

Wrongful Death Damages



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Life is priceless...yet in a wrongful death lawsuit the jury is tasked with the unthinkable. They must answer: "How much loss has this heir suffered and what will he or she suffer in the future?"

It is hard to even begin to answer such a question. Yet time and time again, we ask juries to decide what is fair to compensate a person for losing someone who is irreplaceable.

Life is about shared moments. Shared smiles, shared laughs, and shared experiences. All of what happened in the past is a sign of what the future was likely to bring. The closer two people are the greater the loss... the greater the compensation that is due.

Every relationship is different. Some are extremely close...others are more distant. Each has its own facts...its own emotions and its own reason for being the way it was.

Your loss is special and you should not be ashamed to admit that you are hurting. In fact, a wrongful death claim is one place that you can express your pain, your anger, and your need for justice.

When someone takes your loved from you they are taking a part of you. It is so personal. You deserve all that the law can return to you. It will never be enough. You should not be ashamed of pursuing compensation for what you have lost.

If we want to live in a civilized society we must hold wrongdoers accountable for the losses that they cause. Can you imagine the chaos that would exist if consequences were not pursued? Wrongful death heirs benefit society when they seek justice.

Allowing insurance companies to receive profit windfalls by socially stigmatizing and suppressing legitimate claims is a disservice to society. Insurance companies take money and promise to pay legitimate claims for damages. You should not feel ashamed to make them fulfill their contractual obligations and their legal duties. You are not a bad person for making a legitimate and reasonable claim.

Now with that said, I will try to explain what a jury is asked to decide when awarding damages in a wrongful death case. I will explain the difference between economic and non-economic damages. That would seem simple on first thought but there are specific types of damages that can be claimed and others that cannot.

Every case has unique people and facts. Wrongful death awards are really difficult to determine. They can and do vary significantly.

Loss of Love, Companionship, Comfort, Care and Assistance

The most fundamental loss is known as the loss of love, companionship, comfort, care, assistance, protection, affection, society and moral support. This is known as non-economic damages.

Notice that these are very specific words with their own individual connotations and meanings. Love between spouses differs from that of love between parent and child. A child needs different assistance than an adult. An elderly or disabled person may have greater assistance needs. Each word is reviewed by a jury in light of the unique facts and testimony presented. They have to decide the amount that is fair.

The instruction says that "No fixed standard exists for deciding the amount of non-economic damages." The jury is told that they must "use [their] judgment to decide a reasonable amount based on the evidence and [their] common sense".

As you can imagine this amount can vary significantly. Awards are highly subjective. The multitude of factors that can influence a jury's decision cannot be understated. How the evidence is presented may be just as important as the evidence itself.

Economic Damages

As is expected, there are many types of damages that flow from the loss of a loved one. The first expenses are funeral and burial related expenses. These are easy to calculate and present.

Your claim for financial support can be much more difficult to calculate. It is largely dependent on how long your loved one would have lived, how long you would have received the support and the likelihood and probability of the support?

Often times accountants and economist must be retained to testify so that the jury can receive a set figure that takes into account these issues along with the a present value calculation. For example, if your loved one would have provided an income of \$50,000 a year for the next 10 years, how much money, lump sum, would it take to generate that income flow? It would be \$500,000 over 10 years but in present value a lump sum of \$400,000 may be sufficient to meet that same objective.

Your loved one may have bestowed gifts and benefits to you that result in economic damages. For instance, if

your loved one paid for your vacation every year at a cost of \$5,000, you are now missing that gift or benefit. You have the right to claim that loss.

Another topic is the value of household services. When a person passes so does their labor and effort. There are many things that they did that need to still be accomplished. The law requires that the wrongdoer be required to pay the reasonable value of what those services are. That could mean housework, laundry, and lawn work, etc.. If you are losing time and money to replace that work then the wrongdoer should be paying for it...not you.

Life Expectancy

There are life expectancy tables that the jury will see. The jury will hear evidence of your loved one's health and age. Was he or she healthy and with no physical or mental ailments? How long would he or she have lived had they not been taken from you? The jury will hear the evidence and make a decision based on all the factors that affect your loved one's longevity and life expectancy.

Life expectancy can mean different things to different people. As an example, if a person has a terminal illness and is expected to die in the next 6 months but is taken in an auto accident by a drunk driver, the drunk driver has likely ruined the most important six months of the decedent's life and of the life of the loved ones of that decedent. Life expectancy impacts value but value is largely dependent on what the quality of the relationship was during the life of the decedent.

