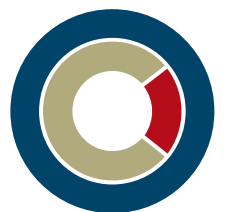


LITIGATION MADE SIMPLE - A GUIDE TO PERSONAL INJURY/ACCIDENT CLAIMS



MJ O'Connor Solicitors

INTRODUCTION

In our firm we thought it would be a good idea to produce a series of short guides to explain matters in simple language avoiding legal jargon. Accordingly we have a series of information leaflets available throughout our offices entitled "Litigation made Simple", "Family Law Made Simple" etc. designed to give clients and prospective clients the basic information they require in the simplest and clearest way possible. For the purposes of our website we felt that it would be more appropriate to go into a little more detail and accordingly what follows while still Litigation made Simple, is "the long version".

What kind of claims do we deal with.

Simply stated we deal with all claims :- Road Traffic Accidents ,Workplace, Accidents in Public Places Claims by Infants (Persons under 18 years of age) ,Claims against uninsured motorists and Medical Negligence.

Our Expertise

We have significant experience and expertise and will advise and guide you through all matters relating to bringing a Personal Injury claim. This is to ensure that you receive the best possible outcome. The law is an area which there are many misconceptions about and there is no shortage of people, who are not qualified, who will readily give you their opinion on your circumstance. What you need is specialist advice. Most people who have suffered an injury will have no previous experience of dealing with the Injuries Board or with the Courts. They need legal advice and assistance to help them through the process. That is where we are here to help you.

Our Ethos

Arthur Andersen founded an accountancy practice in Chicago in 1913 .He was a man of strong principles which he built into the culture of his firm. He believed in honesty and integrity and his own much-communicated motto of 'think straight, talk straight' summed up the ethos by which the firm became globally successful . Arthur died in 1947 and while the firm he founded ultimately came to an unfortunate end in 2002 ,in this firm we still like Arthur's style and his motto. You don't need legal jargon. You will not get legal jargon from us. You will get plain English and plain speaking. There is no fee for a consultation when meeting to discuss the possibility of taking a claim . If we think you have a good claim then we will advise you of such and if we do not think you have a good claim we will be equally plain.

When can an Injury/Accident Claim be brought?

While there is no automatic right to compensation in Ireland if you have an accident in most cases where an accident occurred compensation will be payable. There are certain things that you have to show in all cases. These include;

1. You have to prove that the accident happened.
2. You have to prove that it happened as a result of someone else's fault, i.e. that the other person or persons did or failed to do something as a result of which you suffered an injury .
3. You need to show that the person who caused the accident owed you a duty of care e.g. This would include a driver of another vehicle who collided with you or your vehicle or an employer who failed to provide you with a safe system or place of work.
4. You must show that the other party should have known that the accident was likely to happen if he/she did not take adequate care. This means that the accident was reasonably foreseeable. This is very much a legal issue but it can be as simple as an employer not having a proper guard on a machine or the driver of another vehicle, who strikes your vehicle from behind while 'tailgating'

5. You need to show that you actually suffered an injury, and that the injury you suffered was as a direct result of the accident.

Different levels of duty of care are owed by different parties. This is an area where we can guide you through. Sometimes both you and the other party can be at fault. By this we mean that some degree of blame can be applied at you as the person who suffered the injury. Usually it is that it can be claimed that you as a person who suffered the injury was somewhat careless. e.g. failure to wear a seatbelt or to wear protective equipment. If you are partly at fault for the accident, for example by failing to wear a seatbelt, the compensation which will be payable to you will be reduced. In most cases we will be able to give you a good indication at the start as to whether or not you have a claim. In some cases further investigation will be needed.

A simple guide as to what you should do if you have an accident.

While this depends on the type of accident there are some commonsense matters which you should address;

