MAIN FEATURES OF ICELANDIC COMPENSATION SYSTEMS

BY

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Icelandic law cannot be classified as belonging to any of the main legal systems of the world. Icelandic law is a branch of Nordic law which forms a legal system that might be considered to lie somewhere between the common law system and the civil law of continental Europe.[1] The principal source of Icelandic law is legislation. However, there exists no general codification. In some fields of law legislation is sparse.

Icelandic tort law is predominantly case law.[2] Some important rules on liability, however, are to be found in statutes, such as the Traffic Act, the Aviation Act, and the Maritime Act, see section 2 below.

The following is a brief survey of the principal rules of Icelandic law regarding the basis of tortious liability (section 2) and the effect thereon of fault of the aggrieved party (section 3). On the other hand, such other matters of a general nature as burden of proof, causation and the remoteness of damage, statutory provisions for mitigating unreasonably heavy liability, assessment of damages and form of payment (i.e. whether compensation is paid in a lump sum or periodical instalments) will not be touched upon here. A survey will also be given of alternative remedies which are not based on the system of tort liability.

Procedural questions will not be dealt with here, but it should be pointed out that there are no juries in Iceland.

1. RULES OF CASE LAW REGARDING THE BASIS OF LIABILITY

The *culpa* rule is the main rule in the Icelandic law of torts. Under this rule, a person is liable if he has intentionally or negligently caused damage. The criterion of negligence is the traditional standard of care expected of a

[1] Cf. Jacob W. F. Sundberg, "Civil Law, Common Law and the Scandinavians", 13 *Sc. St. L.*, pp. 179ff. (1969).

[2] The law of torts of the other Nordic countries has also mostly been based on case law, but in Finland, Norway and Sweden there has recently been a change in this respect. These three states enacted uniform laws of tort in 1969–74. Regarding the Swedish statute, see Jan Hellner, "The New Swedish Tort Liability Act", 22 *Am. J. Comp. L.*, pp. 1–16 (1974). The Swedish Act has been amended since the paper referred to was written. Of the Nordic countries only Denmark and Iceland now live mainly under the rules of case law, so far as torts are concerned.

reasonable and prudent man (*bonus pater familias*). The application of the *culpa* rule corresponds in broad outline to the common-law rules regarding intent and negligence. This topic will therefore not be dealt with here in detail.

An employer is liable for damage caused by negligence of which his employees are guilty in the course of their employment. The Icelandic rule on *vicarious liability* is similar to the common-law rule regarding the liability of a master for the conduct of his servant. There are no clear-cut instances of the Supreme Court of Iceland having found a person liable for the torts of an independent contractor except under explicit statutory provisions.

In recent years the Supreme Court of Iceland has created a new rule regarding strict liability. In this connection, one judgment in 1968 and two judgments in 1970 may be mentioned. The circumstances of the cases and the conclusions were briefly as follows:

1968 Supreme Court Reports ("Hæstaréttardómar") 1051
Owing to a faulty safety belt, a man sustained injuries when he fell from a pole carrying an electric wire. The catch of the belt opened while the man was at work aloft on the pole. Plaintiff's employer was found liable in full. The following is stated in the district court judgment, which was affirmed by the Supreme Court, which referred to the premises of the district court: "Plaintiff could therefore rely upon the belt being free from such a construction flaw that the safety devices connecting the lifeline to the belt could open without the agency of the user of the belt. It is not shown that the defendant's supervisory personnel or workmen, including plaintiff, could have known of the flaw in the construction of the belt, or had reason to doubt that the belt was as safe as it was intended to be. On the other hand, the employer must be held responsible to his employee for such a safety appliance being free from a hidden defect such as the said construction flaw must be considered to have constituted."

1970 Supreme Court Reports 434
A seventeen-year-old workman was injured by a nobbing machine in a freezing plant in the Westman Islands. The following is stated in the judgment of the Supreme Court: "The switch of the machine was out of order and the accident may be traced to that deficiency. Fiskidjan h/f (the defendant enterprise) is therefore liable in full for the accident."

1970 Supreme Court Reports 544
A driver of a motor vehicle was awarded damages in respect of an accident he met with while driving along a highway. The steering gear of the vehicle failed suddenly, with the result that the vehicle left the road without the driver being able to take preventive measures. The Supreme Court found the owner of the vehicle liable in the following words: "It must be considered proved that the accident which is the subject of this action was caused by a failure of the steering gear of the motor vehicle VL 2880. This vehicle, the property of the

> Defence Force, was plaintiff's instrument for the performance of his duties and he was employed by the Defence Force. The owner of the motor vehicle is therefore legally liable for the loss resulting from the accident."

