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Founding Consultants

LEWIS N. KLAR, B.A., B.C.L., LL.M.

Professor at the University of Alberta

ALLEN M. LINDEN

Former Justice of the Supreme Court of Ontario

EARL A. CHERNIAK, B.A., Q.C.

Partner in the law firm of Lerner & Associates

PETER W. KRYWORUK, LL.B.

Partner in the law firm of Lerner & Associates

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A cataloguing record for this publication is available from Library and Archives Canada

ISBN 0-459-30771-1 (set)
ISBN 0-459-30731-2 (v.1)
ISBN 0-459-30741-X (v.2)
ISBN 0-459-3075l-7 (v.3)
ISBN 0-459-30761-4 (v.4)

Printed in the United States by Thomson Reuters

THOMSON REUTERS®

THOMSON REUTERS CANADA, A DIVISION OF THOMSON REUTERS CANADA LIMITED

One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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(i) — Definition

§88 When a person is injured he may receive medical care, housekeeping services or other benefits without direct payment to the donor. Moreover, he may receive monetary assistance gratuitously, from government, or through contractual arrangements with insurers and employers. These forms of assistance are referred to as "collateral benefits", or "compensating advantages". Generally, there is a collateral benefit when a source other than the damages payable by the defendant ameliorates the loss suffered by the plaintiffs as a result of the defendant's breach of legal duty. In the assessment of personal injury damages their existence can raise the question of whether an award should be reduced to the extent that collateral benefits have compensated the plaintiff. The question of deduction will arise where receipt of the benefit constitutes some form of excess recovery to the plaintiff for the loss, and the benefit is intended to be an indemnity for the sort of loss resulting from the defendant's breach.[12]

FOOTNOTES

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[12] *Waterman v. IBM Canada Ltd.*, 2013 CarswellBC 3726, 2013 SCC 70, 9 C.C.L.T. (4th) 173, [2013] 3 S.C.R. 985, 366 D.L.R. (4th) 287, [2014] 2 W.W.R. 452, 52 B.C.L.R. (5th) 1, 11 C.C.E.L. (4th) 169, 8 C.C.P.B. (2nd) 1, 28 D.E.L.D. 15, 452 N.R. 207, 347 B.C.A.C. 43, 593 W.A.C. 43 (S.C.C.) (question of when collateral benefit or "compensating advantage" should reduce damages otherwise payable by defendant one of most difficult topics in law of damages; company pension benefits not a form of wage loss indemnity and not to be deducted from damages award for wrongful dismissal). For discussion, see Cooper-Stephenson, *Personal Injury Damages in Canada,* 2nd ed. (1996), c. 9; Cassels and Adjin-Tettey, *Remedies: The Law of Damages,* 3rd ed. (2014), c. 13.

(ii) — General Rule

§89 As a general principle of recovery in a tort action, a plaintiff is not entitled to double recovery for any loss. However, deductions will not be made from damages awards for certain benefits received by the plaintiff, including the proceeds of private insurance or charitable contributions.[13] The general rule is that the wrongdoer should not benefit from the benevolence of third parties who have gratuitously assisted the injured party; nor should the wrongdoer benefit from the sums which the plaintiff has paid to acquire contractual protection from disaster. Thus, the damage award will not be reduced simply because the plaintiff received gratuitous assistance or the proceeds of an insurance policy.[14] Moreover, the plaintiff may have a moral or legal obligation to reimburse the donor for his provision of the benefit and this obligation should not be disregarded for the benefit of the tortfeasor.[15]

FOOTNOTES

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[13] See *Cunningham v. Wheeler*, 1994 CarswellBC 121, [1994] 1 S.C.R. 359, 20 C.C.L.T. (2d) 1, 88 B.C.L.R. (2d) 273, [1994] 4 W.W.R. 153, 41 B.C.A.C. 1, 66 W.A.C. 1, 2 C.C.P.B. 217, 113 D.L.R. (4th) 1, 164 N.R. 81, 23 C.C.L.I. (2d) 205 (S.C.C.); *B. (M.) v. British Columbia*, 2003 CarswellBC 2409, 2003 SCC 53 (S.C.C.), reversing 2002 CarswellBC 379, 2002 BCCA 142, 10 C.C.L.T. (3d) 76, 99 B.C.L.R. (3d) 256, [2002] 5 W.W.R. 327, 211 D.L.R. (4th) 295 (C.A.); Cooper-Stephenson, *Personal Injury Damages in Canada*, 2nd ed (1996), at pp. 568-569; see also *M. (M.) v. F. (R.)* (1997), 1997 CarswellBC 2932, 52 B.C.L.R. (3d) 127 (C.A.), additional reasons (1998), 1998 CarswellBC 758, 48 B.C.L.R. (3d) 360 (C.A.), varying (1996), 1996 CarswellBC 702, 22 B.C.L.R. (3d) 18 (S.C.) (general principle that damages are fully restorative but non-punitive, that award of damages should be for actual loss and no more, and that double recovery is not permitted).

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[14] *Canadian Pacific Ltd. v. Gill*, 1973 CarswellBC 112, [1973] S.C.R. 654, [1973] 4 W.W.R. 593, 37 D.L.R. (3d) 229; *Boarelli v. Flannigan*, 1973 CarswellOnt 872, [1973] 3 O.R. 69, 36 D.L.R. (3d) 4 (Ont. C.A.); *Bourgeois v. Tzrop* (1957), 1957 CarswellNB 54, 9 D.L.R. (2d) 214 (N.B.C.A.). See also *B. (M.) v. British Columbia*, *supra*.

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[15] *Dennis v. London Passenger Transport Board*, [1948] 1 All E.R. 779; *Rawson v. Kasman*, 1956 CarswellOnt 255, [1956] O.W.N. 359, 3 D.L.R. (2d) 376 (C. A.).

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