

Panel Session: Fatal Accident Claims

PEOPIL

- Fern Mapp – Irwin Mitchell Scotland LLP, Scotland
- Lennart Mensonides – Damsté Advocaten, Netherlands
- Edoardo Traversa – Studio Legale Bona Oliva & Associati, Italy
 - Anne-Fleur Willems – HBSV Advocaten, Belgium

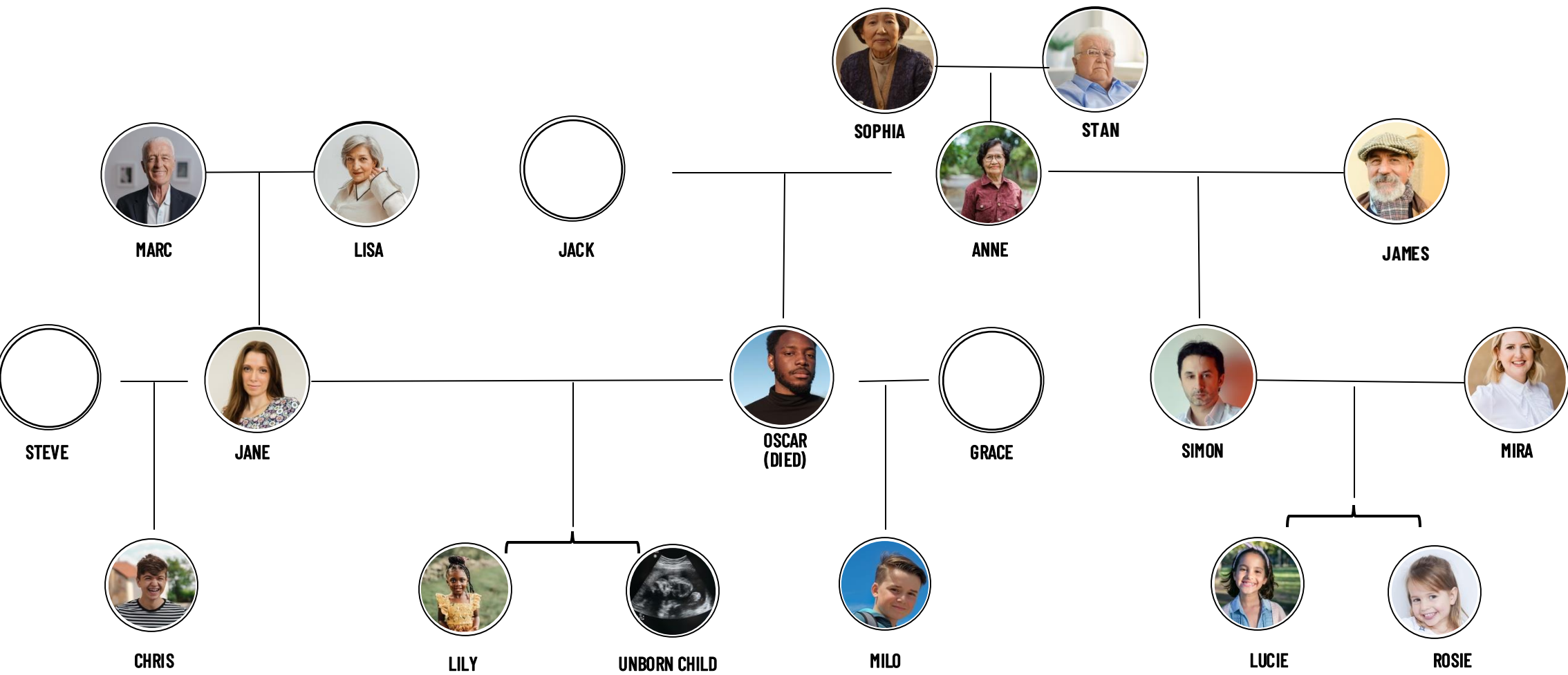
Oscar (40) sustained fatal injuries in an accident when a rollercoaster partially derailed causing him to fall to the ground.

