Secondary Victims’ Psychiatric Injuries: Are Feelings of Grief, Sorrow and Worries/Stresses etc. Compensatable in Law?

Introduction

In our December 2015 issue, we illustrated with cases that a number of legal requirements have to be fulfilled before a tortfeasor would be held liable for the psychiatric illnesses suffered by a secondary victim. Once all requirements for liability have been fulfilled, the remaining question is which heads of damages are recoverable. Recoverability of loss and damages is restricted by two factors. First, the injury must be caused or at least contributed to by the negligence of the defendant and it was a substantial or significant contributory cause. Secondly, the damages must not be too remote (i.e. the injuries must be sufficiently linked to the accident). When secondary victims witness their loved ones injure or die, feelings of grief, sorrow, and worries/stresses inevitably develop. Are these feelings compensatable in law?

Are Feelings of Grief, Sorrow, Worries/Stresses etc. Compensatable?

In Lam Po Yee and Law Yiu Wai Ray v Dr Chan Yee Shing HCPI 62/2011 (Judgment given in May 2017), the Plaintiffs were the parents of a 14-month baby boy who was taken to the hospital for treatment of a cut finger, however, due to his Doctor’s negligence, the finger later turned gangrenous resulting in partial amputation. In addition to the son’s action, the parents claimed against the Doctor, as secondary victims, for psychiatric illnesses they suffered.

The Plaintiffs claimed that they suffered initial nervous shock at the Doctor’s clinic: (1) upon sight of their son’s gangrenous finger after the bandage was removed and the Doctor’s reaction of being astonished and dumbfounded, and (2) receipt of the news it was likely their son’s finger would have to be amputated. The shock was further prolonged and aggravated by the Parents witnessing the remedial treatment given to the son and later receiving the news that amputation was inevitable, and they suffered psychiatric illnesses as a result.

The Defendant admitted liability but disputed on some heads of damages, particularly those which were sought to compensate the Plaintiffs for their grief and sense of loss for the son, their stresses/worries over the son’s prognosis and future, and their regret and self-blame. The Defendant also argued that a host of the parents’ other reactions, such as worries about daily hassles in life, feelings of impairment in social functioning, inconvenience connected with the primary victim’s future treatment, and stress/strain of caring for
the primary victim over a prolonged period, were non-compensatable because these reactions are “normal” feelings and hence not compensatable in law.

“Intense” Feelings “Worsened” into Psychiatric Illness are Recoverable

The trial judge accepted that “normal” feelings of grief, sorrow which are not themselves symptoms of illness are too remote to be recoverable in law, but rejected that this principle can apply in a situation where the secondary victim has suffered a medically recognised psychiatric illness as a consequence both of his experience as a bystander and of his intense (i.e. more than normal) grief reaction to the bereavement which he suffered. Under this situation, the Court agreed with the judge in Vernon v Bosley (No 1) [1997] 1 All ER 577 that the general proposition “normal feelings of grief and bereavement are not recoverable in law” does not cover the situation where those feelings had “worsened” into illness or were partly the cause of the plaintiff’s illness.

By applying Vernon v Bosley (No 1) the Court decided that:

1. Where the harm is indivisible amongst cumulative factors, the tortfeasor who has made a material contribution to the harm is liable for the whole. Since psychiatric illness is injury recognised by law, damages are recoverable for psychiatric illness caused or at least contributed to by the tortfeasor’s negligence, and a secondary victim can recover damages for recognisable psychiatric illness arising from nervous shock of witnessing the accident or its immediate aftermath; and for pathological consequence of grief, sorrow and suffering that such victim must inevitably have suffered but which have become so severe as to give rise to psychiatric illness.

2. The Court accepted the Experts’ opinion that the Parents’ psychiatric illnesses were triggered by witnessing/experiencing the initial shock that finally led on to the painful decision to amputate, and their grief and sense of loss for their son and stresses/worries over the son’s prognosis and future, and their regret and self-blame that arose out of and were continuation of the initial shock served to maintain their psychiatric illnesses.

3. On the basis of the above the Court found that the Parents’ psychiatric illnesses were triggered/caused by the nervous shocks they experienced, but their grief, frustration, regret and anger had become so severe that they evolved as signs/symptoms (and hence part) of their psychiatric disorders. Hence, damages should not be discounted for their feelings of grief and sorrow and a host of their other feelings as stated in above.
Conclusion
This case appears to broaden the scope of damages recoverable for psychiatric injuries suffered by secondary victims. Nevertheless, we have to bear in mind that each case is decided on its own facts and before the Court considers the scope of damages recoverable, the secondary victim needs to fulfil all legal requirements for liability first.

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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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