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The Value Of A Death Of A Loved One: Loss Of Care, Guidance And Companionship *Family Law Act* Claims

Handling cases that involve the death of a loved one is not a pleasant assignment. No amount of money could ever come close to properly compensating a parent for the loss of their child. As representatives for the insurance company, it is our job to assess the appropriate monetary ranges in place for the death of a loved one and try to figure out where this specific case fits in.

The Court set-out this challenge best in the decision of *Hecchavarria v. Reale* (2000) where it was observed:

“The loss of the care, companionship, guidance and the very important emotional bond cannot be calculated in dollar terms. The awarding of money, however, is the only remedy which a Court has available to it in circumstances such as this. Further, when considering the amount to be awarded, a judge must be constrained to a range that is consistent with awards previously made in other cases so that the results in any given case will have a measure of consistency with other like cases. In that way, the courts try to achieve a degree of predictability which in turn, it is hoped, will assist future litigants to resolve such matters without the need for a full trial with all of its attendant hardships and expenses.”

By looking at past precedents we will be in a good position to assess the rationale utilized for assessing the value of a claim for loss of care, guidance and companionship for the death of a loved one.

Damages For Death Of A Child

The two seminal decisions evaluating the death of a child emanate from Court of Appeal challenges to Jury awards about 9 years apart. In *To v. Toronto Board of Education* (2001) a Jury awarded the highest value for a claim for loss of care guidance and companionship for the loss of a child and it was upheld by the Court of Appeal. In *Fiddler v. Chiavetti* (2010) the Jury essentially doubled the award given in *To* which was later reduced by the Court of Appeal. While as Judges deciding cases appreciate that there is a range of values to consider; a Jury is not so constrained. The risk is that Judges will ultimately follow the lead of a Jury.

In *To v. Toronto Board of Education* (2001) (Court of Appeal) a 14 year old boy died as a result of an incident at school involving gym equipment. At trial the Jury awarded each of the parents \$100,000 for loss of care guidance and companionship and \$50,000 for his younger sister. The defendant appealed. Evidence was accepted at trial that in this family's culture that there was great importance and expectations placed on a first-born son. It was expected that he would excel scholastically, attend university, and eventually provide financial/social support to his parents/younger sister. The deceased appeared to be living up to these expectations and had already been assisting his father with his business/personal correspondence as the latter did not read English. It was found that the deceased was devoted to his mother, father and sister. For



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example, he accepted responsibility for ensuring that his sister's homework was properly completed and acted as a surrogate father to his sister. The deceased's tragic death had a devastating effect on the family.

The Court of Appeal has consistently held that claims for care, guidance, and companionship must be assessed in an objective and unemotional way. Since each case must be considered in light of the particular family relationship involved, assessments will vary. With that being said the Court found that the assessments of \$100,000 for each of the parents is considered an acceptable high end range of damages. The Court did not alter the Judgment by the Jury for the award of damages to a parent.

On the other hand, the Court of Appeal did find that the award of damages of \$50,000 to the deceased's younger sister was inordinately high. The Court reasoned that although the sister suffered a significant loss of guidance and companionship as a result of the death of her brother, she will in all probability go on to establish a life of her own and likely a family of her own. The value of the damages award was cut in half to \$25,000.

Nine years later the Court of Appeal had the opportunity to reconsider the values placed for the death of a child in the *Fiddler v. Chiavetti* (2010) (Court of Appeal). The deceased was a young girl who died in a motor vehicle accident. At trial the Jury awarded \$200,000 to the deceased's mother for loss of care guidance and companionship. Unlike the *To* case, the Court of Appeal did not discuss in great length the circumstances surrounding the relationship between the deceased and her family. However, while as the *To* case appeared to revolve around an exceptional child, the *Fiddler* case seems to deal with more of a dysfunctional family. In his closing, defence counsel submitted that each of the respondents was variously lazy, deceitful, a drug user and that together they formed a dysfunctional family. The defence set out that the deceased was incapable of providing care, guidance and companionship to her parents or sister. For example, he said:

"She had an inability to control her temper ... She had outbursts, violent outbursts. She had difficulty with the law. She required the police to intervene at home ... Ashley indicated she felt threatened...

