

Fatal Accident Claims - A Brief Overview

Posted On: 02/12/2020

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The area of fatal accident claims is wide and occasionally very complicated. An understanding of the principles and the cases that historically have shaped the Court's approach is necessary. It is an area in which once the statutory provision is understood, a 'feel' for what the Court will think appropriate in each fact-specific case is needed.

This blog article is intended to provide a brief overview of claims in this area. For a more comprehensive discussion please click [here](#).

The provision for awards for fatal accidents is derived from two statutes: the Law Reform (Miscellaneous Provisions) Act 1934 ("1934 Act") and the Fatal Accidents Act 1976 ("1976 Act").

The Law Reform (Miscellaneous Provisions) Act 1934

Claims under the 1934 Act are for the benefit of the deceased person's estate. The Act preserves for the benefit of the estate any action which the Deceased could have brought prior to death. It encompasses claims for pain and suffering suffered by the Deceased between the tortious act and death. In respect of pain and suffering it is necessary to look at the Judicial College Guidelines and associated cases to determine the range of appropriate awards.

The other group of damages to be awarded under the 1934 Act are past losses. The past losses will include care costs, aids and equipment costs, loss of earnings, and indeed all the heads of damage familiar to any personal injury practitioner. The calculation of loss for past losses is the same as any other personal injury claim.

It is possible to claim for funeral expenses under both the 1934 Act and the 1976 Act, however double-recovery is not permitted. Associated with funeral expenses are the cost of the wake, the cost of the memorial service, the headstone and probate. Both sides put forward arguments but the most consistent decisions remain that the costs of probate and the wake are not recoverable; see for example *Mosson v Spousal* [2016] EWHC 53.

The Fatal Accidents Act 1976

Claims under the 1976 Act are essentially for the loss of dependency. Limitation must be considered carefully when advancing such claims (see section 12 of the Limitation Act 1980). Put succinctly, if the Deceased was still within the appropriate time limit for bringing a claim, i.e. within three years of injury or three years of date of knowledge of injury then the dependents have three years from the date of death to bring a claim.

There is only one dependency claim. It is important therefore to identify all potential dependents and include them otherwise there is a risk of another dependent applying to be joined to the proceedings or possibly even suing for professional negligence for not being included in the first place.

The three heads of loss under the 1976 Act are:

1. funeral expenses (if not claimed under the 1934 Act - see above);
2. bereavement damages; and
3. claims for loss of income and services dependency.

Bereavement Damages

There are a limited number of people who can claim bereavement damages. Essentially, the claim is limited to spouses or civil partners, parents in respect of the death of an unmarried minor child and more recently, for causes of action accruing on or after 6 October 2020, cohabitants (by virtue of the Fatal Accidents Act 1976 (Remedial) Order 2020 - for a

detailed discussion click [here](#)). There is only one award, which must be divided between the eligible claimants. The award is fixed from time to time by statutory instrument (see [here](#)), and at the date of publication stands at £15,120.

Partly as a result of the limited category of bereavement, not least the lack of any award to a child for the loss of a parent, there have developed a number of authorities dealing with an award for loss of love and affection. With children who have lost a parent, that commences with the case of *Regan v Williamson* [1976] 1 WLR 305. A series of cases have basically suggested that insofar as there is any financial compensation, it is not for loss of love and affection but for the intangible benefit of having a partner able to carry out, for example, DIY, childcare and the like. The compensation appears to be made as recompense for time spent in getting in commercial help for something which would otherwise have been done gratuitously by the deceased. Where awarded, the sum is in the region of £2,500. On this point, see for example *Magill v Panel Systems (DB) Limited* [2017] EWHC 1517.

Financial Dependency on Income

Here there is a wider range of eligibility. The range covers spouses, civil partners, cohabitees and former spouses or former civil partners. Cohabitees are included provided that the cohabitee and Deceased lived together as husband or wife or civil partner for at least two years prior to death. Parents, people treated as parents (including in-laws), children, including unborn children, children treated as a child of the deceased by reason of marriage or civil partnership, brothers, sisters, uncles and aunts are all potentially eligible. Cases involving cohabitees of short duration, or involving former spouses/civil partners, can be problematic and will require both sensitive handling and a proper review of the facts.

As is now clearly established by the case of *Knauer v Ministry of Justice* [2016] UKSC 9, the multiplier to be applied to a loss of financial dependency is the same as in any other personal injury claim. The period between death and trial is dealt with as a past loss. For the future, the multiplier applied is that appropriate from the date of trial.

The basis for assessing financial dependency is fixed, conventionally, by the cases of *Harris v Empress Motors Limited* [1984] 1 WLR 212 and *Coward v Comex* (CA, 18 July 1988). The convention is that a dependency is 66% of the joint family income, less the income of the surviving partner, when dealing with a couple, and 75% of the joint family income, less the income of the surviving partner, when dealing with dependent children. The convention is rarely challenged, and to obtain a different percentage result it would be necessary to reveal full bank statements, living expenses, savings, income sources, etc, to prove the amount spent. Most Claimants do not want to do this, and will accept the convention, but the potential remains in a suitable case.

More difficult scenarios arise if the deceased was the driving force behind, for example, family finances or a business endeavour and/or when a couple were making retirement provision by way of, for example, investment in property rather than conventional pension. This is again fact-sensitive. A recent example can be seen usefully in the recent High Court decision of *Witham v Steve Hill Limited* [2020] EWHC 299.

Loss of Dependency on Services

This head of damage traditionally was dealt with by way of the inability to provide DIY, gardening, household services, care for children and the like. It has become much more complex. There is a growth of cases related to disabled children, disabled adult children, disabled partners and in particular those with dementia. This will only become more common as the development of medical science means the population lives for longer with medical conditions and, the lack of social care means that it is the family who take responsibility.

Other Considerations

There remains the provision in relation to all dependents that any benefit arising from death shall be ignored (such as, for example, benefits derived from inheritance or insurance policies); see section 4 of the 1976 Act.

In relation to every aspect of financial loss and loss of services, the life expectancy of both the dependent and the Deceased (but for his or her death), must be taken into account. Dependency can only exist for as long as there is life

expectancy.

Concluding Comments

There are to be considered, in any fatal claim, a huge number of variables. The case might be relatively straightforward. On the other hand, it might show every permutation of the type set out above. It is not to be feared but it is to be investigated thoroughly and the facts applied carefully. More than any other area though, in considering quantum, there is a great scope for variation in respect of which a degree of expertise is required.

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