

Damages in Tennessee Personal Injury Cases

A party is entitled to damages in Tennessee in an amount that will reasonably compensate that party for past and future physical pain and suffering, mental or emotional pain and suffering including anguish, distress, fear, humiliation, grief, shame or worry, loss of capacity for the enjoyment of life, and disfigurement.

A Judge in a personal injury case in Tennessee will instruct the jury that there isn't any mathematical formula for computing reasonable compensation for physical pain and suffering, mental or emotional pain and suffering, disfigurement or loss of the capacity for the enjoyment of life. The opinion of an expert witness is not required as to the amount of such compensation.

An injured party may also recover the reasonable and necessary expenses for medical care, services, and supplies actually given in the treatment of a party as shown by the evidence along with the present cash value of medical expenses reasonably certain to be required in the future.

An injured person in Tennessee may also recover the value of the ability to earn money that has been lost in the past along with the present cash value of the ability to earn money that is reasonably certain to be lost in the future.

In deciding what award should be made for loss of the ability to earn, a jury should consider any evidence of the party's earning capacity, including among other things, the party's health, age, character, occupation, past earnings, intelligence, skill, talents, experience and record of employment. The loss of the ability to earn money may include, but is not limited to, actual loss of income.

AGGRAVATION OF A PRE-EXISTING CONDITION

A person who has a condition or disability at the time of an injury is entitled to recover damages for any aggravation of the pre-existing condition. Recovery is allowed even if the pre-existing condition made plaintiff more likely to be injured and even if a normal, health person would not have suffered substantial injury.

A plaintiff with a pre-existing condition may recover damages only for any additional injury or harm resulting from the fault found in the case. Damages shall include all the additional harm or disability even though it is greater because of the pre-existing condition.

LOSS OF BUSINESS PROFITS

A plaintiff who has a personal business may recover damages for profits lost as a direct result of plaintiff's inability, because of injury, to devote personal skill, talent or ability to the business. It must appear that plaintiff's personal services were necessary to the business and that loss has resulted or will result from plaintiff's absence. If plaintiff's services were replaceable, then the measure of damages would be the cost of hiring a substitute.

DAMAGES FOR PERMANENT INJURIES

If the plaintiff claims damages for permanent injury, the plaintiff must prove the future effect of the injury within a reasonable certainty. While it is not necessary that the evidence show conclusively or absolutely that the injury is permanent, damages may not be awarded for a permanent injury based upon a mere conjecture or a possibility. Proof of permanent injury in a Tennessee personal injury case usually requires expert proof.

NEGLIGENT INFLICTION OF SEVERE OR SERIOUS EMOTIONAL INJURY

In Tennessee, a party can be involved in an incident and receive only emotional injuries as opposed to physical injuries. Tennessee law does not require that there be a physical injury or physical manifestation of an emotional injury before there can be a recovery.

Reasonable compensation can be awarded for a serious or severe emotional injury suffered by the plaintiff and legally caused by the defendant's conduct. A serious or severe emotional injury occurs when a reasonable person, normally constituted, would be unable to adequately cope with the mental stress caused and brought about by the circumstances of the case. Such serious or severe emotional injury must be supported by expert medical or scientific proof.

There is no mathematical formula for computing reasonable compensation for negligent infliction of serious or severe emotional injury, nor is the opinion of any witness required as to the amount of such compensation.

PERSONAL INJURY - SPOUSE

The spouse of the injured party is entitled to compensation. This is called a loss of consortium or loss of companionship claim. If there is an award of damages to the injured parson, then their spouse is entitled to damages. The elements of damage involved in this claim are:

1. The reasonable value of medical care, services and supplies reasonably required and actually given in the treatment of the spouse (not to be duplicated if already awarded to the injured spouse);
2. Expenses reasonably incurred in attending to the spouse in the hospital;
3. The reasonable value of the injured spouse's services the plaintiff has lost [and the present case value of such services plaintiff is reasonably certain to lose in the future;] and
4. The reasonable value of the spouse's companionship and acts of love and affection the plaintiff has lost [and the present case value of such acts plaintiff is reasonably certain to lose in the future] but would have received in the usual course of the parties' married life.