[Amanda] had a significant disability, attention deficit hyperactive disorder which [was] described as one of the worst behavioural issues she had come across."

The Court of Appeal referred to its prior decision of *To* and commented that \$100,000 was considered to be the high end of an accepted range for care, guidance, and companionship damages

at the time (2001). The Court found that an award of \$200,000 is outside the range and warrants appellate intervention. Taking into consideration inflation, the Court ruled that the appropriate high end range in this case is \$125,000. It is clear that the Jury wanted to award to the claimants an amount that is at the mid to high end of the range. It was found that the Jury simply got the range wrong.

Prior to the *Fiddler* decision it could be persuasively argued that the award in *To* was extremely high as it was dealing with an exceptional boy who was thriving in a demanding culture. However, the *Fiddler* decision seems to involve a young girl who was struggling in a dysfunctional family. Yet, the Jury award was double that of *To*. While as it is still viable to argue that the award in *To* is more the exception than the norm; the risk is that a Jury may find otherwise.

Damages For The Death Of A Spouse And Parent

The following five decisions are Judge alone cases and therefore one would expect that they considered the valuations more dispassionately than that of a Jury. In each of these cases, the Judges found that they were dealing with loving families that were significantly impacted on account of the death of a loved one. Yet, the award of damages is not entirely consistent.

In *Isildar v. Rideau Diving Supply* (2008) a husband/father passed away after a fatal deep water scuba-diving incident in the St. Lawrence River. The deceased wife was an unemployed homemaker who was taking care of the couple's three month old son. She immigrated from Turkey, did not speak English, and had not pursued any further education since her arrival in Canada. The couple had been married for four years prior to the accident. She was dependent on her husband both financially and for her companionship; as she had no family in Canada and had not obtained a driver's license. Following the loss she remained in Canada for one year to deal with the estate and after falling ill decided to return to Turkey so that she and her son could rely upon her family for support. She underwent psychological treatment upon her return to Turkey. She returned to her previous work as a lawyer in Turkey but had a low tolerance for stress and was not able to earn enough to make a living. She had not become involved in another conjugal relationship and testified that she did not have an intention to remarry due to her religious beliefs. The Court affixed the value of her claim for loss of care, guidance and companionship at \$75,000.00.

The deceased's son was three months old at the time of the loss and therefore will not have any memory of his father. The mother's evidence was that she had no intention to ever remarry nor did she



feel it appropriate to bring another man into her son's life to act as his father. The Judge assessed the infant son's loss of care, guidance and companionship at \$50,000.

Madonia v. Steven (2008) involves a medical malpractice case in which a 78 year old wife/mother/grandmother passed away after some heart complications. At the time of the loss she had a two year life expectancy. The couple had been married for more than forty years at the time of her death, had a very good marriage, and two of them did virtually everything together. The deceased did all of the cooking, majority of the cleaning, and took care of him. He was described post loss as very lonely, withdrawn, and ate most of his meals out/pre-packed meals. Otherwise, he was managing the necessities of life competently and self-sufficiently. The Judge found that the proper value for loss of care guidance and companionship for the husband was \$50,000.

The deceased's son was adopted and at the time of the loss and was an adult. The mother was described as the "glue" of the family and he considered her his "best friend" when he underwent his divorce. The two of them were very close and the Judge valued the loss of care, guidance and companionship to be \$20,000. The deceased's daughter was also adopted and the two of them were described as having a very close relationship. This was especially so when the daughter had undergone treatment for breast cancer. The Court also affixed \$20,000 for her loss of care guidance and companionship.

Three grandchildren also brought FLA claims. The Court found that one of the grandchildren was particularly close with the deceased as he had spent more time with her on an ongoing basis. The value placed for this grandchild was \$12,500 and for the other two \$7,500.

