

## Quantum Assessment in Queensland

Unless the injury occurred in a workplace or some other limited circumstances, damages awarded in personal injury claims in Queensland are regulated by the *Civil Liability Act 2003* (Qld) (**CLA**) and *Civil Liability Regulations 2014* (Qld) (**CLR**).

Claims against an employer are governed by the *Worker's Compensation and Rehabilitation Act 2003* (Qld) and *Worker's Compensation and Rehabilitation Regulation 2014* (Qld).

### 1. General Damages – pain and suffering damages

- Covers pain and suffering and loss of enjoyment of life.

#### Non-workplace injuries

- The plaintiff's injury is assigned an Injury Scale Value (**ISV**) from 0 to 100 reflecting 100 equal gradations of harm depending on the type, nature and severity of the injury. Each ISV attracts a different general damages amount. The CLR contains guidelines on appropriate ISV ranges for each type of injury and a conversion table to calculate the corresponding general damages.
- Where there is more than one injury, the injury with the highest potential ISV is deemed the '*dominant injury*' which is used as a benchmark to assess the plaintiff's general damages. An uplift (usually 25%) may be applied to the dominant injury's ISV if the other injuries are serious, though it may be lower or higher than 25% depending on the significance of the injuries.
- The date of the incident is relevant as the ISV/general damages conversion is indexed each year on 1 July.
- Interest cannot be claimed on general damages.

#### Workplace injuries

- General damages paid by an employer or their insurer are regulated by the *Worker's Compensation and Rehabilitation Regulation 2014* (Qld), which contains a similar ISV system to the CLA. Interest on general damages cannot be claimed.
- For non-employer defendants, general damages will be assessed at common law and interest will be payable.

### 2. Past economic Loss

- Calculated from the date of the injury to the anticipated date of settlement or judgment.
- If the plaintiff was employed at the time of the incident, past economic loss is calculated by adding up the net weekly earnings the plaintiff lost as a result of the injury.
- If the plaintiff was not employed at the time of the incident, the court will consider whether the injury impacted on the plaintiff's ability to return to work and whether the claimant would likely have returned to work and may award a global sum.
- Past economic loss is capped at three times the average weekly earnings at the date of the award.
- Interest for past economic loss is recoverable.

### 3. *Fox v Wood* damages

- Where workers compensation benefits have been paid to a plaintiff in respect of an injury, the plaintiff will be entitled to recover the income tax paid in respect of refundable workers compensation receipts which will ultimately be refunded back to WorkCover.
- That difference is usually around 15% of the plaintiff's gross earnings.

### 4. Future economic loss

- For a plaintiff to be entitled to future economic loss, they must not only establish a diminution in earning capacity but also that the diminution will or may result in actual financial loss.
- A court will generally award a global sum where the precise impact of an injury on a plaintiff's earning capacity is difficult to determine.
- Future economic loss is capped at three times the average weekly earnings at the date of the award.
- A prescribed discount rate of 5% is applicable to determine the present day value of the future loss.
- After applying the 5% discount, a general discount of 15% is applied for vicissitudes and contingencies. This can be reduced (such as if the economic loss period is short) or increased (such as if the economic loss period is exceptionally long or other factors (e.g. pre-existing medical conditions) will likely impact the plaintiff's future earning potential).

### 5. Past special damages

- Consists of out of pocket expenses paid by the plaintiff, including medical and travel expenses and paid domestic assistance, and medical benefits received by the plaintiff (e.g. hospital, Medicare).
- The former is calculated by asking the plaintiff to provide documentary evidence of their outlays, and the latter by requesting medical providers or statutory bodies for their refunds.
- Interest is recoverable on out of pocket expenses.

### 6. Future special damages

- Consists of anticipated medical and out of pocket expenses the plaintiff will incur in the future as a result of the injury

### 7. Gratuitous and paid care damages

#### (a) Gratuitous assistance / *Griffith v Kerkemeyer* damages

##### i) Non-workplace injuries

- A plaintiff will only be entitled to claim attendant gratuitous care where they have received, or will receive, gratuitous care for at least 6 hours per week for a period of at least 6 months (s 59 CLA).
- No allowance is to be made for gratuitous care unless:
  - 1) The services are necessary;
  - 2) The need has arisen (or arose) solely because of the injury; and
  - 3) The services would not be (or would not have been) provided to the plaintiff but for the injury.

##### ii) Workplace injuries

- A plaintiff cannot claim gratuitous care damages from its employer. For physical injuries over 15% WPI, the plaintiff may be entitled to a minor lump payment for gratuitous care.
- For non-employers, the CLA threshold does not apply and gratuitous care damages are assessed at common law meaning any care obtained that is reasonable and necessary will be compensable.
- Interest on past gratuitous care damages is recoverable.

#### (b) Loss of capacity to provide care – *Sullivan v Gordon* damages

- The plaintiff can claim damages for their inability to provide domestic assistance to a dependant (such as a parent being unable to care for a child) (s 59A), but only where the injured person has died as a result of the injuries or general damages exceeds the amount prescribed under s 6 of the CLR – currently \$46,800 for injuries arising on or after 1 July 2019.
- The services the plaintiff can no longer provide must exceed six hours per week for a period of at least six months.
- Damages will only be awarded where –
  - 1) the plaintiff provided domestic services to those dependents before the incident occurred; and
  - 2) the plaintiff's dependents were not (or will not be) capable of performing the services themselves by reason of their age or physical or mental incapacity.
- If the dependant has previously recovered damages in respect of the same loss of capacity, the plaintiff will not be entitled to claim damages for that loss.

### (c) Paid care

- A plaintiff will be reimbursed for all paid care received, and will receive in the future, as a result of the injuries.

### 8. Plaintiff's costs

- An employer will not be liable to pay for the plaintiff's costs except for limited circumstances where an injury is amended above 20% WPI.
- PIPA imposes lower and upper costs thresholds on recoverable costs which are indexed each year on 1 July. Those thresholds are set out in Carter Newell Fact Sheet 10(b).

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