FAQs on Personal Injury and Fatal Accident Claims
The Power of Integrity
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This publication is intended to be an outline of the law and procedures on this subject for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact this firm on 2810 1212 or email us at onc@onc.hk.

ONC Lawyers

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what is a personal injury claim?

It is a claim for monetary compensation for injuries, including physical, psychological and psychiatric ones, caused by an accident.

under what circumstances can I make a personal injury claim?

Except for Employees’ Compensation Claim (which is explained below), you could only make a claim for compensation if your injury is caused by some other’s “fault”. If the injury arises wholly out of your own carelessness, or from events which could be described as “Acts of God” (e.g. earthquakes), then you would not have a claim.

what is meant is by “fault”?

In the context of personal injury, “fault” could encompass a wide range of improper acts or omissions. If a person intentionally causes harm to you, then you certainly have a claim against him.

If the harm is caused by him carelessly, you can also make a claim against him. The most typical case is when a person drives a car carelessly and it hits you. Sometimes the carelessness may not be so obvious, as when a
restaurant fails to keep its floor clean and dry and you slip on the floor and hurt your back, or a building is poorly maintained and its canopy falls and hurts you. The restaurant and the building owners will be liable to compensate you.

**what if I am also responsible for the accident?**

You could still make a claim although the final award to you would be discounted by a percentage by which the court thinks you are responsible for the accident. For example, if the court finds that you are 40% responsible for the accident, then your award will be reduced by 40% from the award which you would otherwise receive. Sometimes, even if your responsibility is more than 50%, you may still make a claim and your award could still be a significant sum.

**what if I cannot identify the wrongdoer?**

If you are hit by a car in the dark and it runs off without stopping, you could still make a claim to the Motor Insurers' Bureau.

In some case, your lawyer can apply for a pre-action discovery of the identity of any third person who may have
facilitated the wrongdoing.

If several people could be responsible for the accident, and you do not know whose responsibility is the greatest, you may have to sue all of them and let the court apportion their liability among themselves.

**how do I calculate my losses?**

Your losses could be broadly classified into: -

(1) financial, and (2) non-financial losses.

(1) **Financial loss** can be further sub-divided into: -

(a) past, and (b) future losses.

(a) **Past loss** means all losses that could be quantified from the date of accident to the date of the award. For examples, medical expenses incurred (could include Chinese medicine and nourishing food), the loss of earnings from the date of accident to the date of award, reasonable traveling expenses of family members taking care of you in the hospital;

(b) **Future loss** means the foreseeable future loss as at the date of judgment. The most typical example is the loss arising from your reduced earning capacity as a result of the accident. For example, if you earn HK$120,000 a year as a skilled laborer before the accident but, as a result of the accident, could only earn HK$70,000 a year as a post guard, then your future loss of earning would be HK$50,000 times a “multiplier”. The multiplier would be smaller than the actual number of years you are expected
to work until retirement to take into account of the fact that the award is given to you upfront and there may be other contingencies which affect your earning capacity in the future. Generally speaking, an injured person aged 30 may only be awarded a multiplier of 15-16.

You may also claim your expected future medical expenses if you injury requires continuous treatment or care.

(2) Non-financial loss compensates you for your pain and loss of enjoyment of life. In making the award, the court mainly takes into account the effect of the injuries on you, including:

- the degree of pain inflicted upon you by the accident;
- the seriousness of the injury, e.g. the length of hospitalization, whether surgery is required, the length of sick leave period and the extent of permanent disability;
- whether you suffer any loss of enjoyment of life as a result of the accident, e.g., you are a keen tennis player but can no longer play tennis after the accident;
- any disfigurement caused by the accident;
- any effect on your sex life.

Court cases show that injuries are classified into four categories with range of award as follows:
Serious  HK$400-540k
Substantial  HK$540-660k
Gross Disability  HK$660k-1m
Disaster  above HK$1m

By comparing your case to precedents, your lawyer should be able to tell you approximately which category you will fall into.

**how much is the legal costs?**

The legal costs for a personal injury case will depend on the following factors:

The complexity of the case: Is the cause of the accident clear? Whether there is any difficulty in identifying the wrongdoer and fixing his liability?

The seriousness of the injury: If the injury is serious, more work will be required to assess the injury and the future loss.

At what stage the case is settled: Nine out of ten cases will be settled out of court. The earlier it is settled, the less costs will be incurred. If the case proceeds to trial, the costs can be very substantial.

Apart from the lawyers’ fees, there will be other
disbursements such as the costs of obtaining medical reports and expert reports.

