SCHEDULES OF LOSS IN FATAL ACCIDENT CASES

INTRODUCTION

1. The entitlement to bring a claim following a person’s death derives from statute. The quantification of loss therefore depends largely upon those statutory provisions, and the case law interpreting those provisions, although there is some overlap with the principles applying to the assessment of damages in personal injury claims.

2. There are two types of fatal accident claim: the Estate’s Claim and the Claim by the Dependents of the Deceased.

THE ESTATE’S CLAIM UNDER THE LAW REFORM MISCELLANEOUS PROVISIONS ACT 1934 (“the LRMPA”)

3. Section 1(1) of the LR(MP)A provides that:

   a. “Subject to the provisions of this section on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of, his estate.”

4. In bringing this claim, the Estate effectively stands in the shoes of the deceased and can (subject to the exception of funeral expenses) only claim for the losses that the deceased could have claimed if he or she had survived.

5. All causes of action apart from defamation survive the death of any person for the benefit of his or her estate. This includes, for example the diminished value of a personal injury case unconnected to the cause of the deceased’s death. (See Singh v Aitken [1998] PIQR Q37.)
6. The LR(MP)A claim can be brought only by executors or administrators for the beneficiaries of the Estate.

7. The main types of claim under the LR(MP)A are:

   a. Pain, suffering and loss of amenity (from the date of injury to the date of death)

   b. Special damages (from the date of injury up to the date of death).
      These will include Loss or earnings, medical expenses and treatment, damage to clothing and property, Care (professional or gratuitous) and travel expenses.

   c. Funeral Expenses

   d. Probate Fees

   e. Various one-off expenses and losses

   f. Interest

FATAL ACCIDENTS ACT 1976

8. The FAA 1976 creates a separate cause of action for the dependants (and those entitled to the award of bereavement damages) but it is based on the precondition that the deceased, had he or she lived, must have been entitled to maintain an action in respect of the wrongful act of the Defendant (FAA 1976, S1)
9. Therefore:

   a. If the deceased had no cause of action then the estate and the dependants have no cause of action;

   b. Any defence that could have been used against the deceased can be used against the estate and the dependants;

   c. If the deceased was contributorily negligent then the damages of the estate and the dependants are reduced accordingly.

10. In general terms, there are 3 possible heads of damages, namely:

   a. An award of bereavement damages;

   b. A dependency claim for the financial losses suffered by the dependants of the deceased;

   c. A claim for the funeral expenses, if paid by the dependants.

CASE HISTORY

11. Your client is David Turner, aged 45 (Date of Birth 15th January 1970). He and his children live in Woking. He has instructed you following the death of his wife, Mary, who died on 25th February 2013. She was 47 when she died (date of birth 25th February 1964). Together they had three children:

   Crispin, aged 25 (date of birth 5th September 1989)
12. Mary’s death followed a negligently conducted operation to remove a benign tumour from her bowel and a negligent failure to recognise that the operation had failed. Following the operation, on Monday 11th February, her condition immediately began to decline. Over the first few days post-operatively her temperature began to spike dramatically. She was obviously unwell and she experienced episodes of vomiting as well as stomach pain. She was treated with IV antibiotics on the assumption that she was suffering from an infection but there was a complete failure to assess her condition or recognise its seriousness. Mary herself was convinced that something must have gone wrong with her operation. However, her views were disregarded. On 17th February she was febrile and tachycardic and obviously declining and was finally admitted to surgery. In surgery it became clear that her (negligently) stapled bowel wound was open and had been leaking for some time and that she was suffering from extensive peritonitis. Unfortunately, during that second operation, she developed septicaemia and went into organ failure. She was maintained on life support thereafter and did not regain consciousness prior to her death.

13. You issued proceedings on behalf of Mr Turner on 1st January 2014 and served those proceedings on 1st June 2014. Liability was admitted in August 2014 for damages to be assessed. Your prepared the following Schedule of loss by reference to a notional trial date of 25th February 2015.

OTHER RELEVANT INFORMATION

14. It is accepted that Mary’s life expectancy was normal at the date of her death.
15. Mary was very successful in her job and worked full time as a head teacher of a state secondary school, earning £150,000 per annum. She had a pension into which she had been paying 10% of her earnings since she was 30, which 10% was then matched by her employer. Mary had not opted out of the state pension and expected to continue to work until the age of 65.

