

DGR Law News and Articles

Catastrophic Injury Claims

CATASTROPHIC INJURY CLAIMS

I am often asked how catastrophic and high value injury claims differ from other cases.

I have represented Clients in all areas of litigation for over 20 years and there have been a lot of changes to Court procedure over this period.

Catastrophic and high value injury claims are dealt with under pre-action protocols, introduced by Lord Woolf in 1996. The purpose of the protocol is to build on and increase the benefits of early but well informed settlement which genuinely satisfy both parties to the dispute.

The aims of pre-action protocols are:

- more pre-action contact between the parties
- better and earlier exchange of information
- better pre-action investigation by both sides
- to put the parties in a position where they may be able to settle cases fairly and early without litigation
- to enable proceedings to run to the court's timetable and efficiently, if litigation does become necessary
- to promote the provision of medical or rehabilitation treatment (not just in high value cases)
- to address the needs of the claimant

The emphasis is therefore on greater and more effective communication between the parties representatives, a thorough investigation of the issues and progression towards settlement without the necessity of a Court trial.

It is important to identify the issues at an early stage of a case relating to liability and quantum.

If liability for an incident is likely to be in issue, evidence will be required to establish how the incident happened and why the other party was responsible.

If liability is not in issue, the investigation will focus on injuries sustained and loss. In catastrophic and high value injury claims, to prove that the injuries occurred as a direct result of the accident it is necessary to obtain Expert Medical Evidence from a number of different Consultants. For example, an Orthopaedic Surgeon should report on injuries to

bones and joints; a Psychiatrist on Post-Traumatic Stress; an Occupational Therapist or Nursing Expert regarding care and so on.

Under the Protocol, the parties are encouraged to appoint one expert to write a single Report; however, with high value cases, it is common for the parties to appoint their own experts covering the different areas of expert evidence.

By way of example, I recently represented a Claimant (aged 46) who had a motorcycle accident in May 2009. He sustained an ankle fracture which resulted in a below-the-knee amputation of part of his left leg.

Following the amputation procedure, he suffered and continues to suffer from severe phantom limb pain.

This affected every aspect of his life and Reports were required from Experts in Orthopaedics, Prosthetics, Care, Architecture, Rehabilitation, Pain Relief and Employment.

In all, we amassed 19 Reports and Updated Reports over a 3-year period to demonstrate the past and future impact and consequences of the injury and resulting phantom limb pain. The Reports were disclosed to the other party in exchange for their Reports and resulted in agreement in a number of key areas.

In accordance with the aim of the Protocol, a Round Table Meeting was held in July of this year and after negotiations the case settled for a payment in damages of £800,000 plus legal costs.

The settlement provides the Claimant with financial security and private treatment to relieve the pain including the provision of prosthesis for the rest of his life.

The successful outcome was achieved without trial and confirms the benefits of implementing the protocol.

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