

LITIGATION SERVICES

Compensation for Injuries from a Motor Vehicle Accident

When a person is injured in a motor vehicle accident that is not their fault, they are entitled to certain damages from the driver at fault. It is usually the at fault driver's insurance company (ICBC for B.C. drivers) that pays the damages. The damages are either agreed to by way of settlement or awarded by a court if a settlement is not reached. Set out below is brief description of the types of damages that are available to an accident victim.

General Damages

General damages (also called non-pecuniary damages), are awarded, or agreed to in settlement, for an accident victim's pain and suffering and loss of enjoyment of life as a result of the injuries sustained in the accident. Do not be misled by what you see on television or at the movies in terms of damage awards. In Canada, there is a cap on general damages. At the present time, the maximum general damage award for the most catastrophic injuries is approximately \$300,000.

Loss of Income and Loss of Earning Capacity

An accident victim is also entitled to damages for any lost income due to his or her inability to work as a result of injuries sustained in the accident. If injuries continue to interfere with a person's ability to work at the time settlement is reached or trial held, damages for future loss of income may be agreed to or awarded. Even where an accident victim is working, but his or her injuries have required a change in job or prevents him or her from doing certain jobs, such as involving heavy labour, he or she may be entitled to damages for loss of earning capacity or loss of a capital asset. A compensable loss also arises from an inability to pursue vocational training, employment opportunities or promotions as a result of injuries suffered in an accident.

Cost of Care and Future Care

A motor vehicle accident victim is entitled to reimbursement for medical expenses incurred for treatment of injuries sustained in the accident. Such expenses may include ambulance service, medications and rehabilitation expenses for such treatment as physiotherapy, massage therapy or chiropractic. If an exercise program is recommended by treating physicians, the cost of it may also be recoverable.

Where a person is seriously injured in an accident, he or she may face significant care costs into the future. Care items may include modifications to his or her residence to accommodate wheelchair access, motor vehicle modifications and work station modifications. Other common future care costs include medication, rehabilitation expenses and nursing or home care. These costs are recoverable as damages so long as they are reasonably required.

Loss of Housekeeping Capacity

If a person is unable to maintain their household to the same level as before the accident as a result of his or her injuries, they may be entitled to compensation for loss of housekeeping capacity. This is a recently recognized kind of loss by the courts and the law in this regard is still evolving. With respect to past loss of housekeeping capacity, the courts may make a damage award where the accident victim has had to hire someone to perform the housekeeping duties the victim performed prior to the accident or where other family members or friends have voluntarily taken on some of the housekeeping duties that were performed by the victim before the accident.

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