Personal Injury ~ May 2023

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Cancer Victim's Autistic Stepson Receives Just Compensation

Caring for a Disabled Child? Don't Put Off Thinking About Damages

Delay in Contacting Solicitors Can be Fatal to Your Personal Injury Claim

Foot-Dragging Council Granted Leave to Defend Ice Rink Asbestos Claim

Judge Sifts Evidence to Find Motorist Responsible for Serious Road Accident

Love Conquers All – Disabled Boy Receives Seven-Figure Award

Supreme Court Ruling Tests the Boundaries of Vicarious Liability

What is an 'Accident' in a Commercial Air Travel Context? Guideline Ruling

**Cancer Victim's Autistic Stepson Receives Just Compensation**

Settlements of personal injury claims involving children or persons with a disability are subject to close judicial scrutiny. That was certainly so in the case of an autistic young man whose stepfather died from asbestos-related cancer at a tragically young age.

The deceased was exposed to asbestos in the course of his employment with the Ministry of Defence (MoD). He was in his 30s when he succumbed to mesothelioma, an incurable cancer of the lining of the lungs that is almost invariably associated with asbestos.

After his family launched proceedings, the MoD swiftly admitted liability. A global settlement of his widow's claim was agreed, the terms of which remained confidential. The High Court was concerned with the proposed apportionment of £2,862 of the settlement sum to his adult stepson.

That apportionment reflected the value of gifts that the stepson would have received from the deceased had he survived. Judicial approval was required due to concerns that the stepson, who had a diagnosis of autistic spectrum disorder, might lack the mental capacity to make important decisions for himself.

Approving the apportionment, the Court noted that the deceased treated his stepson as his son. The stepson was an integral part of the family and looked to the deceased as his primary male role model. Expressing deep condolences, the Court noted that the deceased was much loved and had fought bravely against his illness. It was to be hoped that settlement of the claim would provide his loved ones with some form of closure.

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

**Caring for a Disabled Child? Don't Put Off Thinking About Damages**

Amidst the daily challenge of caring for a disabled child, it is hardly surprising that seeking compensation is far from the top of many parents' priority list. As a High Court case showed, however, it is vital for them to remember that they will not always be there to provide essential care and support.

The case concerned a 17-year-old boy who sustained neurological damage during his birth, resulting in cerebral palsy and learning difficulties. Thanks to his parents' unwavering support, he has developed into a very engaging individual who, after doing well in his GCSEs, is studying for a BTEC qualification.

His higher intellectual functions are, however, likely to be increasingly challenged as he enters adult life. He will always require safeguarding and support and his earning potential is likely to be limited. In that knowledge, and with a sensible eye to the long future ahead of him, his parents sought legal advice.

A clinical negligence claim was launched against the NHS trust responsible for the hospital where he was born. Although the trust disputed liability, a compromise was reached whereby it agreed to pay 70 per cent of the full value of his claim. Further negotiations yielded a final settlement of the claim for a lump sum of £2,967,513.

Approving the settlement, the Court hoped that it would enable him to face the future with security and confidence. His parents have made many sacrifices in fostering his independence and ensuring that he met his potential. Their devotion was apparent and the Court agreed that they should receive £50,000 of the total sum in modest recognition of all that they had done for him.

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."

**Delay in Contacting Solicitors Can be Fatal to Your Personal Injury Claim**

If you suffer loss or injury as a result of an accident that you believe was someone else's fault, you should contact a solicitor immediately. The potential consequences of delay in doing so were underlined by a case concerning a security contractor's death in a freak accident whilst he was working in Iraq.

At the time of the accident, in 2012, the man was engaged by a company to provide security services at a camp for oil and gas industry personnel which was being built near Basra. He was returning from a morning jog when an unsecured steel gate weighing three tons toppled onto him, causing fatal crushing injuries.

Due to a long delay in his widow contacting English solicitors, a personal injury claim was not issued against the company until 2019 – seven years after the accident and four years after expiry of the three-year limitation period that applies to such cases. As a preliminary issue, the High Court considered the question of whether the widow should nevertheless be permitted to proceed with her claim.

Ruling on the matter, the Court found it difficult to understand why the widow did not consider consulting a solicitor earlier than she did. She was, however, coping with her husband's death and with becoming the principal breadwinner for their young child. Other factors for which she was not responsible contributed to the delay and, overall, it was not so egregious as to count heavily against her.

The Court noted that the widow's case appeared to be a strong one. There was little or no dispute as to the circumstances of the accident and, although memories had faded and some evidence was no longer available, a fair trial of her claim remained possible. The Court exercised its discretion under Section 33 of the Limitation Act 1980 so as to disapply the limitation period, thereby enabling the widow to press ahead with her claim.

