Personal Injury ~ March 2023

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**Accidents on Holiday – Poolside Explosion Victim Receives £120,000 Payout**

Accidents suffered whilst you are on holiday can throw up particular legal difficulties when it comes to seeking financial redress. However, as the case of a young woman who sustained serious burns in a poolside explosion showed, expert personal injury lawyers are more than capable of rising to the challenge.

Aged eight at the time, the woman was holidaying in Spain with her family. She and her mother were in a canteen beside a tourist hotel's pool when nearby fuel canisters exploded. She sustained serious second-degree burns. Her claim for damages was complicated by the fact that the tour operator through which the holiday was booked subsequently became insolvent.

In response, she focused her claim against the proprietor of the hotel and insurers. Early admissions of liability were made and a £120,000 lump-sum settlement of her claim was successfully negotiated. Approving the settlement, the High Court noted that it was an important day for her and her family. Given that she would shortly attain adulthood, the Court agreed that the money should simply be paid into a nominated account for her benefit.

If you are injured as a result of an accident or suffer sickness due to negligence when abroad, contact us for assistance in obtaining the appropriate compensation.

**Bar Owner Overturns Liability Finding Following Customer's Fall on Spilt Drink**

Hospitality venues must take reasonable steps to keep their customers reasonably safe – but that is not a counsel of perfection. The High Court powerfully made that point in the case of woman who suffered a painful fracture when she slipped on a spilt drink in a late-night bar.

The woman was in a crowded corridor in the bar when she fell in the early hours of the morning, sustaining a broken bone in her foot. She launched a personal injury claim against the bar's proprietor, alleging negligence and that it had breached its duty under the Occupiers' Liability Act 1957.

Upholding her claim following a trial, a judge found that steps taken by the proprietor to ensure that drink spillages were promptly cleared up were simply not sufficient. The accident happened in a darkened area of the bar where the wooden floor was likely to become slippery when wet. She was awarded £4,104 in damages.

In allowing the proprietor's appeal against that ruling, the Court noted evidence that the bar was continuously monitored by members of staff who carried out walking inspections at least every 10 to 15 minutes. There was a proactive system in place to ensure that glass breakages and spillages were dealt with promptly.

Although no blame attached to the woman, the Court noted that most customers of late-night bars would be aware that spilt drinks are not an unknown phenomenon. There was no apparent evidence that spillages were a particular problem or that it was an issue requiring special vigilance. Such accidents, the Court observed, can occur from time to time in any bar.

Overturning the judge's decision, the Court accepted that the standard of care he imposed on the proprietor went beyond that required by the Act. His ruling effectively placed the proprietor under a duty to have an instantaneous system in place so that no spilt drink could ever be present on the bar's floor. That was a counsel of perfection which the law did not require.

Whilst this claim was, ultimately, unsuccessful, there are many instances where liability can be proven and pursued. 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.

**Boy Run Down by Reversing Neighbour Receives £600,000 Award**

As some football and rugby players will confirm, the consequences of head trauma may not be immediately apparent but can prove devastating as the years go by. In a case on point, a boy who was knocked down by a neighbour as she reversed out of her driveway received £600,000 in agreed damages.

Aged six at the time, the boy sustained a skull fracture in the accident. He was alert on admission to hospital and, following tests, no brain abnormalities were detected. As he grew older, however, his parents became increasingly concerned that his speech, language and learning difficulties might be linked to the head injury.

In the light of a neurosurgeon's evidence, a claim was launched on behalf of the boy, now a teenager, against the neighbour. She denied liability for the accident, positively asserting that she had taken all reasonable care and kept a proper lookout. The alleged connection between the boy's difficulties and the relatively minor head injury was also hotly disputed.

Following negotiations, however, a £600,000 lump-sum settlement of his claim was agreed. Given the clear risks that would be involved in a contested trial, the High Court had no hesitation in finding that the sensible compromise was in the boy's best interests. Properly managed, the settlement sum would provide a solid financial foundation on which he could maximise his potential.

Negotiating a suitable settlement requires awareness of many factors. Our experienced team takes all relevant issues into account in helping our clients achieve the best possible damages awards.

