Kan Wai Ling Case

The Facts

The deceased sustained fatal injuries in a traffic accident and died on 11 February 2009. Claims for dependency were brought by his former wife, son, daughter and mother. The deceased was 51 years and 3 months old at the time of his death on 11 February 2009. If he were alive at the time of the trial, he would have been 60 years and 6 months old.

Post-Trial Dependency Claim

In determining the appropriate multiplier for future losses of dependency, the Court agreed with the Supreme Court's decision that (i) calculating damages for loss of dependency upon the deceased from the date of death, rather than from the date of trial, meant that the claimant suffered a discount for early receipt of the money when in fact the money would not be received until after the trial, which resulted in under-compensation in most cases; (ii) the current approach involved taking a multiplier as at the date of death and then deducting from it the time which elapsed between death and trial, which mixed up the calculation based on properly considered actuarial principles with an arbitrary arithmetical deduction.

The Court said that there had been no decision of Hong Kong's Court of Appeal on the issue of whether the multiplier in a fatal accident case ought to be ascertained as at the date of death or as at the date of trial and it was not therefore bound by higher authority and was free to follow the Supreme Court's decision, which it considered to be correct.

Loss of Accumulation of Wealth

Another point worthy of note is the Court's method of assessing the award for loss of accumulation of wealth. It adopted the "new" method proposed in Fung Suen Sim v Liu Chun Pong, HCPI 896/2007, which has since been adopted in a number of fatal accident cases. It held that:-

1. Where there is no established pattern of savings, but the evidence clearly shows that the deceased would likely have made some savings from his income, as in the present case, the Courts should adopt a savings rate of 10% of such income to assess this head of claim.

2. Applying a savings rate of 10% of pre-trial median notional net of tax earnings of HK$1,049,098 per annum would produce savings of HK$970,416 (HK$1,049,098 x 10% x 9.25 years). Applying a savings rate of 10% of post-trial notional net of tax earnings of HK$1,194,775 per annum would produce savings of HK$1,135,036 (HK$1,194,775 x 10% x 9.5 years). He would have saved the total sum of HK$2,105,452 at the time of his natural retirement at the age of 70 if the accident had not happened.

3. On the assumption that the deceased would, but for the accident, have invested the wealth he accumulated, such investments would yield a rate of return at 2.5% per annum (for future losses in excess of 10 years in this case). The accumulated savings would have grown to HK$2,742,082 at the date of notional retirement at age 70.

4. Taking 83 years as the likely age of natural death of the deceased, a substantial part of the accumulated wealth would have been depleted during the post-retirement period of 13 years on account of his personal expenditure which would exceed the assumed rate of return of 2.5% per annum on the accumulated fund.

5. Assuming that the deceased's personal expenses after retirement were about HK$30,000 per month (after taking into account his post-trial notional net income, contributions to his dependants and savings), or about HK$360,000 per annum, it would amount to about 13% of his accumulated savings at the time of retirement of HK$2,742,082. Reducing the sum of HK$2,742,082 by 13% per annum, and increasing the balance by the assumed rate of return of 2.5% per annum, would result in a net reduction of the accumulated savings by 10.5% per annum. The fund would therefore reduce to about HK$648,306 in 13 years' time from the notional retirement date to the date of natural death.

6. The remaining net balance of HK$648,306 on the notional date of natural death would then have to be discounted for accelerated receipt of 22.5 years from the date of natural death to the date of judgment. With reference to Table 27 of the 2016 Chan Tables, a discount factor of 0.57 (i.e. a discount of about 43%) should be adopted. The loss of the net accumulation of wealth at the time of the natural death of the deceased would then be HK$369,534 (HK$648,306 x 0.57).