Oscar was conscious and admitted to hospital but died from his injuries 2 weeks later.

The Theme park is liable for the accident caused by lack of maintenance of the ride.



FAMILY TREE



Who is eligible to claim? – Scotland

- Jane – as Executor and co-habiting partner
- Anne and James – Mother and step-father (James accepted the deceased as a child of his family)
- Milo, Lily, Chris (Step-son) and child in utero - Children
- Simon - Half Brother
- Sophia & Stan - Living grandparents
- Estranged Father



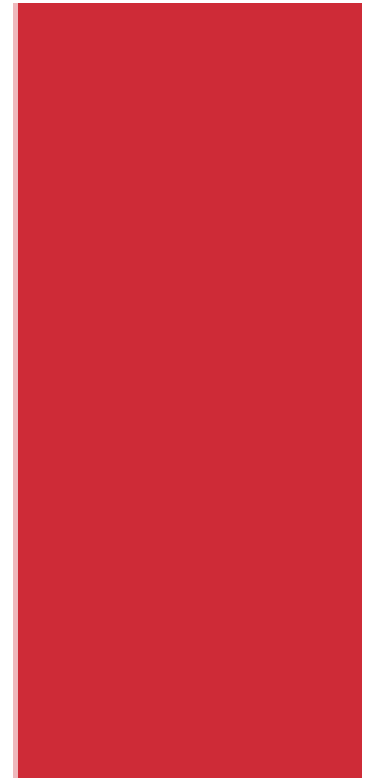
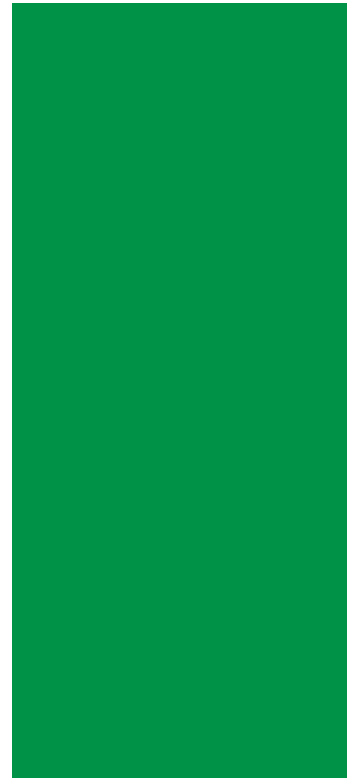
Who is eligible to claim? – Netherlands

- In principle every person who is in such a **close affective and stable relationship** with the victim that it follows from the requirements of reasonableness and fairness that he is entitled to the compensation as a close relative.
- Jane – as co-habiting partner
- Milo and Lily - as acknowledged underaged children
- Parents, grandparents, half-brother, nieces and stepchild.
- Child in utero – as unborn child?



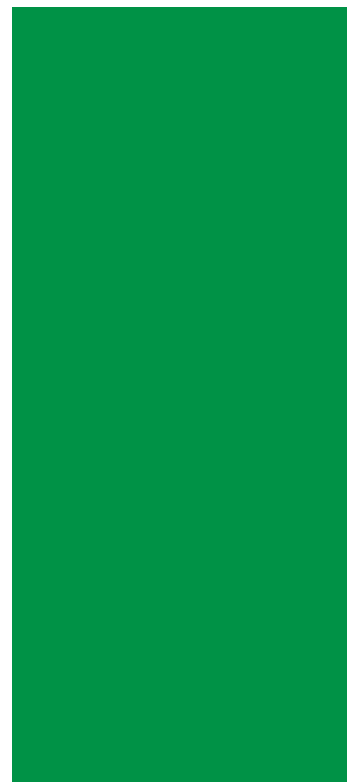
Who is eligible to claim? - Italy

- **Jane**, as partner and heir
- **Lily, Milo**, as natural children and heirs
- **Child in utero**, as natural child and heir
- **Chris**, as stepchild
- **Anne & James**, as mother and stepfather
- **Simon**, as half brother
- Two **nieces**
- **Sophia & Stan**, as **Grandparents**