**Clinical Negligence Expertise Overcomes Difficult Challenge in Case**

Establishing liability in some clinical negligence cases can present a huge challenge. However, as the case of a disabled nine-year-old girl showed, experienced lawyers can negotiate substantial compensation packages for their clients in even the most hotly contested cases.

The mechanism by which the girl sustained serious brain damage around the time of her birth was a matter of dispute between medical experts. It was tolerably clear that a foetal-maternal haemorrhage occurred prior to her delivery. That did not arise from anyone's fault and it was not alleged that she could have entirely escaped injury.

However, when damages were sought on the girl's behalf from the NHS trust that ran the hospital where she was born, it was contended that her injury would have been less severe had she been given a post-delivery blood transfusion earlier than she was. The trust disputed that assertion.

If her case had gone to trial, there would have been a real risk of her coming away with nothing. This outcome was avoided, however, when a £1.2 million lump-sum settlement of her claim was successfully negotiated. That sum will greatly improve her and her family's quality of life and will enable them to move into a specially adapted home.

In approving the settlement, the court noted that it reflected substantial litigation risks. Her parents would ordinarily have been entitled to part of the settlement sum as some reflection of the outstanding care they have given her. Always putting her needs first, however, they had insisted on waiving any such entitlement. The court commented that their daughter was truly fortunate to have them.

If you or a member of your family suffers injury as a result of negligent medical treatment, we can help you obtain an appropriate settlement. Contact **<<CONTACT DETAILS>>** to discuss your claim.

**Contact Sports – Victim of 'Reckless' Rugby Tackle Due Full Damages**

Participants in contact sports voluntarily accept a risk of injury – but what they do not do is submit to the threat of recklessly dangerous play. A judge powerfully made that point in the case of a young mother of two who suffered a catastrophic spinal injury during her very first competitive game of rugby.

Standing little more than five feet tall and weighing nine stone, the woman relied on her skill and speed during the match, in which she played flanker. On the other side, however, was an opponent who, although not much taller than her, had greater playing experience and weighed between 16 and 17 stone.

The woman was acting as scrum half, and was bending over to gather the ball, when the opponent came around the side of a ruck and flattened her. She was not in possession of the ball at the time and the opponent put her whole body weight into the tackle, propelling her downwards onto her bottom. She sustained a spinal fracture which left her paraplegic and wheelchair dependent for the rest of her life.

After a personal injury claim was launched against the opponent, the judge noted that injuries, even serious ones, are generally an accepted risk of contact sports, in which players of different height, stature and weight often take part. Sport, however, is not immune from the law of negligence and competitors whose play falls below an acceptable standard can be held liable.

The court noted that it was a developmental match, in which many of the players were still learning the game, and should have been played in that spirit. Players had a duty to be mindful of one another and to compete with the understanding that enjoyment and learning were the main objectives, not winning.

Some members of the opposing team, however, engaged in foul-mouthed 'trash talk' during the match and competed in an inappropriately aggressive and intimidatory manner. As the game slipped away from them, they upped their rough tactics. The opponent had been involved in an earlier 'off the ball' incident and a red mist had metaphorically descended over her eyes after she came off worst in a tackle. She had been heard to say that she would 'break' the woman.

The judge found that she was not offside when she made the fateful tackle and that she did not intend to injure the woman. Bent on exacting revenge, however, she tackled the unsuspecting woman when she was in a highly vulnerable position and unprepared to protect herself. Crushing her downwards with her full weight, the tackle was obviously dangerous and liable to cause injury.

Upholding the woman's claim, the judge found that the opponent was not attempting to play within the laws of the game but was intent on retribution. Acting recklessly, she closed her eyes to the clear and obvious risk of injury. Following the tackle, she walked away from the prostrate woman, apparently unconcerned. That, the judge observed, could not have been further from the spirit of the game. If not agreed, the amount of the woman's compensation would be assessed at a further hearing.

Our experienced team will fight hard to ensure you obtain the compensation you deserve. Contact **<<CONTACT DETAILS>>** for advice.

**Justice Secured With £3 Million Settlement of Disabled Six-Year-Old's Claim**

Litigation is a high-risk and extremely stressful business, often conducted in the full glare of publicity. However, as the case of a severely disabled six-year-old boy showed, expert clinical negligence lawyers are more than capable of winning compensation for their clients without the need for a public trial.

