



## What happens after a motor vehicle fatality?

### **Introduction**

After a tragic motor vehicle accident in which a loved one is lost, many survivors are unable to cope with the thought of pursuing their legal rights. However, surviving family members should contact legal counsel, on behalf of themselves and other family members of the deceased, to discuss available options. This is especially important when the collision and death occurred as a result of someone else's negligent act. By contacting a lawyer, the survivors will at least be in a better position to make informed decisions about whether or not to pursue the fatal accident claim.

### **No-fault benefits**

In a motor vehicle collision, the deceased's family has access to two insurance policies to assist with expenses. One would be the policy held by the owner of the vehicle the deceased was riding in. The second would be the policy held by the owner of the other vehicle involved in the collision.

The survivors are entitled to 'no fault benefits' from the deceased's vehicle insurance policy, including \$5,000 for funeral expenses, money for grief counselling for family members and a lump sum death benefit, which varies depending on the age and status of the deceased at the time of death. For example, a surviving spouse with two children could receive as much as \$37,000 immediately. These benefits are payable to the survivors after a fatal motor vehicle accident, regardless of fault. Legal counsel is not normally required to access these benefits.

### **Third party liability benefits**

In addition to no fault benefits, if someone other than the deceased was at fault for the accident, the deceased's family may bring a claim against the auto insurance company for the party at fault.

This claim, for which legal counsel is recommended, may include the following benefits to the survivor's family:

1. Funeral, burial or cremation expenses and monuments

In the claim against the party at fault, the expenses for the funeral service, burial or cremation and a headstone or monument are based on the actual costs the family incurred. So long as the costs are reasonable, the insurance company for the party at fault must pay for all of these expenses. This is helpful to the deceased's family as the \$5,000 no fault benefit amount may be insufficient to cover all of the funeral expenses.

2. Bereavement

Under Section 8 of the Fatal Accidents Act of Alberta (FAA), there is a claim for the grief and loss of care, guidance and companionship of the deceased which may be claimed by a parent, child, spouse or adult interdependent partner. The amount awarded is set at \$75,000 for parents who lose a child (divided equally between them); \$75,000 for a surviving spouse or interdependent partner and \$45,000 for a child who loses a parent. Note: a spouse or interdependent partner cannot claim this amount if they were living separate and apart at the time of death.

An April 2010 amendment to the FAA now allows the \$75,000 bereavement to the parents regardless of the age of their child at time of death. Prior to this amendment, parents could only claim this benefit for minor children.

3. Loss of dependency

Additional amounts that can be claimed against the insurance company for the party at fault for a wrongful death is a function of who is left behind. For example, a sole-income earner in a family with young children and a young spouse dependent on the deceased's income will result in a significant claim. On the other hand, the tragic loss of a child, unfortunately in the eyes of the law, does not result in significant compensation to the survivors due to the fact the survivors were not dependent on the child's income. However, in some cases parents have successfully brought a claim for loss of dependency in old age on the child's future income.

Due to the complicated process of calculating the claim amount, based on life expectancy of the deceased, projected income, etc. it is highly recommended that survivors seek legal counsel before filing this type of claim.

4. Loss of housekeeping capacity and child care

Another head of damages is a loss of housekeeping services and child care claim. This claim is particularly important and can be quite significant for the survivors when the deceased was primarily responsible for child rearing and taking care of the house.

A calculation is made based up the number hours per week the deceased worked in the household on such things as: shopping, meal preparation, house cleaning, child care, transportation services, maintenance, home repairs (inside and outside) and other household chores the deceased performed.

For example, if the deceased was a full-time homemaker with several children, this claim could be large, as it is based on services the deceased would have provided into the future for many years.

5. Out-of-pocket expenses

Other potential claims against the part at fault include: expenses incurred for the care and well being of the deceased between time of injury and time of death; travel and accommodation expenses incurred by the family as a result of the injury and death of the deceased; and fees for grief counselling for surviving family members, including spouse, interdependent partners, parents, children and siblings.

# Determining Liability

## **Which driver is at fault?**

In the difficult circumstances surrounding the death of a loved one, it is common that fault or liability for the motor vehicle accident is not discussed immediately. However, if there is any question about who may have been at fault for a fatal motor vehicle collision, it is important that family members contact legal counsel as soon as possible so that evidence of the accident scene itself can be preserved and witness statements taken for potential use later in any civil proceedings.

Note: Liability is not an all or nothing proposition. Fault can be shared between two drivers, depending on the circumstances of the accident.

## **Seat Belts**

Failure to wear a seat belt may result in a reduction in the amount survivors can claim, based on the assumption that the deceased contributed to the resulting fatality by failing to wear a seat belt. Expert evidence from a biomechanical engineer is crucial at an early date, to examine the seat belts and the vehicle itself for evidence of use. Failure to wear a seat belt may result in a reduction of the survivors' claims by up to 30%, depending on the facts of the case.

## **Other fatal accidents**

Under Alberta's Traffic Safety Act, 'off highway vehicle' means any motorized mode of transportation built for cross-country travel on land, water, ice, snow, marsh or swamp land or any other natural terrain. The Traffic Safety Act requires these vehicles to be insured, unless they are being operated on one's own land. In that case, the land or homeowner's policy will likely pay any claim for negligence. Boats are required to be insured under federal law.

In any of these situations, there is likely a third party liability insurance policy in place that will respond to defend the negligent party and pay compensation to the victim's family.

## **Conclusion**

Fatal accident claims are a complex area of law. Very different claim amounts are arrived at, depending on which family member was the victim of a fatal motor vehicle collision, who the survivors are, who was at fault and whether or not seat belts were worn at the time of the collision.

The deceased's family should contact a lawyer experienced in fatal accident claims so that the surviving family members can make informed decisions about whether or not to proceed with a claim.