Insurance & Personal Injury

My child got injured by his/her classmates, can I sue the school?

Introduction

It is beyond question that a school must ensure that reasonable care is taken of its students when they are in school and that teachers have a duty to take all reasonable and proper steps to prevent students from suffering injury in school. However, question arises as to whether the school has the responsibility to oversee the students when they among themselves are playing with each other but one of them got injured as a result of the unintentional acts of some other students.

In Man Hin Fung v SKH Chan Young Secondary School [2018] HKEC 740, the student plaintiff (the “Injured Student”) returned to the school for athletics training on a particular date. The accident happened when two other students, being student A and student B, were horseplaying with each other. In particular, student A threw a tennis ball at student B, with student B threw back a mat in return. At the critical moment, student A managed to dodge the flying mat but the same hit the Injured Student unexpectedly, who just finished tying his shoelaces and stood up. The Injured Student got serious injury to his eyes as a result of the “Accident”.

The Injured Student commenced the legal proceedings against the school at the District Court for failing to provide sufficient and adequate supervision and control over the students at the time of the Accident. In particular, the Injured Student contended that one of the most senior PE teachers of the school, who has been playing an important role in the supervision system of the school and entrusted with the duty of overseeing the students’ safety, should not have left the school on that day. The Injured Student argued that if that teacher was there on the date of the Accident, student A and student B would have been stopped from horseplaying and thus the Accident would have been prevented.

What could be expected from teachers?

While the Injured Student’s case seems to establish a solid claim against the school, the Court considered that the law in respect of the responsibility of teachers should have a limit somewhere.

In respect of a teacher’s duty to supervise students in the playground, a balance should be struck between a too strict supervision over students at every single moment of their school life and the objective of encouraging independence. Teachers are therefore not expected to
keep a close supervision on each single student every single minute or to insure students against injury from ordinary play in the playground which is not deviated from the common norms of the game. Further, teachers could not foresee every single act of stupidity of students that might take place. As such, the degree of supervision needed would depend on the range of the students’ ages and the risk of a particular accident and injury.

More importantly, the Court acknowledged that it would be entirely contrary to the public policy and adversely affect the relationship between teachers and students by requiring teachers to constantly supervise students who are simply playful but without prior history of violence. If every teacher is required to take precise precautions to control that there is never any chasing, racing or horseplay among students, a school would not be a suitable place for students to grow up.

The ruling

After considering the relevant legal principles and overall evidence of both the Injured Student and the school, the Court found that those students involved in the Accident are generally well-behaved. There was no indication that they could impose high safety risk to the others. No record of serious disciplinary issues or accidents resulting in serious injuries during track and field practice or dangerous horseplay had been found in respect of student A and student B. More importantly, the Court considered that there were other students who might also be as playful as student A and student B on that particular day. Therefore, the teachers were not alerted of any special circumstances that required their additional supervision over student A and student B.

Further, it was held that as the Accident happened only within a very short period of time, i.e. just a couple of seconds, even if more teachers were present and had exercised uninterrupted supervision over the students, the Accident or another accident could have still occurred in any event. The Accident was described as “purely a freak accident” in the sense that student A just dodged the mat at the very critical moment while the Injured Student finished tying his shoelaces. As such, while the Court expressed much sympathy to the Injured Student and his family, it was concluded that the Accident was indeed a sudden, unfortunate but totally unexpected event that the school could not have prevented. As such, the school was not liable to the Injured Student.

Conclusion

The case illustrates that while a school does have a duty to take care of its students and must take all reasonable steps by providing sufficient and adequate supervision, the Court is reluctant to impose a stringent requirement on teachers to micro-manage the day-to-day play of students. As such, unless the trouble-making student has a history of violence or could impose a particular risk to the others in a particular circumstance, the law would require a
high degree of carelessness of the teachers in order to establish the liability against the school.