



**AWARD OF DAMAGES FOR BEREAVEMENT
UNDER THE FATAL ACCIDENTS ORDINANCE**

SUBMISSION

The Fatal Accidents Ordinance

1. Section 4 of the Fatal Accidents Ordinance, Cap 22, provides that:

“4. Bereavement

- (1) An action under this Ordinance may consist of or include a claim for damages for bereavement ...*
- (3) the sum to be awarded as damages under this section shall be \$150,000. (Amended L.N. 205 of 1991; L.N. 144 of 1997)*
....
- (5) The Legislative Council may by resolution amend subsection (3) by varying the sum specified therein.”*

Quantum of the Awards

2. The Law Society notes that the quantum made under the above provision for bereavement awards has not been varied for more than two decades.
3. Personal injuries practitioners have routinely been receiving comments that this head of claim, which is intended to compensate for the grief and sorrow for the loss of the beloved family members, is too low. The award is perceived to be continuously disproportionate to the quantum of claim in a non-fatal claim. Notably, in a fatal accident claim, where (for example) the deceased is an infant or a retiree with no income or savings, the bereavement award will form the majority of the claim.

4. **This statutory award should be increased. For that purpose, an amendment bill should be introduced, as soon as possible.**
5. In respect of quantum of the increase, we take note that at the Legislative Council session on 16th April 1997 (when the latest amendment to increase the bereavement award to the current level was passed) there were suggestions that, when considering an increase in this award, one needed to take into account inflation, *as well as* the changing social and economic conditions in Hong Kong. The Attorney General at that time took on board this suggestion and raised the award beyond what would have otherwise been provided for by a mere reference to the Consumer Price Index (“CPI”) changes.
6. In a Report by the Law Reform Commission (“LRC”) on “*Damages for Personal Injury and Health*” released in 1985, when this statutory award was first proposed for Hong Kong, we note that there was no suggestion to limit or cap the future revision of the quantum of this award to only CPI indices. See paragraph 8.23 therein.
7. Recently, we received a suggestion that, based on the cumulative increases in the CPI(A) in the past (from March 1997 to March 2018), the bereavement award is to be increased to HK\$220,000. This proposed figure is arguably not the most desirable, as it has not (for example) taken into account “the changing and social and economic conditions in Hong Kong” that we have referred to (see paragraphs 5 and 6 above). However, that said, we acknowledge that continual and further debate on the quantum necessarily take time. The legislative process could thereby be delayed. In the circumstances, **we have no objection to, and support, the award for bereavement under the Fatal Accidents Ordinance, Cap 22, being revised up to HK\$220,000, in order to assist the legislative process within the current legislative year.**

A Review Mechanism

8. Apart from the above increase, we consider there should be regular reviews – the above LRC report already suggests “*some form of machinery be devised which will enable this figure to be adjusted from time to time*” (see paragraph 8.23). Furthermore, the Attorney General at the above Legislative Council session also “*confirmed*” his intention to review the amount of the award for bereavement *every two years* (p.98 of the Official Record). With respect, many

stakeholders would consider that a review only once in a decade does a grave disservice to the families of the deceased personal injuries victims.

9. With our observations in the above, we would ask that the following be put in place, viz.

- (a) **there be a periodic uplift of the bereavement award under the Fatal Accidents Ordinance, Cap 22, once every two years.** The above uplift could be based on variations of CPI(A) recorded in the two-years periods. The uplift should be swift, routine and unbureaucratic;
- (b) **there be a comprehensive review of the quantum for this head of claim once every six years.** This review should be thorough and should encompass consideration of any issues which are beyond, or which are not captured in, the measurements of the CPI(A). The aim of the review is to ensure that this statutory award should adequately compensate the value of the life lost and/or the value of the bereavement. As to the details and the mechanics of this proposed review, we are prepared to make further submissions.

The Law Society of Hong Kong
17 May 2018