These judgments have in common the feature that apparatus, machinery or other technical implements in the ownership of the employer of the injured person are held to have failed or to have hidden defects. From these judgments, and some others, the conclusion may be drawn that it is a *general rule* in Icelandic law that *the employer is strictly liable (i.e. regardless of fault) to his employee if the latter sustains an injury as a result of deficiencies in technical material or machinery owned by the employer.* It must be presumed that the strict liability rule applies only if a failure or hidden defect is the cause of the loss, and is not applicable to losses caused by the general use of technical material, machinery or other technical implements.[3]

It is hardly possible to draw general conclusions from the above-mentioned cases. In none of them is it, for example, decided whether the employer is liable irrespective of fault if defects cause damage to property owned by the employer's servant or a third party. Nor has a decision been reached as to a conceivable strict liability of the employer owing to a failure causing bodily harm to other individuals than his servants. Moreover, these cases supply no answer to the question whether the employer would be held liable on a strict basis if damage was caused by failure in technical equipment, etc., used by him in his business, in a case where the technical equipment is owned by another party (the employer for example, having the technical equipment on loan or on hire). It is interesting to note that all three Supreme Court judgments, as well as other judgments in similar cases, relate to relatively dangerous technical equipment. It is therefore not clear whether the strict liability rule in connection with deficiencies applies to all tools (for example, hammers and other hand tools not mechanically driven) or whether it is restricted to apparatus or tools generally attended by greater danger than other inanimate objects.

The conclusions of these judgments are in accord with the tendency of Icelandic courts to apply *strict liability in products liability cases.* No judgment has been rendered clearly imposing strict products liability, but a hidden defect in a manufactured article was one of several points on which the liability of a manufacturer was based in a Supreme Court judgment in an action for damages against a soda-water manufacturer brought by an assistant in a grocer's shop. A soda-water bottle exploded suddenly without external causes, plaintiff losing the sight of one eye as a result. The

[3] Danish courts have not gone so far as this in imposing strict liability in similar cases, see Stig Jørgensen, "Liability and Fault", 49 *Tul. L. Rev.*, pp. 341–2 (1975).

manufacturer was held liable, although he had bought the defective bottle from a foreign producer (1974 Supreme Court Reports 977). But products liability cases in Iceland are so few and far between that great uncertainty exists as to applicable liability rules. It is probable, however, that Icelandic courts will apply rules resembling those applied in Denmark.[4]

It should be pointed out that Icelandic courts have not formed any general rule regarding strict liability for dangerous activities.[5]

2. STATUTORY RULES REGARDING THE BASIS OF LIABILITY

Statutes contain certain rules regarding the basis of tort liability, some of which are stricter than the *culpa* rule and the vicarious liability rule. A brief survey of the most important of the strict rules follows.

2.1. *Liability of shipowners*

The Maritime Acts of all the Nordic countries contain provisions regarding shipowners' liability for the torts of their employees. Sec. 8 of the Icelandic Maritime Act no. 66/1963 contains, *inter alia,* the following provision:

> The owner is liable for damage resulting from any fault or neglect in the course of the service by the master, crew, pilot or others working in the interest of the ship.

The master, crew, and in some instances pilots, are the shipowner's employees. So far the legal provision in question therefore corresponds to the general rule of case law regarding vicarious liability. On the other hand, according to sec. 8, the shipowner is also responsible for the actions of a compulsory pilot even though he has no option about admitting him on board and the pilot is not the employee of the shipowner in the usual sense.

Moreover the words "others working in the interest of the ship" have been held by courts of justice in the Nordic countries to denote that the shipowner is liable for actions of people, including independent contrac-

[4] Regarding Scandinavian rules, see B. Dahl, "Product Liability in Scandinavian Law", 19 *Sc. St. L.*, pp. 59–100 (1975).

[5] Regarding Scandinavian rules, see A. Vinding Kruse, "The Scandinavian Law of Torts. Theory and Practice in the Twentieth Century", 18 *Am. J. Comp. L.*, p. 66 (1970).

tors, the employees of independent contractors or other third parties, who come neither under his direct management nor under his supervision. However, this far-reaching liability of the shipowner is not unconditional. The work must be performed in connection with a specific ship, in the interest of that ship and her owner. The shipowner is not liable for the acts of the charterer or his employees. It is furthermore held that the shipowner is liable solely for the actions of people performing work pertaining to the operation of the ship, i.e. work in connection with the navigation or management of the ship and the handling of cargo and care of passengers.[6]

If a shipowner has paid damages according to the rules mentioned above he has a right of recourse, under para. 2, sec. 8 of the Maritime Act, against the person who committed the fault.

