

INSURANCE AS AN OBLIGATION RESTS WITH THE SPORTS ORGANIZATION TOWARDS THE ATHLETE

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Abstract

The insurance industry has recently witnessed contemporary trends and did not stop at a classic concept, as it was not only satisfied with the traditional fields, but also included the sports center as it is a fertile field in which sports accidents are active and injuries abound in stadiums during matches, which do not negatively affect the player only, but cast a shadow even on the development of the sector and its development, where the athlete is exposed to the risk of injury while performing his activity, as he may suffer from an injury that leads to permanent or temporary disability, which may force the player to abandon the stadiums permanently or temporarily, but the stadiums may witness from time to time a death of one of the players, so the player may insure himself from such dangers, as this is considered an obligation on the club or sports institution to insure the contracted sports player. And the sports institution must ensure that the health of the athlete is preserved, which is among its obligations in order to enjoy good performance

Keywords: Injuries. Stadiums. Insurance. Player. Athlete. Good health.

Introduction

The rise in sports injuries and the aggravation of their seriousness in the sports community, and the negative reflections it has on the physical and psychological side of the athlete, especially at the present time when sports investment has become one of the most important priorities of development in most countries of the world. Sport is no longer an activity, which aimed at strengthening and preserving the human body in the first place, but it has become the most important aspects of economic investment on which countries depend in their development. In light of the deficiency or insufficiency of legal mechanisms that guarantee players after suffering various injuries in stadiums and their survival in cases of disability, the necessary and sufficient legal protection in this framework, makes it necessary to establish laws and regulations that provide security and safety factors as preventive measures to reduce injury and as controls that place sports practice in its correct educational and scientific framework.

First: The research topic:

There is no doubt that the contract concluded between the sports player and the sports institution is subject to the general principles of contract theory in terms of its conclusion, however, there is a certain specificity in the conclusion of the contract, and the aspect of privacy emerges in the procedures and medical and health measures and insurance against sports injuries for the player and stadiums alike. Either, as stadium insurance is one of the important means of insurance in the sports field.

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Second: The research significance:

The significance of the study comes by shedding light on one of the most important obligations that falls on the shoulders of the contracted sports institution, as it is committed to ensuring the safety of the player, which is thus considered a legal protection for the sports player.

Third: The research problem:

The situation that many players have become due to the various risks in which their work environment is active, and given the situation that many players have become as a result of their exposure to stadium injuries during the exercise of sports activity, which reflects the images of lack of serious care for some of them and in order to preserve the future of the athlete and support development in the sports sector, it was necessary to ask the following question: Is the actual guarantee that the injured player receives as a result of the various accidents that he is exposed to on the field, and the extent to which he is provided with medical, psychological and social protection, constitutes a sufficient guarantee for him, or is it necessary to insure the stadium as a working environment?. For the player as well as one of the most important means to ensure his safety and security?

Fourth: Research Methodology:

In our study, we will follow the descriptive-analytical approach to insurance, which is one of the most important obligations of the sports institution towards the athlete, with reference to the views of legal jurisprudence in this regard.

Fifth: Research objectives:

- We aim through the research to answer the question that was raised regarding the topic, which is considered problematic to try to find solutions to it.
- Standing on the legal controls and systems mentioned by the legislation under comparison, in order to extract the most important legal principles regarding insurance, which is one of the most important obligations of the institution towards the athlete.
- Reaching the best recommendations, hoping that the Iraqi legislator will take them to fill the legislative void in this field.

Sixth: Research plan:

To be aware of the legal aspects of the subject of the research and in line with its privacy, we decided to search it on two demands, we will look in the first requirement about insurance from sports injuries, while the second requirement, we will deal with the insurance of sports stadiums, and then we end the research with a conclusion that includes the most important conclusions and recommendations.

The first chapter**Sports injury insurance**

Injury insurance is a contract whereby the insurer (1), in return for insurance premiums, undertakes to pay the insured (2), or the beneficiary (3) in the event of the death of the insured, the sum insured in the event that the insured suffers bodily injury, and to reimburse the insured the expenses of treatment and medicines, all or some of them (4) or the amount of insurance varies according to what the physical injury led to, it may lead to the death of the insured or to his inability to work wholly or partially, permanently or temporarily (5).

