# Death Compensation from Fatal Accidents Not Part of Estate of the Deceased under China Laws

## Description

Dealing with inheritance issues, we occasionally encounter inquiries about death compensation arising from fatal accidents though we don't generally deal with many personal injury cases in China. Instead, we focus on how death compensation is treated in the course of inheritance and estate administration.



Can the estate claim death compensation?

### I. China Laws and Practice

Assuming your loved one were killed in a car crash in China and the other party to the accident was totally responsible for the crash, then as close family members, you are concerned with the aftermath of the fatal accident and you want to know how you should go about sorting out the ensuing legal issues such as seeking justice against the wrongdoer, claiming death benefits from insurers, working out estate administration and inheritance.

*(1) Double Recoveries from both Insurers and Wrongdoer*

Foreigners in China are more sensible than most Chinese people in terms of purchasing insurance policies. Yes, as a foreigner outside home country, it is always advisable to purchase some basic insurance policies like accident insurance, health insurance.

So in the event of personal injury or death caused by an accident, you and your insurance beneficiary will receive the insurance benefits under insurance policy, then are you or your family members still entitled to sue the wrongdoer to claim more death compensation?

The answer is clearly provided in China Insurance Law: yes, you can.

In other words, besides of the insurance coverage available, your family members are entitled to seek separate compensation from the wrongdoer.

(*2) Who are Eligible to Sue for Death Compensation under Chinese Laws*

Now you know that upon death of your family members in China caused by a third party fault, you won't just let the bad guy go free from punishment.

So who is the legal standing to take the legal action against the wrongdoer under Chinese laws?

Article 1181 of China Civil Code has the answer: the close family members are entitled to claim compensation against the tortfeasor. Then who are the close family members under Chinese laws? Article 1045 of the Code provides for a well-defined scope of "**close family members**", namely, spouse, parents, children, siblings, paternal grandparents, maternal grandparents and grandchildren from both paternal and maternal sides.

It shall be noted that close family members are classified into two groups: spouse, parents and children as first group, and siblings, grandparents and grandchildren as second group. In practice, if any of the first group is alive, he or she has a preemptive right over any of the second group members, similar to priority of right of inheritance among close family members in the case of intestate succession in China .

Well, since very often there are multiple close family members, do they have to take the same legal action all together or go separately on each own?

This is indeed a controversial issue in China judicial practice. The mainstream practice is that courts won't require all existing close family members to file the claim together. In other words, any of close family members of first group or in case of having no member of first group, any of the second group may take action on their own.

***(3) Death Compensation Not Part of the Estate of the Decease***

Assuming that China court awards proper compensation in the lawsuit, should such compensation form part of the estate of the deceased?

This is a murky and tricky area of law.

In China judicial practice, because of opinions expressed by China Supreme Court in the past, it is widely accepted that death compensation obtained from any wrongdoer is vested in close family members, and is intended to help them to set off against the loss of a loved one, both financially and emotionally.

There is the other opinion holding otherwise that such death compensation is in nature not much difference from the decedent's estate. It is the last piece of asset created and left at the cost of life by the decedent, and shall form part of the estate.

Exclusion of death compensation from estate means:

Shanghai Landing Law Offices

(i) the creditor of the deceased cannot go after the death compensation fund to satisfy the debts incurred by the deceased before death;

(ii) such compensation fund, not being part of the estate, is out of the reach of people who are dependent on the deceased for a living but not a member of the close family members;

(iii) more importantly, the division and distribution of the death compensation is not supposed to be handled by the executor or estate administrator, leaving it to be dealt with by and among the close family members on their own where disputes may arise.

(*4) Division and Distribution of Death Compensation*

As said, this death compensation is supposed to be for close family members (again pay attention to right of priority of one group over the other). Thus in practice, it is held that such fund shall be jointly owned by the relevant close family members. Division and distribution is made and conducted in much the same way as that of estate of the decedent, taking into account who has made more contribution to the wellbeing of the deceased.

**II. UK and HK Law and Practice**

I don't have time and resources to look into how the same matter is dealt with in most other jurisdictions. I have chosen to look at UK law in that regard.

After reading a few articles from the internet including this PDF document on fatal accident claims, I came to know that:

(1) there are two legal basis for claiming fatal accident compensation respectively under two different legislation;

(2) unlike in China death compensation is one sum settling all claims, in UK, the estate represented by the executor or administrator basically claims the past losses and those dependents claim the loss of future income. Correct me if I am wrong on this.

(3) in regard of legal standing to sue the wrongdoer, due to the difference of estate administration practice in China and other jurisdictions, executor and estate administrator in China has not given the clear power to represent the estate to sue any third party in the course of estate administration.

It seems that dependents claiming compensation under Fatal Accident Act 1976 shall join the same legal proceeding all together instead of going separately.

Hong Kong is still following suit of UK in such area of law and practice.

Though inheritance issues concerning death compensation don't happen much in our practice, but occasionally they do. It is worth a post to take note of such differences in law and practice in order to better serve clients in cross-border inheritance cases.

**Date Created**
April 2022
**Author**
admin

Shanghai Landing Law Offices