

Original Research

Navigating the Medical Disability Assessment and Personal Injury Claims Landscape in Malaysia

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Individuals who have sustained permanent residual disabilities due to injuries or illnesses and relevant stakeholders engaged in the adjudication process persistently encounter obstacles in accessing equitable and just systems for assessment, support, and facilitation. These systems enable such individuals to secure appropriate compensation and lead fulfilling lives within their communities.

Objective

This stakeholder engagement process explores the lived experiences of individuals with disabilities and their journey through the claims processes, understanding their concerns and expectations.

Results

A total of 152 participants participated in the seminar. Thirty-nine participants with extensive experience in medical disability assessment and the claims process were purposefully surveyed, and in-depth interviews were conducted. Several themes emerged from the interview: awareness and education, the legal and judicial system and processes, expert opinion, and reports.

Conclusion

The findings concluded that expert opinion and report emerged as a critical theme, with participants stressing the need for guidelines, professionalism, and accreditation for expert witnesses. Establishing a multidisciplinary regulatory body to design and develop an educational program for court experts is suggested, as is creating and maintaining a public register of court experts. Such measures will promote transparency, accountability, and quality in expert testimony and reporting.

Keywords

Expert report; Injuries and illness; Judicial system; Medical compensation; Medical disability and personal claims.

INTRODUCTION

In Malaysia, the common law primarily governs compensation for personal injury, illness, and disability. However, Parliament has intervened to modify and, in specific areas, supplement the assessment principles. This has been achieved through:

- the Civil Law Act 1956;
- the Civil Law (Amendment) Act 1984 (A602); and
- the Civil Law Act (Amendment) Act 2019 (A1591).

Claims arising out of personal injury resulting in residual

disability, whether temporary or permanent, involve different principles, and Parliament has made drastic changes in the method of assessment, departing from common law principles in this context.

Personal injury claims involve larger amounts of compensation than fatal claims, where the damages are limited to bereavement, funeral expenses, and loss of dependency. Loss of dependency means the monetary support given by the deceased to his dependents, if not for the fatal injury.¹

The common law has extensively defined the categories of damages for which an injured person may receive compensa-

tion. These categories can be classified as follows:

- I. Pain, suffering, and loss of amenities.
- II. Loss of earnings,
 - a) Future loss of earnings, or
 - b) loss of earning capacity.
- III. Cost of future medical care, e.g., future surgeries, rehabilitation, use of prosthetic limbs, and the attendant periodical replacements and repairs.

Nursing Care

These are the various types of damage the courts are familiar with.

There are attempts to achieve uniformity in damages for comparable injuries and disabilities to encourage the settlement of claims. Damages for comparable injuries and disabilities involve factual analysis, and for the legislature to formulate the principle in this regard would be futile. The Workmen's Compensation Act of 1956 has a tariff to compensate the injured employee based on the percentage of disabilities. There is doubt that this principle will help assess damages for injuries sustained in a road accident.

It is the law that damages are recoverable upon establishing negligence on the part of the person who caused the damage, meaning he or she is wholly liable or the blame is apportioned between the tortfeasor and the injured. Section 10 of the Civil Law Act, 1956, deals with this issue.²

Critical to the dispensation of compensation is the efficient process of assigning liability, assessing disability, and quantifying damages and losses. The whole process of personal injuries and claims aims to compensate for losses and allow them to lead the most independent lives possible and reach their full potential. For example, the Civil Law Act 1956, particularly in Part III, General on Negligence, the Road Transport Act 1987 for road accident claims, and the Workmen's Compensation Act 1952 for workplace injuries.³

The personal injury claims process has been known to be challenging globally. The areas of dissatisfaction include the following: (1) lack of communication and lack of information; (2) delayed or denied payments of compensation; (3) slow treatment approval and discussions about causality; (4) complicated and voluminous paperwork; and (5) discussions about the assignment of liability.⁴ The framework for understanding and solving personal injury claims and compensation includes:

Establishing Liability

Determining the party or parties responsible for the injury is essential. This often involves proving negligence or fault on the part of the defendant.

