Causation Defences in Fatal Accident Act Claims

Posted On: 25/02/2025
Author: Philip Godfrey

"*In this world nothing can be said to be certain, except death and taxes*." - Benjamin Franklin

Introduction

In a recent fatal clinical negligence case that I was involved in, the agreed medical position was that the Deceased would have been unlikely to survive for more than a month after the negligent event that brought about their death.

This led to the Defendant disputing the claims for bereavement damages and funeral expenses brought under the Fatal Accidents Act 1976 on the basis that the death of the Deceased was imminent in any event.

The question upon which I was instructed to advise was: is this correct?

The answer, in the author's opinion, on the current state of the law is:

1. For bereavement damages, no.

2. For funeral expenses, yes, but there is an alternative route to pursue the claim.

The Statutory Framework

Section 1A of the Fatal Accidents Act 1976 states as follows:

1A. — Bereavement.

(1) An action under this Act may consist of or include a claim for damages for bereavement.

(3) Subject to subsection (5) below, the sum to be awarded as damages under this section shall be £15,120.

(emphasis added)

Under s.3(5) of the Fatal Accidents Act 1976, it states:

(5) If the dependants have incurred funeral expenses in respect of the deceased, damages may be awarded in respect of those expenses. (emphasis added)

Interpretation of the Statute

The leading case in this area is *Brown v Hamid* [2013] EWHC 4067 (QB). Jeremy Baker J was asked to consider a case where the negligence had caused an acceleration of the Deceased's death in the order of 12 months. The Judge allowed the claim for bereavement damages, but disallowed the claim for funeral expenses. The reasoning within this Judgment is sparse. At paragraph 40, the Court set out as follows:

40. It is submitted and to a certain extent conceded that dependant upon my findings in relation to the basis for the calculation of general damages for pain, suffering and loss of amenities a number of the originally pleaded heads of damage would not be sustainable. This will not of course apply to certain other heads, including damages for bereavement which will be recoverable in the sum of £11 800.00 under s.1A(3) of the Fatal Accidents Act 1976. However although damages for the recovery of funeral expenses "may" be recovered and indeed usually are recovered under s.3(5) of the 1976 Act, in the circumstances of this case, namely the acceleration of the symptoms associated with a pre-existing condition by a relatively short period of time, I do not consider that it would be appropriate to make such an award.

With reference back to the statute, therefore, the point of distinction appears to be that a claim under s.3(5) incorporates a degree of judicial discretion, such that damages "may be awarded". No such discretion is afforded by s.1A, which establishes that where the claim is included, damages shall be in the fixed sum.

This might seem like a fine distinction.

In the author's opinion, there is a difficulty in logic here. Every claim brought under the Fatal Accidents Act 1976 is an acceleration case, as is reflected in the famous quote at the top of this article. Where is the line drawn?

In *Brown*, it was a year. What if the period of acceleration was 13 months? Or 18 months? Is five years too long, but three years sufficient? What is the justification for this? The imposition of an arbitrary cut-off seems unfair, and is at odds with the purpose of the statute.

The Potential “Work-Around” for Claims for Funeral Expenses in Acceleration Cases

Section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 provides that, in a Law Reform Act claim by the deceased’s estate for causing the death of the deceased, damages: "… shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included." (emphasis added)

The claim in *Brown* appears only to have been advanced under the 1976 Act. There was no reference to the 1934 Act in the Judgment. To that end, there is a point of distinction here: under the 1934 Act, the claim for funeral expenses “may be included”, however under the 1976 Act damages “may be awarded”.

The wording of the 1934 Act therefore appears to mirror the provision for bereavement damages, and as was set out in *Brown*, these are to be applied regardless of there being an acceleration.

It is therefore the opinion of the author that bringing the claim under the 1934 Act has the potential to circumvent the restriction in *Brown* on claims for funeral expenses where the Deceased’s death has been accelerated for a short period of time.

Readers should bear in mind that this argument has not, to my knowledge, been tested in Court.

Conclusion

The effect of this is to bring the law into a state of inconsistency on this issue. Why should a Claimant bringing a claim under the 1976 Act be at a disadvantage compared to a Claimant under the 1934 Act?

Does this interpretation render claims for funeral expenses under the 1976 Act otiose in acceleration cases?

The practice points to take away are as follows:

1. For those representing Claimants, if faced with a fatal claim in which the medical evidence shows that the death of the Deceased has been accelerated by a short period, the Claimant may be best advised to bring the claim for funeral expenses under the 1934 Act.

2. For those representing Defendants, if faced with such a claim brought only under the 1976 Act, there may be a causation defence to the claim for funeral expenses.