16. Mary also had a private insurance policy in place which paid out £300,000 to David on her death.

17. David did not work, he and his wife having agreed that he should be available to look after the children and the home. He had last worked as a school laboratory technician in 1995. He and Mary had planned that David would return to some form of part time work when Clare turned 18 in 2023 and when he would be 55.

18. On Crispin’s 21st birthday (5th September 2010), Mary gifted him £150,000 from her savings as a deposit for a flat in London.

HEADS OF LOSS

19. Under the LRMPA, you will be considering the following:
   a. The claim for pain, suffering and loss of amenity for the week during which Mary suffered and was conscious. Technically you can also claim loss of amenity (only) for the period during which she was unconscious.
   b. There is no loss of earnings claim as Mary would still have been recovering during the period prior to her death “but for” the negligence.
   c. Expenses incurred by David Turner in visiting Mary (to the extent that they exceeded what he would have done “but for” the negligence). Eg parking costs.
d. Care – there may be a small gratuitous care claim in respect of the extra time that David spent tending to his wife during that period.

e. A claim in respect of the Inheritance Tax that Crispin will be expected to pay on the £150,000 given to him by his mother less than 7 years prior to her death.

f. Funeral Expenses

g. Probate Expenses

h. Interest

20. Under the FAA, you will be considering the following:

a. Bereavement damages

b. Dependency which will include:

   i. Past Losses and Expenses from the date of death to the notional trial date to include Financial Dependency and Services Dependency.

   ii. Future Losses and Expenses from the notional trial date to include Financial Dependency, Services Dependency and Pension Loss.

   iii. Interest
WORKED EXAMPLE

IN THE ALDERSHOT AND FARNHAM COUNTY COURT

CLAIM NO: 1234567

BETWEEN

MR DAVID BRIAN TURNER

(Widower and Administrator of the Estate of Mary Jane Turner)

Claimant

and

ASHFORD AND ST PETER’S HOSPITALS NHS FOUNDATION TRUST

Defendant

SCHEDULE OF LOSS

CLAIMS UNDER THE LR(MP)A
1. General Damages
   a. The Deceased suffered increasing and significant pain, nausea and distress during the 7 days following her operation. She was convinced that there was something seriously wrong and her suffering was exacerbated by the failure of the Defendant’s staff properly to respond to her concerns. She expressed the fear to her family that she might not survive. (See eg SP (Widower and Executor of the Estate of NP, Deceased v West Hertfordshire Hospitals NHS Trust Lawtel (2013) Doc no AM0202225)

   £4000

2. Special Damages
   a. Travel expenses.

   The Claimant visited the Deceased every day from 11th to 25th February 2013. But for the Defendant’s negligence, the Claimant avers that the Deceased would have been discharged by 17th February at the latest and therefore claims for 8 days of extra travel. He and his family also attended twice thereafter in order to visit the morgue to view the Deceased’s body on 26th and 27th February 2013.

   Each round trip to Hospital was 10 miles. At 40p per mile, the total claim for mileage for 10 trips is £40.00.

   The daily car park fee was £20. The half day fee was £10 and the minimum cost for 0-2 hours (the parking required in order to visit the morgue) was £5.

   Mr Turner stayed with his wife during all visiting hours (for 3 ½ hours a day) during the first 4 days. He then obtained permission to spend all day with her for the following 3 days until she was moved to intensive care after her operation on 17th February 2013.

   Parking fees claimed: 15th to 17th February (extra half day of parking) £30

   18th to 25th February £160
b. Child Minding
   i. Paid child minding

   Whilst the Deceased was in hospital, from 12th to 15th February, it was necessary to pay a child minder to baby-sit for Clare during the week, to collect her from school, to feed Clare and Amanda and to stay with them until their father returned at 9pm. But for the Defendant’s negligence, he would only have attended one visiting session at the hospital from 12th February onwards and would therefore have been home by 5pm rather than 9pm.

   4 hours per day is claimed @ £8 per hour = £128.

   The girls’ half term ran from 18th to 22nd February. Mr Turner stayed with his wife all day while she was in the intensive care unit.

   14 hours per day is claimed @ £8 per hour = £560

   Total paid child minding fees = £688.

