

UAE Judgment - The assessment of damages payable to injured healthcare patients

Mohamed Al Marzouqi - Regional Co-Head of Litigation - Litigation / Legislative Drafting
m.almarzouqi@tamimi.com - Abu Dhabi

Dr. Omar Al Azawe - Senior Counsel - Litigation
o.alazawe@tamimi.com - Abu Dhabi

Seif Elfar - Trainee Solicitor
S.Elfar@tamimi.com - Abu Dhabi, UAE

Judicial precedent has revealed to us time and time again how the compatibility of the facts relating to a dispute, with the documents supporting a party's arguments, can impact a party's position before the competent court during the course of legal proceedings. The significance of such compatibility is made clear in the reasoning of a recent Abu Dhabi court judgment (Abu Dhabi Court of Cassation 162-2021) in a case in which our litigation team successfully defended a healthcare facility client from all liability and costs in relation to a long-standing dispute by focussing on the correct application of the following two legal principles:

1. No compensation shall be awarded by a court to an injured party if they chose not to benefit from their health insurance;
2. No compensation shall be awarded by a court to an injured party for injuries that were not specifically claimed in the court proceedings.

Background

The claimant filed case no. 254/2020 before the Abu Dhabi courts against our client, in its capacity as a healthcare facility, and others (collectively known as the '**defendants**'), to demand payment of:

- AED 5,002,450, representing medical expenses incurred by the claimant for the treatment of his son, who suffered an injury as a result of a medical error;
- AED 500,000, representing compensation for moral damages; and
- legal interest in the amount of 9% on the claimed amount, in addition to court fees and attorney expenses.

The claimant premised his legal grounds on a judgment issued in a previous case that established the liability of the defendants in relation to a medical error, and in which he was awarded compensation. However, the compensation did not include compensation for medical expenses or moral damages. As a result, the claimant filed case no. 254/2020 to claim compensation for medical expenses and moral damages.

The dispute was heard before the Court of First Instance, the Court of Appeal (appeal no. 254/2020), and eventually heard before the Court of Cassation (appeals no. 174, 187, 188/2021). Ultimately, as a result of our advocacy, our client was found not to be liable to the claimant, for reasons that are highlighted below.

- **No compensation shall be awarded to an injured party if they choose not to benefit from the health insurance coverage available to them**

This substantive defence argued by our litigation team before the Court of First Instance was based on the fact that the medical costs that were paid by the claimant from his own personal funds, in his capacity as the patient's father, should not have been expended considering there was insurance coverage available to him from the medical centres approved by the insurer (the insurance company). The Court of First Instance upheld this reasoning and premised its judgment on the following key points:

- The insurer (the health insurance provider) was found to have refused to pay for the treatment as the service provided by the medical centre did not meet the standards of authorised medical providers at government hospitals.
- Health agencies accredited to the insured had not failed to provide medical care to the patient, especially since such care was available at the health agencies.
- While the claimant, in his capacity as guardian of the patient, had the right to opt for his son's treatment at certain health centres, the centre must be accredited by the relevant health authority as the competent regulator that issues standards of treatment to companies and health centres.
- It was open to the claimant to seek alternative treatment for his son or to bear the cost of treatment in private medical centres in accordance with his financial means; however, this should not come at the expense of any other party.

The court dismissed the case and concluded that it did not recognise the invoices issued by the health centre that provided the medical care to the claimant's son from 2015 to 2019.

- **The Court of Appeal's decision to compensate the claimant for damages that he did not claim**

The claimant challenged the judgment of the Court of First Instance before the Court of Appeal, questioning the validity of the grounds on which the judgment was based. The claimant argued that the Court of First Instance had misapplied the law and violated his defence rights by failing to recognise the invoices provided as a basis for the claimant's claim for compensation for expenses incurred in the treatment of his son.

The Court of Appeal heard the appeal and acknowledged that the claimant had incurred expenses for his son's treatment at a time when he could have avoided such expense by resorting to the insurance coverage available for his son's treatment. Despite this line of reasoning, the court awarded the claimant an amount of AED 600,000, representing the time, effort, and money expended as a result of the provision of care to his son and taking legal action against those who had caused harm to his son.

- **The essence of the defence presented before the Court of Cassation: No compensation shall be awarded for damages not specifically claimed**

The Court of Appeal issued a judgment awarding the claimant compensation for unspecified general damages which were not claimed by the claimant in the proceedings, despite the fact that the claimant had filed a case for compensation for quantifiable and specific expenses incurred while treating his ill son, in addition to compensation for moral damages.

Consequently, we filed an appeal against the judgment issued by the Court of Appeal before the Court of Cassation, in which we argued that the competent court is obliged to include in its judgment an explanation of the factors contributing to the damage when calculating the amount of compensation and the amount to be awarded by the competent court is considered a legal issue to be decided by the said court. The Court of Cassation decided to overturn the judgment of the Court of Appeal and upheld the judgment issued by the Court of First Instance.

Conclusion

The key lessons from this case are that the availability of health insurance coverage to a claimant as well as the availability of health care services at medical centres approved by the respective insurance

company prevents a claimant from claiming expenses for treatment, specifically in the event they decide to receive medical care in medical centres not included within the insurance coverage. Moreover, a judgment awarding compensation to a claimant for unspecified damages that are not being claimed by that party will likely result in the judgment being overturned.

Al Tamimi & Company's [litigation team](#) regularly advises and acts for hospitals and healthcare facilities before the UAE Courts. For further information please contact [Dr. Omar Al Azawe](#) .