Personal Injury ~ April 2023

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**Birth Injuries Boy, 6, Receives £13.5 Million Award**

Newborn babies are uniquely vulnerable and delays in delivery or treatment in the immediate neonatal period can have devastating consequences. That was sadly so in the case of a gravely disabled six-year-old boy whose lifelong care was thankfully secured by an eight-figure compensation package.

The boy's acute brain injury arose from a combination of delays in his delivery and in giving him a neonatal blood transfusion. Suffering from cerebral palsy and epilepsy, he is fully dependent on a 24-hour care regime. After a clinical negligence claim was launched on his behalf, the NHS trust that bore responsibility for the hospital where he was born made an early admission of liability.

Following negotiations, a final settlement was agreed whereby he will receive a £6 million lump sum, together with annual, index-linked payments to cover the costs of his care and case management for life. Those payments will start at £366,000 a year and rise to £410,000 a year when he reaches the age of 19. The overall capitalised value of the settlement was about £13.5 million.

The settlement was tailored to his particular needs in that the trust further agreed to contribute £100,000 a year towards the fees of a private special school where he is a pupil. However, that agreement would only take effect if his parents failed in their attempts to obtain local authority funding for the school placement.

Approving the settlement, the High Court described it as suitable, sensible and fair. The Court also agreed that £268,442 of the settlement sum should be paid to the boy's parents in modest recognition of the care they have lavished upon him. Despite facing daily challenges, they have looked after him with tireless devotion.

Says **<<CONTACT DETAILS>>**, "Nothing can truly compensate for mistakes on the part of medical staff during a child's birth that cause permanent damage to health. However, a financial settlement enables the family to achieve the best quality of life possible for their child, without the stress of money worries. Our specialist legal team is experienced in handling claims of this kind."

**Boy Severely Injured in Open-Top Bus Tragedy Receives Damages**

Accidents that happen abroad often present particular difficulties for personal injury lawyers. However, as the case of a young boy who almost died when an open-top tour bus was driven into an overhanging tree branch showed, there are few challenges that cannot be overcome.

The boy and his father were on the bus's unprotected top deck when the accident occurred overseas. There was evidence that the bus driver had been using drugs and that the vehicle had deviated from its allotted route. Several other passengers died or were seriously injured and the incident had triggered a number of other compensation claims in foreign jurisdictions.

The boy, who is approaching his teens, suffered multiple skull fractures and bruising to his brain. He needed emergency antibiotic treatment to save his life. Thanks to his parents' devoted care, he has made a remarkably good recovery, but he remains a very different boy than he was prior to the incident. He has some difficulty walking and there was evidence of personality change and diminished intellectual ability.

The bus's insurers did not dispute liability, but the case was made more demanding by the fact that the accident occurred in a foreign country. The case was subject to the laws of that country, where an overall insurance indemnity limit of 6,070,000 euros applied in respect of all claims arising from the incident.

A settlement of the boy's claim was negotiated for a substantial portion of that sum. Due to the insurers' ongoing negotiations with other claimants, the precise sum that the boy would receive was kept confidential. On any view, however, it was a life-changing amount of money.

Approving the settlement, the High Court observed that, given the number and scale of the claims arising from the accident, the insurance indemnity limit was not so high as it appeared to be and was likely to be exceeded. In those circumstances, the boy's father had been very well advised to accept the settlement offer.

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

**Ex-Marine Awarded Over £700,000 Damages for Noise-Induced Hearing Loss**

Anyone who reads the news will know that the Ministry of Defence (MoD) is facing a multitude of claims by services personnel who sustained noise-induced hearing loss. In one such case, an ex-Royal Marine who was stricken by tinnitus following an overseas training exercise received over £700,000 in compensation.

Most of the damage to the man's hearing was likely to have been caused during the large-scale exercise in California. Amongst other things, a heavy machine gun was operated within 10 metres of his position; grenades and other ordnance went off close to him during urban warfare training in a dummy town and F16 fighter jets dropped concrete bombs, giving rise to loud reports.

He began to notice intrusive, high-pitched ringing in his left ear shortly after his return to the UK. His bilateral hearing loss progressively worsened and ultimately led to his discharge from the Marines on medical grounds. After he issued proceedings, the MoD admitted breach of statutory duty and negligence, including failing to provide him with suitable hearing protection.

Ruling on his case, the High Court rejected the MoD's argument that he was in part responsible for his own injury. He did take steps to protect himself and he did, as best he could, wear such hearing protection as was provided to him. He was reliant on the equipment issued to him and the failure to ensure that his hearing was properly safeguarded was entirely the fault of the MoD.

