Insurance & Personal Injury

Damages for Personal Injuries

What is a personal injury?

Personal injury is a form of civil wrong caused when an individual failed to attend to another individual with reasonable care and often involving negligence. Personal injuries might often refer to physical injuries, but here it can be referred to psychiatric injuries as well. For example, in addition to physical injuries, a victim may suffer from Post-Traumatic Stress Disorder (PTSD) as a result of a traffic accident.

The possible heads of claim a personal injury victim can recover vary. Some may suffer chronic injuries such as long-term pain while others may be forced to change their daily routines and jobs, or lose their jobs. The usual heads of claim include pain, suffering and loss of amenities, loss of earnings, loss of earning capacity, medical and other expenses incurred as a result of the accident.

A personal injury victim can recover damages under common law and if the injury is caused by accident arising out of and in the course of the employment, the victim can also recover employees’ compensation under the Employees’ Compensation Ordinance.

Common Law

Damages recoverable under common law would be computed under several categories. Damages for pain, suffering and loss of amenities would be assessed by reference to the seriousness of the injuries, the pain inflicted and the resulting loss to the injured person’s enjoyment of life. The Court would take into account the award made in previous cases in which the victim suffered from similar injuries and residual problems. The Court would also take into account inflation over the years when making the award.

The victim is also entitled to recover loss of earnings incurred as a result of the accident before and after trial. For pre-trial loss of earnings, the Court would make a finding on the earnings of the victim at the time of accident, the earnings the victim could have earned but for the accident, the length of the sick leave period, the actual earning the victim could earn after the accident and then work out the amount of the loss. If the victim continues to suffer loss of earnings after trial, for example he cannot return to his pre-accident job and has earned less after the accident, the victim will be entitled to recover post-trial loss of earnings. The Court would take into account the retirement age of the job and the age of the victim to work out a multiplier for assessing the post-trial loss of earnings. Finally, the injured person
is also entitled to recover his medical and out-of-pocket expense, the interest on the above damages and his legal costs.

**The Employees’ Compensation Ordinance**

The Employees’ Compensation Ordinance lays the foundation of rights and obligations of employers and employees when injuries or death are caused by accidents arising out of and in the course of employment. The usual employees’ compensation recoverable includes the compensation for permanent total or partial incapacity (which is usually referred to as permanent loss of earning capacity caused by the injury), the compensation for temporary incapacity (which is usually referred to as periodical payment) and the compensation for medical expenses.

The permanent loss of earning capacity caused by the injury is assessed by the Medical Assessment Board arranged by the Labour Department. If a victim is not satisfied with the assessment made by the Medical Assessment Board, he should appeal against the assessment within 6 months from the date the assessment is made. Otherwise, the assessment is legally binding on the victim.

The periodical payment is paid to the victim during the sick leave period and it is usually 4/5 of the monthly earnings of the victim. The employer is only liable to make periodical payment up to 2 years after the accident (or for a further 1 year if leave is given by the Court).

The compensation for medical expenses is subject to a maximum of HK$200.00 for each day on which the medical treatment is given. The maximum daily rate recoverable is HK$280.00 if the victim recovers medical treatment both as an in-patient in a hospital and other than as an in-patient in a hospital.

If a personal injury victim is entitled to claim both under the common law and under Employees’ Compensation Ordinance, it is usual that the victim will recover the employees’ compensation first. When recovering the damages under the common law, the victim has to give credit for the employees’ compensation he has already received.
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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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