The insurance of sports injuries is a contract that does not differ in its concept from the insurance contract, but defining its content in the sports field and determining its legal nature requires standing on the most important points represented in the insured risk in insurance from injuries and adapting it from a legal point of view, as these elements contribute to determining the scope of this insurance is both objective and legal, so it is necessary to address the basic elements of sports injury insurance in terms of conditions and legal nature, and we will show this through the following two sections:

First branch**Legal requirements for sports injury**

The risk in the insurance contract must be imminent and not related to the will of one of the parties to the contract, as well as legitimate and not contrary to public order and public morals (6).

Insurance from sports injuries applies to these technical and legal conditions for risk. In addition to the general conditions, there are special conditions

for sports accidents that lie in describing sudden and unexpected accidents resulting from a sports activity related to the environment and the sports environment, meaning that it is of a somewhat exceptional nature required by the nature of the sports game and the environment in which it is practiced.

First, the sports injury must be sudden and unexpected

The athlete is often exposed to unlimited dangers and inevitably has serious consequences and negative repercussions on the physical and psychological side on his future as a whole, because the player is not able to anticipate them, and does not leave time to prevent them nor the ability to pay them (7) although they are inevitable and essential in sports activity.

Second: The sports injury must be caused by a sports activity related to sports

The injury of the athlete resulting from the exercise of sports is a phenomenon that is inconsistent with the health objectives of physical education and field games, in addition to that, what the statistics monitor from the high rates of the volume of sports accidents and the aggravation of their seriousness resulting from a sports activity related to sports shows the exact opposite, but the sure thing is The more exercise you do, the more likely you are to get sports accidents. (8).

Second branch

The legal nature of a sports injury

Judicial and jurisprudential opinions differed about the legal adaptation of the contract between the player and the sports institution; Some like the old French Judicature regards it as the contracting contract.

The nature of this contract is determined by taking into account the nature of the contracting parties as well as the nature of the contractual relations arising between them.

and if we hypothesize that the player's professional contract is a work contract, then the problem here is the legal nature of the sports injury to which this player is exposed, and whether it is considered a work injury as an inevitable result based on the legal qualification that applies to him, or is it of a special nature?

At the time when sports became one of the areas attracting capital and the attention of economic forces, it has transformed at the same time from a mere activity practiced by amateurs and enjoyed by spectators to an industry that generates millions of dinars for professional clubs and players (11) Therefore, sports professionals consider themselves workers and that sport for them is a craft and they enjoy ,this is why most countries interested in sports turn to the principle of protecting athletes by pushing for the establishment of professional sports unions to defend their rights. The first countries to take this step were Egypt (12) as well as France, where there are specialized sports union organizations.

We conclude from what was mentioned, that the injury that may be inflicted on the Iraqi athlete is considered a work injury, and accordingly the player benefits from the provisions of the Labor Law related to compensation for injuries sustained by the worker during work, despite the absence of explicit texts in this framework.

The Second Chapter

Sports stadium insurance

Securing sports stadiums has an effective role in advancing the growth of sports activity, reducing the risks of sports and advancing the sports sector, providing a guarantee for all participants in sports activity, and this is what Article 17 first of the Iraqi Sports Professionalism Law (13), especially since the insurance industry has recently witnessed contemporary trends that did not stop at the classic concept and were not only satisfied with the traditional fields, but also invaded the sports community as a fertile field in which sports accidents are active and injuries abound in stadiums during matches, and this requires the necessity of securing the work environment.

It is worth noting that the dangers that sports stadiums may be exposed to cannot be counted or enumerated, some of them are natural resulting from climatic fluctuations, some are political, and some are sports. Another is related to the extent to which the club secures the elements of safety and security, whether when or before the player is injured from sports medicine, medical monitoring, as well as rehabilitation. Therefore, we must address this issue through the following two sections:

First branch

Providing security in sports stadiums

The sports stadiums were and still are the focus of the Iraqi legislator's

attention because of the many threats that affect the security and safety of sports facilities, some of which are natural and artificial threats caused by man, and perhaps the most important of them is sports riots, where sports violence may be one of the strongest and most common causes of it is the administrative organization and the lack of sportsmanship as well as the rule of control, tyranny, impulsive and emotional thinking that is linked to extremist responses and intolerance (14) as well as the effect of drugs, weak interdependence between the individual and his community, in addition to the fanatical masses of their teams (15), also the weakness of the coach's control over his players, poor arbitration and negative team performance (16) all of these reasons, in addition to the structural condition of the stadiums and the tournament system, as well as the role of the media and the phenomenon of sports politicization...etc. All these reasons, whether collectively or individually, are considered to have a significant impact on the security of the stadiums and thus have a direct impact on the sports process in general.