Johnson v. Milton (Town) (2006) involved a fatal accident when the deceased husband was riding a bicycle and struck a rock on the roadway. At trial it was accepted that the wife had a very close relationship with her husband and she was awarded \$50,000 for loss of care guidance and companionship. The oldest of two children, who was 13 years old at the time of the accident, did not testify and very little information was called into evidence about how he had been impacted on account of this loss. The award of damages for him was just \$5,000. Meanwhile, the youngest child was just three years old at the time of the loss was awarded \$20,000 as he had to grow up in a household in which his father is absent. Post accident he had a close relationship with his older brother and uncles.

Wright v. Hannon (2007) involved a case in which a father/ex-husband died in a motor vehicle accident. The Court awarded to the ex-wife for loss of care, guidance, and companionship damages of

\$7,500. The two of them had been physically separated and the only contact they had was in relation to his visits with his daughters. The couple had been separated for nearly four years, had finalized the divorce, and had decided to go their separate ways.

The Court did find that it was clear that there was a strong bond between the deceased and his two daughters. The evidence indicated that the deceased was a good and loving father and it is clear that each of the two girls had been deeply affected by the loss of their father. The court found that while there are various reasons why distinctions could be drawn and in favor of each of these two girls; he awarded them both \$50,000.00.

In *Hechavarría v. Reale* (2000) a wife/mother (of three children) died in a motor vehicle accident at the age of 53. It was found that the couple had a very loving relationship and had been married for 34 years. The deceased worked full time, was an "outstanding homemaker", and a "caring, loving and supporting mother". Following his wife's death witnesses testified that the husband now appears to be a shell of his former self; he is now withdrawn, uncertain and depressed. He was awarded the sum of \$85,000 for loss of care, guidance, and companionship. In today's terms with inflation that would total about \$110,000.

The Court also found that each of the children has been deeply affected by the loss of their mother although the effects of that loss manifest themselves in different ways. At the time of the trial the children were ages 32, 27 and 22. The oldest son became more withdrawn, the middle daughter suffered emotional problems, and the youngest son became very angry. At the time of the trial all three were still living together in the parental home. Each were award \$30,000 for their loss. In today's terms with inflation that would total about \$39,000.

The Court also considered the FLA claims by the three sisters. It was apparent from the evidence that all three sisters were close to the deceased. They routinely either spoke or visited with each other. The sisters and their families socialized at different family events each year. Each sister had obviously lost someone whom they loved a great deal. Each sister was award \$12,500 on account of their sister's passing. In today's terms with inflation that would total about \$16,000.

Conclusion

To be clear, the cases above reflect decisions by Judges that are published. The majority of cases are still tried by a Jury and therefore there is no precedential value attached as there is no written decision. An award by a Jury may be higher or lower than the above assessments. With that being said, the above cases do



provide a guideline and foundation to assess these losses. To be cold and crass, the above valuations can be summarized as follows:

- Death of a Child: \$125,000 being the high range;
- Death of a Spouse: \$50,000 - \$110,000 (adjusted for inflation);
- Death of Parent: \$20,000 - \$50,000;
- Death of a Sibling: \$16,000 - \$32,500 (adjusted for inflation).

Each case certainly needs to be considered on its own merits and the nature of the relationship between the family members explored. Cases tried by a Jury are subject to risky propositions. In the *To* case the Court of Appeal did not rein in a high award but did so following the *Fiddler* decision. Who knows what will happen next time. Meanwhile, decisions by Judges are far from consistent as set-out above in the wide fluctuations. This is despite the fact that all of the cases were dealing with apparent very loving families.

At the end of the day, the goal is to arrive at an equitable sum to bring these cases to rest. By using past precedent as your guide in negotiations it will show that you are coming from an informed position and trying to be fair. When dealing with the death of a loved one, grieving family members will want their deceased's memory to be treated with respect. This will be achieved best through compassion and knowledge.

Notes:

To v. Toronto Board of Education (2001) (Court of Appeal)

Fiddler v. Chiavetti (2010) (Court of Appeal)

Isildar v. Rideau Diving Supply (2008)

Madonia v. Steven (2008)

Johnson v. Milton (Town) (2006)

Wright v. Hannon (2007)

Hecchavarria v. Reale (2000)

"Determining Damages" Litigation Bulletin By Richard Bogoroch and Yoni Silberman Fall 2011

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