


“Lost Years” compensation principle reaches the supreme court

07 February 2025  Jonathan Fuggle

Following a 10 day trial of quantum heard in June 2023, in **CCC v Sheffield Teaching Hospitals NHS Foundation Trust**, Mr Justice Ritchie granted the claimants permission for a “leap frog” appeal to the Supreme Court on the issue of whether loss of earnings in the “lost years” could be recovered by a child.

The case comes before a panel of five Justices of the Supreme Court on 11 and 12 February 2025

Background

As a result of a shortened life expectancy, a claimant may suffer future financial losses. Can a claim be made in his or her lifetime for the loss of earnings that he or she will suffer after their likely death (the so called “lost years”)?

In **Pickett v BRE (1980) AC136** the House of Lords found that an adult claimant can recover damages for loss of “financial expectations” during the “lost years”. The House of Lords decided that these were pecuniary losses because the claimant had been deprived of the opportunity of distributing the income in way they desired. The unfairness to dependents by not allowing recovery for income in the lost years was considered the principle social reason for permitting recovery.

Nevertheless, such claims have continued to be controversial. Lord Phillips in **Gregg Scott (2005) 2AC 176** questioned the rationale behind lost years claims:

“It seems to me that this right is a poor substitute for the right of the claimant's dependants to make full recovery for loss of dependency if and when the claimant dies prematurely. It would be much better if the claimant had no right to recover for such loss of earnings and the dependants' right to claim under section 1(1) of the Fatal Accidents Act 1976 subsisted despite the claimant's recovery of damages for his injury.”

The decision in **Pickett** found that the losses were those of the claimant for which they had a claim in their own right, and that recovery was possible regardless of the actual existence of dependents. The only caveat is that the loss should not be considered too remote to be measurable.

Child claimants

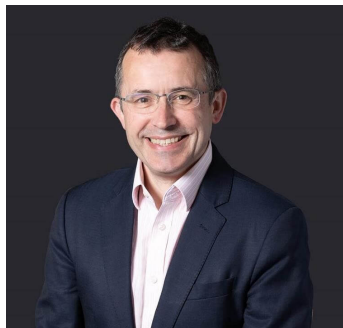
Whilst recovery of loss of earnings in the lost years has been permissible by adult claimants, recovery by child claimants has been barred since the decision in **Croke v Wiseman** on the basis that such claims were considered to be too speculative, Griffiths LJ stating:

“In the case of a child, however there are no dependents, and if a child is dead there can never be any dependents and if the injuries are catastrophic equally there will never be any dependents. It is the child that will be dependent. In such circumstances it seems to me entirely right that the court should refuse to speculate whether in the future there might be dependents for the purpose of providing a fund of money for persons who will in fact never exist”

Comment

Whilst there is apparent unfairness between the way adult claims are treated and those of a child, a child's potential losses are fundamentally more speculative than those of an adult. It will be interesting to see how wide a review of the recoverability issues the Supreme Court decides to undertake.

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