

**Bills Committee on
Employees Compensation Assistance (Amendment) Bill 2002**

LC Paper No. CB(2)2095/01-02(02)

**Issues Raised by the Assistant Legal Adviser :
Application of the Relief Payment Provisions**

Introduction

In response to the request by the Assistant Legal Adviser in her letter of 17 May 2002, this paper sets out the application of the relief payment provisions under the Employees Compensation Assistance (Amendment) Bill 2002 (the Amendment Bill) to two selected fatal cases where common law damages were awarded by the Court.

Case 1 : Tsui Shuk Fong and others v. Chan Chu Sun t/a Wai Tat Construction Engineering Co. (HCPI 979/98, [2000] HKCFI 1071)

Court award

2. The deceased employee sustained fatal injury in September 1995 due to the collapse of the wall when he was engaged in the demolition of a concrete partition wall of a flat. The deceased employee was survived by a spouse, a son, a daughter and his parents at the time of his death.

3. According to the judgement passed down by the Court in September 2000, the employer of the deceased employee was liable to pay damages of \$3,133,407 with the following apportionment to the dependants:

	Widow	Son	Daughter	Father	Mother	Total
Pre-trial loss of dependency	\$232,440*	\$232,440*	\$232,440*	\$40,500*	\$40,500*	\$778,320
Post-trial loss of dependency	\$604,000	\$594,000*	\$594,000*	\$18,000*	\$18,000*	\$1,828,000
Bereavement	\$70,000	---	---	---	---	\$70,000
Sub-total	\$906,440	\$826,440	\$826,440	\$58,500	\$58,500	\$2,676,320
Funeral Expenses	\$71,887 (awarded to the plaintiff(s) who has / have incurred the expenses)					
Pre-trial loss of accumulation of wealth	\$126,000 (awarded to the estate)					
Post-trial loss of accumulation of wealth	\$259,200 (awarded to the estate)					
Total	\$3,133,407					

*Note : * Where the judgement has not explicitly stated how the amount should be distributed among the different claimants, the sum is divided among them on equal shares.*

After giving credit to the amount of compensation of \$1,099,065 under the Employees’ Compensation Ordinance (ECO), the net sum of the damages awarded by the Court was \$2,034,342.

Application of the provisions of relief payment

Eligible persons to receive relief payment

4. In the abovementioned case, the persons who obtained the court awards are the “eligible persons” as defined under the Amendment Bill. Pursuant to the new section 20A(1), all of them are entitled to apply

for relief payment if they are unable to recover from the employer the payment of the damages for which the employer is liable to pay under the Court award.

Amount of relief payment payable to each eligible person

5. The new section 20B(1) provides that the amount of a relief payment to an eligible person shall be the amount of damages for which the employer is liable to pay the eligible person after that amount is reduced by the amount of compensation payable under the ECO. By virtue of this provision, the amount of relief payment payable to each of the eligible person shall be reduced by the amount of compensation which shall have been paid to them. Calculation of relief payment for each of the eligible person is as follows:

<i>Widow :</i>	<i>\$906,440</i>	} <i>Less the amount of compensation paid or payable</i>
<i>Son :</i>	<i>\$826,440</i>	
<i>Daughter :</i>	<i>\$826,440</i>	
<i>Father :</i>	<i>\$58,500</i>	
<i>Mother :</i>	<i>\$58,500</i>	

6. Since the amount of compensation received by each of the eligible person is not known from the judgement of the common law damages, we are not able to derive the exact amount of relief payment payable to each of them. However, in actual practice, the Employees Compensation Assistance Fund Board (the Board) should possess the relevant information to determine the amounts of relief payment due to each eligible person.

7. The funeral expenses awarded to the eligible person(s) (\$71,887) should also be taken into account in calculating the relief payment payable to the eligible person who has actually incurred the expenses.

8. In the judgement, the Court has awarded pre-trial loss of accumulation of wealth and post-trial loss of accumulation of wealth (\$385,200) to the estate of the deceased employee. These amounts will

not be included in the calculation of relief payment as the sums were not awarded to any of the eligible persons.

Manner of payment and Apportionment

9. The aggregate amount of relief payment payable to all eligible persons shall be the sum equivalent to \$2,676,320 less the total amount of compensation payable to them. Since the aggregate amount likely exceeds \$1,500,000, the Board shall pay the first payment of \$1,500,000. Subsequent monthly payments at the rate of \$18,000, which was the monthly earnings of the employee at the time of the accident as determined in accordance with section 11 of the ECO, shall then be payable. The first payment and the monthly payments shall be apportioned to the eligible persons on a pro-rata basis in accordance with the respective amount of relief payment to which each of them is entitled.

Case 2 : Lam Po Yuk & Anor v. Mercury Shipping Co. Ltd. (in liquidation) (HCPI 750/96)

Court award

10. The deceased employee sustained fatal injury in August 1989 when he worked on board the vessel in Reunion. The deceased employee was survived by a divorced spouse, two sons and an elder sister at the time of his death.

11. According to the judgement passed down by the Court in November 1997, the employer of the deceased employee was liable to pay damages of \$1,071,428 for this fatal injury with the following apportionment to the dependants :

	Divorced wife	Elder son	Younger son	Elder sister	Total
Pre-trial loss of dependency	---	\$337,750	\$337,750	\$20,225	\$695,725
Post-trial loss of dependency	---	\$33,000*	\$33,000*	\$3,520	\$69,520
Funeral expenses	---	---	---	\$3,000	\$3,000
Bereavement	---	\$20,000	\$20,000	---	\$40,000
Sub-total	---	\$390,750	\$390,750	\$26,745	\$808,245
Loss of earnings	\$13,183 (awarded to the estate)				
Pain, suffering and loss of amenities	\$150,000 (awarded to the estate)				
Loss of accumulation of wealth	\$100,000 (awarded to the estate)				
Total	\$1,071,428				

*Note : * Where the judgement has not explicitly stated how the amount should be distributed among the different claimants, the sum is divided among them on equal shares.*

After giving credit to the amount of EC under the ECO awarded to the elder sister only (\$85,000), the net sum of the damages awarded was \$986,428.

Application of the provisions of relief payment

Eligible persons to receive relief payment

12. In the abovementioned case, only the two sons and the elder

sister of the deceased employee are the “eligible persons”. If they are unable to recover from the employer the payment of damages for which the employer is liable under the Court award, they are entitled to apply for relief payment.

Amount of relief payment payable to each eligible person

13. Under the new section 20B(1), the amount of relief payment payable to each of the eligible person shall be reduced by the amount of compensation paid or payable to the eligible persons. As indicated in the Court judgement, only the elder sister was earlier awarded compensation of \$85,000. The amount of relief payment for each of the eligible person is as follows :

Elder Son : \$390,750

Younger Son : \$390,750

Elder Sister : \$26,745 – \$85,000 = \$0

Manner of payment and apportionment

14. Since the aggregate amount of relief payment does not exceed \$1,500,000, the Board shall pay the amount in full to the eligible persons.

Labour Department
May 2002