

**3PB Barristers**

**Hugh Rimmer**  
**Year of Call: 2003**



## **Mosson v Spousal (London) Ltd [2015] EWHC 53 (QB): Damages in Fatal Claims**

**by**

**Hugh Rimmer**

The Claimant, Mr Mosson, died of malignant mesothelioma in January 2014. Liability was admitted, and an allegation of contributory negligence failed (as the Defendant had insufficient evidence to substantiate the same), leaving damages to be decided. It is the court's decisions on certain, relatively modest, heads of loss that are of note in relation to fatal accident claims:

### Funeral Expenses

- The costs of a wake and funeral attire were disallowed, citing the first instance decision of Gammel v Wilson [1982] AC 27. The cost of a memorial bench was also disallowed, distinguishing between a headstone to marking the grave, which is a legitimate funeral expense, and a memorial which is not.

### Costs of Probate

- Unlike funeral expenses, there is no reference to probate costs in the Law Reform (Miscellaneous Provisions) Act 1934. As such, they were disallowed.

### Intangible Benefits

- This was claimed to reflect the *“additional value and convenience in having someone who is willing and able to provide these services out of love and affection rather than bringing in outside help and contractors”*. The Defendant disputed that it was not a valid head of claim.
- It was found there was *“no room here for an additional award for the loss of intangible benefits over and above the claim for the lost services”*. The alleged loss was already covered by the claim for loss of services (which was recovered) and the damages for bereavement.

The finding in relation to the wake and memorial reflects the commentary in *Kemp & Kemp*. Looking at the 'intangible benefits' claim, this was put forward on the basis of the benefit (or perhaps convenience) of a spouse carrying out services rather than specialist contractors. It will be interesting to see how claims for intangible benefits now fare, and when may be an opportunity for the Court of Appeal to give any further guidance on when, and to whom, such losses should be awarded.

The full text of the judgement can be found on BAILII here, <http://www.bailii.org/ew/cases/EWHC/QB/2016/53.html>

### **About Hugh**

Hugh specialises in personal injury, clinical negligence and costs. He regularly advises and provides representation for both Claimants and Defendants in high value cases, often involving complex injuries and issues. He also has a busy costs practice and regularly appears in courts and the SCCO to argue points of principle on costs law.

To read Hugh's full profile please see: <http://www.3pb.co.uk/profile/hugh-rimmer>

### **Contact details**

Hugh Rimmer

Email: [hugh.rimmer@3pb.co.uk](mailto:hugh.rimmer@3pb.co.uk)

Tel: + 44 207 583 8055

*This article is for information only, it should not be relied upon and is not to be used as a substitute for seeking legal advice.*

[www.3pb.co.uk](http://www.3pb.co.uk)