



Recovery of Compensation following Motor Vehicle Accidents in British Columbia

When an individual is injured in a motor vehicle accident in British Columbia, they potentially are entitled to both no fault compensation and to be put in the position they would have been in if they had not been the victim of another individual's negligence. This paper will provide a brief description of the compensation that is available under either scheme.

The no fault benefits in British Columbia are currently administered by the Insurance Corporation of British Columbia ("ICBC"). No fault benefits are a statutory scheme, which provides minimum benefits to individuals injured in motor vehicle accidents in British Columbia provided that certain minimum criteria are met. The no fault benefits that may be available to an individual include rehabilitation benefits, disability benefits and death benefits. In determining the rehabilitation benefits that will be provided, there are certain mandatory benefits that must be provided and there are also permissive benefits that may be provided. The overall test for determining what rehabilitation benefits will be provided is whether the treatment will assist in "the restoration, in the shortest practical time, of an injured person to the highest level of gainful employment or self sufficiency that, allowing for the permanent effects of his injuries is, with medical and vocational assistance, reasonably achievable by him". Disability benefits are paid to those individuals who fall within the specified criteria are amount to a maximum of \$300 per week or 75% of the individual's usual weekly earnings, whichever is less. Homemakers may also be entitled to disability benefits if the injury substantially and continuously disables the homemaker from performing most of their household tasks. If this test is satisfied, ICBC will compensate the homemaker for the reasonable expenses incurred to hire a person to perform the chores to a maximum of \$145 per week.

Compensation is also available to put the individual in the position that they would have been in had the injury not occurred if another person is at least partially at fault for the injury. Compensation is based on the fault of the other party and will be proportional to that fault. Restoring the individual to the pre injury position requires consideration of the following:

1. Pain, suffering and loss of enjoyment of life. Compensation for this non-pecuniary aspect of the individual's loss is meant to provide solace to the individual for the loss of enjoyment of life that they have experienced as a result of the injury.
2. Wage Loss. Restoring the individual to their pre injury position requires a consideration of what income would have been earned absent the motor vehicle accident, to the date of assessment of the loss. Inherent in this is an assessment of what the earning path would have been absent the injury, including any opportunities for advancement of career or increased earnings.



3. Future loss of earnings. Motor vehicle accidents often result in a long-term compromise of an individual's ability to earn an income either through delay in career path, delay in education, or ongoing physical impairments, which result in a compromised income earning ability. Restoration of an individual to their pre injury position requires an assessment of the loss that the individual will suffer in the future in their earnings path as a result of the injury. Assessment of future losses is based on a "real possibility" rather than probability, that an event or loss will occur.
4. Special damages. Special damages are the out of pocket expenses incurred by the individual as a result of the injury suffered in the motor vehicle accident. Proof that the expense was incurred, was reasonably necessary and was as a result of the motor vehicle accident is necessary.
5. Future care. In assessing the cost of future care, the court will consider what is reasonably necessary on the medical evidence to support the physical and mental health of the injured individual. The test for determining what expenses will be covered is in general terms whether a reasonably minded person of ample means would incur the expense.

The above provides a very brief summary of the type of compensation that is available to an individual that has been injured in a motor vehicle accident in British Columbia. Each case is fact specific and requires careful consideration of the change in the individual's life that has occurred as a result of the injury. Careful analysis and presentation of a case ensures that the injured individual is restored, as closely as is possible through monetary compensation, to the position that he or she was in prior to the motor vehicle accident.