The Maritime Act contains rules regarding carrier's liability, and in contracts of affreightment it is usually laid down that liability shall be subject to the Bill of Lading Convention, 1924, or law based on that Convention.

2.2. *Liability for traffic losses*

A special strict liability rule is established in the Traffic Act no. 40/1968. According to sec. 67 of that Act, the registered owner of a motor vehicle is liable for injury to persons or damage to property resulting from the use of the motor vehicle even though the injury or damage can be attributed neither to failure or defects of the vehicle nor to the driver's negligence. In other words, there is strict liability for loss caused by motor vehicles. The plaintiff has a right to compensation even if the circumstances of the loss are such that general tort rules would not lead to the owner of the vehicle being held liable.

The vehicles covered by the liability rule are: motor vehicles, motor cycles, tractors and snow scooters. For the sake of simplicity, only losses caused by motor vehicles will be specifically treated here, although what is said also applies to motor cycles, tractors and snow scooters.

The special strict liability rule in sec. 67 of the Traffic Act does not, however, apply to all losses caused by the use of motor vehicles. It does not apply to injury to persons or damage to property if either is carried free of charge by a private motor vehicle. The strict rule does not, on the

[6] Sjur Braekhus, *Rederens husbondsansvar* (Vicarious Liability of Shipowners According to Scandinavian Law), Gothenburg School of Economics Publications no. 2, Gothenburg 1953, pp. 71–2.

whole, apply to losses caused through the collision of two or more motor vehicles. Damage to the motor vehicles themselves and other losses sustained by the owners or drivers involved in the collision will be compensated according to the general tort rules. In such circumstances the plaintiff will as a rule recover no damages unless he is able to prove fault.

2.3. *Liability rules of the Aviation Act*

According to sec. 133 of the Aviation Act no. 34/1964, the owner or the person for whose account the aircraft is operated is liable irrespective of fault for injury to persons outside the aircraft or for damage to property not on board the aircraft. This is a matter of strict liability similar to that contained in sec. 67 of the Traffic Act referred to above. The rule in the Aviation Act does not, however, apply to injury to persons or loss of property within the area of an approved airport. Nor does the rule apply to losses caused to aircraft or cargo if aircraft collide. Regarding the last-mentioned type of losses and losses within the area of an approved airport, rules making fault a condition for liability therefore apply in most instances.

The Aviation Act contains special rules applying to the liability of carriers of passengers, registered luggage and goods. These rules are adapted from the Warsaw Convention of 1929 as amended by the Hague Protocol, 1955, relating to Carriage by Air.

2.4. *Liability of flat owners in apartment blocks*

Sec. 12 of Act no. 59/1976 regarding blocks of flats contains the following liability rule:

> A flat owner is liable to fellow-owners for such loss as they may sustain as a consequence of an accident in his flat, resulting from failure of apparatus, pipes or lines pertaining to his flat.

According to sec. 1 of the Act, the definition of a block of flats is "any house containing two or more flats". A flat within the meaning of the Act is any room with an adjoining kitchen. The Act applies to apartment blocks where the flats are owned by more than one person.

The liability provision in sec. 12 does not attach fault to liability. This is therefore a rule of strict liability of the flat owner. He is liable even though the loss cannot be attributed to human fault or negligence.

It must be admitted that this provision is not as explicit as it might be. The Icelandic word *óhapp* in the text of the Act, here rendered in English as "accident", does not always have the same meaning, either in legal

language or colloquially. *Óhapp* may be understood to mean only an occurrence for which no person is to blame. But from the point of view of the flat owner, it can also signify an incident which may be attributed only to the fault of a third party.

Consequently, plaintiff's right to compensation according to sec. 12 of Act no. 59/1976 depends very largely on the way in which the word *óhapp* is construed. On the basis of the first construction, the flat owner is only liable in the case of a fortuitous event, such as a defect for which no person is to blame. (The flat owner is, of course, liable according to other tort rules if he or his servants are to blame for the loss.) The first construction also comprises the flat owner's liability for natural catastrophes. On the basis of the second construction, liability according to sec. 12 of Act no. 59/1976 also covers loss caused by independent contractors and other third parties.