**do I need to go to the court if I make a claim?**

As explained above, nine out of ten personal injury cases will be settled out of court. According to Practice Directions issued by the court, your lawyer must try to negotiate for a settlement before filing a claim to the court.

In addition, the court also requires both parties to consider mediation. Mediation is a process where a mediator assists both parties to reach a settlement which is both satisfactory and acceptable to both parties. Your lawyer will recommend mediation to you at suitable time to try to settle the case by mediation.

**can I claim legal costs from the wrongdoer?**

If you are successful in your claim against the wrongdoer (i.e., the defendant), the court will normally order him to pay your legal costs in addition to the compensation for your loss. If the parties cannot agree on the amount of legal costs, the amount will be taxed (determined) by the court.

If the case is settled out of court, normally the defendant
will also pay your legal costs in addition to the compensation for your injury.

what if I cannot afford the legal costs?

If you cannot afford the legal costs required to make your claim, you may apply for legal aid. In short, you may apply for legal aid if you have a reasonable claim and your annual disposable income and assets (as calculated according to the rules set out in the Legal Aid Regulations) is not more than HK$260,000. For details, you may refer to the website of the Legal Aid Department at http://www.lad.gov.hk or discuss with our solicitors.

Some recovery agents may offer to pursue the claim for you on a “no win, no fee” basis, and then take a chunk of the client’s compensation in the end. Their practice might constitute the offences of “champertory” or “maintenance”. You are strongly advised against engaging any recovery agents.
what if the wrongdoer has no money to pay?

Most activities carrying any risk are covered by insurance. All motor vehicle owners are required by law to take out third party insurances, all building sites have contractor all risks insurances and most buildings are covered by public liability insurances. If you wrongdoer has no money to compensate you, you could resort to their insurers.

what if I suffer injury at work?

If you are injured at work, or contract certain specified diseases (e.g., tuberculosis, ulcers, cramp of hand, inflammation of tendons) form your workplace, you will be compensated under the Employees’ Compensation Ordinance. All employers are required by law to take out insurance for the protection of the employees. Your compensation will be calculated according to the rules set out in the Employees’ Compensation Ordinance and not those discussed above.

One important feature about Employees’ Compensation is that it is not dependent on “fault”. Even if the injury is purely caused by the employee’s carelessness, he will still be compensated. If the accident is caused by the employer or some other people’s fault, the employee may also make a personal injury claim as discussed above in addition to employees’ compensation.
if my family member dies from an accident, what compensation could I claim?

The family member of a person who dies from an accident may have a claim against the wrongdoer in three respects:-

The family could also claim a lump sum compensation called “bereavement”, the statutory amount of which is at present HK$150,000, and the reasonable funeral and burial expenses for the deceased.

An action on behalf of the deceased against the wrongdoer. This could include the wealth that the deceased could have accumulated during his lifetime if he had not died. And if the deceased did not immediately die from the accident, compensation for the pain he suffered from the accident. Compensation under this head will form part of the deceased’s estate and distributed according to general succession law.

The dependents of the deceased, who may be his children, spouse or parents, could make a claim for loss of dependency. This will be calculated based on the deceased’s contribution to the dependent’s living expenses and the number of years for which the dependent could expect to receive such contribution from the deceased. Generally speaking, an old aged parent could recover less than a young child of the deceased.
is there a time limit for me to make the claim?

There are different time limits within which a claim must be made.

General personal injury or fatal accident claim must be brought within three years from the day of the accident. Employees’ Compensation claim must be brought within two years from the day of the accident.

Claims in respect of accident happening on an airplane or ship must also be brought within two years.

what should I do if I want to make a claim?

You should contact us immediately for a free consultation. If you delay in bringing the claim, not only could you be barred by the time limit, but you may also miss the chance of collecting important evidence for your case.
contact us

For enquiries, please contact our Insurance & Personal Injury department.

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Ray is the head of Insurance and Personal Injury Department. He has been specializing in personal injuries and insurance-related litigation since he started his legal career. He has extensive experience in acting for claimants as well as insurance companies in employees’ compensation and personal injuries claims. He also advises insurance companies on policy disputes including motor vehicles third party risks policies, employees’ compensation policies, contractors’ all risks policies and public liability policies.

Ray has handled a number of claims involving multiple parties, claims by incapacitated persons (including minors and mentally incapacitated persons) and paralytic or paraplegic claims involving damages of over HK$20 million. He also has experience in advising on structured settlement. In addition to personal injuries and insurance-related litigation, Ray has considerable experience in family and matrimonial matters, employment disputes, and civil and criminal litigation.
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