   Gratuitous child minding

   On the weekends of 16th and 17th February and 23rd and 24th February, Crispin Turner looked after his sisters.

   14 hours per day @£6 per hour (allowing a 25% reduction for gratuitous care)

   Total gratuitous child minding £336

   c. Gratuitous Care

   Whilst the Deceased was in hospital, her husband was in attendance initially during all visiting hours and all day (12 hours) from 15th to 17th February 2013. It is admitted and averred that but for the Defendant’s negligence he would have spent 3.5 hours with his wife on 11th February (full visiting hours) and 1.5 hours per day thereafter with his wife from 12th February
until her discharge on 17th February 2013. Due to the Deceased’s ongoing increasing pain and distress, the Claimant spent a further 2 hours per day supporting his wife from 12th to 15th February and a further 8.5 hours per day supporting her on 15th to 17th February. (See the principles laid down in *Beesley v New Century Group Limited* [2008] EWHC 3033 (QB) and *Giambrone v Sunworld Holidays Ltd* [2004] EWCA (Civ 158))

Total gratuitous care, at £6 per hour £201

3. Funeral Expenses (see *St George v Turner* [2003] CLY 936)
   a. Burial Fees £1500
   b. Wake £1000
   c. Monument £5,500

4. Probate Fees
   Due to the distress caused by the Deceased’s death the Claimant employed an outside agency to deal with all matters arising out of the administration of the Deceased’s estate and to oversee the grant of probate. £3,000

5. Inheritance Tax: The Claimant will seek credit for any inheritance tax payable by reason of the Deceased’s gift of £150,000 to her son on 5th September 2010. But for the Defendant’s negligence the Deceased would have survived, on the balance of probabilities until beyond 5th September 2017. A report from an expert accountant has been commissioned by the Claimant and further details of this claim will be provided on receipt of that report.

TOTAL (Law Reform Act Claims) £16,465.00
CLAIMS UNDER THE FATAL ACCIDENTS ACT 1976

6. Bereavement Award
   The Claimant seeks and is entitled to the statutory award for bereavement under Section 1A of the Fatal Accidents Act 1976 (as amended) £11,800.
   (The award has increased in respect of causes of action accruing after 1st April 2013)

7. Past Losses and Expenses
   a. Financial Dependency
      See the section on future financial dependency below for a fuller description. Two years of the multiplier are claimed as past loss. See Appendix 1 for calculations. £92,902.01
   b. Service Dependency
      The Deceased was a very keen gardener who kept the family garden in immaculate condition and spent around 4 hours per weekend working on the garden from April to September and around 2 hours per weekend in the winter months. Since the Deceased’s death the Claimant has paid for a gardener on the same hourly basis, at a rate of £15 per hour. Therefore the total claim for gardening to the notional trial date (beginning on 1st May 2013) is £4,258.80.

   Total FAA dependency past loss: £97,160.81

8. Future Losses and Expenses
   a. Financial Dependency
      The Deceased was very successful in her job. At the time of their death she was working full time as a head teacher of a state secondary school,

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1 This method of calculation follows from the case of Cookson v Knowles [1979] AC 556. But n.b. the case of Knauer v Ministry of Justice [2014] EWHC 2553 (QB) in which Bean J gave permission to pursue a leapfrog appeal to the Supreme Court on the issue of Cookson v Knowles. Their Lordships have yet to indicate whether they will permit the appeal to proceed.
earning £120,000 per annum. Increases were anticipated in line with inflation\(^2\).

The Claimant did not work, it being agreed between the parties that he would devote himself full-time to raising the children. He claims as a dependant upon her income. It was the intention of the Claimant and the Deceased that the Claimant would return to part time work when Clare turned 18 in 2023 and when he would be 55.

The Deceased’s life multiplier is 25.29. The Claimant’s life multiplier is 25.45. Therefore the Deceased’s life multiplier is taken\(^3\).

See Appendix 2 attached for calculations. A deduction has been made for the sums the Deceased paid into her work pension from her salary.

The claim for dependency is made on a sliding scale from 75% when all children are in their minority, to 67% where the Claimant alone receives the dependency. Deductions have been made for employment the Claimant could expect to receive. He will by then have been away from work for some time and will be part-time only. His expected wages are minimal.