Other points in sec. 12 are debatable, but they cannot be discussed here. From what has already been shown, it is evident that disputes concerning this legal provision may be expected to continue to occur until the courts have decided how the ambiguous word *óhapp* is to be construed.

2.5. *Liability for animals*

Sec. 34 of Act no. 42/1969 regarding common grazing, etc., provides that if livestock enters grassland, infields, vegetable gardens or other fenced areas, and causes damage, the owner is liable to pay damages to the aggrieved party.

It is understood that this provision is to be construed as providing that straying of livestock into grassland, infields and vegetable gardens makes the livestock owner liable regardless of whether or not the area is fenced off. Intrusion into other areas, on the other hand, is not subject to tort liability according to sec. 34, unless such areas are fenced.

It is not a condition for liability that any fault of the livestock owner shall have caused the damage. The liability imposed by sec. 34 is strict.

As to livestock owners' liability in respect of grazing in other unfenced areas, general tort rules apply.

Secs. 13 and 33 of the Livestock Breeding Act no. 31/1973 provide for strict liability in respect of loss caused by unconfined breeding bulls and stallions.

Icelandic law contains very few other provisions regarding strict liability for animals. Such provisions as do exist apply only in isolated cases and are of very small consequence in practice.

The main rule in Iceland, therefore, is that liability for loss caused by animals is subject to rules making fault a condition for liability.

3. THE CONDUCT OF THE AGGRIEVED PARTY

It is a general rule in the Icelandic law of torts that the plaintiff's claim for damages will be wholly or partially reduced if he himself (or anyone for whom he is responsible) has negligently contributed to the occurrence of the damage. The rule applies when plaintiff is an accessory to the event leading to the damage, and also when plaintiff neglects to take measures to avert or mitigate harmful consequences of the event.

This general rule is judge-made law, but it is also incorporated in some statutes, for instance the Traffic Act no. 40/1968 and the Maritime Act no. 66/1963. As has been said earlier, the rule is a general one, i.e. it is valid regardless of the tort rule on which plaintiff bases his claim. A negligent plaintiff basing his claim on a statutory tort rule—for instance the rule regarding strict liability of the owner of a stallion—must put up with a reduction on account of his own fault in the same way as must a plaintiff, guilty of negligence, who bases his right of action on a rule of case law, such as the *culpa* rule.

There are no exceptions from the rule regarding plaintiff's own fault, except those provided for in statutes. Such instances are very few in number, but one may mention para. 2, sec. 133, of the Aviation Act no. 34/1964, which says that there shall be no liability to pay damages for injury to persons or damage to property if plaintiff has caused the injury or damage by a wilful act or gross negligence.

As will be seen from the foregoing, the principle of reduction of damages for "comparative negligence" is the main rule in Icelandic law of torts, but the "contributory negligence" defence has never been allowed by Icelandic courts.[7]

The defendant may also invoke the defence of voluntary assumption of risk. Voluntary assumption of risk is a ground for the dismissal of an action in tort, not merely a ground for reduction of damages.

In two recent cases the Supreme Court has on this ground rejected a passenger's claim for damages against the driver of a motor vehicle whom the passenger knew to be under the influence of alcohol (1969 Supreme Court Reports 180 and 1976 Supreme Court Reports 1080). By contrast, the majority of Supreme Court Justices took a different view in an action for damages brought by a 16-year-old girl who went for a ride in a car with a youth of her own age who had not obtained a driving licence (1978 Supreme Court Reports 484). In the judgment the Court says that certain-

[7] Regarding these concepts, see, *inter alia*, G. T. Schwartz, "Contributory and Comparative Negligence: A Reappraisal", 87 *Yale L. J.*, pp. 697–9 (1978).

ly it was imprudent of the passenger to go for a ride with the defendant. Having regard to the fact that the defendant possessed some driving skill (this the passenger knew), the majority of the Supreme Court (three Justices) considered it right to award 50 % of plaintiff's loss. The minority (two Justices) voted for rejection of the claim, on the basis of voluntary assumption of risk.

It would seem that frequently in Icelandic law the distinction between defendant's own fault and voluntary assumption of risk is not so sharply defined as it is in English and American law.