His hearing loss amounted to a disability in that it has a substantial adverse effect on his day-to-day activities. He was awarded a total of £713,716 in damages, including £27,500 for his pain, suffering and loss of amenity, £8,000 for the loss of his congenial employment in the Marines and over £630,000 in respect of his past and future loss of earnings and loss of pension entitlement.

If you suffer from an occupational disease, such as hearing loss, as a result of a failure on the part of your employer to put in place the safety measures required by law, you could be entitled to compensation. Contact **<<CONTACT DETAILS>>** to discuss your claim.

**High Court Delves into Social History to Resolve Widow's Asbestos Claim**

Many people are still being carried off by merciless cancer due to asbestos exposure in the dim and distant past. As a High Court ruling showed, it is the very passage of time that makes it so hard for their loved ones to obtain compensation.

The case concerned a former plasterer who died, aged 72, from mesothelioma – an incurable form of cancer that commonly takes decades to develop and can be caused by breathing in a single asbestos fibre. His widow launched a personal injury claim against a company for which he worked in the mid- to late 1970s.

Ruling on the matter, the Court observed that the case involved delving back into a period of social history when vast numbers of low-cost homes were being built so that inner-city dwellers could move away from old and decrepit housing stock. The man's role was to erect plasterboards in newly constructed homes.

In dismissing the widow's claim, the Court noted that the relevant events took place more than 40 years ago. On the evidence, she had failed to establish her case that, when it rained, carpenters came indoors – where her husband was working – to cut up boards that were used to make rooves watertight. It had also not been proved that it was more likely than not that the boards contained asbestos.

The Court noted that asbestos is cheap, versatile and strong, but can also be lethal. It was undoubtedly used in many of the huge residential construction projects of the time. The man was certainly exposed to asbestos at some point in his working life, but it had not been shown that it was whilst he was working for the company.

The case highlighted the intense fragility of life. The man was a fighter and his wife was devastated when he lost his terrible struggle against cancer. The rejection of her claim would seem to her a further insult. In seeking to discern where the truth lay, however, the Court was required to put sympathy and compassion to one side.

Whilst this claim was unsuccessful, there are many instances where compensation has been secured for victims of asbestos-related illnesses. 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. We are experienced in handling claims for all kinds of industrial injuries.

**Litigation Risks Weighed in Achieving Clinical Negligence Settlement**

Negotiating settlements in clinical negligence cases involves balancing the prospects of success against the risks of failure in the context of often highly complex medical evidence. That exact exercise was performed in the case of a seven-year-old boy who sustained an avoidable brain injury due to negligent hospital treatment.

The boy was seriously unwell during his first months of life, having been born with an infection – toxoplasmosis. When he was 10 months old, he was taken to hospital suffering from raised intra-cranial pressure. After a compensation claim was launched on his behalf, the NHS trust that ran the hospital admitted that there was a negligent delay in referring him to a surgical team. That failure, it also accepted, caused a significant and avoidable brain injury, resulting in cerebral palsy.

However, the trust disputed whether the admitted failure was the cause of the full spectrum of the boy's disabilities, including cognitive and behavioural problems, visual impairment and intractable epilepsy. The trust contended that those difficulties arose from the congenital infection, for which it bore no responsibility, and were unconnected to the subsequent negligence. There was, in particular, a dispute as to whether he had developed epilepsy prior to the hospital admission.

Those issues greatly challenged the numerous legal professionals and medical experts involved in the case. However, the daunting prospect of a long and hard-fought trial of the claim – which could have gone either way – was averted when a settlement of liability issues, whereby the trust agreed to pay 85 per cent of the full value of the boy's claim, was successfully negotiated.

In approving the settlement, the High Court found that it fairly reflected litigation risks on both sides. The fact that just short of 2,000 pages of documents had been placed before the Court illustrated the complexity of the issues. The compromise was of considerable benefit to the boy in that it meant that the vast majority of his future care needs would be met. If not agreed, the amount of his compensation – which was bound to be very substantial – would be assessed at a further hearing.

Sometimes, achieving a just settlement requires doggedness and determination. Our experienced team can help you get a just settlement of your claim.

**Lorry Driver 60 Per Cent to Blame for Catastrophic Road Tunnel Collision**

Witnesses to road accidents commonly express linear, black and white views as to where responsibility lies. As a case concerning a catastrophic collision in a road tunnel showed, however, judges take a more nuanced and evidence-based approach.