Two Different Instructions

In California, we have two jury instructions for wrongful death damages. One is for the parents

recovery of damages for the loss of a child, the other is the loss of an adult and can apply to children of the decedent, spouses, registered domestic partners or other financial dependents.

As you can expect, the loss of a spouse causes the loss of sexual relations. There is value in intimacy and the law recognizes that. Jurors are instructed that the loss of the enjoyment of sexual relations is compensable.

Children often rely heavily on parents for training and guidance. This can be an extra area of damages claimed. Sometimes this goes the other direction. Sometimes a parent relies heavily on a child for training and guidance. Loss of training and guidance is compensable in a wrongful death lawsuit.

What is Not Compensable

The jury is instructed not to consider your personal grief, sorrow or mental anguish. They are told to pay you for your losses...not your emotions. I find this instruction to be strange considering that your losses are directly correlated with the grief, sorrow and mental anguish that you are experiencing. Nonetheless it is there to place a check on the jury...they have to consider the facts not just emotions.

Your loved one's pain and suffering, no matter how much, is not something the jury is supposed to pay you for. You do not receive the value of their pain and suffering. You receive the value of your losses only. Again this is designed to place a check on the jury so that they do not award excessive damages for painful deaths.

The jury is told not to take into account your wealth or poverty. If you are a billionaire or on welfare the jury is

supposed to look at the facts and award you your losses. As a practical matter, a jury may have a hard time reconciling what is fair when there is a significant difference in wealth of the parties.

Notice that all of these non-compensable items that can easily be ignored by a jury. They may say they followed the law but sometimes these "non-compensable" items affect decisions made on the compensable items.

One other item should be noted. You are not allowed to seek punitive damages against the wrongdoer for your losses...even if the death was intentional. It should be noted that if your loved one survived for any time after the incident, there may be a separate claim by your loved one's estate for punitive damages. This is discussed near the end of this article.

No Guessing or Speculating

No need to prove the exact amount...just no guessing or speculating allowed. There must be evidence that supports the amount being requested and awarded. The jury will look to the documents, to the accountants, to the economist for guidance on the math.

More than One Plaintiff

The judge has the power of apportionment. Not the jury. When there is more than one wrongful death plaintiff, the jury will render one award for all plaintiffs. The judge will then take that evidence and hold a separate hearing to award specific dollar amounts to each plaintiff.

The plaintiffs collectively can agree to a division of the lump sum award and avoid the need for a judge controlled apportionment hearing.

Medical Expenses

You may have noticed that there was no mention of medical bills that your loved one may have incurred as a result of the accident/incident that lead to his or her death. You as a wrongful death heir under wrongful death law (CCP 377.60 et seq.) do not have a claim for medical expenses. Those are claims of your loved one's estate. Those medical bills may be requested through a separate cause of action known as a survival claim (CCP 377.30).

Wrongful death claims under 377.60 compensate heirs for their personal losses whereas survival claims under 377.30 compensate the estate of the decedent for claims the decedent could have brought had they decedent survived the accident/incident. Successors in interest (most often the same wrongful death heirs) are allowed to file suit for medical expenses, wage losses, property damage claims and they may also seek punitive damages from the wrongdoer.

Restitution in Wrongful Death

If your loved one's death resulted from a criminal act, you may be able to seek restitution in the criminal proceeding. Restitution generally allows you to recover medical expenses, funeral expenses, and lost wages and other financial losses. It does not allow for the same type of non-economic damages that a wrongful death claim allows for.

If a criminal act was involved, then you may best served by acquiring both a restitution award and an award from the civil court for wrongful death damages. There are many decisions that must be made in these restitution cases and you are encouraged to call for a specific evaluation of your case.

In Closing

If you have lost a loved one, you should not be ashamed of bringing a claim against the wrongdoer and the insurance companies for the wrongdoer. The law requires that you be fairly compensated for all your losses.

An experienced wrongful death lawyer will pursue all viable claims. This includes civil claims for wrongful death damages, survival damages and restitution awards.

Richard Harris is the principal attorney of Rich Harris, A Law Corporation.

His practice is dedicated to helping individuals and families pursue their wrongful death claims against reckless motorists, greedy insurance companies, and careless government agencies.

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