Can I Claim for the Value of Services Provided by My Family Members following My Injury?

While it has been well established that care provided by a family member to an injured person in personal injuries cases can be included in the claim for damages from the wrongdoer, not all care and attention spent on the injured person can be recovered. This article illustrates the scope and limitation of the claim for value of gratuitous services provided by family members.

Gratuitous services and care by family members

In the unfortunate event of an accident, the family members of the injured person will often devote extra attention and care on the injured person. In some cases, a family member may have to give up his or her full time employment to take care of the injured person; others may need to spend extra care and attention on the injured person in his or her after-work hours. Some may only spend a few months taking care of the injured person during his or her rehabilitation while others may need to pay extra attention for the rest of the injured person’s life.

The English cases of *Cunningham v Harrison* [1973] 1 QB 942 and *Donnelly v Joyce* [1974] 1 QB 454 established that the injured person can recover from the wrongdoer for the gratuitous provision of care by a third party. While disagreeing with the reasoning of the Court of Appeal in *Donnelly v Joyce*, the House of Lords confirmed the principle in *Hunt v Severs* [1994] 2 AC 350. The principle has been adopted and followed by the Hong Kong courts.

The underlying rationale for such a claim is to enable the voluntary carer, e.g. a family member, to receive proper and reasonable recompense for his or her services. It is said that the damages recovered should be held on trust by the injured person for the voluntary carer.

Generally speaking, if the services and care provided by the family members are over and above that which would normally be provided, and such services and care are reasonable and necessary in the circumstances, such claim will be allowed. However, disputes often arise between parties over the level of care and the valuation of the gratuitous care provided, as it will directly affect the damages recoverable from the wrongdoer.
Value of gratuitous services and care

In practice, the quantification of the value of service always poses difficulty, mainly because it is difficult to quantify the service, care and attention by a family member. But where there is such a claim, how should the gratuitous care be valued? The following cases provide some illustration on the court’s view on these matters.

*Lai Hing Wan v Kowloon-Canton Railway Corporation, HCA No. 4338 of 1984*

The plaintiff fell from the train while it was still moving. He was trapped between the carriage and the rail and suffered very severe injuries which involved the amputation of his left arm and leg. He was hospitalised for 14 months and was fitted with artificial arm and leg. Following the accident, the plaintiff’s wife had to help him each day in dressing and washing and had to accompany the plaintiff to work.

The plaintiff claimed, amongst others, for the services of his wife in looking after him. The court held that a sum of $2,500 per month was the reasonable value of the supervision and care and attention which the plaintiff’s wife had rendered and would be required to render for the rest of the plaintiff’s life. The court adopted a multiplier of 18 and awarded a sum of $540,000 for the services of the plaintiff’s wife.

*Li Yuet Yee & Ors v Ng Chi Hang*, HCPI No. 451 of 2006

This case concerns a traffic accident to the plaintiff’s family. The family was walking on the street while the vehicle driven by the defendant knocked down the mother and the younger son from behind, causing serious injuries. In respect of the action by the younger son, the value of service provided by the father to the younger son at the hospital and extra care for recovery thereafter was claimed.

The court held that the cleaning, feeding and exercising done by the father were more than what ordinary parents would do because no parent is going to expect his child being knocked down by a vehicle and hospitalised. As a result of the service and care, the condition of the younger son did improve as time went on. The court valued the extra care spent by the father on the younger son to be equivalent to the service provided by a maid charging at $3,000 per month for a period of 3 years.

*Ho Ho Ming v Tse Po Wah & Ors, HCPI No. 1168 of 2003*

The plaintiff suffered from head injuries and multiple fractures resulting from a fall in a construction site. The plaintiff claimed for the value of services / loss of earnings of his girlfriend and his girlfriend’s mother, and his parents. The service rendered by the plaintiff’s girlfriend comprised of helping the plaintiff to wash and bathe, bringing breakfast and food to him and providing him with clean clothes and underwear. The court found that those were services which would be provided to him by the nursing staff in the hospital. Although the court did not doubt that the girlfriend did all that because she was the plaintiff’s girlfriend and
wanted to care for him over and above the services provided by the hospital staff, the court found that it was not reasonably necessary for the girlfriend to do so in the circumstances.

The plaintiff also claimed for 18 months’ loss of earnings by the plaintiff’s mother who was earning $6,000 per month working as a cashier, in order to take care of the plaintiff after his discharge from hospital. The 18 months related to the time the plaintiff stayed at home after discharge from hospital until he moved out. The plaintiff’s mother only resumed working thereafter. In light of the condition the plaintiff was in, the court found that he had to be wholly dependent on his mother to take care of him while he was recuperating at home for those 18 months and it was therefore not unreasonable for his mother to give up her work for that period of time. The court awarded the claim for the 18 months’ loss of earnings by the plaintiff’s mother.

Conclusion

As illustrated in the above cases, in assessing the claim for value of services provided by family members, the court will usually look at, firstly, whether such service was over and above the services the injured person received or would have received in ordinary courses of events; and secondly, whether such service was reasonable and necessary in the circumstances. The court will also make reference to the value of service provided by domestic helpers as comparables in valuing the gratuitous services provided by family members.