INJURY TO MINOR - SUIT BY PARENTS AND MINOR

When there is a case involving injury to a minor, the case involves two separate claims. First is a claim by a child under the age of 18 for damages for injuries. This would include all of the elements of damages of the personal injury case. The second claim is by minor's parent(s) or guardian for medical expenses incurred and potentially for loss of the earnings and services of the minor during minority.

DAMAGES FOR WRONGFUL DEATH

If death was caused by the fault of the defendant, there are two classes of damages:

First, those damages sustained immediately by the injured party including compensation for the following:

1. The mental and physical suffering actually endured by the injured party between the injury and death;
2. Medical expenses necessitated by the injury, including expenditures for doctors, nurses, hospital care, medicine and drugs;

3. Reasonable funeral expenses; and
4. Loss of earning capacity during the period from injury to death.

It cannot be speculated as to whether conscious pain and suffering actually did exist between the injury and death. If, however, it is found that there was such pain and suffering prior to death, damages must be awarded for it.

The second class of damages that may be awarded is the pecuniary value of the life of the deceased. In determining this value, the following factors should be taken into consideration:

1. The age of the deceased;
2. The condition of health of the deceased;
3. The life expectancy of the deceased;
4. The strength and capacity of the deceased for work and for earning money through skill in any art, trade, profession, occupation or business; and
5. The personal habits of the deceased as to sobriety and industry.

In weighing these factors, it should be considered that the fact that expectancy of life is, at most, a probability based upon experience and statistics. The possibility that the earnings of an individual are not always uniform over a period of time should be taken into consideration. The most optimistic expectations of the future, but also the most pessimistic, and all of the uncertainties between the extremes should be taken into consideration.

Finally, when determining the amount of damages based upon life expectancy and earning capacity, the deceased's living expenses, had the deceased lived, should be deducted. Living expenses are those that under the deceased's standard of living would have been reasonably necessary to keep the deceased in such a condition of health and well-being so as to maintain the capacity to earn money.

PUNITIVE DAMAGES

An award of punitive damages can be made only when the plaintiff has suffered actual damage as a legal result of the defendant's fault and there are compensatory damages.

The purpose of punitive damages is not to further compensate the plaintiff but to punish a wrongdoer and deter others from committing similar wrongs in the future. Punitive damages may be considered if, and only if, the plaintiff has shown by clear and convincing evidence that a defendant has acted either intentionally, recklessly, maliciously or fraudulently.

Clear and convincing evidence is a different and higher standard than a preponderance of the evidence. It means that the defendant's wrong, if any, must be so clearly shown that there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

A person acts intentionally when it is the person's purpose or desire to do a wrongful act to cause the result.

A person acts recklessly when the person is aware of, but consciously disregards a substantial and unjustifiable risk of injury or damage to another. Disregarding the risk must be a gross deviation from the standard of care that an ordinary person would use under all the circumstances.

A person acts maliciously when the person is motivated by ill will, hatred or personal spite.

A person acts fraudulently when: (1) the person intentionally either misrepresents an existing material fact or causes a false impression of an existing material fact to mislead or to obtain an unfair or undue advantage; and (2) another person suffers injury or loss because of reasonable reliance upon that representation.

AMOUNT OF PUNITIVE DAMAGES

If it is decided that the plaintiff is entitled to punitive damages, the plaintiff has the burden of proving by a preponderance of the evidence the amount of punitive damages that should be awarded.

In determining the amount of punitive damages, a jury must consider the following:

1. The defendant's net worth and financial condition;
2. The objectionable nature of the defendant's wrong-doing, the impact of the defendant's conduct on the plaintiff, and the relationship of the parties;
3. The defendant's awareness of the amount of harm being caused and the defendant's motivation in causing the harm;
4. The duration of the defendant's misconduct and whether the defendant attempted to conceal the conduct;
5. The amount of money the plaintiff has spent in the attempt to recover the losses;
6. Whether defendant profited from the activity, and if so, whether the punitive award should be in excess of the profit in order to deter similar future behavior;

7. The number and amount of previous punitive damage awards against the defendant based upon the same wrongful act;
8. Whether, once the misconduct became known to the defendant, the defendant tried to remedy the situation or offered a prompt and fair settlement for the actual harm caused; and
9. Any other circumstances shown by the evidence that bears on determining the proper amount of the punitive award.

Compensatory damages are awarded for the purpose of making the plaintiff whole. Punitive damages are awarded to punish a wrongdoer and to deter misconduct by the defendant or others.