- If you are injured then seek medical help.
- You actually have a duty to do what is reasonable to keep your losses to a minimum. This includes seeking and taking appropriate medical advice and following the medical advice given .
- Try and get the name and contact details of any witnesses. Even if the accident is very straightforward it is important to have these details. This would include in the case of a motor accident the name and address of the driver, the registration number of the vehicle and the name of the insurance company. If you have an accident in the workplace then you will have the name of your employer.
- You should report all accidents. In the case of a road traffic accident you should report it to An Garda Síochána. In the case of an accident at work you should report it to your employer.
- You should try not to move the vehicle until An Garda Síochána arrive.
- If you have an accident at work make sure that the incident is logged in the Accident Book. Take the opportunity to look at the Accident Book entry and to make sure that all the details are correct. If they are not correct set out in writing to your employer what you disagree with.
- If you have an accident in a public place get a photograph of where it was and if anything caused the accident.
- In the case of an accident at work take a note of all members of staff who saw or could have seen the accident.
- Keep all damaged items whether they are a vehicle, clothing or whatever until they are examined.
- Keep all documentation in support of financial loss. This would include wage slips and work invoices, repair costs, medication costs, travel expenses and anything else that you have to buy or pay for as a result of the accident. If you lose wages keep a note of what wages you have lost.
- It is very important as soon as possible after an accident to write out your recollection of what you remember. Try and set out as much detail as possible as this will help you when you see a Solicitor

Bringing a Personal Injury/Accident Claim

In this section we try and set out in a simple way the procedures involved . Unfortunately, it is also the section where legal jargon is practically unavoidable and accordingly we will try to keep it to a minimum.

In most claims they must first be submitted to the Injuries Board. This is commonly called "PIAB". The Injuries Board was previously known as the Personal Injuries Assessment Board. If the injury was caused by an uninsured motorist then the claim must also be submitted to the Motor Insurers Bureau of Ireland

(MIBI). The Injuries Board was introduced not to reduce the amount of compensation payable to an injured person but to reduce the costs involved in litigation.

While you may submit your own claim to the Injuries Board it is always advisable to have the services of a Solicitor to advise you. In such event we will provide a clear, precise and exact Letter of Engagement to you, (known as a "Section 68 letter") which will set out the terms and conditions under which we will provide our services to you. Before we do anything for you we will get you to sign up this agreement. You will have an opportunity to review it fully before you agree to engage us. For further particulars see our leaflet "Litigation Fees made Simple"*

When must I submit my claim

All claims for a Personal Injury must be sent to the Injuries Board within two years from the date of the accident or the date when you first had the necessary knowledge as defined by Section 2 of the Statute of Limitations (Amendment) Act 1991. In simple terms this means, in the case of a motor accident, two years from the date of the accident. Nearly all injury claims must be sent to the Injuries Board. If the accident was caused by an uninsured motorist then they must also be sent to MIBI. There are exceptions. The main exception is in the case of medical negligence. These are not dealt with by the Injuries Board.

What do I need to do to submit a claim

It is advisable that a letter is sent to the party who caused the accident or was responsible for it preferably within two months of the date of the accident advising him/her of the nature of the claim and the wrongdoing alleged. Depending on the type of accident it may be necessary to ask for evidence to be preserved. This would for example include a vehicle that was involved in an accident or a machine that caused an accident.

How do I submit a claim to the Injuries Board

All persons claiming that they suffered a Personal Injury must fill out an application form. It is known as a Form A. It is sent with a Medical Report (known as a Form B) and a cheque in the sum of €45. It is also important to include any receipts for medical expenses that you intend to claim back. The most important part of any claim is to ensure that your claim is sent within two years of the date of the accident. There are exceptions but the general rule is that they must be made within two years.

What happens next

Once the Injuries Board receives the claim they will send a letter confirming receipt and will serve a notice of your claim on the party whom you claim is responsible. That party are entitled to object to the Injuries Board assessing a claim in which case you will get what is known as an Authorisation from the Injuries Board which will then enable you to go to Court. The person responsible for the accident, or normally their Insurers, can allow the Board to make an assessment. If they agree to this the Board will assess the amount of compensation. At that stage either party has to accept or reject the amount of compensation. If the compensation award is rejected then an Authorisation will issue for the claim to be brought to the Courts.

How long will it take

The Injuries Board must make their assessment within nine months of receiving the consent from the other party who was responsible for the accident. The party responsible for the accident is given 21 days to accept or reject the amount and you are given 28 days to accept or reject the amount of compensation.

There is a guide to the likely levels of compensation the Board will offer which can be seen by visiting www.injuriesboard.ie. entitled the Book of Quantum which sets out the range within which general damages will be determined. If you get an offer of assessment and you fail to respond then the Injuries Board will consider their proposed compensation figure as having been rejected.

What type of damages am I entitled to

The level of damages depend on the severity of the injury. While the Book of Quantum gives guidance personal circumstances can have a significant bearing. If the injury causes you not to be able to work or not work as efficiently as you did before the accident happened then this will have a bearing on the level of damages that are likely to be awarded. If you have suffered a purely psychological injury then the Injuries Board normally will not get involved in setting a figure of compensation and you will have to go to Court.

