

Compensation in a wrongful death case

0

Share

Tweet

Published: 10/02/2012 at 12:00 AM

Newspaper section: Business

Wrongful death claims can result in the assessment of civil and criminal penalties on parties that may be far removed from the negligent actor. The impact could be seen on officers and directors, manufacturers and dealers, employees and employers, agents and principals, insured and insurers, among others. This article is written for corporations and their officers and directors and includes an overview of wrongful death actions, significant components of awards, and protection mechanisms.

A wrongful death action is brought by close relatives of the decedent for damages incurred as a result of the victim's death.

Liability is based on the concept of a "wrongful act" under Thai law, which is essentially an action in tort akin to a claim of negligence in common law jurisdictions.

Establishing liability requires that the plaintiff show that the defendant acted willfully, negligently, or unlawfully, resulting in the death of the victim.

The court has the discretion to determine the manner and the extent of compensation according to the circumstances and the gravity of the wrongful act and may award compensation for the following:

- funeral and other necessary expenses;
- expenses for medical treatment and loss of earnings (where there existed a period between the incident and the death);
- support that would have been provided by the decedent (where the claimant is legally entitled to support); and
- damages where the decedent was bound by contract to perform services for an employer or contractor.

Importantly, non-pecuniary damages (or damages that cannot be measured in money, such as damages for pain and suffering of the victim) are not recoverable by heirs, except where the wrongdoer agrees to pay compensation to the heirs for such damages.

Significant components of awards: The law gives the courts the discretion to assess damages on a case-by-case basis.

At the same time, the law does not give absolute freedom to the courts to determine damages, and the exercise of power is limited by the various provisions contained in the Civil and Commercial Code.

A significant component of damages is the maintenance that would have been provided by the decedent to persons entitled to support.

In Thailand, children are bound to support their parents, and parents are generally bound to support their children until the age of adulthood (20 years). Husbands and wives shall maintain and support each other, according to their abilities and conditions in life.

Thus, the court may consider factors such as the decedent's level of education, salary or potential salary, and age. The court may also review the plaintiff's age, status, living expenses, occupation, and other sources of support.

In a 2008 case decided by the Court of Appeals, the parents received 10 million baht in compensation for the death of their daughter, caused when she fell out of a bus due to a broken door.

Among other factors, the court observed that the victim was about to pursue her master's degree in Japan and, on completion, would have earned an average monthly salary of 46,000 baht for about 20 years.

In addition, courts in Thailand consider the ability of the defendant to pay the judgement.

In a case decided in 2007 with similar facts to the above case, but where the defendant had fewer means, the parents of the decedent received less than 300,000 baht from the Supreme Court.

Another critical consideration is the amount requested by the plaintiff in the complaint.

By law, courts cannot exceed the demand requested by the plaintiff. Note, however, that the court may allow the plaintiff to amend the complaint in order to seek greater sums from the defendant.

Protection: Given the disparity in awards for wrongful death claims and the likelihood that corporations and their officers and directors will be subject to awards on the high end of the spectrum, it is important to maintain good business practices.

Active oversight and management, careful delegation of important responsibilities, and timely and appropriate responses to emergency situations will go far in avoiding or mitigating any damages incurred in wrongful death lawsuits. Directors and officers should also take care to only sit on a board of a company in which they are actively involved.

Management should also consider purchasing quality insurance. It is recommended that such insurance include coverage for legal fees, as it is often costly to defend wrongful death litigation.

Finally, legal risks can be reduced by seeking the advice of competent counsel, in a proactive and timely manner, in order to adequately respond to an emergency situation or prevent the occurrence of such situations.