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2869 9457
2877 5029

Mrs Jenny CHAN
(Rights and Benefits)
Labour Department
18/F, Harbour Building
38 Pier Road
Central
Hong Kong

By Fax (2544 3271) & By Post

29 May 2002

Dear Mrs Chan,

**Employees Compensation Assistance (A) Bill 2002 -
Application of Relief Payment**

I refer to my conversation with Mr Lai Ka-tong, Senior Labour Officer, of your office with regard to the apportionment of relief payment under the Bill.

I would like to refer to the example of calculation in *Tsui Shuk Fong's case* (LC Paper No. CB(2)2095/01-01(02)), as set out in pages 2 - 3 of your paper. My reading of the Bill is that the application of relief payment involves 2 steps -

- (a) apportionment, and
- (b) actual payment.

(I) Apportionment (section 20F)

Is it correct to say that their respective share of relief payment in terms of percentage should first be apportioned in accordance with section 20F (on a pro rata basis according to the respective amounts awarded by the court or equal share basis, as the case may be)? Then their respective share of relief payment is to be reduced by the amount of employees' compensation under section 20B(1).

(II) Actual Payment (section 20B(1))

New section 20B(1) provides for the amount of relief payment, that is, the amount that an eligible person will finally receive. Section 20B(1) reads:

"... the amount of a relief payment to an eligible person shall be the damages for which the employer is liable to pay the eligible person after that amount is reduced by ...the amount, if any, of (employees') compensation"

Thus the actual payment is arrived at by reducing the amount calculated under (a) above by the amount of employees' compensation.

Tsui Shuk Fong's case involves 5 eligible persons with, according to your calculation under the Bill, the following court awards:

Widow : \$906,440
 Son : \$826,440
 Daughter : \$826,440
 Father : \$58,500
 Mother : \$58,500

The approach under the Bill:

Eligible person	Damages awarded (Total: \$2,272,320)	Share of relief payment according to the respective amounts awarded by the court (%)	Less Employees' Compensation	Final amount of relief payment <i>**Based on their shares in percentage term and subject to the limits of lump sum payment (\$1,500,000) and monthly payments (\$10,000) under s.20C</i>
Widow	\$906,440	33.87%	?	To be apportioned / ascertained
Son	\$826,440	30.88%	?	To be apportioned / ascertained
Daughter	\$826,440	30.88%	?	To be apportioned / ascertained
Father	\$58,500	2.19%	?	To be apportioned /ascertained
Mother	\$58,500	2.19%	?	To be apportioned / ascertained

I would be most pleased if you could comment on whether my understanding of the method of calculation is correct. Please let me have a reply in both languages as soon as possible.

Thank you.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

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