

Liability and compensation for injury

When a person directly causes injury to another through negligence, it is clear that liability is attributed to the wrongdoer and the injured person may claim compensation from the wrongdoer. However, there are circumstances where a natural or legal person may attract liability for personal injury even though they did not directly cause the injury. Such circumstances usually involve a special relationship linking that party to the wrongdoer.

The following are instances in which a relationship exists between two parties giving rise to the liability of one party for injury inflicted by the other on a third party. This is known as vicarious liability.

Employer-employee. Where an employee causes injury in the course of his employment, the employer will be jointly liable to compensate the injured person. Example 1: Mr A was hit by a motorcycle driven by Mr B, an employee of Company C, a fast-food retailer, while Mr B was delivering food to a customer. B and C are jointly liable for A's injuries. Under the law, A may recover full compensation for his injury from either B or C. If A sues C alone, C will have to pay the full compensation awarded by the court but is entitled to reimbursement from B for his share of the liability.

Hirer-contractor. Where a contractor injures a third person in the course of the work, the hirer of the contractor may be jointly liable to the injured party if the hirer was at fault in respect of the work ordered, or his selection of the contractor, or his instructions to the contractor. Example 2: Ms D wanted to

build a new house on her land. Although aware that Company E did not have a good reputation, she hired E because it provided the cheapest quote. During the construction, a roof tile fell on the head of Mr F, a neighbour. D is jointly liable with E to pay compensation to F.

Parent/guardian-minor/incapacitated person. The parents/guardian of a child/mentally disabled person are jointly liable for injury caused by that child/person unless they can show they took proper care in the supervision of the child/person. Example 3: A father permitted his 17-year-old son to drive his sister to school, knowing that his son did not have a driver's licence. While driving, the son received a call. Momentarily distracted, he accidentally hit a woman crossing the street. The father is jointly liable with his son to compensate the woman for her injuries.

Teacher/care provider-minor/incapacitated person. A teacher/care provider responsible for supervising a minor/incapacitated person is jointly liable for injury to another caused by such minor/incapacitated person if it can be proven that the teacher/care provider did not exercise proper care. Example 4: Mrs G, a primary school teacher, is responsible for supervising ten children in the school bus that takes them home after school. She knows that H, a 10-year old boy, often bullies other children and so always pays special attention to him in the van. Being very tired one evening, G fell asleep and woke up to find that H had hit another child with his ruler and the child was bleeding and had to be treated at a hospital. The parents of the injured child may sue G

on the injured child's behalf, as G did not take proper care of the children.

Examples 3 and 4 are similar except in the way liability has to be proven. In Example 3, the father has the burden of proving that he exercised proper care in the supervision of his son in order to avoid liability. He could not do so in this case, because he allowed his son to drive the car knowing that he did not have a driver's licence. In Example 4, the family of the injured child has the burden of proving that the teacher did not exercise proper care of the children, and must therefore prove that G was sleeping when the incident happened.

Damages are generally awarded to place the injured person in the position he would have been in if the wrongful act had not been committed. The damages are intended to compensate for loss or injury. The Court has discretion in awarding damages and will usually only award damages in respect of losses directly resulting from the wrongful act, e.g., medical expenses, lost income and earning capacity.

The Court may also award damages to compensate the injured person for pain and suffering. Claims must be filed within one year from the day when the damage and the person liable to pay compensation became known to the injured person, but in any event, no later than ten years from when the incident happened.

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