From the survey above it will be seen that the main rules of the Icelandic law of tort regarding the basis of liability are not very dissimilar to English and American rules. On the whole, plaintiff must prove that loss will be traced to the fault of another person. There are some important exceptions which have already been mentioned. In spite of these important exceptions, the Icelandic law of torts suffers from many of the main shortcomings of the English and American tort systems. Liability insurance is fairly common in Iceland. This type of insurance, of course, affords a great deal of security to the defendant when the insured is liable in tort.

4. ALTERNATIVE REMEDIES

4.1. *Social insurance (Social security)*

Since 1936 the Icelanders have lived under a fairly comprehensive system of social insurance legislation. The social insurance plan is administered by public institutions; benefits and operating costs are for the most part financed by the taxpayers. Expenditures on health and social insurance matters now constitute more than one third of the Treasury's total expenditure, most of this money going to benefits paid by the State Social Security Institute. In addition to the old-age pension, which is immaterial in this context, Icelandic social insurance pays benefits in respect of accidents and sickness. The social insurance system covers the entire population, and the right to benefits is independent of whether the beneficiary has made arrangements beforehand to enjoy the insurance. Under the National Insurance Act no. 67/1971, the claimant is automatically insured against accidents. That Act contains further conditions for the right to benefits. The stipulations of the Act concern chiefly the age, domicile in Iceland, and earning capacity of the beneficiaries.

All Icelanders have an equal right to sickness benefit. Accidents are a different matter. Persons suffering personal injury at work or while travel-

ling to or from their place of work enjoy a much stronger claim to social insurance benefits than do other citizens suffering loss as a result of accidents. All citizens are entitled to benefits if permanently disabled to the degree of 50 % or more.

> Diseases are the cause of disability of by far the greatest number of people receiving benefits in respect of disability rated at such a level. An investigation carried out a few years ago by the State Social Security Institute showed that only 3 % of these beneficiaries were disabled as a result of accidents. The causes of disability of 97 % of the beneficiaries were diseases or congenital disability.[8]

People sustaining personal injury at work are also entitled to benefits in respect of permanent disability rated at 15 % or over. Moreover, higher death benefits are paid out of the social insurance where death results from work accidents than where it results from other injuries.

The complicated rules covering social insurance benefits cannot be described here; it should, however, be mentioned that the social insurance scheme pays nearly all costs of medical and hospital care, rehabilitation, and a very large part of the cost of necessary medicines. On the other hand, social insurance benefits to compensate loss of income owing to accidents or diseases are very limited. Even benefits in respect of loss of income owing to work injuries, which as has been said are higher than other accident benefits, are insufficient to pay for more than a small part of the loss sustained when a person becomes incapacitated as a result of an accident. The social insurance pays no benefit for non-economic loss, such as pain and suffering, loss of expectation of life, or loss of amenities.

4.2. *Pension funds*

There are many pension funds in Iceland. Their purpose is to provide periodical payments for people if their income from work fails owing to old age, invalidity or the death of a breadwinner. Most of the pension funds are self-governing institutions.

The inordinate inflation that has long prevailed in Iceland has had the effect that the value of benefits paid by pension funds has greatly diminished, whereas social insurance benefits are index-linked. A few pension funds, however, are in a sufficiently strong position to afford considerable help when the earnings of members or dependants cease owing to old age, disability or the death of the breadwinner.

[8] Stefán Guðnason, *Disability in Iceland*, Reykjavik 1969, pp. 8 and 32–7.

When comparing the significance of pension funds with that of the other compensation systems, it must be borne in mind that the majority of total benefits paid by pension funds consist of old-age pensions and allowances for dependent children. Their value as a source of compensation for persons who have become disabled as a result of accidents is therefore limited.

Conditions governing the right to benefits vary a great deal from one pension fund to another. It is, however, common to all pension funds that benefits are paid only to members or their next of kin (spouse or children).

The right to benefits from a pension fund is generally independent of benefits from other compensation systems. However, regard is sometimes paid to payments from the victim's pension fund when tort damages are awarded, see 5.1 below, but the victim's pension usually comes as an addition to other compensation to which he may be entitled in respect of the same loss or contingency. Members of pension funds, for example, have the same right to social insurance benefits as have non-members. The social insurance benefits may therefore be looked upon as a basic protection and pension fund benefits as an additional compensation. The "additional compensation" paid by pension funds falls far short of conforming to the social insurance basic benefits; the total sum paid by both systems is usually not at a level appropriate to meet the needs of the beneficiary. In many instances the total benefits are too low, whereas in others they may be considered rather on the high side.