Proving Causation

It must be shown that the defendant's negligent actions directly

caused the injury sustained by the claimant.

Assessment of Damages

This involves evaluating the extent of the injury, its impact on the claimant's life, and the financial consequences. Key considerations include medical expenses, lost wages, and pain and suffering.

Quantification of Damages

An accurate compensation calculation is important to ensure fair restitution for the claimant's losses. This may include future medical expenses, loss of future earnings, and any necessary accommodations or adjustments to the claimant's lifestyle.

Applicable Local Statutes and Regulations

Depending on the jurisdiction, there may be specific laws, regulations, or time limits that apply to personal injury claims. Compliance with these requirements is essential for a successful claim.

Negotiation and Litigation

Many personal injury claims are resolved through negotiation or alternative dispute resolution. However, litigation may be necessary to seek adequate compensation if a fair settlement cannot be reached.⁵

The Persistent Problem

Individuals with enduring residual disabilities arising from injuries or illnesses, as well as the stakeholders involved in the adjudication process, consistently confront obstacles when seeking access to fair and equitable systems for assessment, support, and facilitation. These systems enable such individuals to secure appropriate compensation and lead fulfilling lives within their communities.

Stakeholder Engagement

In an attempt to understand the challenges, concerns, and expectations of all stakeholders in the personal injury claims and disability assessment domain, a seminar and workshop were organized on October 1 and 2, 2022, at Persatuan Alumni Universiti Malaya (PAUM), University of Malaya, Kuala Lumpur, Malaysia.

The objectives of this seminar were:

- To explore the lived experiences of individuals with disabilities in Malaysia and their journey through the claims processes, understanding their concerns and expectations.
- To identify and engage stakeholders in the personal injury claims process through interviews and focus group discussions on understanding the problems they face from their perspectives.
- To develop a comprehensive list of concerns and issues through mutual learning, revisit problems, reframe the problems that need further action, prioritize, rank, and agree to the problems, and generate possible interventions or solutions.

- To design and develop an action plan for interventions and determine their acceptability and feasibility for implementation.

Format

The involvement of relevant stakeholders was facilitated through a collaborative and participatory methodology, encompassing interactions among individuals with disabilities, members of the judiciary, healthcare professionals, representatives from the legal profession, and insurance specialists.

The following questions and concerns were posed to the participants at this seminar:

- What are the experiences of the affected individuals in Malaysia who have suffered personal injuries and illness with a residual disability?
- What are the problems the stakeholders face in the processes for enabling affected individuals to obtain support and assistance to live in the community?
- How can stakeholders engage in mutual learning to co-create solutions addressing the problems?
- What are the feasible and practical strategies that can be implemented?

Demography of the Participants

One hundred and fifty-two participants participated in the seminar, and their details are summarized in Table 1. Thirty-nine participants with extensive experience in medical disability assessment and the claims process were purposefully surveyed, and in-depth interviews were conducted. The seminar was conducted using a participatory and interactive approach to ensure the active participation of the affected individuals and stakeholders.

Participants Details	No 136	Gender
Registered	89	Male (M)-38
		Female (F)-51
Legal field	64	M-25
		F-39
Medial field	7	M-6
		F-1
Occupational therapist	9	M-3
		F-6
Choose not to disclose the profession	9	M-4
		F-5
Speakers (4 International)	27	M-19
		F-8
Volunteers (from social, medical, and occupational field)	12	M-3
		F-9
Malaysian Healthy Ageing Society Council Committee (5 medical filed, occupational therapist, legal and media	8	M-4
		F-4

METHODOLOGY

This study followed a mixed-methods, quantitative analysis followed by a qualitative component. The sample population consisted of 136 participants of any gender who completed the survey and attended the disability workshop on October 1 and 2, 2022. They were selected using purposive sampling. An online survey questionnaire was constructed for online deployment by the expert panel, and face and content validity were obtained from the workshop's organizing committee. Attendees were encouraged to participate in this online survey.

