

DAMAGES

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I PROCEEDINGS TO WHICH SECTION 32A OF THE SUPREME COURT ACT 1981 OR SECTION 51 OF THE COUNTY COURTS ACT 1984 APPLIES

41.1 Application and definitions

- (1) This Section of this Part applies to proceedings to which SCA s.32A or CCA s.51 applies.
- (2) In this Section –
 - (a) 'SCA s.32A' means section 32A of the Supreme Court Act 1981¹;
 - (b) 'CCA s.51' means section 51 of the County Courts Act 1984²; and
 - (c) 'award of provisional damages' means an award of damages for personal injuries under which –
 - (i) damages are assessed on the assumption referred to in SCA s.32A or CCA s.51 that the injured person will not develop the disease or suffer the deterioration; and
 - (ii) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

41.2 Order for an award of provisional damages

- (1) The court may make an order for an award of provisional damages if –

¹ 1981 c.54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c.53).

² 1984 c.28.

- (a) the particulars of claim include a claim for provisional damages; and
- (b) the court is satisfied that SCA s.32A or CCA s.51 applies.

(Rule 16.4(1)(d) sets out what must be included in the particulars of claim where the claimant is claiming provisional damages)

- (2) An order for an award of provisional damages –
 - (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
 - (b) must specify the period within which such an application may be made; and
 - (c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.
- (3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

41.3 Application for further damages

- (1) The claimant may not make an application for further damages after the end of the period specified under rule 41.2(2), or such period as extended by the court.
- (2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.
- (3) The claimant must give at least 28 days' written notice to the defendant of his intention to apply for further damages.
- (4) If the claimant knows –
 - (a) that the defendant is insured in respect of the claim; and
 - (b) the identity of the defendant's insurers,he must also give at least 28 days' written notice to the insurers.
- (5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.

41.3A

- (1) Where –
 - (a) a claim includes claims arising under –
 - (i) the Fatal Accidents Act 1976; and
 - (ii) the Law Reform (Miscellaneous Provisions) Act 1934; and
 - (b) a single sum of money is ordered or agreed to be paid in satisfaction of the claims, the court will apportion the money between the different claims.
- (2) Where, in an action in which a claim under the Fatal Accidents Act 1976 is made by or on behalf of more than one person, a single sum of money is ordered or agreed to be paid in satisfaction of the claim, the court will apportion it between the persons entitled to it.
- (3) Unless it has already been apportioned by the court, a jury or agreement between the parties, the court will apportion money under paragraphs (1) and (2) –
 - (a) when it gives directions under rule 21.11 (control of money received by a child or patient); or
 - (b) if rule 21.11 does not apply, on application by one of the parties in accordance with Part 23.

II PERIODICAL PAYMENTS UNDER THE DAMAGES ACT 1996

41.4 Scope and interpretation

- (1) This Section of this Part contains rules about the exercise of the court's powers under section 2(1) of the 1996 Act to order that all or part of an award of damages in respect of personal injury is to take the form of periodical payments.
- (2) In this Section –
 - (a) "the 1996 Act" means the Damages Act 1996¹ ;
 - (b) "damages" means damages for future pecuniary loss; and
 - (c) "periodical payments" means periodical payments under section 2(1) of the 1996 Act².

41.5 Statement of case

- (1) In a claim for damages for personal injury, each party in its statement of case may state whether it considers periodical payments or a lump sum is the more appropriate form for all or part of an award of damages and where such statement is given must provide relevant particulars of the circumstances which are relied on.
- (2) Where a statement under paragraph (1) is not given, the court may order a party to make such a statement.
- (3) Where the court considers that a statement of case contains insufficient particulars under paragraph (1), the court may order a party to provide such further particulars as it considers appropriate.

41.6 Court's indication to parties

The court shall consider and indicate to the parties as soon as practicable whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages.

41.7 Factors to be taken into account

When considering –

- (a) its indication as to whether periodical payments or a lump sum is likely to be the more appropriate form for all or part of an award of damages under rule 41.6; or
- (b) whether to make an order under section 2(1)(a) of the 1996 Act,
the court shall have regard to all the circumstances of the case and in particular the form of award which best meets the claimant's needs, having regard to the factors set out in the practice direction.

41.8 The award

- (1) Where the court awards damages in the form of periodical payments, the order must specify –
 - (a) the annual amount awarded, how each payment is to be made during the year and at what intervals;
 - (b) the amount awarded for future –

¹ 1996 c.48

² Section 21 is substituted by section 100 of the Courts Act 2003 (c. 39)

- (i) loss of earnings and other income; and
 - (ii) care and medical costs and other recurring or capital costs;
 - (c) that the claimant's annual future pecuniary losses, as assessed by the court, are to be paid for the duration of the claimant's life, or such other period as the court orders; and
 - (d) that the amount of the payments shall vary annually by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.
- (2) Where the court orders that any part of the award shall continue after the claimant's death, for the benefit of the claimant's dependants, the order must also specify the relevant amount and duration of the payments and how each payment is to be made during the year and at what intervals.
- (3) Where an amount awarded under paragraph (1)(b) is to increase or decrease on a certain date, the order must also specify –
- (a) the date on which the increase or decrease will take effect; and
 - (b) the amount of the increase or decrease at current value.
- (4) Where damages for substantial capital purchases are awarded under paragraph (1)(b)(ii), the order must also specify –
- (a) the amount of the payments at current value;
 - (b) when the payments are to be made; and
 - (c) that the amount of the payments shall be adjusted by reference to the retail prices index, unless the court orders otherwise under section 2(9) of the 1996 Act.

41.9 Continuity of payment

- (1) An order for periodical payments shall specify that the payments must be funded in accordance with section 2(4) of the 1996 Act, unless the court orders an alternative method of funding.
- (2) Before ordering an alternative method of funding, the court must be satisfied that –
- (a) the continuity of payment under the order is reasonably secure; and
 - (b) the criteria set out in the practice direction are met.
- (3) An order under paragraph (2) must specify the alternative method of funding.

41.10 Assignment or charge

Where the court under section 2(6)(a) of the 1996 Act is satisfied that special circumstances make an assignment or charge of periodical payments necessary, it shall, in deciding whether or not to approve the assignment or charge, also have regard to the factors set out in the practice direction.