4.3. *Sick pay and other employment benefits*

Nearly all Icelandic employees (State and municipal workers as well as privately employed personnel) are entitled to full pay for a specified period of time during absence from work owing to accident or sickness. Often this right is based on statutes, but in many cases it is provided for in contracts of employment.

If an employer pays wages to an injured employee, the employee's claim against a third party is reduced by a sum corresponding to the sick pay.

4.4. *Collective occupational accident insurance*

It often happens, in Iceland as in other countries, that a worker sustains an accidental injury without having access to tort damages. Even if an employee has not himself taken out accident insurance, he is nevertheless almost never entirely without means of support. In by far the greatest

number of cases he has access to benefits from two sources, viz. sick pay according to 4.3 above and social insurance benefits according to 4.1 above.

> Pension funds, cf. 4.2 above, are, on the other hand, of use on far fewer occasions. This is so mainly for three reasons: first, pensions are generally only payable in respect of a very high permanent disability rating, or death; secondly, the right to disability payments is subject to the member of the pension fund having paid his contribution for a specific minimum period of time, usually 3–10 years; thirdly, the paying capacity of a large number of pension funds is impaired as a result of the inflation.

The right to wages during absence from work owing to an accidental injury is, as has been pointed out, limited to a specified period of time —e.g. one month from the day of accident—and the social insurance benefits are so low that they suffice only to pay a part of the injured person's pecuniary loss if he is incapacitated after payment of occupational sick pay ceases. The same is true of the social insurance benefits in respect of accidental death, which generally are a great deal lower than damages for fatal injuries under tort rules.

In the years following World War II, and especially during the past 10–20 years, there has been growing dissatisfaction among employees over the low social insurance benefits in respect of work accidents. Employees and trade unions have pointed out the great difference between damages received by, on the one hand, a person entitled to recovery in tort and, on the other, a person having no recourse to a tort remedy. In 1961 most of the seamen's unions in Iceland made agreements with shipowners' associations to the effect that the latter should take out occupational accident insurance with private insurance companies for every signed-on seaman. Such provisions have since remained in seamen's collective agreements. In 1971 there was a turning point in Icelandic occupational insurance. By a collective agreement made between the trade unions and the Confederation of Icelandic Employers, it became compulsory for organized employers to take out accident insurance for their employees on a much larger scale. A few years later, unions of state and municipal workers concluded an agreement with the state and municipalities along similar lines. Consequently, the majority of employees in Iceland are now insured with private insurance companies against work injuries or accidents occurring while travelling to or from their place of work.

There is reason to draw attention to the fact that trade unions demanded that the accident insurance should be taken out with private insurance companies and not the State Social Security Institute, the social

insurance being in the hands of that institution. The trade unions have not officially stated the reason for this demand. Probably the reason is twofold. First, by taking out insurance with private insurance companies the parties to the collective agreement can decide on the insurance sum, the form of benefits (lump sum and not periodic payments was agreed on) and categories of benefits (for instance, whether compensation shall be paid for temporary disability). It would have been more cumbersome to try to use the social insurance system for added accident insurance cover. This could only be achieved by introducing statutory amendments and these would take a long time to prepare. Secondly, Icelandic labour leaders had on the whole had favourable experience of their dealings with private insurance companies, in that for a number of years the trade unions have assisted their members when these were claiming damages from insurance companies under employers' liability insurance.

It is interesting to note that in Sweden the same thing has happened as in Iceland, namely that when negotiating accident insurance, the trade unions tend to prefer private insurance companies to state-organized insurance.[9]

Occupational accident insurance provided for by collective wage agreements in Iceland may be divided into two main classes: occupational accident insurance of seamen, and occupational accident insurance of other workers. The rules regarding benefits from the seamen's insurance differ a great deal from those applying to the occupational accident insurance of other employees. Only the latter type of rules will be discussed here.

The occupational accident insurance of workers other than seamen covers only accidents leading to *permanent disability, death,* or *temporary disability.* The insurance does not make good out-of-pocket expenses resulting from an accident; as pointed out earlier, nearly all medical expenses are paid by the social insurance. The occupational accident insurance benefits for temporary disability are rather low. The benefits for permanent disability and death, on the other hand, are fairly high and of considerable help to the beneficiaries.