Consent was implied if they clicked the link to participate in the online survey. No personally identifiable data was collected. On completion and submission of the survey forms, participants had the option to volunteer to participate in the qualitative study.

A purposive sample of five participants, incorporating some stakeholders, agreed to the qualitative part of the research. They were interviewed in English with a semi-structured interview guide. This guide of open-ended questions was based on the recommendations of the available literature and the expert panel. This was piloted among five members of the committee, and there was consensus on its face and content validity. Participants' responses were audio-recorded digitally for data analysis later. Interviews lasted 25 to 35-minutes, averaging approximately 30-minutes. The transcriptions were provided to the participants for validation.

For the seminar, an expert panel of healthcare, insurance, and legal professionals was consulted to design a structure for the seminar and the topics for engagement based on the expert panel's view of the challenges and problems faced on the ground.

The format included case-based discussions and interactive panel discussions with in-depth interviews and focus group discussions. The proceedings were transcribed, and the scripts were analyzed using NVivo (Oct 2022, qualitative research software developer (QSR) International) software.

Data Analysis

The imported narratives were analyzed for themes based on word usage and themes based on open coding. The transcripts were read and coded line-by-line, and the data were categorized into codes analytically. Thematic analysis was conducted deductively based on the available concepts in the literature. Besides, the researchers also used self-reflective methods to check the researcher's own assumptions and biases. In this study, transferability, dependability, and peer checking were used in the analysis process to maintain the trustworthiness of the research.

From this primary data, evidence was obtained from the participants' voices to develop a comprehensive understanding of the problems in medical disability assessments and claims management in Malaysia.

At the end of the seminar, these synthesized findings

Legal and judicial systems and processes focused on statutory amendments, judicial perspectives, the intricacies of resolving injury claims, and the obstacles faced by legal professionals. It underscores the dynamic nature of the legal framework surrounding personal injury claims. By scrutinizing legislative changes, analyzing the judiciary's role in shaping legal outcomes, and identifying the intricacies and challenges in the claims resolution process, This theme sheds light on the evolving legal landscape and its impact on claimants and practitioners.

Expert opinion and report encompassed concerns surrounding the credibility of expert testimony, potential conflicts of interest among expert witnesses, and the critical role of expert analysis and documentation in personal injury claims. It delves into the critical role that expert testimony plays in shaping the trajectory and outcome of personal injury cases. This theme emphasizes the importance of maintaining rigorous standards for expert analysis, ensuring the credibility of expert witnesses, and addressing potential conflicts of interest that may arise during the claims process.

Lastly, stakeholder engagement emphasizes the significance of multifaceted collaboration among legal practitioners, insurance providers, and other parties and their dispositions and expectations in the claims process. It emphasized the diverse stakeholders involved in personal injury claims, each with their own perspectives, concerns, and expectations. Effective collaboration and communication among legal practitioners, insurance providers, healthcare professionals, and claimants are essential for fostering a more equitable and efficient personal injury claims process.

DISCUSSION

Personal injury claims and damages continue to be challenging globally. A compensation culture narrative has been partly enabled by media distortions of legal consciousness.⁶ The seminar on the challenges of medical disability assessment for personal injury claims in Malaysia revealed several salient themes outlined in this paper's findings section. The findings emphasize the need for targeted education and awareness initiatives, stakeholder collaboration, establishing guidelines for expert reports, and creating a multidisciplinary regulatory body for the training and accreditation of court experts.

