Insurance & Personal Injury

Can a Parent be Liable for His Child’s Injury Caused by a Tortfeasor, or Is a Child Capable of Contributory Negligence?

Introduction
In July 2013, we wrote an article on the parents’ liability for the torts committed by their child. In that article, it concludes that parents have the duty to exercise a reasonable degree of supervision and control over the child when taking into account the child’s age, propensity to meddle and the foreseeable danger of the activities the child was involved at the relevant time.

This article aims to discuss the parents’ liability of their child’s personal injuries inflicted by a tortfeasor. Further, we shall discuss whether an injured child can be held contributory negligent to his own injuries even if the injuries are caused by the tortfeasor.

May Ngai Gloves Factory Ltd v Nam Kam Lan CACV 90/1979
A 10-year-old girl (the “Girl”) who was knocked down by a van driven by the driver (the “Driver”) and sustained injuries sued the Driver for negligence. In the lower court, the Driver joined the Girl’s mother (the “Mother”) as the Third Party because the Girl was with the Mother before the Girl ran out to cross the road. The Driver argued that the Mother had failed to supervise and control the Girl. The court held that the Driver was negligent. The Driver appealed on the issues that the Girl was contributory negligent and the Mother had been negligent in her control of the Girl.

On the first issue whether the Girl was contributory negligent, the Appeal Court found the Girl was 20% to blame for the accident because when the Girl started to cross the road she could see that the van was approaching at some 100 ft. away. The Girl of 10 years old should know better than to step out in that circumstances. In reaching this decision, the Appeal Court cited the earlier decision of Ho Kwai Loy v Leung Tin Hong CACV 62/1977 and a statement of the Canadian Supreme Court in McEllistrum v Elches [1956] SCR 787. In Ho Kwai Loy, it was held that a child of 6 years old is capable of contributory negligent. In McEllistrum v Elches, the Court said “it should now be laid down that where the age is not such as to make a discussion of contributory negligence absurd, it is a question for the jury in each case whether the infant exercised the care to be expected from a child of like age, intelligence and experience”.

On the second issue whether the Mother had been negligent, the Appeal Court considered that parents do owe a duty of care to other road users to control their young child while they
were walking on a public road in their company. Nonetheless, the Mother was found not negligent because at the time, the Mother was holding her daughters aged eight and five respectively by their hands. The Girl and her two elder brothers were walking a few feet in front of the Mother. The Mother had instructed them on the use of zebra crossing and had expected them to wait for her at the zebra crossing. The accident happened when the Girl felt an urgent need to relieve herself, crossed to go to the lavatory on the opposite side of the road where there was no pedestrian crossing. She did not use the zebra crossing some 100 yards down the road.

In this case, we can see that had the Mother failed to supervise and instruct the Girl on the use of zebra crossing, it is likely she would have to share liability. The test for the parents’ liability relates to the degree of reasonable supervision and control over the child. The degree of reasonableness depends on the age and personality of the child. The more mature and well-behaved the child, the lower the degree of control is expected of the parents. On the question of a child’s share of liability, the test is whether the child of such age can be expected to take precautions in the circumstances.

Emma Hughes v The estate of Dayne Joshua Williams, deceased [2012] EWHC 1078 (QB)

This is a case of car accident happened in the UK where the Defendant (“D”) driver was driving along the road in the opposite direction and swerved into the path of Ms Williams’ (“M”) car where the Plaintiff, a child just over 3 years old (“C”), was seated on a booster seat restrained by the adult seat belt adjusted to shoulder level. The serious injuries caused to C include cerebral contusions, cervical root avulsion, spinal cord contusion, fractured left humerus and ruptured liver.

It was not in dispute that D was negligent but he joined M as the third party and sought contribution on the basis that she had been negligent in failing to secure C safely by way of a suitable seat restraint. M’s car was fitted with a booster seat as well as a child seat with a 5-point harness. M had chosen to restrain C in the booster seat for which C did not fit the age, height or weight criteria of the manufacturer’s instructions. Expert evidence revealed that the injuries sustained by C would have been largely avoided if the child seat had been used.

M argued that her decision taken at the time was genuinely for the welfare of C. The decision was not a negligent or blameworthy one. The accident was wholly caused by D.

The UK Court held that a duty of care is owed by a parent to her/his child to take reasonable steps to ensure that the child is secured with an appropriate seat restraint. M was negligent and in breach of that duty by failing to secure C safely by using an unsuitable seat restraint and ordered that M contributed 25 per cent of the damages.
**Conclusion**

No doubt parents would be traumatized in seeing their child suffers injuries. They would be double traumatized if they are held liable for their child’s injuries inflicted by a tortfeasor. To avoid attracting such liability, parents should always, depending on the age of their child, take reasonable steps to supervise and control their child. The supervision and control are sometimes not difficult, say for example, hold the child’s hand while crossing the road or while walking on unsafe road condition, fasten his/her seat-belt and give repeated and clear instructions to the child to avoid dangerous situations. These methods not only help to avoid the risk of injuries to their child, but may also sufficiently absolve the child and the parents from contributing to the tortfeasor’s liability.

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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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