

Fatal Accident Claims

Introduction

Claims arising from the death of a party due to the negligence of others are frequently encountered but involve complex issues and are deserving of special attention.

The Legal Framework

1. The estates' claim under the Law Reform (Miscellaneous Provisions) Act 1934 ("LRMPA")
2. The dependants' claim under the Fatal Accidents Act 1976
3. The relatives' claim for a "bereavement award" under the Fatal Accidents Act 1976 ("FAA")

The Claim by the Estate

On death, all causes of action shall survive for the benefit of the estate – s1(1) LRMPA

What can be claimed?

- Damages for the Pain Suffering & Loss of Amenity of the deceased
- Awareness of reduced life expectancy – s1(1)(b) Administration of Justice Act 1982

Kadir v Mistry (CA) 26.3.14

[3 months distress caused by awareness, awarded £3,500]

- Pre-death Special damages – eg loss of earnings, loss of property, expenses, etc
- Funeral expenses, if paid by the estate

Who is entitled to claim?

The beneficiaries of the estate

Is there a Will?

- If so, then claim can be started/continued by the executors of the estate on behalf of the beneficiaries – CPR 19.3
- *If no Will, and died intestate, MUST get a Grant of Letters of Administration **before** any proceedings are issued*

Milburn v Evans [2011] EWCA Civ 577

[no grant of Letters of Administration – claim a nullity – CPR 19.8(1) could not retrospectively correct the deficiencies]

The Claim by the Dependants

Who is a dependant?

- Must prove a reasonable expectation of future benefit from deceased
- Only as defined by statute – s.1(3) FAA
 1. Spouse or former spouse of dec'd
 2. Cohabitee – who had been living with dec'd as spouse in same household for at least 2 years before death. *[Swift v Sec of State [2013] EWCA Civ 193]*
 3. Parent, grand-parent, great grand-parent

4. Any person treated by dec'd as parent, grand-parent etc
5. Any child, grand-child, great grand-child
6. Any child treated by the dec'd as a child of the (*married*) family of the dec'd
7. Any sibling of the dec'd or their children
8. Any aunt/uncle of the dec'd or their children
 - a relationship by marriage is treated as a relationship by blood – s.1(5) FAA
 - a half relationship is treated as a whole relationship
 - a child may be of any age
 - A step-child is treated as a child of the step-parent
 - Illegitimate or adopted child is treated as legitimate
 - Unborn child, conceived before accident, is included
 - Dependant may claim even where dependency arose after injury to dec'd, but before death

Phillips v Grampion Health Board [1992] SLT 659

Types of dependency

Need to prove a loss arising from the deceased's death

- Loss of income (financial loss)
- Loss of gratuitous services provided by deceased
- Loss of pension
- Loss of fringe benefits eg Co car, medical insurance
- Loss of gifts (eg pocket money for children/ grandchildren)
- Losses incurred *because of death*:
 - eg: additional IHT due on gifts transferred by deceased as a result of death less than 7 years from original transfer

Davies v Whiteways Cider Ltd [1975] QB 262

Loss of Financial Dependency

Calculating the dependency

- The deceased's net income from death to trial [this may increase/decrease]
- Less the amount dec'd would have spent on him/her self

"Conventional approach" – Harris v Empress Motors

- i. 33.3% of joint income deducted where only a dependant spouse
- ii. 25% where dependant children & spouse

To depart from conventional approach will need to produce evidence to show exactly what dec'd did spend on him/her self and will require an analysis of bank, credit card statements, etc.

Where spouse is earning before death & no dependent children

1. deduct 33.3% from their JOINT income; and
2. deduct survivors income

e.g.

Dec'ds net income	50,000
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Survivor's net income	20,000
Joint net income	70,000
x 66.6%	46,620
Less survivor's	-20,000
Annual dependency	£26,620

Past loss to trial

- Use the dec'd's probable earnings from death to trial
- If survivor is working at time of death, his/her earning *capacity* will be taken into account even if actual earnings are reduced because of the other's death

Cookson v Knowles [1978] 2 All ER 604

- Conversely, if survivor was not working at date of death, survivor's earning capacity will *not* be taken into account

Howitt v Heads [1972] 1 All ER 491

Future loss

- The multiplicand
- calculated on basis of what is known at date of trial
- The multiplier
- calculated from the date of death
- Take the shorter of
 - period in which dec'd would have been able to provide dependency (ie based on dec'd's life); **or**
 - period in which dependent would have been able to enjoy the dependency (based on dependent's life)

Factors affecting the multiplier

[contingencies other than mortality]

- Health of dec'd and dependent(s)
- Relationship between dec'd and dependent(s)
- eg expectation of divorce/separation
- NB: the fact of co-habitation, and not marriage, *should* be taken into account according to s. 3(4) FAA
- Apply any other adjustments using tables A-D in explanatory notes to Ogden Tables *[Facts & Figures para 33 onwards]*

Periods of future dependency

- from trial to retirement age
- from retirement to death

The approach to adopt

- To retirement age– see para 70 of *Facts & Figures 2017/18*
- From retirement– see para 76 of *Facts & Figures 2017/18*

Factors to be disregarded – s 4 FAA

“..benefits which have or may accrue to any person from his estate or otherwise as a result of death, shall be disregarded”

- Includes insurance policies, life assurance, etc
- Widow's pension is ignored
- *Pidduck v Eastern Scottish Omnibuses [1989] 2 All ER 261*
- Better care provided to child by new step-mother, ignored
- *Stanley v Saddique [1991] 2 WLR 459*

The Loss of Services Claim

- To include the services that the dec'd would have provided, in his lifetime, to the dependant(s)
- Each dependent to be assessed separately
- To be assessed on a commercial basis (and discounted by 25% if actually provided gratuitously)
- To include DIY, house maintenance, gardening, etc
- In relation to dependent children:-
- Usually sought until end of full-time education (22)
- On a reducing multiplicand as child gets older
- To be apportioned unless equality can be justified

Miscellaneous Items

- Separate award for “intangible” loss of a parent
- *Regan v Williamson [1976] 1 WLR 305*
- [usually between £3000- £5000]
- Funeral expenses
- s.3(5) FAA- where incurred by the dependants
- must be reasonable
- does not include expenses arising from death eg probate

Bereavement Award

- Payable as a fixed sum under s 1A FAA
 - Very limited category of recipients:-
1. spouse
 2. parents of unmarried, legitimate minor (divided equally)
 3. mother of unmarried, illegitimate minor
- Amount of award:-
 - £11,800 if death between 1.4.08 and 31.3.13

- £12,980 where death after 1st April 2013

By Christopher Taylor – July 2016