Who is eligible to claim? - Italy

- In principle, **any person** who is capable of proving the existence of a **stable affective relationship with the victim** or that such kind of relationship would have developed
- The **proximity or distance** of the parental relationship can sensibly affect the quantification of the compensation



Who is eligible to claim? - Belgium

- In principle, **any person** who can prove the existence of a **stable affective relationship with the victim**
- The **proximity or distance** of the relationship can sensibly affect the quantification of the compensation



Who is eligible to claim? - Belgium

Who can definitely claim?

- **Jane**, as partner
- **Lily & Milo**, as children
- **Anne**, as mother
- **Jack**, as father although he is estranged
- **Sophia & Stan**, grandparents

Who is likely to claim as well?

- **Chris**, as stepchild who lived with Oscar
- **James**, as stepfather who was considered a father by Oscar
- **Simon**, as half brother who grew up in the same household



Who is eligible to claim? - Belgium

Who might also be able claim?

- Two nieces

Who is definitely not able to claim?

- **Child in utero**, as an unborn child is not a legal person



Non-Patrimonial Loss – Scotland

Transmissible solatium (Oscar's pain and suffering before his death)

Eligible Relatives have individual claims for **Loss of Society** compensating:

- i. distress and anxiety endured by the relative in contemplation of the suffering of Oscar before his death
- ii. grief and sorrow of the relative caused by Oscar's death
- iii. the loss of such non-patrimonial benefit as the relative might have been expected to derive from Oscar's society and guidance if he had not died.

Loss of Society Awards – Scotland

The law does not explicitly state how such awards should be calculated.

Choice of Judge or Jury.

Awards will be influenced by:

- Ages of deceased and relatives at date of death
- Life expectancy of the deceased prior to injury or illness caused by negligence
- Closeness of relationship
- Reaction to the death

Potential Ranges of Loss of Society Awards – Scotland

- Jane, Partner: £100,000 - £150,000
- Lily, Milo, Child in utero: £60,000 - £100,000
- Chris, step-son: £50,000 - £80,000
- Anne and James, mother and step-dad: £80,000 - £120,000 (James slightly less)
- Simon, half brother - £30,000 - £50,000
- Grandparents - £20,000 - £35,000
- Estranged Father?

Non-Patrimonial Loss – Scotland

Loss of Services - This covers services the deceased provided, like childcare, cooking, cleaning, gardening, or DIY.

Secondary Victim claims

Witnessed the scene of the incident or its immediate aftermath

Suffered a recognized psychiatric injury as a result of witnessing the event.

Immaterial damage – Netherlands

Transferable compensation for grievances

Oscar's pain and suffering before his death –
Because he was conscious.

Eligible Relatives have individual claims for **Affection damage and grievances**

We distinguish two situations.

- i) Mental injury arising because of the death or injury of a close person (affection damage).
- ii) Mental injury sustained by a victim as result of confronting a traumatic event or its direct consequences (shock damage).



Affection damage – Netherlands

Affection damage

- i. It is compensation for loved ones who are grieving. The purpose of compensation is to show that grief is acknowledged.
- ii. Only the victim's partner, children and parents, or those who have a similar relationship with the victim, are eligible for compensation for affection damage.



Awards for affection damage- Netherlands

- Jane, Partner: 17.500 euro
- Lily, Milo: 17.500 euro
- Chris, step-son: 17.500 euro
- Anne and James, parents: 35.000 euro
- Half brother – 15.000?
- Grandparents – 15.000?
- Estranged Father – 17.500?
- Unborn Child – ?



Shock damages - Netherlands

Shock damage is a ground for liability and can consist of both material and immaterial damage (damages).

Claimant is not the direct victim. Often a family member or other close person.

To qualify for a claim, the following viewpoints are relevant; a confrontation, mental injury, severity of the consequences and relationship with the victim.



