Insurance & Personal Injury

What Legal Actions Can I Take If I Fell Because the Escalator Suddenly Collapsed / Broke?

Introduction

Recently, there are various news reports on accidents arising from the breakage or collapse of escalators in shopping malls and mass transit railway in Hong Kong and China causing concerns over escalator safety. This newsletter aims at providing a general overview of the potential claims in such an accident.

Suing the operator / occupier

The most straightforward person to be sued may be the operator or owner of the escalator. In most of the cases, they are also the occupier of the premises which contained the escalator in question, as he has control over it. The claimant may sue the operator or occupier for negligence, breach of occupier’s common duty of care and/or breach of statutory duty.

Duty of care

In Kam Wai Ming v MTR Corporation Ltd & another, unreported, DCPI408/2002 (11 December 2003), the first local escalator case concerning an accident in which the escalator suddenly stopped, Empire Company Limited v Sheppard, 103 ACWS (3d) 436 was followed and the court held that the owner or operator of the escalator has to ensure that the escalator is operated and maintained with a high standard of care.

Further, pursuant to section 3(2) of Occupiers’ Liability Ordinance (Cap 314) (the “OLO”), an occupier owes a common duty of care towards all visitors on his premises that they will be reasonably safe in using the premises (including the escalator).

Part 3 of Lifts and Escalators Ordinance (Cap 618) (the “LEO”) also expressly imposes a statutory duty on the owners of escalator. In particular, section 44(1) requires the owners to ensure their escalator is kept in a proper state of repair and in safe working order.

Breach of Duty

To successfully claim against the operator or occupier, one has to prove that they breached their duty of care on the balance of probabilities. Therefore, the claimant may need to instruct experts to examine the broken escalator and/or to adduce evidence such as previous maintenance logbooks and testing records etc. to show that the operator had failed to take reasonable steps to ensure that the escalator is well maintained or repaired.
However, under section 3(4)(b) of the OLO, if the operator can show that the breakage of the escalator is caused by the negligent maintenance or repair work by a contractor instructed by him, and he had already (1) exercised reasonable care in entrusting the work to a qualified contractor and (2) had taken all reasonable steps to satisfy himself that the contractor was competent and (3) that the work had been properly done, then he may not be liable for breach of occupiers’ liability.

While appointment of contractor may help the operator under the head of occupiers’ liability, in *Poon Kwok Wing Ernest v Airport Authority Hong Kong* [2010] 3 HKLRD 345, the Court of Appeal ruled that the statutory duties imposed by Lifts and Escalators (Safety) Ordinance (which is the old version of the LEO) on owners of escalator are not wholly delegable and one cannot rely on the facts that (1) it has entrusted a qualified contractor and (2) reports did not show that escalators had any problem, to refute the negligence claim.

The injuries are caused by the breach

After proving a breach of duty, the claimant also has to show the injuries are caused by the operator or occupier’s failure to take reasonable steps to ensure the escalator is in proper order or safe to use. In a collapse or breakage of the escalator case, this causation should be easily proven.

Suing the maintenance contractor / engineer / worker

Professional workers who are engaged to carry out examination, maintenance and repair and alteration work of the escalator (the “Escalator Works”) are also potential parties to be sued in an escalator accident for negligence and/or breach of statutory duty.

Duty of care and breach of duty

In general, these professionals owe users of the escalator a duty of care to exercise reasonable care in carrying out the Escalator Works. Part 3 of the LEO further imposes a statutory duty on registered escalator contractors, engineers and workers to carry out the Escalator Works properly and safely. Code of Practice for Lift Works and Escalator Works, issued by the Electrical and Mechanical Services Department (the “Code”), provides guidance to the standard of care of these professionals in carrying out the Escalator Works. This helps claimants to prove a breach of duty by showing that they did not comply with the Code.

The injuries are caused by the breach

Again, causation has to be shown, that is, but for the negligence of these professionals in carrying out the Escalator Works, the escalator would not break and cause personal injuries to the claimant.
Suing the manufacturer

Manufacturer of escalator has a **duty** to the ultimate users to exercise reasonable care to ensure that the escalator it produced is safe. (as per *Donoghue v Stevenson* [1932] A.C. 562)

However, it may be difficult to prove negligence. It is because when the escalator suddenly broke, it may well be the case that the manufacturer has properly produced an escalator in perfectly safe and sound condition, but after a period of daily usage, wear and tear with insufficient maintenance and repairs had caused the escalator to break. In such event, there is no fault on the manufacturer’s part.

**Conclusion**

To sum up, a victim who suffered injuries due to the sudden collapse or breakage of the escalator would generally have a claim against the operator and the maintenance contractor/ engineer/ worker whereas a claim against the manufacturer is unlikely to succeed.

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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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