

PERSONAL INJURY  
COMPARISONS &  
PERSPECTIVES ACROSS EU;  
ENGLAND & WALES



# Parents' Non-pecuniary Damages for Fatal Accident Involving Child

The Fatal Accidents Act 1976 allows parents of a deceased child to bring a claim for non-pecuniary damages. These are known as statutory bereavement damages.

Claim can only be made -

- if the child was never married or had a civil partner
- by his parents, if he was legitimate; and
- by his mother, if he was illegitimate

No other relatives (e.g. siblings, grandparents, uncles and aunts) can make a claim.

The sum awarded as damages for bereavement is currently fixed at £12,980 / €16,225. The age of the child (unless he was 16 and had married or was in a civil partnership), how he died and whether there was a delay between injury and death is irrelevant. The figure is the same in all circumstances. It is fixed by legislation. Therefore case law is also irrelevant.

Most commentators consider the level of the bereavement award and the restricted class of persons who can claim it, as scandalous.

Where there is a claim for damages under this section for the benefit of both parents of a deceased child, the sum awarded is divided equally between them. Therefore they will only receive £6,490 / €8,112.50 each.

A parent cannot claim bereavement damages where their child is over the age of 18 at the date of death, even if the injury occurred when he was under 18.

# Incidence of Civil Claims in England and Wales

- ❑ Population of the UK is approximately 65 million. Of this, approximately 58 million live in England and Wales.
- ❑ About 1.5 million civil claims and petitions are brought in the County and High Court of England and Wales each year. Therefore about 1 claim is brought per 39 members of population each year.
- ❑ Typically only about 3% to 4% of these cases require a trial. In the vast majority of cases, either the defendant does nothing so the claimant can ask the court to order the defendant to pay the amount claimed, or the disputes are settled without a court hearing.
- ❑ Civil hearings are presided over by a single judge, without juries. There are two main types:
  - (a) **Informal small claims hearings** - usually where the value being disputed is less than £10,000 / €12,500
  - (b) **Formal trials** - usually where the value being disputed is greater than £10,000 / €12,500

# Duration of a Claim at First Instance

Much of the preparatory work is done before the claim starts in court. This is because of pre-action protocols requiring parties to give early disclosure so that the strength of each parties' case can be assessed by the other. The protocol period lasts between 3 and 6 months.

Once the claim has started in court, the following are guidelines on how long cases take to conclude to a judgment –

- ❑ Claims worth less than £10,000 / €12,500 (procedure called small track) – generally 26 weeks from inception to judgment
- ❑ Claims worth between £10,000 / €12,500 and £25,000 / €31,250 (procedure called fast track) – generally 39 weeks from inception to judgment
- ❑ Claims worth over £25,000 / €31,250 (procedure called multi track) – huge variation in times because complexity of claims differ so much; but generally between 52 and 78 weeks from inception to judgment.

Note that if a claim involves personal injury with a non-pecuniary damages claim exceeding £1,000 / €1,250 (shortly to increase to £5,000 / €6,250), it will proceed in the fast track even if the total claim is worth less than £10,000 / €12,500.

# Methods of Restricting Litigation

- To avoid judicial decisions, there are a vast array of alternative dispute resolution (ADR) measures to help parties settle disputes, before and/or during a court claim. These include direct discussions between lawyers, mediation, facilitation, neutral evaluation and arbitration.
- In personal injury claims the most popular ADR is direct face-to-face discussions (called roundtable meetings). At roundtable meetings lawyers, parties, insurers and sometimes experts attend to argue the strengths of their case and the weaknesses in the other in an attempt to reach a deal.
- A roundtable meeting usually costs about £3,000 / €3,750 for each party
- Note that the court cannot COMPEL parties to participate in ADR, although failure to engage in ADR can lead to adverse costs orders.
- If a case requires decision by a judge, finality of litigation is achieved by providing NO automatic right to appeal. Appeals can only be brought with the permission of the judge at first instance or the appeal court.
- Permission is usually only given if the appeal has real prospects of success. Moreover, once a first appeal is determined, it is very difficult to bring a second appeal. A second appeal can usually only be brought if there is an important point of principle or practice.
- Even if permission is given, the appeal itself is not a rehearing. It is a review of the decision at first instance. The starting point is that the original decision stands. It is therefore difficult to appeal successfully.

# Number of cases that resolve in and out of court

- ▣ In civil cases only about 3% to 4% of the approximately 1.5 million court claims started in England and Wales every year proceed to trial. Therefore 96% to 97% resolve before trial.
- ▣ When one bears in mind that most disputes resolve before coming to court, it is estimated that less than 0.5% of all disputes require final determination by a judge. Therefore more than 99.5% resolve without trial.
- ▣ It is anticipated that the rate of disputes being resolved without court intervention is likely to rise even more. This is because of steep increases in court fees. For example, to start a claim worth £200,000 / €250,000, the initial court issue fee alone is £10,000 / €12,500.

# District Judge Jinder Singh Boora

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*This paper was prepared for the International Comparative Law European Conference Hosted by Judge Francesca Fieconi, Held on 27<sup>th</sup> May 2016 at Milan Courthouse, c/o Aula Magna, c.so P.ta Vittoria 47 , 20122 Milan, Italy. The paper represents a short synopsis of a talk given by the writer.*