As two years is claimed as past loss, the remaining claim for dependency is £472,574.42.

b. Service Dependency

The Claimant’s need to replace the Deceased’s gardening services will continue. The Deceased was very fit and active and the Claimant contends that she would have continued to work at the same level within

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\(^2\) Multipliers in Ogden represent return to be expected on investment after inflation, but assess multiplicand as at date of death.

\(^3\) First work out the period for which the Deceased would have been able to provide the dependency, then work out how long the dependants would have been able to receive it, then take the shorter of the two.
the garden until the age of 75, at which point she would have employed a gardener.

Period from date of trial for which deceased would have been able to provide dependency. See table

The Claimant therefore contends for a multiplier to this lost service

As 2 years of this multiplier would have been used up by the date of trial, the appropriate multiplier for loss of services, taken from the 2.5% column of table 14 of the Ogden Tables = 19.36, less 2 years to trial = 17.36.

The gardening costs will continue at a rate of £2340 per annum.

\[ £2340 \times 17.36 = £40,622.40 \]

c. Pension Loss

The Deceased had a pension into which she had been paying 10% of her earnings since she was 30, when her employment as a teacher commenced. 10% of her salary was then matched by her employer\(^4\). She was the fortunate beneficiary of a final salary pension\(^5\). Mary had not opted out of the state pension and expected to continue to work until the age of 65.

The formula for her final salary pension was

\[ \frac{1}{80} \times \text{final salary} \times \text{pensionable service} \]

A lump sum would have been payable on retirement calculated as:

\[ \frac{3}{80} \times \text{final salary} \times \text{service to age 60} \]

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\(^4\) This is a simplification. Under the current Teachers' Pensions Regulations 2010 contributions would be scaled proportionate to salary.

\(^5\) NB in reality, the Defendant would argue that Mary's pension would have been subject to the changes in the Teachers' Pension Scheme Regulations 2014 coming into effect on 1 April 2015. She would have had locked in final salary benefits until such date but thereafter her remaining benefits would be calculated on a 'career average' basis.
Calculations of recurrent pension loss are set out in Appendix 3. An Auty discount of 0.89 is allowed\(^6\). The lump sum loss is calculated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lump Sum</td>
<td>£50,000.00</td>
</tr>
<tr>
<td>Accelerated by 18 years</td>
<td>0.6412</td>
</tr>
<tr>
<td>Mortality</td>
<td>0.97</td>
</tr>
<tr>
<td>Auty</td>
<td>0.89</td>
</tr>
<tr>
<td><strong>Total Lump Sum</strong></td>
<td><strong>£27,670.36</strong></td>
</tr>
</tbody>
</table>

The total pension loss is therefore **£320,534.55**

9. The Claimant seeks compensation for the loss of special attention and affection that the Deceased would have continued to provide to him and his children but for her untimely death as follows:
   a. £2,500 for the Claimant
   b. £1,000 for Crispin
   c. £2,500 for Amanda
   d. £5,000 for Clare.

   **Total:** **£11,000**


**INTEREST**

10. Interest on Law Reform Act Claims
   a. Interest on General Damages

   The Claimant is entitled to and claims interest at 2%

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\(^6\) i.e., Auty v National Coal Board [1985] 1 W.L.R. 784, CA, a discount for imponderables beyond mortality alone.
on general damages from the date of service of the
Claim Form = 1.5% x £4000  £60

b. Interest on special damages, funeral expenses and probate fees is claimed at the full special account rate, from the date of death to the date of trial (2 years), making a total of 1%  £124.65

11. Interest on Past FAA Claims
   a. Interest on Bereavement award

   Interest on the Bereavement award is claimed at
   the full special account rate, from the date of death to the date of trial (1%)  £118.00

   b. Interest on Financial Dependency

   Interest on past financial dependency is claimed at half the special account rate, from the date of death to the date of trial (0.25%)  £464.51

   c. Interest on Services Dependency

12. Interest on past services is claimed at half the special account rate, from the date of death to the date of trial (0.25%)  £21.29

13. Interest on loss of intangible benefits is claimed at the full special account rate from the date of death to the date of trial (1%)  £110

TOTAL DAMAGES CLAIMED  £987,520.63