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## LawTalk Blog



# Can I claim assistance provided by family members in a personal injury claim?

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**Date:** Tuesday October 8, 2019

When a person suffers an injury in circumstances where they are entitled to compensation there are various types of compensation which they may be entitled to depending on their personal circumstances and can include the following:

1. Pain and suffering
2. Past loss of earning capacity
3. Future loss of earning capacity
4. Past medical and travel expenses
5. Future medical and travel expenses
6. Past gratuitous care/ voluntary services
7. Future care

## What are voluntary services/gratuitous care?

Gratuitous care/voluntary services is, as the name suggests, care or services provided without a charge being rendered for that service or provision of care. A claim for gratuitous care/voluntary services is a recognised category of loss in personal injury matters which is directed at compensating the injured person for services of a domestic nature that the injured person requires as a result of their injury which are provided by family on a voluntary basis.

The need for the care must have arisen as a result of the compensable accident/injury. This can be a contentious issue when you are dealing with an injured child as one needs to differentiate between care provided as a result of the accident/injury and care the child would otherwise have required regardless of the injury.

This can also be a contentious issue in claims arising out of a delay in medical treatment or the worsening of a condition due to negligent medical treatment and differentiating between the additional care required as a result of the negligent treatment as opposed to the original injury or medical condition.

## What conditions must be satisfied to claim gratuitous care/voluntary services?

An injured person will often obtain assistance from family and friends with personal care, including nursing care, domestic chores and assistance with transportation to and from medical appointments as a result of the injuries sustained. The person entitled to claim the loss associated with the requirement for gratuitous care/voluntary services is the injured party and not the person providing the care/services.

The financial loss sustained by the person providing the care/services such as lost time away from work is not recoverable, however, the value of the time provided may be recoverable by the injured person.

## Who can claim gratuitous care?

Pursuant to the provisions of the *Civil Liability Act 1936*(SA) the categories of persons from whom the injured party can claim gratuitous care are restricted to a parent, spouse, domestic partner or child of the injured person.

## How much can be claimed for gratuitous care?

The award of damages under this head of damages is further restricted to an amount not exceeding the equivalent of four times the State average weekly earnings unless the Court is satisfied that:

1. the gratuitous services are reasonably required by the injured person; and
2. it would be necessary, if the services were not provided gratuitously by a parent, spouse, domestic partner or child of the injured person to engage another person to provide the services for remuneration.

In other words, if the gratuitous care had not been provided then the injured party would have been required to engage paid services then the injured person is entitled to claim the gratuitous care provided in those circumstances in excess of an amount equivalent to 4 times the State average weekly earnings. However, "*the damages awarded are not to reflect a rate of remuneration for the person providing the services in excess of the State average weekly earnings*".

## Gratuitous care in motor vehicle accidents

The *Civil Liability Act* further restricts any award for gratuitous care in circumstances where the personal injury has arisen from a motor vehicle accident. The threshold applicable for pain and suffering must be met and the services must be provided for at least 6 hours per week for a period of at least 6 consecutive months and the hourly rate applicable has been set by the relevant regulations for motor vehicle accidents.

As many months or years can elapse between the occurrence of an injury and resolution of a claim, it can be of great assistance in assessing any entitlement to a payment on account of gratuitous care/voluntary services provided if a contemporaneous record is kept by the injured person with respect to the care/services provided particularly with respect to motor vehicle accident claims due to the threshold that needs to be met.

If you had suffered a personal injury it is recommended you [seek advice from a lawyer](#) experienced with [personal injury](#) claims. Get in touch with today's blog writer, [Suzanne Pinyon](#) for more information.

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