

Insurance & Personal Injury

Would the Marine Department be Liable to the Victims of the Lamma Island Ferry Collision Accident?

Introduction

When a claimant suffers personal injury whether mental or physical as a result of public servants' doings in their line of duty (occupier's liability excluded in this article), apart from launching a claim against the particular public servant, the claimant can also consider whether a claim against the relevant public authority can be brought. This article discusses in what circumstances public authority might be held liable, a case to mind is the liability of the Marine Department in the Lamma Island ferry collision tragedy in October 2012.

Vicarious liability

Firstly, as an employer of public servants, public authorities may be vicariously liable for the negligence of employee public servants causing harm to citizens if:

1. the particular public servant is found to be negligent; and
2. the public servant was acting in the course of his/her employment when committing the tort in question and the tort was closely connected to the work he/she was employed to do.

Negligence claim – breach of duty

Secondly, the public authority might be found negligent for the acts or omissions of its servants if:

1. the public authority owed a duty of care to the claimant;
2. the public authority breached such duty of care; and
3. it is reasonably foreseeable that the breach of duty of care would cause personal injuries and losses to the claimant.

If the public authority is not the primary or direct party causing harm to the claimant but it has certain degree of control over the offending third party, then there had to be a sufficient relationship of proximity to establish a duty of care owed by the public authority to the claimant. A duty to the public at large is not enough and there had to be particular circumstances giving rise to an additional degree of risk over and above that faced by the public at large. One such circumstance would be the fact that the public authority which is

responsible for controlling the third party where a failure to exercise that control gives rise to an immediate and obvious risk to the claimant.

Is the Marine Department liable in the circumstances?

The Marine Department is responsible for all navigational matters in Hong Kong and the safety standards of all classes and types of vessels. Under the Merchant Shipping (Safety) Ordinance, the Director of Marine Department (or officers whom he delegated) shall issue a general safety certificate showing that the ship complies with the regulations on passenger ship construction, life-saving appliances and other relevant regulations¹.

In the report published in April 2013 by the Commission of Inquiry into Collision of Vessels, it pointed out several malpractices of Marine Department's inspectors who had carried out routine inspections on the vessel (i.e. Lamma IV) prior to the accident. He might have negligently passed Lamma IV on seaworthiness when it was actually not safe. Specifically, the Inspector:

1. failed to note the absence of watertight door to Access Opening in Lamma IV which was documented in the ship plan and drawings;
2. accepted the 2005 Stability and Damage Stability Booklet submitted to the Marine Department but which was based on false assumptions;
3. failed to ensure that seats were properly secured on the Upper Deck; unsafe seats attachment was a major cause of death;
4. failed to properly enforce 2007 Regulation requiring children lifejackets for 5% of passengers on board.

Subsequently, after the collision, Lamma IV sank faster than it was designed to be. On hindsight, had the Inspectors showed no leniency in inspection, improvement could have been requested before Lamma IV could set sail.

In view of the findings of the above report, it is arguable that the Marine Department was negligent for the acts or omissions of its inspector and such negligence caused harm to the aggrieved individuals in the Lamma Island ferry collision accident.

If it is alleged that the harm to the aggrieved individuals in the Lamma Island ferry collision accident was not caused by the Marine Department but by the third parties (for example, the owner, the captain and the crew of Lamma IV), the aggrieved individuals can still claim against the Marine Department if they can prove that the Marine Department has certain

¹ Section 15 of the Merchant Shipping (Safety) Ordinance

degree of control over those offending third parties and that there was a sufficient relationship of proximity between the Maine Department and the aggrieved individuals.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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