Second branch

Providing health and safety factors in sports stadiums

The responsibility to take care of the player from stadium injuries starts from the moment he enters sports life, not from the moment the injury occurs. It starts from directing him to practice the appropriate sports specialty, preventing accidents, exercising caution and training in scientific and health methods, and when the injury occurs, he should be treated on the basis that he is a patient who needs the attention of the medical staff, meaning that the player moves from a state of activity and maximum energy to a state of apathy and lethargy, and his recovery to the physical and technical fitness that he was in, requires the intervention of the specialists, starting from his first aid on the field until his rehabilitation and overcoming the pressures of injury and his fear of being excluded from the stadiums.

If this stage begins from the health aspect represented by sports medicine, which aims to monitor and treat players in an organized framework in order to determine the health status, physical development and functional status of the player and treatment of sports injuries (17) and then continuous medical monitoring (18) and Iraq, like other countries, are subject to Players are required to take preventive measures, which make their practice of sports activities safer and healthier, by imposing regular and available medical supervision and follow-up in the sports environment through which the player's physical ability and safety from all diseases that may pose a threat to his athletic performance, limiting his athletic progress..

Finally, it should be noted that these ingredients, if available in the sports field, contributed to the prevention of risks and stadium injuries, or at least reducing them or even taking care of them and remedying them as soon as possible in the event of their occurrence, and this reflected positively on the player.

Conclusions and Recommendations

Through our research on the subject of (insurance as an obligation of the sports institution towards the athlete), we reached several conclusions that called us to make several recommendations that we hope the Iraqi legislator will take

First: the conclusions

1. The Sports Professionalism Law stipulates the obligation of the club to provide health insurance to face any risk that may affect the player regardless of its source as long as it occurred during the player's practice of his sports activity and with the knowledge and approval of the sports institution, but it did not indicate other issues such as the player's inclusion in insurance against illness and the maximum amount of coverage The player has this insurance and the player's family is covered by the insurance.

2. The large number and diversity of sports injuries prevent sports and athletes from being encouraged in most countries in general and in Iraq in particular, which prevents the development of the sports industry there.

3. The weak culture of insurance in the sports field, which led to limiting insurance to narrow angles of goals and objectives, which prevented insurance from taking its proper role. He justifies the necessity of educating the sports community, including athletes, clubs, federations, their technical cadres and others, and spreading the culture of this insurance in the sports community that does not have sufficient information about this modern industry and its importance.

Second: Recommendations

1. We call on the Iraqi legislator to amend the Sports Professionalism Law to be more comprehensive in terms of health insurance, and to clarify fundamental issues in this regard to include the player's insurance from illness and the amount of insurance, in addition to the player's family in the event of injury, illness or death

2. As the stadium is a working environment for the professional player, the necessity of securing it is considered as a guarantee and incentive for excellent performance

3. He justifies the necessity of educating the sports community, including athletes, clubs, federations, their technical cadres and others, and spreading the culture of this insurance in the sports community that does not have sufficient information about this modern industry and its importance.

