

FATAL ACCIDENTS

Where a person dies in an accident his/her next-of-kin may still bring a claim:

the deceased's estate may maintain any action the deceased may have had in respect of the accident.

a person who was "dependent" of the deceased may bring a claim for damages for loss of dependency.

ACCIDENTS AT WORK

In addition to any common law claim for damages, an employee who suffers an injury as the result of an accident at work, or who suffers a disease contracted from his place of work, can sometimes seek compensation from the employer under the Employees' Compensation Ordinance.

Compensation under the scheme is available for burial expenses in fatal cases, medical expenses and loss of wages. Both the injured party, or dependants of a deceased party may make a claim under the scheme. The amount of compensation which can be awarded is strictly laid down by the Ordinance, and depends largely upon the length of employment by the injured party with the employee, and the degree of incapacity suffered by the injured party.

The law is as stated at January 2003

The law relating to personal injury in Hong Kong is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet you should consult a solicitor

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LAW GUIDE SERIES No. 10

Personal Injury Law in Hong Kong

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WHAT IS A PERSONAL INJURY CLAIM?

You may be knocked down by a car crossing the road, hit on the head by falling debris, or have an accident at work. You may be entitled to damages *i.e. money* compensation for your physical injury, caused by the negligence of the driver, contractor, or employer.

Although most personal injuries are caused by negligence, some may result from trespass to the person, nuisance, dangerous premises, chattels or animals, or from breach of a statutory duty. Whatever the legal grounds for the defendant's liability, the measure of damages will be calculated by the court in the same manner.

THE COURTS

As the injured party, the plaintiff usually commences proceedings on one of two Courts;

1. District Court - damages not exceeding HK\$600,000.00
2. High Court - for damages exceeding HK\$600,000.00

It is therefore important to quantify the claim as best as possible before commencing legal proceedings.

In both the High Court and the District Court, apart from actions within the Admiralty jurisdiction, all actions where a claim is made for damages for death or personal injuries, including claims arising from medical negligence, shall be assigned to the Personal Injury List. Proceedings are commenced by issuing a Writ of Summons endorsed with general endorsement of claim. Together with the Writ of Summons, a full statement of claim and the medical reports to be relied on must be served on the defendant. The defendant must file an Acknowledgement of Service within 14 days of deemed service if he wishes to dispute the claim.

These documents are almost always prepared by a solicitor. If you cannot afford a solicitor you may be entitled to legal aid. If special damages (see below) can be calculated at the time, they will also be included in the claim. Notice of the court proceedings will also be served on the defendant's insurance company, if any.

Automatic directions for the conduct of personal injury actions are prescribed by the High Court Rules and the District Court Rules.

If the case is undefended, the plaintiff may proceed to default judgement and obtain a hearing for damages to be assessed. More often, the action will be defended and will proceed to trial. During the trial the plaintiff will have to prove the elements of his case and his claim for damages. It is quite common however, particularly where the defendant in a road traffic case has a criminal conviction in relation to the same incident, for the action to be settled before trial.

At the trial each side is usually represented by a barrister assisted by a solicitor. In the District Court the trial may be handled by a solicitor only. Legal Aid may be available if you cannot afford a barrister or solicitor to represent you.

WHAT ARE "DAMAGES"?

Compensation for personal injury is divided into damages awarded for losses which the plaintiff would expect to suffer in the future from the date of trial ("general damages") and losses which have accumulated from the date of the accident to the date of the trial ("special damages").

GENERAL DAMAGES

General damages can be divided into financial and non-financial losses :-

1. Financial Loss

This is the sum by which the plaintiff is financially disadvantaged by the accident. This sum includes the cost of future medical care and attention.

2. Non-financial Loss

i.e. loss which cannot be restricted by a money award.

(a) The most important category is pain, suffering and loss of amenities.

An amount will be awarded to cover past and future pain and suffering, whether physical, mental or emotional. The Court looks at awards in other cases for guidance where there are similar injuries, but would also take into account the following factors :-

- awareness of pain, the shortcomings of the plaintiff's lifestyle as a result of the injuries
- the suffering caused by awareness of shortened life expectation
- any embarrassment resulting from disfigurement
- the effect the injury may have on the plaintiff's relationships with

members of his family.

Hong Kong cases have suggested guidelines for personal injury awards, dividing injuries into categories of serious, substantial, gross disability, and disaster, with appropriate money awards.

(b) Another non-pecuniary loss is termed "loss of society" of the plaintiff, suffered by the close family of the plaintiff. The amount of the award depends upon the seriousness of the injury but will not exceed HK\$150,000.00.

(c) Loss of future earnings including earnings which are expected to be lost from the date of trial.

CALCULATING LOSS OF EARNINGS

This is calculated by taking the plaintiff's net earnings as they would have been at the time of trial, and subtracting from that the plaintiff's current earnings. The resulting sum ("the multiplicand") is multiplied by a figure known as a "multiplier". The multiplier will be less than the number of years the plaintiff would have been expected to work, taking into account that the plaintiff may have been unable to work for some other reason, and the fact that the plaintiff is receiving a lump sum award which can be invested.

If the plaintiff has lost skills as a result of the accident, and award is sometimes made to reflect his loss of earning capacity.

SPECIAL DAMAGES

Special damages are awarded to cover those costs accrued before the trial, including medical expenses between accident and trial. This can include traditional Chinese medicine and nourishing foods.