Are there different type of damages

Yes- the first type General Damages and is for the pain and suffering that you incurred as a result of the injury received. It also takes into account ongoing problems which you may have which may impact on your ability to enjoy life as you did before the accident happened.

The second type of damages is called Special Damages and relates to expenses incurred as a result of the injury suffered .. It may also include future losses which can be clearly calculated. Special Damages also includes such matters as medical expenses. This is why it is important to have receipts. It includes loss of earnings and travel expenses and may depending on your circumstance also include future loss of earnings. The next area is medical expenses. While it is easy to work out the medical expenses that you have to pay up to the date of a hearing, future medical expenses, where there are serious personal injury can be very substantial. In the case of a very serious injury you may have a situation where a person may require a specially adapted vehicle so that they can go to work, that a house has to be adapted to take account of their injury.

An award of damages

Damages may be awarded in one of two ways. The first is by the Injuries Board or the second is when the Courts award an amount. In many cases insurance companies will settle your claim. This is where you need a Solicitor who can advise you on any settlement.

Do I need a Solicitor to submit my claim to the Injuries Board

While the simple answer to this is no ,it is strongly advised that you obtain specialist legal advice concerning any Personal Injury claim before submitting anything to the Injuries Board. The Injuries Board do not give legal advice. Their job is simply to process the claim. They make an award based on the Medical Report which is sent to them and to any other relevant documentation which they receive. The Injuries Board does not hear evidence. The Injuries Board was originally designed to preclude the involvement of Solicitors however the Supreme Court has held that the Injuries Board must deal with your Solicitor if you instruct them to do so. Because Injury claims are complex it is important that the appropriate paperwork is sent to the Injuries Board. The Form A submitted to the Injuries Board is a critical document. In order to come within the two year time limit for bringing claims you must have all relevant paperwork submitted to the Injuries Board and you must obtain a written acknowledgement that they have received the documentation. If you receive an award by the Injuries Board you need to be careful before you reject it. If the ultimate award is less than the amount awarded by the Injuries Board you can be responsible for the legal costs of any Court case. If you accept an award which is less than the full value

and issues subsequently arise or you failed to notify the Injuries Board of an important fact, you have no recourse. It is therefore important that you obtain appropriate legal advice.

Bringing a case to Court

If the other party or their insurers reject an assessment by the Injuries Board or they reject the award or if you reject the award, then the case will proceed to Court. Depending on the value of the case it will be heard in either the District Court, the Circuit Court or the High Court. The normal procedures in relation to these cases is that a Personal Injuries Summons will issue. It will set out full details about how the accident happened, what injuries occurred and the damages suffered. It will also set out how you claim how the other party was at fault. At that stage the Solicitors for the other party will normally issue what is called a Notice for Particulars seeking more detailed particulars. It may include particulars of any accident or claim history that you have had in the past. It is very important that this is properly responded to fully. Once the replies are given then the Defendant will lodge a Defence and if necessary a Counter Claim. The case will then proceed for hearing.

How long will a claim take

There are two main issues which determine how long a claim will take;

1. Whether and how quickly the other party accepts liability and;
2. The severity of your injuries and when will there be a final view of when you have recovered fully or when you are likely to recover.

In straightforward claims where liability is admitted we would expect where you have recovered or are expected to recover within twelve months of the date of the accident that the case will take somewhere between 16 and 20 months to resolve. In more complex cases it will take longer.

SUMMARY

If you have an accident it can have a devastating effect on you. In addition, to the physical pain and suffering caused by the personal injuries sustained, the accident can be very disruptive of your lifestyle, work and family life. In our firm we are fully aware of this. Our experienced Solicitors will advise and guide you through each step of your Personal Injury claim to ensure that you achieve the best outcome possible. There is no cost nor any obligation to come in and see us. If you want us to act for you we will not do so until we have agreed the terms and conditions under which we will act for you. These will be explained to you in clear, simple terms and set out in writing. You will not be asked to sign anything up on the day when you come to see us. You will be given an opportunity to consider whether to use this firm or another firm of Solicitors. You will be sent an Engagement Letter which sets out our terms and conditions which will already have been discussed with you and you will have ample opportunity to review them and to take any advice that you wish. Until you have agreed to those terms then you have agreed to nothing and if you reject them then you owe us nothing.

Our Personal Injury/Accident Law Practice is headed up by Seamas Turner who can be contacted at 053 9122555 /021 4813944 or sturner@mjoc.ie

*** In contentious cases a Solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.**

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