Benefits for permanent disability are calculated on a rating basis and are payable in proportion to the insurance amount, but in such a way that each disability point from 26 to 50 per cent has a double effect, and every disability point from 51 to 100 per cent has a treble effect. This is a very interesting rule and a reasonable one, for investigations in the Nordic

[9] Jan Hellner, "Geborgenheitsversicherung", *Festschrift für Ernst Klingmüller,* Karlsruhe 1974, pp. 169–70.

countries indicate that very low disability usually has little or no effect on earnings, whereas the effect of a high disability percentage on earning capacity is often greater than the disability rating gives reason to expect.

Further details of occupational accident insurance cannot be given here owing to lack of space, but it may be said in broad outline that for permanent disability the insurance pays from about 20 to 100 per cent of the amount to which the claimant would be entitled if his loss were evaluated according to tort rules. In exceptional cases the accident insurance benefits for permanent disability can be higher than tort damages in similar contingencies.

There is reason to believe that in the near future Icelandic trade unions will lay stress in their bargaining on an increase of insurance sums. If this is done, the occupational accident insurance will pay an even larger portion of the loss sustained by employees as a result of industrial accidents. On the other hand, it cannot be expected that occupational accident insurance benefits will replace the tort system in this field for some years to come. In spite of accident insurance cover according to collective agreements as well as social insurance, the Icelandic workers are far from enjoying as effective an accident insurance as employees in the countries where insurance is most advanced, for example Sweden. As an instance of the effectiveness of Swedish accident insurance, it may be mentioned that an injured employee with an average income often receives insurance benefits amounting to more than 90 per cent of his loss of income.[10]

4.5. *Personal insurance*

The above-mentioned sources of compensation, i.e. social insurance, pension funds, sick pay, and collective occupational accident insurance, all have in common the feature that on the whole they come into being without the prior initiative of the victims they concern. The compensation afforded by these systems is therefore generally not due to the foresight or provident care of the insured or other beneficiaries.

These compensation schemes are not intended to fulfil all the needs of the insured in the case of personal injury. None of the systems except social insurance covers the entire population. Moreover, mostly the schemes do not afford full compensation, at any rate in comparison with the amount of compensation as evaluated according to tort rules. There are, however, some insignificant exceptions.

Personal insurance in this context means insurance other than liability

[10] *Produktansvar I. Ersättning för läkemedelsskada, SOU* 1976: 23, p. 11.

insurance, taken out on a voluntary and individual basis, for instance life insurance, personal accident insurance, sickness insurance, and property insurance.

In Iceland, as in most other countries, people may take out insurance in the open market covering their various interests. Experience shows, however, that personal insurance is far from being sufficiently widespread to compensate all those losses which cannot be made good by means of the traditional tort rules. Some people take out no insurance at all, unless they are obliged by law to do so. Others only hold compulsory insurance and the so-called comprehensive householders' insurance, including insurance of household effects against damage by fire and water, and liability insurance for the policyholder, his spouse and other close relatives living in his home. It should be particularly pointed out that personal life insurance and accident insurance are not so common in Iceland as in many other West European countries. The reason for this is not easy to determine, but doubtless the galloping inflation plays some part in bringing it about that the Icelanders tend to spend their money on things other than insurance protection.

From the survey of Icelandic compensation systems given above, it will be seen that persons who have not themselves taken out insurance against accidents and sickness are quite disproportionately well off. *Employees* are in an altogether special position, although their rights differ from one group to another. *Employers* do not as a rule enjoy an automatic right in any compensation system other than social insurance. In addition to employers, *housewives* and *students*, for example, stand outside all schemes other than social insurance. The main reason for the poor position of employers, housewives and various other groups, is doubtless that they lack the political power to assert themselves more effectively in this field.

In spite of the fairly good—in some instances very good—insurance protection of employees, they are far from being fully covered. The compensation schemes they enjoy (other than the basic insurance of the social insurance, pension funds and sick pay) are usually restricted to financial consequences of personal injuries *suffered at work or in connection with their occupation.* Voluntary personal insurance, on the other hand, mostly covers accidents "round the clock" ("24 hour insurance"). Voluntary personal insurance can also fill other gaps in the insurance protection of workers, employers and others.

The compensation systems here mentioned (other than the law of torts and personal insurance) primarily cover death and personal injury suffered in accidents. The legislature and bodies with common interests have been far less concerned with damage to chattels and financial loss irrespec-

tive of physical loss (purely economic loss) than with personal injury. In a very large number of cases the first-mentioned type of losses carry no insurance protection. In such circumstances the plaintiff must put all his trust in the law of torts. Where legal liability exists, the plaintiff may frequently obtain damages out of the liability insurance of the liable party.

