

The Defence of Inevitable Accident

With accident compensation being a fault-based system, in order to trigger entitlement to compensation resulting from a car accident, it is necessary to demonstrate legal fault by the other driver. The fault is often referred to as negligence which is momentary carelessness and does not need to be the higher type of fault relevant to criminal cases.

The Defendant (the driver of the vehicle that caused the accident) has a variety of defences available to them which can serve to either reduce the total compensation figure payable or to eliminate the requirement to pay entirely. For example, if you fail to wear a seatbelt, the defence of contributory negligence can be raised to reduce the payout figure by a percentage amount.

In some cases, although quite rare, the Defendant may be able to rely on the defence of Inevitable Accident. This defence is raised when the collision results after the defendant driver blacks out or suffers some type of medical catastrophe. This defence can allow the Defendant (or more commonly, their insurance company) to successfully deny liability if despite the exercise of reasonable skill and care, a defendant was unable to prevent an accident occurring. To rely on this defence, the insurer must prove that the accident was unintentional and unavoidable as their insured driver had no knowledge of a black out, no previous symptoms and that there was no reason to expect a black out could occur.

Some key factors to consider include:

1. Whether or not the defendant knew/should have known of the illness or condition, which caused the black out (as the defendant previously suffered from the heart attack).
2. If the defendant knew/should have known, what steps they were using to control this risk (were they being treated for this condition?).
3. Before the defendant drove the car, were there any circumstances which indicated an increased risk of a black out?

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Examples of successful cases:

- *Smith v Lord* [1962] SASR 88:
 - As the driver had no long history of heart related issues, he was able to deny liability with the defence of inevitable accident for an accident which was caused by loss of vehicle control due to cardiac failure.
- *Collins Transport Group Pty Ltd v Kerry Logistics (Australia) Pty Ltd* [2006] SADC 124:
 - A collision between two vehicles was held to be unavoidable as expert cardiologist evidence supported that the driver had insufficient time to react and avoid the accident due to the cardiac event.

Unsuccessful cases:

- *Dowsing v Goodwin* (1998) 27 MVR 43:
 - Although the driver suffered a sudden hypoglycaemic attack, she had the condition since childhood and her blood sugar levels were of concern weeks before the accident. As such, she was found negligent for not taking reasonable steps to prevent the occurrence of the attacks.
- *K & S Freighters Pty Ltd v Nelmeer Hoteliers Pty Ltd* - BC 200103009:
 - As there was a known history of chest pain which had previously progressed into a heart attack, there was sufficient warning that something was not right, so his defence was dismissed by the court.

With these points in mind, the viability of this defence rests on the content of the Defendant's medical records (such as ambulance reports and general practitioner records) and other supporting evidence (such as police reports). If the Insurance Company has sufficient documentation and evidence to support their assertion that the blackout was sudden and unexpected, they will have a very strong case to be able to prove and rely on the defence of inevitable accident.

This doctrine is a key reminder of the importance of obtaining comprehensive insurance for your vehicle. The road is unpredictable and there is no way in telling what another driver may do or what medical related incident could happen to them whilst driving. The key benefit of insurance is that it enables the risk to be shared between individuals and the insurer to appropriately manage the risk that the road presents. Relying on the compulsory third party (CTP) insurance of other drivers is not ideal in ensuring recovery of any damage done to your vehicle as CTP insurance only covers personal injury claims.

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Even in the case of additional third party car insurance to cover property damage, claimants will have to go through the Defendant's insurance company directly to recover.

The advantage of comprehensive insurance arising out of indemnity insurance contracts for damage done to a vehicle is that (subject to the terms of the policy), once a claim has been paid out, the insurer has a right of subrogation and can bring a claim against the third party in the insured's name to recover the damage incurred. As such, the insurer can "step in the shoes" of the insured and recover the amount that they have paid out to the insured from the third party. This effectively means that the insured does not have to use their time and resources to chase up the Defendant's insurance company (although the insured will be required to assist in providing the relevant details relating to the accident to their insurance company to assist in proceedings).

In summary, what may appear to be a clear-cut fault by the driver of a car (that crashes into another car/cars) can be more complex if the reason for the crash was due to the driver experiencing some type of health episode. Depending upon the nature of the health episode, it may be possible for the driver to escape liability when otherwise the driver would be blamed for bad driving! In the usual way if someone crashes into a stationary car on the side of the road there would be no defence because it's plain that the driver was not paying attention or was distracted or driving carelessly.

However in this special situation, where the driver experiences a health episode, the driver (and their insurance company) may be allowed to escape legal liability. Whether that technical defence is available will depend on the factors that have been referred in this article. And, this discussion highlights the importance of adequate insurance coverage. Even where someone is blameless (such as the owner of a stationary car), they can still suffer loss of money if there is no insurance of their own that would cover the cost of repair when the driver is not liable due to this defence of inevitable accident.

This article was prepared with reference to: Brett Turnbull, "*The Not-So-Inevitable Inevitable Accident*," (14 April, 2015), Recoveries Corp <http://www.recoveriescorp.com.au/news/the-not-so-inevitable-inevitable-accident/>

Further information can also be found from the Motor Accident Insurance Commission, "*Frequently asked questions – Motorists*" (23 February 2016), Queensland Government, <http://www.maic.qld.gov.au/ctp-premium/faqs.shtml>

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