The theme of awareness and education underscores the importance of stakeholders appreciating and understanding the complexities of the injuries sustained and disabilities faced by claimants. This has been supported by evidence in the literature on stakeholders' perspectives on road traffic injuries.⁷ Participants suggested the creation of targeted workshops and open resources to address this issue. Additionally, the formation of a multidisciplinary task force to develop a curriculum addressing the needs of stakeholders in personal injury claims is proposed. The body of existing knowledge reveals the need for training in disability assessment,⁸ assessing and giving written expert opinions, acting as expert witnesses in all types of legal matters,⁹ and the role of an expert witness.¹⁰

The Legal and Judicial System and Processes theme highlights the need for improved collaboration and understanding among stakeholders, with an emphasis on the attitudes of lawyers and judges in the claims process. Participants recommended engaging stakeholders to co-create strategies and guidelines for quantum calculations and fair disbursement of funds, ensuring equitable compensation. This includes incorporating mediation and claims process reengineering, with a technical team of relevant stakeholders executing these initiatives. The literature has documented the challenges in this area of personal injury claims and good faith.¹¹

Expert Opinion and Report emerged as a critical theme, with participants stressing the need for guidelines, professionalism, and accreditation for expert witnesses. Establishing a multidisciplinary regulatory body to design and develop an educational program for court experts is suggested, as is creating and maintaining a public register of court experts. These measures will promote transparency, accountability, and quality in expert testimony and reporting.¹²

Finally, the theme of stakeholder engagement emphasizes the importance of stakeholder identification, participation, and continued discussion. Participants noted the value of involving various stakeholders, such as academics, practitioners, and non-governmental organization (NGOs), in a joint process to convince the government of the need for collaborative efforts. A targeted workshop in the second half of 2023 for addressing concerns, challenges, and expectations was proposed, along with the establishment of a platform or forum for relevant stakeholders to execute this engagement and participation. This has been shown to be useful in reducing road traffic injuries.¹³

The seminar recognizes that determining general damages for pain and suffering is not the stakeholders' primary issue in the current personal injury claims landscape. Instead, stakeholders express concern over the costs of ongoing medical treatment, future surgeries, prosthetic devices, replacements, and repairs, as these expenses often result in inconsistent awards. Variability in expenses may arise due to inflation and the passage of time, potentially leading to either excessively high or low awards.

To address these concerns, it is proposed that parties collaboratively determine all damages, including future medical care and expenses for surgeries, prosthetic devices, repairs, and replacements, during the mediation stage.¹⁴ Adopting a periodic disbursement approach protects affected individuals against financial loss, while insurers are not burdened with compensating large lump sums.¹⁵ This strategy establishes a fair and consistent process for all stakeholders engaged in the personal injury claims process.

The relevance of medical disability assessment for personal injury claims, as discussed in the paper, extends significantly into global public health, particularly in countries with similar socio-economic and legal frameworks as Malaysia. It is important to note that injuries and illness go beyond the physical and psychosocial realms, and economic considerations need to be taken into

account. Public health, fundamentally concerned with the health and well-being of populations, inherently intersects with the issues of equitable access to compensation and support for individuals with disabilities arising from injuries or illnesses. The efficient and fair adjudication of personal injury claims is crucial in ensuring that individuals receive the necessary resources to manage their disabilities, which directly impacts their health outcomes, quality of life, and social integration. In countries grappling with limited resources or underdeveloped healthcare systems, the burden of untreated or inadequately supported disabilities can exacerbate existing public health challenges, leading to increased healthcare costs, lost productivity, and further entrenchment of health inequities. Moreover, the systemic issues identified in the paper, such as the need for improved awareness, education, and standardized expert assessments, resonate with broader public health goals of enhancing health literacy, access to care, and the overall responsiveness of health systems to the needs of vulnerable populations.¹⁶

The use of transdisciplinary research (TDR) as a methodology offers a robust framework for monitoring and evaluating public health programs, particularly in the context of addressing the challenges highlighted in the paper. TDR, by its nature, fosters collaboration across multiple disciplines, integrating diverse perspectives and expertise to tackle complex health issues. In the context of medical disability assessment for personal injury claims, TDR can facilitate the convergence of legal, medical, social, and public health insights to create more comprehensive and effective evaluation mechanisms. For instance, TDR can aid in developing standardized protocols and guidelines for disability assessment that are not only medically accurate but also socially just and legally sound. Furthermore, TDR can be instrumental in evaluating the impact of such assessments and claim processes on broader public health outcomes, such as measuring the improvements in mental and physical health of individuals post-claim settlement, assessing the changes in public health costs due to better disability management, and monitoring the societal integration and quality of life of claimants. By employing TDR, public health programs can more effectively ascertain the efficacy of interventions, identify gaps in service delivery, and inform policy changes that holistically address the needs of individuals with disabilities within the larger public health framework.

