

# How a personal injury case is handled in Chinese courts?

## Description

With more and more foreigners coming into China for work or for travel, it has seen a number of cases where foreigners fall victim to personal injuries (typically in road accidents), and it is often inevitable to resort to courts in China to settle the compensation disputes arising therefrom.

It is terrible to be caught in a road accident in a foreign country, and to add salt to wound, the compensation available under Chinese laws is often a pitiable amount in the eyes of victims from USA and Europe. In some cases, victims may end up with no compensation at all simply because the wrongdoer has no ability to pay any damages. But unfortunately you are in China.

Generally, after getting injured, you are entitled to claim, inter alia, the following items of damages from the :

### 1. Medical expenses

Claim for medical expenses reasonably incurred at official hospitals will be supported by court upon presentment of invoices of those expenses. Though courts tend to believe that medical bill incurred by a foreigner is higher than that incurred by a Chinese national of the same injury, exorbitant medical expense may invite doubt on the part of the judge.

### 2. Loss of salary/income

Those who cannot go to work because of personal injury may claim this loss of salary if their employers deduct their salaries for the period of absence from job. To avoid fake amount of salaries, the defendant and courts will always ask the plaintiff to submit ancillary evidences for salaries such as income tax records, historical records of payroll (bank reference).

### 3. Nursing/caring cost

This cost refers to situation where the injured needs aid in their daily activities due to inability or inconvenience to move around. This cost is a standard one, around RMB 30-40 per day. If the injured hires the services of a nursing agency, you can claim the actual payout made therefor. If the nursing and care is provided by a family member who as a result suffers a loss of salary during the nursing/caring period, the nursing/caring fee will be that part of loss of salary of such family member.

### 4. Disability compensation

If the injury constitutes disability, a relatively large amount of disability compensation is available under Chinese laws. Disabilities are classified into ten grades under the technical standards. Once the grade of disability is assessed and known, the amount of disability compensation will be clear. The formula is as follows:

Disability compensation= A x B x C

A stands for the amount of disposable income of previous year in the place where the court of forum is. For example, if a personal injury case is being tried now in Shanghai, A shall be the amount of disposable income of 2010 year, which is RMB 31,838.

B stands for the coefficient a percentage prescribed by law, ranging from 10%, 20%...90% to 100%, each in line with the grades of disability from grade 10 (lowest), grade 9 to grade 2 to grade 1 (highest). Grade of disability will be determined by a special evaluation agency approved as qualified to conduct such evaluation.

C equals 20 if the person injured is not more than 60 years old. In other words, if the age of the injured person exceeds 60 by N (a number from 1 to 15) years, the C in the formula will be the number of 20 minus N. In case the injured person is over 75 years old, C will be fixed at 5.

To illustrate, if a person of 40 years old is injured recently in a road traffic accident in Shanghai and the injury is determined to constitute disability of Grade 7, the disability compensation will be  $31,838 \times 40\% \times 20 = 254,704$ .

## 5. Death compensation

The amount of death compensation is the product of AxC as defined above. Equally applicable as in the case of calculating disability compensation, if the age of the dead person exceeds 60 by N (a number from 1 to 15) years, the C in the formula will be the number of 20 minus N. In case the injured person is over 75 years old, C will be fixed at 5.

## 6. Spiritual damages

This is one of most ridiculous areas of law practice in Shanghai, China. From those cases I have personally handled, courts in Shanghai have been following a ridiculous rule when granting spiritual damages to plaintiffs. Namely, the amount of spiritual damages is closely and correspondingly linked with the grade of disability. RMB 5,000 will be granted in the case of disability of grade 10 and all the way up, RMB 50,000 will be granted for disability of Grade 1. In other words, when grade of disability goes up to a higher level, RMB 5,000 will be added to the amount of spiritual damages, regardless of other circumstances of the injury. This simplified treatment has caused flagrant injustice where a person is injured at face making the victim suffer a lot emotional distress, but the injury is not yet a disability and therefore is denied any spiritual damages.

There are other items of damages of minor significance that can be successfully claimed. But to sum up, the amount of compensation a victim of personal injury can receive is rather a humble sum of money when measured against western standards. So foreigners should spare no efforts to ensure their personal safety while living, working or traveling in China

However for those foreign people who for various reasons have to land their feet in China shall be fully guarded and insured against such risks of personal injuries. In any event, it will be difficult and unadvisable in some cases to institute a lawsuit to recover compensation or losses in China. Meanwhile, foreigners coming to China shall need to ensure contract arrangement has been made to

protect their interests from personal injury risk.

For instance, foreigners coming to China for tour shall buy adequate insurance to cover personal injury that might happen during travel. In turn, foreign travel agencies organizing foreign tourists to travel within China shall also purchase sufficient insurances to cover their liabilities towards their customers. Moreover, foreign travel agencies shall include clauses transferring liabilities to their Chinese local counterparts that receive foreign tourists upon entrustment by foreign travel agencies.

For those foreigners coming to China for work, though Chinese social insurances are now extended to expat employees, it is necessary for expat workers to procure that their employers buy them additional commercial insurances covering personal injury.

With contract arrangement in place, legally it will be easier and faster to get compensation by initiating a contract dispute than by initiating a tort case in China.

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