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**Asbestos Widow's Claim Value Set for Reassessment**

If judges' decisions were treated as anything other than final, there would be no end to litigation. However, as a Court of Appeal ruling in an asbestos case showed, there are rare occasions when a fundamental change in circumstances demands that a case be reopened.

The case concerned a happily married couple who acted on a permanent basis as foster carers for two troubled children. It was agreed between them that the wife, a specialist nurse, would continue to work as the family's main breadwinner whilst the husband would remain at home as the children's primary carer. The couple's long-term aim was to adopt the children and bring them up to adulthood.

Their plans were derailed, however, when the husband, who had been exposed to asbestos whilst working as a general labourer in the 1990s, died from asbestos-related lung cancer at the age of 55. Following a trial, his employer at the time was ordered to pay his widow £928,827 in damages. Of that total, £666,781 was to compensate for the loss to the family of his domestic, household and childcare services.

In challenging that outcome, the employer presented fresh evidence that the children were no longer in the widow's care. Although she hoped that they would be returned to her, with additional support from a local authority, she had not seen them for more than a year and had no knowledge of their whereabouts.

Ruling on the matter, the Court acknowledged the general principle that there must be finality in litigation, save in very exceptional cases. The fresh evidence was, however, directly relevant to the widow's loss of dependency claim and to ignore it would be an affront to common sense or a sense of justice. The case was remitted to the trial judge for the value of the widow's claim to be reassessed.

If employers fail to take appropriate measures to prevent exposure to substances that can damage the health of employees, they can be liable to pay compensation for the resulting illnesses. If you or someone you know has suffered ill health as a result of exposure to harmful substances in the workplace, contact <<CONTACT DETAILS>> for advice.

**Catastrophically Injured Cyclist Receives Seven-Figure Award**

Cyclists are amongst the most vulnerable of road users and, if an accident happens, personal injury lawyers play a vital role in ensuring that just compensation is paid. In one case, a cyclist who was catastrophically injured when a parked motorist opened her car door in his path received seven-figure damages.

The man, in his 60s, was riding home from work along a cycle lane when he collided with the car door and fell onto the road. He struck his head, suffering a severe brain injury. He barely survived the accident and was for a time in a deep coma. Following rehabilitation, he made a reasonably good recovery from his physical injuries, but the damage to his brain caused a profound change in his personality.

Formerly a book keeper, he suffers from cognitive difficulties, executive dysfunction, symptoms of anxiety and communication problems. His days of paid employment are over; he does not have capacity to manage his own affairs and his life expectancy is reduced to the age of 81. He has a tendency to reject professional care, but it is hoped that light-touch support will improve his access to the community and his quality of life.

After proceedings were launched on his behalf, the motorist's insurers agreed to pay 85 per cent of the full value of his claim. Following further negotiations, a full and final settlement of his case was achieved for a lump sum of £2,890,000. In approving the settlement, the High Court praised his wife for the unstinting support she has given him since the accident.

<<CONTACT DETAILS>> says, "While nothing can truly compensate victims of serious accidents for the loss of their health and independence, a financial settlement can provide them and their families with the knowledge that the care they need can be paid for. If you or a member of your family have been injured in a road accident, contact us to discuss the possibility of claiming compensation."

**Dental Practice Owner Vicariously Liable for Subcontractors' Acts**

Can business owners be legally liable for the negligence of subcontractors? In the case of a dental practice proprietor who engaged self-employed dentists, the High Court answered that question with a decisive 'yes'.

The case concerned a woman who underwent dental treatment at the practice over a number of years. She claimed that she was negligently treated by four dentists, three of whom were self-employed subcontractors. She claimed compensation from the practice owner although he had not at any point treated her himself. The issue of whether he could be held personally liable for the alleged failings of the subcontractors was considered as a preliminary issue.

Ruling on the matter, the Court found that the practice owner owed the woman a duty of care that could not be delegated to others. His relationship with the subcontractors was also sufficiently akin to employment to render him indirectly – or vicariously – liable for any negligence on their part.

Although he had chosen to deliver his services via subcontractors, he bore ultimate responsibility for patient care under the terms of his NHS contract. The woman was a patient of the practice, not just of each dentist who treated her. She had placed herself in the care of the practice in circumstances where she was vulnerable to injury and the practice owner was under a duty to protect her from harm.

