

High Court ruling sets new level for damages payable to individuals who suffer catastrophic injuries

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A recent High Court decision in the case of *Maggie Yang Yun-v-Motor Insurance Bureau of Ireland and Tommy Xiang Bai Tao*, will have important implications for people who have suffered catastrophic injuries and are bringing a claim for damages. The Plaintiff, Maggie Yang Yun is a Chinese national who was studying in Ireland. She suffered a spinal injury when the car in which she was a passenger struck the rear of another vehicle on a road in Drogheda. The court had to decide the level of damages that the Plaintiff was entitled to recover as a result of her injuries.

The case is significant because it reviewed the amount of damages that a court will award to a Plaintiff who has suffered catastrophic injuries.

In any action for personal injuries the task of the court is to assess the damages to which a Plaintiff is entitled to, in order to compensate him/her for the injuries sustained. A Plaintiff is the name given to an individual who takes a court action. Before the court awards damages there must be negligence on the part of a Defendant. No matter how severe the injuries are, damages will only be awarded if a Defendant has been negligent or partly negligent. The negligence must have caused or partly caused the Plaintiff's injuries.

In assessing damages, a court is required (in so far as is possible), to put a Plaintiff in the position that he/she would have occupied if he/she had not suffered the injury. The reality is that no sum of money can fully compensate a person for the loss they experience as a result of a catastrophic injury.

There are two categories of damages. The first category is called Special Damages (out of pocket expenses). The second category is called General Damages (compensation for pain and suffering).

Special Damages

Special damages relate to losses, costs and expenses which a Plaintiff has suffered as a result of an injury. They are also known as "out of pocket expenses". Special damages cover losses from the date of the injury to the hearing of the action and also losses, costs and expenses which will continue into the future as a result of an injury. Categories of loss include nursing care, medical aids and equipment, loss of earnings from the date of the accident and loss of earnings

into the future. Special damages can also be awarded for past care provided by parents and family members. Special damages can also be recovered for the costs that arise from changes that have to be made to a Plaintiff's housing in order to make accommodation more accessible to someone who has suffered a catastrophic injury.

There is no limit on the amount of special damages that a court can award. However all claims must be fully supported. This is usually done by expert evidence. It is therefore necessary to obtain expert reports to support any claim for special damages. A nursing consultant will assess care costs. An occupational therapist will assess the medical aids and equipment required. A vocational assessor will determine the effect that an injury has had on an individual's ability to work. An actuary will calculate loss of future earnings. An architect will review a Plaintiff's housing and recommend any changes that are necessary in order to make the house more accessible.

General damages

If a Plaintiff is successful in his/her case, he/she will also be entitled to what is known as general damages. General damages is compensation for pain and suffering as a result of an injury. It excludes those areas of loss that are covered by way of special damages. Pain and distress suffered by someone with a catastrophic injury will be life long and general damages are intended to provide a Plaintiff with some measure of compensation throughout the entire duration of their pain and distress. Some cases come before the courts where it is recognised that the injuries suffered are so severe that the maximum general damages payable should be awarded.

When awarding general damages for catastrophic injuries, the courts have recognised that a limit must exist as to how much can be awarded under this heading. In 1984 the sum of £150,000 (€190,000) was the limit on general damages. This sum was set by the Supreme Court in the case of *Sinnott-v-Quinnsworth*. The importance of the *Maggie Yang Yun* case is that the High Court put a new figure on the upper limit of general damages that the court would pay out to those who have suffered catastrophic injuries. The court had the task of taking the 1984 figure of £150,000 (€190,000) and establishing what this figure should be in 2009.

A new "cap" for General damages

When reviewing the limit for general damages in *Maggie Yang Yun's* case the court considered expert evidence in relation to the country's economic and social history between 1984 and 2009 and future social and economic outlooks. Ordinary living standards in the country were a relevant factor in determining the amount to set the limit at. The two key issues when comparing today's standards and values with those of 1984 were inflation and economic growth. Inflation has reduced the purchasing power of money between 1984 and 2009 and economic growth has caused a large improvement in the overall standard of living in the country as a whole between 1984 and 2009.

The court was of the view that when updating the "cap" on general damages, an adjustment should be made to reflect a present and forthcoming reduction in wealth and living standards. The court heard expert evidence to the effect that this is likely to continue for a period of approximately five years and recovery in the Irish economy is unlikely before the end of 2011 and it could be delayed for a further year. The court noted that any award should reflect the current economic situation. However the court stated that "today's recessionary economic circumstances should not be visited upon the most vulnerable in society in order to regulate the damages which are intended to compensate them for the whole of the remainder of their lives".

The court made an upward adjustment of the 1984 limit or cap in order to allow for inflation and improvement in living standards. A downward adjustment was then made to take into consideration present and forthcoming reduction in wealth and living standards, which commenced in early 2007 and is expected to continue for a further period in excess of five years. Taking these factors into consideration, the court raised the cap on general damages to €450,000.

If there are any particular legal topics of interest to you please email Spinal Injuries Ireland at info@spinalinjuries.ie or contact McMahon Goldrick Solicitors at Tel: 01-8898580 or mobile: 087-2854007 Ralph McMahon.