Non-Patrimonial Loss - Italy

Transmissible pre-death non pecuniary loss - Oscar's pain and suffering before his death
– *sub-species* “**conscious agony**”

Individual claims for **Non-pecuniary damage for the death of a family member**, compensating:

- i. bereavement, grief and sorrow of the relative caused by Oscar's death
- ii. negative changes in the life of the secondary victim, loss of amenities

Loss of physical and/or mental integrity directly **suffered by the surviving relative** as a consequence of the death of family member (subject to medical evidence, e.g. medico legal opinion, psychiatrist's opinion)

Awards for Non-Patrimonial Loss – Italy

Transmissible pre-death non pecuniary loss - Oscar's pain and suffering before his death
50,000 € - 300,000 €

- **Jane**, partner: 270,000 – 390,000 €
- **Lily**, cohabiting daughter: 300,000 – 390,000 €
- **Milo**, non-cohabiting son: 240,000 – 360,000 €
- **Child in utero**: ~ 350,000 €
- **Chris**, stepson: 100,000 – 280,000 € (could vary on the basis of the relationship with victim)
- **Anne & James**, mother and stepfather: 170,000 – 270,000 € (James, as a stepfather, bears a strict burden of proving the stable affective relationship with the victim)
- **Simon**, half-brother: 50,000 – 100,000 €
- Two **nieces**: 60,000 – 100,000 € (subject to strict prove of stable bond of affection)
- **Grandparents**: 30,000 – 80,000 €

Non-Patrimonial Loss - Belgium

- **Damages ex haerede** (Transmissible pre-death non pecuniary loss for Oscar's pain and suffering before his death)
- **Moral damages for the relatives**
- **Own claim survivors for exceptional suffering** and the limitations they suffer personally, domestically and economically as a result



Awards for Moral Damages – Belgium

- Jane : 15.000,00-45.000,00 EUR
- Lily & Milo: 15.000,00-45.000,00 EUR
- Anne & Jack: 15.000,00-45.000,00 EUR (lower for Jack)
- Sophia & Stan: 7.500,00-25.000,00 EUR
- Chris: same range as Lily and Milo but a little bit less
- James: same range as Anne & Jack, most likely almost the same amount as Anne
- Simon: same range as siblings 7.500,00-25.000,00 EUR
- Others: no specific range foreseen up to the judge to decide what's reasonable



Patrimonial Losses - Scotland

Funeral Costs: recoverable as long as reasonable

Other expenses related to the accident

Loss of Support:

- Partner/ dependent child: total available is 75% of the deceased's net income
- The relative is not to be awarded more in compensation for loss of support than the actual amount of that loss
- The calculation would consider the duration of dependency. Children are typically dependent until they reach adulthood or complete their education



Death damages - Netherlands

Funeral Costs

Costs must be reasonable in view of the circumstances in which the deceased lived

Insofar as they are not already reimbursed under a death insurance policy

Loss of Support/Livelihood:

In the method for calculating damage by death the following aspects are leading:

The family is considered an economic unit.

The net disposable (consumption) family income before and after the death is the basis for the calculation.



Principles for calculating fatal accident claims

- Step 1: determination of need
- Step 2: determination of income after death
- Step 3: determination of EE and AE
- Step 4: calculate annual family loss



Patrimonial losses - Italy

- **Funeral costs**
fully recoverable, as long as **reasonable**
- **Expenses** borne by the relative
E.g. transportation, accommodation,
drugs, medical care, etc.
- **Loss of support**
[Victim net income + likely increases –
“*quota sibi*”] x coefficient (presumable
number of years for which the benefit
would have continued)



Patrimonial losses - Belgium

Funeral costs

recoverable if **reasonable**, paid to person who can prove to have borne the costs, it is considered that this may constitute an early payment

Loss of financial support

- Jane and children: [Victim net income + likely increases – own share] x coefficient
- Milo: maintenance money x coefficient



Patrimonial losses - Belgium

Loss of support in household

Jane can claim compensation based on the victim's share of household activities before his death



Questions?

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