5. COLLATERAL SOURCES OF COMPENSATION

5.1. *Tort damages – Damages from other compensation sources*

In the case of an *accident,* the following benefits are deductible from the claim against the liable party:

(1) Most social insurance benefits
(2) Sick pay and other employment benefits
(3) Collective occupational accident insurance benefits.

However, benefits under personal life, accident, or sickness insurance taken out by the victim himself are not deductible,[11] nor are benefits from collective occupational accident insurance if the liable party is not the injurer's employer. Benefits from pension funds are usually not deductible from compensation claims, but substantial pensions may have a reducing effect in evaluating the total loss sustained by the claimant, especially in cases concerning death claims.

It should be pointed out that the rule providing that an employee loses all rights to tort recovery against the injurer, for example his employer, if he accepts benefits from social insurance, a pension fund, or from other compensation carriers, has never prevailed in Iceland.

Compensation for *other types of losses,* for example damage to property, is deductible in full from a claim against the tortfeasor.

5.2. *Mutual relationship of benefits from alternative compensation systems*

Benefits from compensation systems in cases of *personal injury* are generally paid independently of one another. The victim may therefore keep all such payments without impairment of his rights (other than his right to tort recovery). However, social insurance benefits for temporary disability are not paid so long as the claimant enjoys full compensation for loss of income from other sources (for example, according to the provisions of a

[11] Jan Hellner, "Damages for Personal Injury and the Victim's Private Insurance", 18 *Am. J. Comp. L.*, pp. 128–9 (1970).

collective employment agreement). The general rule regarding *losses other than those resulting from personal injuries* is that the claimant shall not receive a higher compensation than is needed to make good his actual loss. If the claimant's interests are insured for a higher amount, the compensation is to be reduced proportionately.

5.3. *Right of recourse*

When a private insurance company, the State Social Security Institute, or some other insurer has made good a loss for which a third party is liable, the question of the insurer's right of recourse against the liable party arises. This right of recourse is generally allowed, except as regards life, accident, or sickness insurance covered by sec. 25, para. 2 of the Nordic Insurance Contracts Acts.[12] It may also be mentioned that it is not clear whether pension funds have a right of recourse against the tortfeasor.

The rules regarding reimbursement differ quite widely from one compensation system to another. Frequently the right of recourse of the insurer is more restricted than that of the victim himself, cf. for example sec. 25 of the Insurance Contracts Act, which authorizes the courts to exempt the tortfeasor from liability or to reduce damages under certain circumstances.[13] The right of recourse is on the whole not very often used by Icelandic insurers.

In general, insurers have no right of redress except under tort rules. The State Social Security Institute, for example, has no right of recourse against pension funds or private accident insurers. An employer who has paid an employee wages during the latter's absence from work owing to accident or sickness, may, however, acquire the employee's right to compensation for temporary disability from the State Social Security Institute.

6. CONCLUSION AND SUMMARY

The main rules of Icelandic tort law, such as the *culpa* rule and vicarious liability, belong to case law. Some important rules are to be found in statutes, but mostly these rules are applicable only in certain fields, e.g. the road traffic liability rules. The main rules establishing the basis of liability

[12] Jan Hellner, *op. cit.*, p. 128.

[13] See A. Vinding Kruse, "The Scandinavian Law of Torts. Theory and Practice in the Twentieth Century", 18 *Am. J. Comp. L.*, p. 73 (1970).

and defining the effect of plaintiff's fault are not very dissimilar to English and American rules.

In Iceland, as in many other countries, compensation systems are notably lacking in coordination, and for this reason amongst others it is difficult to give a brief and graphic description of how they operate. Even though the survey in section 4 above of Icelandic compensation systems is both brief and lacking in detail, it shows that the Icelandic systems are not essentially different from the chief compensation systems in Western Europe and the United States.

Insurance in Iceland in its various forms is not so comprehensive that it is possible to abolish the tort system without appropriating enormous sums of money to increased insurance benefits. Certain classes of victims, in particular those suffering traffic and work injury, are so much better covered than others that far less money would be required to set up a "no-fault" system for them than for others.

All in all, it is probable that an adequate "no-fault" system in Iceland is still a long way off. It is likely that the different insurance systems, especially social insurance, pension funds, and collective occupational accident insurance, will continue to be strengthened. Gradually these compensation schemes should become strong enough to dislodge the tort system with regard to personal injuries, without changing tort rules. Progress in social security and private insurance could be of much greater practical effect than a reform of tort law.