- Insurer/agency must take and keep initiative in resolution process

- Behaviour of insurer/agency should carry across implicit message that insurer/agent and not victim is the ‘owner’ of the problem that mistake was made and damage was caused, which now has to be limited, assessed and compensated
Resolution process should favour determinants of Procedural Justice

- Providing adequate information
- Facilitation ‘voice’ and Involvement
- A respectful and polite treatment
- A higher priority to personal contact
Changing insurance company claims handling processes improves some outcomes for people injured in road traffic crashes

Frederike Schaafsma, Annelies De Wolf, Areen Kayaian and Ian D Cameron

Abstract

Background: Regaining good health and returning to work are important for people injured in road traffic crashes and for society. The handling of claims by insurance companies may play an important role in the rate at which health recovers and return to work is actually attained.

Methods: A novel approach towards claims handling for people injured in road traffic accidents was compared to the standard approach. The setting was a large insurance company (NRMA Insurance) in the state of New South Wales, Australia. The new approach involved communicating effectively with injured people, early intervention, screening for adverse prognostic factors and focusing on early return to work and usual activities. Demographic and injury data, health outcomes, return to work and usual activities were collected at baseline and 7 months post-injury.

Results: Significant differences were found 7 months post-injury on ‘caseness’ of depression ($p = 0.04$), perceived health limitation on activities ($p = 0.03$), and self-reported return to usual activities ($p = 0.01$) with the intervention group scaling better. Baseline general health was a significant predictor for general health at 7 months (OR 11.6, 95% CI 2.7-49.4) and for return to usual activities (OR 4.6, 95% CI 2.3-9.3).

Conclusion: We found a few positive effects on health from a new claims handling method by a large insurance company. It may be most effective to target people who report low general health and low expectations for their health recovery when they file their claim.

Keywords: Road traffic injuries, Claims handling, Rehabilitation, Health status, Return to work

Background

Injuries due to road traffic crashes happen often and have a major impact on the individual and on society [1].

The effect of financial compensation on health recovery and return to work for people injured in traffic accidents has been studied extensively over the last 10 years [2-4]. Not only financial compensation but also the approach of claims handling by an insurance system towards injured people may have effect on health recovery and return to work. Recently, Casey et al. concluded that the claims management process could be improved by the inclusion of health outcome information at claim notification which would assist in identifying those at risk of delayed recovery [5]. Clear communication, professional assistance besides quick estimation of the severity and prognosis of the injury may also help speed up the health recovery and limit costs for insurance companies and health care systems. Insurance companies should provide financial assistance as well as health care assistance for best results and help the injured person to find the best treatment. They require a regulatory framework to assist this.

In New South Wales Australia compensation under the third party insurance scheme is available where people are killed or injured as a result of a motor vehicle
Conclusion

• There are many opportunities to make claims handling psychologically more intelligent, regardless of fault or no-fault.
• Offering acknowledgment to victims and meeting the deficit of their overdrawn emotional bank account will promote recovery and health.
• It also seems a reasonable expectation that this will have a positive effect on the overall amount of damages, diminish transaction costs and increase customer satisfaction.
• Psychologically more intelligent claims handling is in the interests of all parties.