If you would like advice on how to make a personal injury claim, contact **<<CONTACT DETAILS>>**. It is important to take advice early on, to ensure you are not hampered by the time limits that apply when making a claim for compensation.

**Foot-Dragging Council Granted Leave to Defend Ice Rink Asbestos Claim**

Those who drag their feet in litigation may deserve stern judicial rebuke, but should they be shut out from pursuing or defending a claim? The High Court pondered that issue in the case of a young father who was dying from asbestos-related cancer.

The successful businessman and entrepreneur was in his 40s when he was diagnosed with mesothelioma, a cancer of the lining of the lungs almost invariably associated with asbestos exposure. That was an unusually young age in that the condition takes many years to develop and victims are commonly in their 60s or older. Despite punishing treatment, his death in due course was tragically inevitable.

A personal injury claim was brought against a local authority, asserting that he was exposed to asbestos as a schoolboy whilst doing a holiday job at an ice rink. Back-of-house pipework was said to have been lagged with shabby asbestos coverings. Given his youth and the extent of his wife and child's financial dependency on him, his claim was valued at over £6 million.

Default judgment was entered in his favour due to the council's failure to defend, or even acknowledge, the claim within the relevant time limit. Belatedly, however, the council applied to set that judgment aside on the basis that it neither occupied, managed nor controlled the ice rink, which had long since been demolished and was said to have been in private hands.

Ruling on the matter, the Court noted that the council richly deserved rebuke for its serious and inexcusable lack of promptness in both responding to the claim and making the application. An entirely decent family man was dying and any further delay in the proceedings would entail a real risk that he would not survive to see the outcome of his case. His uncertainty as to whether his wife and child would be provided for after his death would be prolonged.

On the other hand, a great deal of public money was at stake and the council's defence had a real prospect of success. There was a live, evident and non-fanciful chance that it was simply the wrong defendant. With a heavy heart, the Court found that the balance came down in favour of allowing the application and permitting the council to defend the claim.

It is vital to have expert representation when pursuing a claim such as this. 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.

**Judge Sifts Evidence to Find Motorist Responsible for Serious Road Accident**

The speed with which road accidents occur can make it extremely difficult to discern with absolute certainty where fault lies. However, as a case concerning a severely injured motorcycle pillion passenger showed, judges are adept at sifting detailed evidence to arrive at conclusions on the balance of probabilities.

The woman was on the back of a 1,000cc motorbike when it collided head-on with a car on part of a trunk road that was replete with complex road markings. The biker was fatally injured. After the woman issued a personal injury claim against both the biker's estate and the car driver, it fell to a judge to decide where responsibility for the accident rested.

In doing so, the judge considered a thorough police report of the accident together with the evidence of a number of eyewitnesses and the testimony of no fewer than three accident reconstruction experts. Laser measurements of the road and marks left by skidding tyres and spilt oil played a prominent part in the case.

Ruling on the matter, the High Court found that the most probable explanation was that the car driver lost concentration for a relatively prolonged period and drifted onto the wrong side of the road. That represented a serious failure to exercise reasonable care for other road users. Although he was driving at a safe speed, he did not see the motorbike coming towards him until the last moment and made no attempt to avoid the collision.

The biker was travelling slightly in excess of the 60mph speed limit. In ruling that he had not been negligent, however, the judge found that his speed did not give rise to a foreseeable risk of harm to his passenger. He was riding in his correct lane and the consequences of the accident would have been no different had he been going at a slightly lower speed. The judge's ruling opened the way for the woman to proceed with her claim against the car driver. Her claim against the biker was dismissed.

If you have been injured in a road accident through no fault of your own, you could be entitled to compensation. Contact us to discuss your claim.

**Love Conquers All – Disabled Boy Receives Seven-Figure Award**

Even in the teeth of adversity, love will not be conquered. The High Court made that observation in approving the multi-million-pound settlement of a seriously disabled boy's clinical negligence claim.

The boy, aged nine, sustained a catastrophic hypoxic injury during his birth. He has no independent mobility and requires 24-hour care. An avid football fan, he brings great joy to his parents' lives and takes particular pleasure in slapstick humour. He noisily expresses emotion and makes good use of eye-activated communication technology.

It was alleged that administration of a labour-inducing drug was mismanaged and that his delivery was negligently delayed. The NHS trust that runs the hospital where he was born denied liability but, after proceedings were launched on his behalf, it agreed to settle his claim for 55 per cent of its full value.

Following negotiations, a final settlement was agreed whereby he would receive a £2.85 million lump sum, together with annual, six-figure, index-linked payments to cover the costs of his care and case management for life.

