Regan v Williamson Awards

1. The following is an edited extract from Chapter 13 of *A Practical Guide to Claims Arising from Fatal Accidents (2nd Edition)* published by Law Brief Publishing.

2. This type of award is a common law award which has developed relatively recently in the context of claims arising out of fatal accidents. It is referred to variously as an award for "loss of consortium"; an award for an award for "the loss of the deceased's love and affection"; an award for "the loss of services only a mother could provide"; and an award for "the loss of intangible benefits".

3. The case of *Regan* was a first instance decision and so is not binding. Slightly unusually, there is still no binding authority on this type of award. Perhaps because of this, there have been differing approaches taken by the Courts to this type of award, as we shall see below.

4. Although the origin of this type of award was an *"attempt by the courts to value the services of a mother … to a child over and above the commercial cost of replacing her"*[1] this type of award has now been extended to cover cases involving the loss of a spouse or partner. In the case of *Beesley v New Century Group*[2] Hamblen J stated, *"In principle there is no reason for differentiating between the position of children and spouses in connection with the availability of such awards"*[3].

5. As we shall see below, the case law demonstrates that over time claims for this type of award have been framed as an attempt to compensate two different types of loss:

    a) A claim for pecuniary loss: the value of services provided by the deceased that are over and above those reflected in the commercial cost of replacing those services.

    b) A claim for non-pecuniary loss: a claim solely for the "love and affection" provided by the deceased that has been lost.

[1] Per Mackay J Fleet v Fleet EWHC 3166 (QB) para 24
[2] [2008] EWHC 3033 (QB)
[3] Ibid, para 83

6. This type of award is separate from an award for bereavement. The bereavement award is a statutory award. It is a set amount determined by statute which is currently £12,980 for deaths after the 1st of April 2013 and £15,120 for deaths after the 1st May 2020.

7. The amount awarded is not set at a particular level but is at the individual judge's discretion. The awards made under this heading are relatively modest. Reported cases show that awards generally range from £1,000 to £3,000[4]. The upper end of the bracket of awards seems to be around £5,000 at present. This may increase slightly in line with inflation.

8. In the case of *ATH & Anr v MS*[5] the Court of Appeal reduced awards made under the heading *"services only a mother can provide"* from £5000 and £7000 to £3,500 and £4,500 respectively. Kennedy LJ stated:

   "The awards…of £5000 and £7000 are challenged by Mr Strachan on the basis that the conventional maximum award is about £5000, even where the dependant child is very young…Mr Lederman's response is that in other cases there was no evidence as to the value and quality of the services lost. In my judgment that is not a sufficient reason to abandon the bracket, and I would reduce the award…"[6]

9. The Fatal Accidents Act is concerned almost entirely with pecuniary loss; that is a loss that can be valued in pounds and pence. The only exception to this is the bereavement award. The bereavement award is an attempt (some would say a poor one) to compensate the claimant for the non-pecuniary loss of the grief and emotional trauma caused by bereavement.

10. Within this framework there remains ample scope for the Court to make a "Regan v Williamson" type of award. When the Court makes this type of award they are doing so as an estimation of an additional pecuniary loss that cannot be adequately compensated for solely by the services dependency claim.

11. In the case of *Beesley* Hamblen J explained:

    "In my judgment the principle of making awards for loss of intangible benefits is now well established…It reflects the fact that services may be provided by a mother, wife, father or husband over and above that which may be provided by a paid replacement."[7]

[4] £1,000 was awarded in the case of Mehmet Op. cit; £3,000 was awarded in the case of Knauer Op cit.
[5] [2002] EWCA Civ 792
[6] Ibid at para 38
[7] Op. cit. at para 83

12. In the case of *Grant v Secretary of State for Transport*[8], after a comprehensive review of the case law, Martin Chamberlin QC (sitting as a Deputy High Court Judge) concluded:

"First, aside for the award for bereavement, there can be no claim under the 1976 Act for non-pecuniary loss…

Second the courts have sometimes recognised that the claimant may suffer a pecuniary loss as a result of the death of a relative that was not adequately compensated by an award for services dependency. A pecuniary loss, for these purposes, means a loss that is conceptually capable of being valued in money or money's worth…Awards made on this basis do not offend the principle that, bereavement apart, compensation is available for pecuniary loss only. They are simply an attempt to capture more accurately the pecuniary value of the deceased's services…"

13. There are numerous examples where a "Regan v Williamson" award has been made on the basis that there is a modest additional pecuniary benefit that cannot be compensated solely by the damages calculated for services dependency. The Courts have identified the additional pecuniary benefit provided by the deceased in: the special quality of care provided by a parent[9]; providing higher quality care and assistance to the elderly and the disabled[10] and value in the convenience of not having to arrange for various services to be performed commercially[11]. In all these situations the Courts have made modest "Regan v Williamson" type awards accordingly.