This paper's focus on medical disability assessment for personal injury claims synthesizes two crucial aspects of the 10 Essential Public Health Services framework: social equity and policy compliance (Centers for Disease Control and Prevention (CDC), 10 Essential Public Health Services, Public Health Infrastructure Center, 2023). Emphasizing social equity by advocating for fairness and protection of the public, particularly individuals with disabilities, the findings of this paper align with the public health goal of ensuring equitable treatment and support for all, emphasizing the need for a system that is inclusive and just. On the issue of compliance, related to policy development and assurance, our recommendation for the establishment of guidelines, accreditation for expert witnesses, and a regulatory body clearly demonstrates the importance of adhering to high standards in health policy and practice. This approach not only enhances the quality of the disability as-

essment process but also assures the integrity and effectiveness of health systems in managing personal injury claims. Together, these aspects contribute to a public health framework that is both equitable and compliant, ensuring fair treatment and the necessary resources for individuals navigating the complexities of personal injury claims.

CONCLUSION

In conclusion, the medical disability assessment for personal injury claims presents significant challenges for all involved parties. The significance of a multifaceted approach to addressing the challenges must be considered. Through continued collaboration and engagement, stakeholders can develop standards, guidelines, and educational programs that ensure just and equitable outcomes for all parties concerned.

RECOMMENDATIONS

The following recommendations were co-created to address the challenges of medical disability assessment for personal injury claims in Malaysia moving forward:

1. Develop targeted awareness and education initiatives: Create workshops, open resources, and a curriculum that addresses the needs of stakeholders in personal injury claims. This would facilitate a better understanding of the complexities of injuries and disabilities and improve the overall claims process.
2. Foster stakeholder collaboration and understanding: Engage stakeholders to co-create strategies and guidelines for quantum calculations and fair disbursement of funds. Incorporate mediation and claims process reengineering, with a technical team of relevant stakeholders executing these initiatives.
3. Establish guidelines and accreditation for expert witnesses: Form a multidisciplinary regulatory body to design and develop an educational program for court experts, ensuring transparency, accountability, and quality in expert testimony and reporting. Create and maintain a public register of court experts.
4. Enhance stakeholder engagement and participation: Organize targeted workshops and establish a platform or forum for relevant stakeholders to collaborate, discuss concerns, challenges, and expectations, and participate in the decision-making process.
5. Encourage ongoing dialogue and collaboration: Maintain regular communication between stakeholders, including academics, practitioners, and NGOs, to foster a joint approach and convince the government of the need for collective efforts in addressing the challenges of medical disability assessment for personal injury claims.

By implementing these recommendations, stakeholders can work together to create a more equitable, efficient, and transparent personal injury claims process, ultimately benefiting claimants and improving the overall system in Malaysia.

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council members from 2021 to 2024. MHAS is a non-profit organization that educates physicians, scientists, and public members on numerous healthy ageing issues. MHAS believes that the disabilities associated with normal ageing are caused by physiological dysfunction, which is, in many cases, treatable and any form of medical disability that may occur should be addressed to ensure that the human life span is increased. The quality of one's life improves as one grows older.

ETHICS

The authors obtained relevant study-specific approval from the appropriate ethics committee for research involving humans and/or animals, informed consent since the research involved human participants. Perdana University Ethics Board granted ethics approval for this study (Ref Number PU-IRB/DB/0382/510).

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CONFLICTS OF INTEREST

The authors whose names are listed above certify that they have NO affiliations with or involvement in any organization or entity with any financial interest (such as honorarium; educational grants; participation in speakers' bureaus; membership, employment, consultancies, stock ownership, or other equity interest; and expert testimony or patent-licensing arrangements), or non-financial interest (such as personal or professional relationships, affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.