After a tipper lorry braked to a halt in a slip lane inside the tunnel, a scooter rider ran into the back of the vehicle. He sustained severe spinal and brain injuries. After a personal injury claim was launched on his behalf, the lorry driver's insurers denied that he was at fault and alleged that the scooter rider had himself been grossly negligent.

The lorry driver, who had since died, told police at the scene that he stopped after hearing a noise coming from his vehicle. He activated the lorry's rotating beacon lights before climbing down from his cab and conducting a visual inspection to ensure that nothing was going to fall off. It was whilst he was walking round the vehicle that the collision occurred.

Ruling on the matter, the High Court found that, despite the absence of a clearway sign, a reasonably prudent motorist would have realised that it was not permitted to stop in the tunnel and that to do so had the potential to cause serious danger to other road users. On hearing the noise, a reasonably prudent driver would have proceeded slowly and cautiously out of the tunnel.

By parking his lorry where he did, the driver created an extremely dangerous and unjustified obstruction that entirely blocked the slip lane. He could have reduced the hazard by driving further on, where the lane widened. The beacon lights would have reflected confusingly off the tunnel walls and would not necessarily have indicated that the vehicle was stationary, rather than moving slowly.

On the other hand, in nipping between lanes and entering the slip lane without first ensuring that it was safe to do so, the scooter rider failed to take reasonable care for his own safety. The Court apportioned responsibility for the accident 60 per cent to the lorry driver and 40 per cent to the scooter rider. The amount of the scooter rider's compensation would be assessed on that basis.

Insurers will always do what they can to minimise their costs, which makes the need for strong and experienced legal representation crucial. If you have been injured as a result of an accident on the road, you may be entitled to compensation. Contact **<<CONTACT DETAILS>>** to discuss your claim.

**Man Gravely Injured in Suicide Bid Receives Seven-Figure Settlement**

People with mental health difficulties are entitled to look to the NHS to protect them from themselves. In a case on point, a young man who was gravely injured when he tried to take his own life by jumping from the first-floor window of his home received seven-figure compensation.

It was alleged that the incident would not have occurred had an NHS trust's mental health team provided him with appropriate care and support after he suffered an acute psychotic episode. He sustained a brain haemorrhage and multiple fractures in the incident, rendering him wholly wheelchair dependent.

He has cognitive and serious speech difficulties but is nevertheless able to make himself understood very effectively using eye-driven communication technology. His charm and sense of humour continue to shine through and he remains the intelligent, enquiring and resourceful person that he was before.

The trust denied liability but, following negotiations, agreed to pay 52.5 per cent of the full value of his damages claim. On that basis, he will receive a lump sum of £2,036,500, together with index-linked payments of £193,750 a year to cover the costs of his care for the rest of his life.

Approving the settlement, the High Court found that it was in his best interests. To his enormous credit and that of his devoted family, he retains an admirable zest for life and sense of purpose. The Court hoped that the settlement would enable him to look to the future with a sense of continued hope and security.

Our experienced team will fight hard to ensure you obtain the compensation you deserve.

**Victim of Substandard Neonatal Care Awarded Eight-Figure Payout**

Medical advances, ever-increasing life expectancies and the escalating costs of care together explain why damages awards in some clinical negligence cases may seem staggeringly large. All those factors played a part in the case of a teenage boy who received an eight-figure compensation award.

The boy was delivered very prematurely and required care in a hospital's neonatal unit. There was a failure by medical staff to test for, recognise and treat a loss of blood and oxygen circulation to his lower limbs. Both of his legs were seriously affected.

After proceedings were launched, the NHS trust that bore responsibility for his care made a swift and full admission of liability. Following negotiations, the trust agreed to settle his claim for a lump sum of £9.2 million, plus annual, index-linked payments to cover the costs of his care for life. Given that he is expected to live at least into his late 70s, the settlement had an overall capitalised value of between £18 million and £20 million.

In approving the settlement, the High Court found that it was fair, reasonable and in the boy's best interests. It will ensure that all his care needs are met and that he and his family can move to a suitably adapted home. The boy leads an active life despite his mobility difficulties, and his considerable achievements bear witness to his own determination and his family's devotion. His mother, in particular, has done far more for him than any parent would ordinarily conceive of doing for a child.

Although nothing can truly compensate for mistakes that permanently damage one's health, a settlement can relieve financial worries while victims of medical errors and their families adjust to the consequences. If you have been injured as a result of negligent medical treatment, contact **<<CONTACT DETAILS>>**.

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