IS COVID-19 INFECTION REALLY ELIGIBLE FOR INDEMNITY UNDER AN INJURY INSURANCE POLICY?

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A recent judgment by the Court of Turin, of January 2022, has reopened the debate on the eligibility for indemnity payment under private injury insurance of death or bodily injury attributable to Covid-19 infection. The issue had remained in the background for two years, following the passage of the emergency legislation that for the purpose only of the coverage supplied by INAIL, had established the equivalence of Covid-19 infection and injury. At the moment, the judgment in question expresses an isolated position, different from the various rulings issued on the subject by other trial-level judges, even more recently. It is based essentially on the results of the medical-legal evaluations conducted by the Court-appointed expert named in the case in question and was received favorably by commentators who principally follow medical-legal doctrine.

Part of medical-legal doctrine has for some time considered a virulent cause to be equivalent to a violent cause, i.e. one of the elements that, together with the accidental and external character of the cause itself, distinguishes a harmful event that gives rise to an injury (according to the definition of injury used as general practice in insurance contracts). In other words, a viral infection, especially when the infective load of the viral agent is per se sufficient to produce bodily harm, is considered to be of a violent nature and thus Covid-19 infection would constitute an injury eligible for compensation under private insurance policies.

However, it is worthwhile to recall that the equivalence proposed by that medical-legal doctrine in the past was apply by the Italian jurisprudence only for the purpose of ensuring INAIL coverage for workers affected by viral, bacterial and parasite infections for work reasons; otherwise, since those infections were not included among the occupational diseases listed in the ministerial tables in force at the end of the last century, those workers would not have received any protection. So, it was merely a prudential work-around, dictated by legitimate reasons of social justice. Today, however, with the updating of the ministerial tables to include such infections among occupational diseases, it has no reason to exist.

From a legal standpoint, two additional aspects come into consideration:

a) for private law purposes, an injury necessarily requires not only an accidental, external and violent (or virulent) cause, but also the occurrence of a harmful event, and that it must be possible to identify the moment, place and method of occurrence of said event. Frankly, in the case of Covid-19 contagion, this does not seem possible;
b) at least in relation to private insurance policies stipulated prior to the outbreak of the pandemic, Covid-19 infection was certainly a risk unknown to and unknowable by the parties. How it can now be claimed that, in a contract between private parties, governed by contractual provisions that expressly do not consider infections in general, and thus certainly not Covid-19 in particular, the insurer is required to cover a risk not considered *ab origine* and for which the policyholder has not paid any premium to transfer the risk to the insurer, remains a mystery.

Regardless of any considerations concerning the questionable equivalence between violent cause and virulent cause, and the fact that, at least until now, nobody has ever dreamed of providing insurance coverage for infectious diseases under an injury policy (except for infections contracted as a consequence of another injury), this last consideration is decisive in my view, in order to exclude the eligibility for compensation of Covid-19 infection as an injury in the context of private insurance coverage; unless, once again, insurance companies are asked to play the role of providing social shock absorbers, that certainly is not proper for them.