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APPENDIX

Themes	References	Suggestions	Implementation
Awareness and Education	<ul style="list-style-type: none"> • “The inability of some stakeholders to fully appreciate and understand the injuries sustained and the gravity of the situation. This also applies to the disabilities faced by the claimant.” Senior Lawyer 2>- §3 references coded • “Guidelines should be implemented for an expert report “Legal 2> - § 3 references coded 	<ul style="list-style-type: none"> • Create awareness of the challenges and concerns of principle stake holders of the personal injuries claim process • Targeted education of stakeholders through workshops and open resources 	<ol style="list-style-type: none"> 1. Targeted workshop in March 2023 for co creation of concerns, challenges, and expectations through Stakeholder engagement 2. Establish a multidiscipline task force to develop a curriculum for needs of stakeholders in personal injury claims
Legal and Judicial System and Processes	<ul style="list-style-type: none"> • “lawyers attitude and judges attitude. where some .. just don’t want to settle at all cause....” Legal Practitioner 2 transcript> - §2 references coded • “Judges should play an active role in pre-trial case management “Senior Lawyer 2> - § 1 reference coded • “exaggeration in the ... claim demand” Legal Pract 2 • money really goes where it’s supposed to be going • “Somebody which is the trust company who then actually administers and monitors .. to make sure the money actually goes to the victim “Legal Practitioner 2 transcript> - §7 references coded 	<ul style="list-style-type: none"> • Engage stakeholders to understand and learn from the concerns, challenges, and expectations of each other • Co-create strategies that are acceptable for execution • Need for guidelines for quantum calculations and the just disbursement of funds 	<ol style="list-style-type: none"> 3. Include in agenda for targeted workshop in March 2023. Establish a technical team of relevant stakeholders to execute a claims process re-engineering, incorporating mediation, the development of guide to quantum determination and the fair and timely disbursement of funds to ensure equitable Dispensation of compensation
Expert Opinion and Report	<ul style="list-style-type: none"> • “Guidelines should be implemented for an expert report” Legal 2> - § 3 references coded • “Specialists should be professional and not be “pro” Plaintiff or Defendant” Senior Lawyer 2> - §4 references coded • “Some protocol for expert evidence” Senior Lawyer 2> - § 4 references coded • “They’ve got accredited who wants to give reports to go register with the association.” Senior Lawyer 2> - §4 references coded • “How one specialist could be more you know more impressive. as a human sitting up there you get carried away by all these theatrics.” Senior Legal Expert 1> - §12 references coded • “They’ve got accredited” Senior Legal Expert 1> - §12 references coded 	<ul style="list-style-type: none"> • Requirements and standards of the expert report to meet the needs of the court • Accreditations and the obligations of an expert for the court • Training and credentialing of expert witnesses for the court 	<ol style="list-style-type: none"> 4. Establish a multidisciplinary regulatory body to design and develop an educational program for the training of court experts 5. The creation and maintenance of a public register of court expert/s
Stakeholder engagement	<ul style="list-style-type: none"> • “wW need to hear it from people on the ground” Legal Practitioner 2 transcript> - §1 reference coded • “I think it should be the whole the academics should be involved. practitioners should be the NGO should do at least convince the government that it is a joint process and not the individual NGO” Senior Legal Expert 1> - §5 references coded • “This kind of consensus statement good to getting because you see bringing all the stakeholders on the table, also open up a lot of what if What can how, why and you know what? ” Senior Legal Expert 1> - §5 references coded 	<ul style="list-style-type: none"> • Stakeholder identification • Stakeholder engagement and participation • Continued and regular discussion 	<ol style="list-style-type: none"> 6. Targeted workshop in March 2023 for co creation of concerns, challenges, and expectations through Stakeholder engagement 7. Establish a platform/forum of relevant stakeholders to execute this engagement and participation