Approving the settlement as being in the boy's best interests, the Court noted that his mother had movingly described him as amazing and resilient. Both parents had been placed under enormous strain but their extraordinarily devoted care for their son was proof that love conquers all.

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 compensation awards.

**Supreme Court Ruling Tests the Boundaries of Vicarious Liability**

Employers must compensate victims of misdeeds committed by their employees in the course of their work. That is a true statement, so far as it goes, but a Supreme Court ruling in a case concerning a Jehovah's Witness who was sexually assaulted by an elder in the faith showed that the concept of vicarious liability is much more nuanced than that.

The woman and her husband had been close friends of the elder and his family for some years before he sank into depression and alcohol abuse. He made advances towards her, at one point asking her to run away with him. It was agreed that their friendship would have come to an end had he not been an elder and had she not been advised by his father, also an elder, that he needed love and support.

The attack occurred when the woman and her husband went to the elder's home after taking part in door-to-door evangelising. After she went into a back room to talk to him about his depression, he pushed her to the floor, held her down and raped her. He was subsequently convicted of the rape, together with seven counts of indecent assault on two other victims, and sentenced to 14 years' imprisonment. By that time, he had been expelled as a Jehovah's Witness for unrelated conduct. The woman had also ceased her association with the faith.

After she took action, a judge found that the Jehovah's Witness organisation was vicariously liable to compensate her for the consequences of the elder's crime. She was awarded general damages of £62,000. The judge's ruling was subsequently upheld by the Court of Appeal.

Ruling on the organisation's challenge to that outcome, the Supreme Court noted that vicarious liability is unusual in that it renders a defendant legally responsible for civil wrongs committed by a third party. The law on vicarious liability had been subject to expansive redrawing of boundaries during the 21st century.

The Court accepted that the relationship between the organisation and the elder was akin to that of employment. He was carrying out work on behalf of, and assigned to him by, the organisation. His appointment as an elder made him part of the organisation's hierarchical structure and he performed duties that were in furtherance of, and integral to, the organisation's aims.

In upholding the appeal, however, the Court noted that the rape was not committed whilst he was carrying out any activities as an elder. His crime primarily arose from the abuse of his position as the woman's close friend. The rape was a shocking, one-off attack and was not an obvious progression from what had gone on before. It was unrealistic to suggest that he always wore his metaphorical elder's uniform when dealing with members of the congregation.

His wrongful conduct was not so closely connected with acts that the organisation authorised him to perform that it could be fairly and properly regarded as done by him in the course of his employment or quasi-employment. Overall, there was no convincing justification for the organisation being required to bear vicarious liability for the rape. The fact that the organisation had deeper pockets was no justification for extending the concept of vicarious liability beyond its principled boundaries.

The law surrounding vicarious liability is complex but our expert lawyers will help you to ascertain if you have a viable claim to pursue. Contact **<<CONTACT DETAILS>>** for guidance.

**What is an 'Accident' in a Commercial Air Travel Context? Guideline Ruling**

The word 'accident' is, in common parlance, often used quite loosely. However, as a case concerning a passenger who slipped on board a Ryanair jet showed, it has a very specific meaning in the context of commercial air travel.

Wintry conditions afflicted a flight from Manchester to Hamburg and de-icing fluid had to be applied to the aircraft before take-off. Boarding passengers traipsed a mixture of water, or ice, and de-icing fluid into the cabin on their shoes. Early on in the flight, the passenger slipped and fell on a pool of liquid close to the aircraft's toilets.

He launched a compensation claim against Ryanair under the Montreal Convention. Even in the absence of negligence – which was not alleged against the airline – the Convention renders commercial air carriers liable for bodily injury or death sustained by passengers in accidents that occur on board aircraft or in the process of embarkation or disembarkation.

In dismissing his claim, however, a judge found that the incident was not so unusual or unexpected as to constitute an accident within the meaning of the Convention. It was to be reasonably expected both that an aircraft might require de-icing before travel and that passengers might track de-icing fluid from the tarmac into the cabin. Neither the volume of liquid on the floor nor the slowness with which it evaporated were so out of the ordinary as to support a claim under the Convention.

Rejecting his appeal against that outcome, the High Court expressed sympathy for him but found no flaw in the judge's reasoning. She was entitled to conclude that, from the viewpoint of a reasonable passenger, there was, on a freezing day when de-icing was required, nothing unusual or unexpected about a large amount of liquid being tracked into the cabin by numerous passengers.

Whilst this claim was unsuccessful, there are instances where claims can be successfully lodged, in the event of accidents that take place in the course of travelling abroad. Our expert team can advise.

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