The boy, an only child, suffered profound hypoxia around the time of his emergency delivery by forceps. He suffers from cerebral palsy affecting all four limbs and is reliant on his devoted parents and extended family for all aspects of his care. His sunny personality, however, shines through his disabilities.

Proceedings were launched on his behalf, alleging that ominous signs during his mother's labour should have prompted his earlier delivery. If that had happened, it was claimed, he would have escaped injury. However,the NHS trust that ran the hospital where he was born strongly denied liability, presenting expert medical evidence that the signs were not so worrying as to mandate a caesarean delivery.

Given that fundamental disagreement, the scene was set for a lengthy trial of the claim at which the boy would be in real jeopardy of coming away empty-handed. That risk was avoided, however, by a successful negotiation of a settlement whereby the trust agreed to pay £3 million in compensation without making any admission of liability.

In approving the settlement, the High Court noted that a trial could have gone either way and that establishing liability on the trust's part would have been a challenging task. Describing the boy as a happy little thing, the Court had no doubt that a sensible compromise had been reached, in his best interests, which would spare his family the expense, risk and anxiety of a contested trial.

Sometimes, achieving a fair outcome requires doggedness and determination. Our experienced team are here to help.

**Mental Health Counsellor Pays Price for Overstepping the Professional Mark**

Professional counsellors often have to delve deep into their clients' private lives but must always be careful not to overstep the mark of propriety. The High Court made that point in awarding compensation to a troubled woman whose counsellor recklessly did just that with a view to his own gratification.

The woman received work/life coaching from the counsellor through her work and then paid privately for further sessions in respect of mental health and wellbeing issues, during which psycho-sexual issues were discussed. She subsequently launched a personal injury claim against him, alleging that he had worsened her condition by subjecting her to verbal sexual abuse.

In upholding her claim in respect of one counselling session only, the Court found that the counsellor had asked her to undress and perform a sex act in front of him or to record herself performing a sex act at home. He was not a specialist sex therapist or psycho-sexual counsellor and there was no therapeutic justification for those requests.

The Court acknowledged that there was no malevolence on the counsellor's part and that he did not intend to do her harm. However, given his knowledge of her fragile mental health, their proximity and the imbalance of power in their relationship, he owed her a duty of care.

The requests were reckless in that, by making them, he threw fuel upon the fire of her vulnerability for his own gratification. Although there was no sexual touching involved, it was foreseeable that his words would exacerbate her mental health problems. The woman was awarded £10,000 in damages for her pain, suffering and loss of amenity. Further awards were made in respect of certain legal expenses and the cost of additional therapy.

Psychological as well as physical injury can warrant a personal injury claim. If you have experienced treatment by another person that has caused you emotional or psychological distress, contact us for advice.

**Serious Road Accidents Can Affect Families for Generations to Come**

Road accidents happen in an instant but can have lifelong consequences not just for those immediately involved but for their families and, in some cases, even future generations. That was sadly so in the case of a young woman who was a passenger in her boyfriend's car when he crashed into a tree.

The woman sustained a serious brain injury in the collision. She has in many ways made a better recovery than expected, but she suffers from such acute fatigue that she often has difficulty getting up in the morning. Her ability to organise her daily life is seriously impaired and she is heavily reliant on the care and support of members of her family.

Since the accident, she has given birth to children by her new partner, one of whom is seriously disabled. Whilst the driver's insurers admitted primary liability for the accident, there was a dispute as to the extent to which her care responsibilities for the child should be reflected in her award. The difficulty in separating her own needs from those of her child further complicated her claim in respect of accommodation costs. There was also a debate as to whether she was herself negligent in failing to wear a seatbelt.

Following negotiations, however, a £6 million lump-sum settlement of her personal injury claim was secured. It was also agreed that she could return to court for further damages if she develops uncontrolled epilepsy prior to the 20th anniversary of the accident.

Approving the award, the High Court paid glowing tribute to the strong and loyal support given to her by her family, particularly her mother and grandmother. No one could have done more to help her cope with the consequences of the accident.

Says **<<CONTACT DETAILS>>**, "Nothing can adequately compensate for the loss of one's health and normal way of life. However, a financial settlement can help the victim of an accident and their family adjust to the changes in circumstances knowing that essential care needs can be met and paid for."

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