Margins

1. Moaziz Abdel Karim, an article entitled Contract, Insurance and Compensation in the Sports Field, Journal of Humanities and Social Sciences, Issue Seven, January, 2012, p. 254
2. Law No. 60 of 2017, Sixth, "The sports institution treats a professional athlete who is injured during matches and exercises at its own expense during the term of his contract
3. The beneficiary in sports injury insurance is mostly the insured (the player) participating in the sports activity, and it may be a person or other persons to whom the insurance company pays the amount of insurance when the insured sports accident is realized, especially if this accident is death, the beneficiary is inevitably It will be another person specified by the insurance policy schedules
4. Abdul Razzaq Al-Sanhoury, Mediator in Explaining Civil Law, Part VII, Volume Two, Insurance Contract, Gambling, Betting and Life Salary, Mansha'at Al-Maaref, Alexandria, 2004, p. 1280.
5. Abdul Qadir Al-Atir, Land Insurance in Legislation, a comparative study, general rules and provisions for contracts: Liability insurance against car accidents - life insurance - fire insurance, Culture House for Publishing and Distribution, 2004, pp. 61-62
6. Abdul Razzaq Al-Sanhouri Al-Wasit in Explanation of the New Civil Law, Part VII, Volume Two, previous reference, p. 1218 and beyond
7. Abdul Qadir Al-Atair, previous reference, p. 47.7.'
8. Hassan Hussein Al-Barawi, Compulsory Insurance from Civil Liability of Sports Organizers for Damage to Spectators, Comparative Study, Twenty-Second Annual Conference, Legal Aspects of Insurance and its Contemporary Trends, College of Law, United Arab Emirates University, 2014, p. 444
9. The player, although he enjoys independence in his movements during the game, but outside this scope remains subject to the will of the club in terms of weekly training. February 13, 10996 What confirms that the element of dependency is necessary for the existence of an employment contract. «Le lien de subordination et caractérisé par l'exécution d'un travail sous l'autorité d'un employeur qui a le pouvoir de donner des ordres et des directives, d'en contrôler l'exécution et de sanctionner subles manquenments de son . » Cass.Soc. November 13, 1996.
10. Tommy Sonia Mubarak, The Professional Football Player Contract, a critical analytical study, focusing on the legal framework governing the formation and termination of the contract, a master's thesis in the theory and methodology of physical education and sports sciences, 2007, p. 96.
11. Hassan Hussein Al-Barawi, The Legal Nature of the Professional Football Player Contract, Legal and Judicial Journal, Qatar, no publication year, pp. 101-104.
12. Issuance of Law No. 03 of 1987 dated March 05, 1987, with the intention of establishing the Syndicate of Sports Professions, Official Gazette of the Arab Republic of Egypt, No. 10 of 1987.
13. Article 17 first of the Iraqi Sports Professionalism Law No. 60 of 2017, "Clubs are obligated to provide stadiums and model sports halls to practice their activities for the purposes of this law within a period of two years from the date of its entry into force.
14. Muhammad Hassan Allawi, Mathematical Psychology, first edition, Book Center for Publishing, Cairo, 1998, p. 1601.
15. An example of sports riots is what the sports world witnessed for the first time during the football match between the English team Liverpool and the Italian team Joe Ventis on May 29, 1987 in the Belgian city of Brussels. 41 people were injured and more than 400 people were injured, and the British were known as the sports stadiums fans. Muhammad Fathi Eid, titled Security of Sports Facilities, Naif Arab Journal for Security Sciences, on the occasion of the research papers of the scientific symposium "Sports Stadium Security", first edition, Riyadh, 2000, p. 10.
16. Malik Shalih Tawfiq, Violence in the stadiums, a field study in the stadiums of the Wilayat of Oran, Nazra on Social Law Journal, Oran Community, No. 5, 2014, p. 156.16
17. Osama Riyad, Sports Medicine and Stadium Injuries, Dar Al-Fikr Al-Arabi, Cairo, 2012, p. 81.
18. The medical supervision in Iraq was mentioned in the text of the Sports Professionalism Law No. 60 of 2017 in Article 16 of the second paragraph: "Sports institutions contracting with professional players are obligated to insure them against sports injuries or deaths with the National Insurance Company

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References

- Moaziz Abdel Karim, an article entitled Contract, Insurance and Compensation in the Sports Field, Journal of Humanities and Social Sciences, Issue Seven, January, 2012.
- Abdul Razzaq Al-Sanhoury, Mediator in Explaining Civil Law, Part VII, Volume Two, Insurance Contract, Gambling, Betting and Life Salary, Mansha'at Al-Maaref, Alexandria, 2004.
- Abdul Qadir Al-Atir, Land Insurance in Legislation, a comparative study, general rules and provisions for contracts: Liability insurance against car accidents - life insurance - fire insurance, Culture House for Publishing and Distribution, 2004.
- Hassan Hussein Al-Barawi, Compulsory Insurance from Civil Liability of Sports Organizers for Damage to Spectators, Comparative Study, Twenty-Second Annual Conference, Legal Aspects of Insurance and its Contemporary Trends, College of Law, United Arab Emirates University, 2014.
- Tommy Sonia Mubarak, Professional Football Player Contract, a critical analytical study, centered on the legal framework that governs the formation and termination of the contract, a master's thesis in the theory and methodology of physical education and sports sciences, 2007.
- Hassan Hussein Al-Barawi, The Legal Nature of the Professional Football Player Contract, Legal and Judicial Journal, Qatar, no publication year.
- Muhammad Hassan Allawi, Mathematical Psychology, first edition, Al-Kitab Center for Publishing, Cairo, 1998.

Laws:

1. Iraqi Sports Professionalism Law No. 60 of 2017.
2. Law No. 03 of 1987 dated March 05, 1987 in Egypt.