



QLD Supreme Court rules on damages payable to minor following parents' death

Date: Sunday March 13, 2016

The Queensland Supreme Court has ruled that fund management fees are not to form part of damages payable where an amount is held on trust following the death of a minor's parents.

Our client, the applicant, was just one year old when both her parents died after their parked vehicle was struck by another car. There was an agreed settlement, with the claim before the court being about whether the cost of the administration and management of that amount to be held on trust was also payable by the respondent, RACQ Insurance.

The claim was brought under s 64 of the Civil Proceedings Act 2011 (Qld) which allows the Court to award "damages it considers to be proportional to the damage to them resulting from the death." The issue in question was whether fund management fees fall within the concept of "damages... resulting from the death".

While it was accepted by both sides that fund management fees were recoverable in a common law claim arising from a negligently caused injury, RACQ argued that the Civil Proceedings Act did not allow recovery of such fees. Our argument for the applicant was that any fees payable on management of an amount of money held on trust for the applicant minor did result from the death – had her parents lived there would be no cause to put money on trust and accrue such fees. Those fees are a foreseeable consequence of loss resulting from the death of our client's parents.

Justice Boddice disagreed. In making his decision, Boddice J referred to the 1988 Queensland decision of *Fox v The Commissioner for Main Roads* which found that costs associated with the administration of funds were not properly chargeable against the defendant. Reviewing this decision in the context of the newer legislation, the 2011 Civil Proceedings Act, his Honour found the legislature had no stated intention to change the type of damages recoverable. As a result, Boddice J found no basis to extend damages recoverable to include administration fees.

Notwithstanding this decision (and any option of an appeal), there is no denying that a minor is unable to manage large sums of money which are usually the subject of settlements (or court awards) for actions for loss of dependency upon one (or in this case both) parent(s). It is too important an issue not to be properly dealt with and that is probably achieved by legislative amendment.

If you believe you or someone close to you has a claim and you need help navigating how this decision may impact your claim, we can help. Please contact a member of our personal compensation law team on [1800 659 114](tel:1800659114) or via [our online form](#) for a consultation today.

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