The practice held her dental records, arranged her appointments and received payment for her treatment. It provided the premises, equipment and support staff required by the subcontractors. Any goodwill associated with her treatment was retained by the practice and the subcontractors were subject to post-termination restrictions designed to protect the practice's client base.

The subcontractors were free to make their own clinical decisions and to provide treatment as they saw fit. They also largely determined their own working hours. However, they worked as an integral part of the practice and its owner had sufficient control over them to render their relationship akin to employment. The imposition of vicarious responsibility on the practice owner was fair, just and reasonable. The Court's ruling opened the way for the woman to proceed with her claim.

If you have suffered as a result of negligent dental treatment, we can help you obtain an appropriate settlement. Contact <<CONTACT DETAILS>> to discuss your claim.

**Indoor Ski Slope Operator Not to Blame for Woman's Agonising Fall**

Some sports are inherently risky and unfortunate accidents inevitably occur for which no one is to blame. The High Court resoundingly made that point in the case of a woman who was grievously injured when she fell on an indoor ski slope.

The middle-aged woman had not skied for 35 years when she attended the ski slope with a view to honing her skills in preparation for a holiday. She was descending the learner slope when she fell, suffering a complex leg fracture. Despite reconstructive surgery she was unable to return to full-time work for a year and the long-term consequences of her injury have persisted to date.

In rejecting her personal injury claim against the slope's operator, however, a judge noted that skiing is never risk free and that falls are suffered by skiers of every ability. Her accident was not caused by any defect in the snow surface, nor was the learner slope over-crowded. Although the operator's record keeping and risk assessment required substantial improvement, it had not exposed her to a foreseeable risk of injury over and above the risk inherent in skiing.

Dismissing her appeal against that outcome, the Court could find no lack of logic or consistency in the judge's conclusion that the accident arose from her voluntary participation in an enjoyable but risky sport. A nervous skier, she had probably been distracted by an out-of-control snowboarder passing close to her, but such incidents were commonplace on ski slopes.

The Court expressed sympathy for the woman for the terrible pain and longstanding consequences arising from the accident. Her honesty and thoughtfulness as a witness shone through, but she could not succeed in her claim.

It is important to seek expert legal advice before making a personal injury claim. This will help to establish how strong your case is and if it is worth pursuing before proceedings are entered into. Contact our specialist personal injury lawyers to discuss your claim.

**The Law is Not in the Business of Discouraging High-Risk Adventure Sports**

Adventure sports enthusiasts have a perfect right voluntarily to place themselves in danger and, as a High Court ruling showed, the law is not in the business of discouraging organisers of challenging and high-risk events.

The case concerned a very fit middle-aged woman who took part in a demanding obstacle race. She was swinging between monkey rings when she fell to the ground, suffering serious injuries to her right leg and shoulder. She sought compensation from the event's organisers on the basis that they had failed in their duty under the Occupiers' Liability Act 1957 to take reasonable care for her safety.

Ruling on the case, the Court noted that, prior to the event, she signed a waiver form by which she acknowledged that her participation gave rise to a risk of serious injury, even death. She knowingly and freely accepted all such risks. The Court, however, noted that, as a matter of law, the form could not exclude the organisers from liability if the accident arose from their negligence.

Dismissing her claim, however, the Court noted that the monkey ring obstacle was particularly challenging and many other participants had also fallen. She and others taking part in the event were given adequate instructions on how to embark on the obstacle. A hay landing cushion had been provided and a claim that it had not been properly spread, so as to prevent bare patches, was rejected.

The Court observed that accidents of this type are an inherent risk of participation in adventure sports events and that no amount of care and vigilance by organisers can eliminate the possibility of such risks materialising. The woman had elected to take part in the event and was well aware of the dangers involved. Although she deserved much sympathy for her grave misfortune, the fact that she landed badly and suffered serious injury was a matter of mere chance.

Whilst this claim was unsuccessful, sports and recreational activities can pose risks and providers have a duty to ensure that facilities are fit for purpose. If you have been injured as a result of a failure to put in place appropriate measures to safeguard your health and safety, you could be entitled to compensation. Contact <<CONTACT DETAILS>> for claims advice.

