
DEATH WORTH LESS THAN INJURY?

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It may be hard to believe but it's true that the loss of a loved one, caused by a wrongful act of another, such as negligence in a motor vehicle accident, is often worth less money than if the same person was injured. The reason has to do with the *Family Compensation Act* of British Columbia, which is the legislation that governs non-work related, wrongful death lawsuits.

The purpose of the legislation is not to compensate the family for their grief but to minimize the financial impact of death on those who depend on the deceased. It does this by trying to put the family member(s) back in the same financial position as though the death had not occurred. To many people's surprise, the Act does not allow the family to claim compensation for grief, pain, suffering or other emotional aspects of death. However, pain and suffering is compensable in a personal injury action. The Act also limits who can claim compensation.

Children (including stepchildren, adopted children, and grandchildren), parents (including stepparents), grandparents and spouses (including marriage-like relationships and same-sex couples where the couple have been together for at least 2 years and the relationship ended no earlier than 1 year before the death) are the only persons who can make a claim. Siblings or others who may have been dependent on the deceased cannot make a claim.

The following paragraphs set out some of the more common types of damages that may be recoverable in a *Family Compensation Act* claim.

Damages for **loss of financial support** are designed to compensate the family member(s) for the income the deceased would have earned, less the amount that would have been consumed by the deceased.

Damages for **loss of household and childcare services** are to compensate the family member(s) for the loss of services the deceased would have provided to the family such as housework, yard work, cooking, driving, childcare etc.

Damages are also available for **loss of love, guidance and affection**. While this category of damages may seem like an emotional loss, it is viewed by the Court as a financial loss. The basis for this is that love, guidance and affection are vitally important to a person's development. This category of damages is typically only available to children, however it has been awarded to parents in some cases. The rough upper limit for this award is currently \$35,000 (see *Morrison v. Moore* 2009 BCSC 1656).

Damages for **loss of inheritance** can be awarded if the family member(s) can demonstrate that the deceased would have saved or invested money that would have been passed on to family at the time of his or her natural death beyond what passed at the time of actual death. In other words damages in this category is for the difference in the value of the estate at actual time of death versus the estimated value of the estate at his or her predicted natural death.

Special damages are awarded to compensate the family member(s) for all reasonable out-of-pocket expenses already paid for resulting from the death (i.e. funeral expenses, medical or hospital expenses leading up to the death).

All of the above amounts are added together for a total, which may be reduced for various reasons, such as negligence of the deceased (partial fault for the accident) or contingencies, such as the possibility of early retirement, loss of employment, divorce, or remarriage by the surviving spouse.

Determining the value of a wrongful death case is not a simple matter and often involves the use of experts. Hopefully the above information has provided you with some insight on how the value of a wrongful death claim is determined.

**Important Note: The information contained in this column should not be treated by readers as legal advice and should not be relied on without detailed legal counsel being sought.*

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