14. Sometimes the Court concludes that it is unnecessary to award an additional sum after the award for services dependency has been calculated and declines to make a "Regan v Williamson" type award. In the case of *Mosson v Spousal (London) Ltd* [12] Garnham J (having observed that the legal basis for making such awards was unclear) analysed whether there had been an additional pecuniary loss. He determined that there had not been and declined to make such an award. He also concluded that there was not any proper legal basis for this type of award at all. He stated:

"I take on board the fact that the making of awards of this sort has become increasingly commonplace. However I regret to say that, for two reasons, I find myself in disagreement with

[8] [2017] EWHC 1663 (QB)
[9] Regan Op. cit. Mehmet v Perry [1977] 2 All E.R. 529; Corbett v Barking Havering and Brentwood Health Authority [1992] 2 QB 408; Johnson v British Midland Airways Ltd [1996] PIQR Q8. See chapter 8.5.4 for a further discussion of awards made on this basis.
[10] Fleet v Fleet Op. Cit; Also (arguably) Devoy v Doxford [2009] EWHC 159 (QB)
[11] Grant Op. cit; Beesley Op. cit; Wolstenholme v Leach's of Sunderhill Ltd [2016] EWHC 588 (QB); Blake v Mad Max Limited [2018] EWHC 2134
[12] [2016] EWHC 53 (QB)

the conclusions of the other judges of this Court to whom I have referred. I can see no proper jurisprudential foundation for this claim[13]."

15. In summary, Garnham J went on to state that the first reason he would not make such an award was because there can be no precise equivalence in money terms of every loss that flows from an injury or a death; the court had to do its best to calculate the pecuniary loss and had done so in the present case. Secondly, he stated that any claim that is not for a pecuniary loss was the type of loss that the statutory bereavement award was intended to cover[14].

16. In the case of *Magill v Panel Systems (DB) Ltd*[15] HHJ Gosnell (sitting as a High Court Judge) observed that *"such claims had become commonplace"* but found that on the facts of the case there could be no additional pecuniary loss which was capable of compensation. He declined to make an award for the loss of a partner's care and attention in the emotional (non-pecuniary) sense. He concluded:

"I have no doubt that the Claimant has lost the care stated and attention of the deceased in the emotional sense and the loss of that cannot be minimised but it does not sound in additional damages because this is exactly the loss that the bereavement award (modest though it is) is intended to compensate for."[16]

17. As we have seen, with the exception of the bereavement award, as Edmund-Davies LJ observed, *"it is undoubtedly the case that damages under the fatal accidents act can only be awarded in respect of pecuniary loss and not as a solatium for injured feelings"*[17].

18. Nevertheless, occasionally claims continue to be made for the "loss of love and affection" of the deceased both in the context of deceased spouses and partners and of deceased parents. Following the analysis set out in the cases above (and in particular in the case of *Grant*) the reader could be forgiven for expecting that these claims would fail. However, Courts do sometimes make awards on this basis.

19. Recently, in the case of *CC v TD*[18] HHJ Freedman (sitting as a High Court Judge) stated:

"…a claim for loss of intangible benefits on behalf of the children falls into an entirely different category and is to be distinguished from the type of claim made in Mosson…I am satisfied that

[13] Ibid at para 71
[14] Ibid at paras 72-75
[15] [2017] EWHC 1517 (QB)
[16] Ibid at para 65
[17] See above at 13.2
[18] [2018] EWHC 1240 (QB)

the line of cases starting with Hay in 1975 permit the Court to make an award for loss of intangible benefits where children have been denied the benefit of love and affection which their father would otherwise have bestowed upon them. Experience suggests that such awards are commonplace"[19]

20. HHJ went on to award £5,000 for each child dependant.

21. In addition to awards made in Court, the author has experience of claims settling out of court where sums of up to £4,000 have been allowed for "loss of love and affection" where it is clear the sum contended for does not relate to a pecuniary loss.

[19] Ibid paragraphs 56-57