**Trainee Stuntman Injured in Gym Accident Receives Six-Figure Damages**

Personal injury cases are often hard-fought and it is an uncomfortable fact that genuine accident victims sometimes have their honesty challenged in court. A case on point concerned an athlete whose hopes of becoming a film stuntman were dashed by serious injuries sustained at a local authority-owned gym.

The man was a world-class free runner who worked on a number of film projects as a trainee stuntman. He was using a piece of gym equipment called an air track when he performed a flip, landed awkwardly and violently twisted his knee. He sustained complex ligament damage, requiring numerous operations.

After he launched a claim, the local authority accepted 65 per cent liability for the accident. There was no dispute that his injury put paid to his hopes of qualifying as a full-fledged stuntman and that he was permanently incapable of any work that involved heavy lifting, kneeling or squatting.

In reliance on covertly shot video evidence, however, the council argued that he had exaggerated his disabilities and that his claim should be dismissed in its entirety on the basis that he had been fundamentally dishonest. That argument failed to convince a judge, who awarded him £125,321 in damages.

Dismissing the council's challenge to that outcome, the High Court noted that his injury was undoubtedly serious and that he clearly believed that he was disabled to the extent he described in his evidence. The judge was entitled to find that he had not been dishonest, let alone fundamentally dishonest.

Says <<CONTACT DETAILS>>, "It is common for a defendant to contend that symptoms of illness or injury are being exaggerated by the claimant. Expert legal advice and evidence are necessary to ensure a just settlement is obtained."

**Wedding Reception Slipping Accident Victim Receives Substantial Damages**

Accidents do happen, but if they are someone else's fault you should not delay in consulting a solicitor with a view to seeking justice. A woman who did just that after suffering an agonising fall on a pub dancefloor was awarded more than £30,000 in damages.

The middle-aged woman was attending a wedding reception at the pub when she slipped on a damp patch on the floor. Her injuries, which had permanent disabling effects, included serious damage to her left hamstring. Consequently, she launched a personal injury claim against the pub's owner.

Upholding her claim, a judge found that a water dispenser had been positioned on a table with its tap overhanging the dancefloor. There was no drip tray and it was very likely, if not inevitable, that water would spill onto the ground. She had changed into flat shoes before going onto the dancefloor, which was lit only by disco lights, and the accident did not arise from any fault on her part.

The judge awarded her a total of £31,871 in compensation, including £25,000 for her pain, suffering and loss of amenity. The pub's owner, who did not participate in the trial of her claim, was also ordered to pay her legal costs.

If you have been injured in a trip, slip or fall through no fault of your own, you may be entitled to compensation. Contact us for advice on making a claim.

**Young Patient Let Down by Optometrist, High Court Rules**

High street opticians do more than issue prescriptions for glasses – they play a crucial role in spotting signs of serious eye conditions and referring sufferers for specialist treatment. The High Court made that point in the case of a teenager who had to undergo corneal transplant surgery after an optometrist let him down.

The boy attended an opticians' store after suffering headaches whilst studying for his GCSE exams. He consulted an optometrist who prescribed some new glasses. His condition improved for a time, but he went back to the store about six months later after his headaches worsened and his vision deteriorated.

At the second consultation, an optician formed the view that he had kerataconus – an eye disease that affects the structure of the cornea – and referred him urgently to hospital. The diagnosis was confirmed and, after undergoing various forms of treatment, he ultimately required corneal transplants in both eyes.

A personal injury claim was brought against the owner of the store and the optometrist who conducted the first consultation. The Court was asked to make certain preliminary findings in the case.

Ruling on the matter, the Court noted that the boy presented at the first consultation with a large change in astigmatism in his left eye since a previous appointment about a year earlier. The change was sufficiently great to raise suspicions of kerataconus or another pathological cause.

The optometrist detected signs of pathology but did not investigate further or refer him for specialist treatment. The Court found that such a referral should have been made right away. Had that been done, the boy would probably have avoided both the need for corneal transplants and the severity of visual symptoms from which he currently suffered.

Errors or delays in diagnosis can lead to tragic consequences and, when this is due to the negligence of medical staff, compensation may be warranted. If you or a member of your family has suffered as a result of improper medical treatment, contact <<CONTACT DETAILS>> for advice.

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