

PERSONAL INJURY

Damages in Personal Injury Cases

Victims of an accident can recover a variety of damages through the Canadian court system. The general principle applied to the recovery of damages is that a victim should be put in the position that they would have been in had the accident not occurred. The courts have divided the types of damages victims can recover into two separate categories: pecuniary and non-pecuniary.

Pecuniary Damages

Pecuniary damages can generally be broken down into three categories: pecuniary loss occurring before trial, loss of earning capacity and cost of future care.

I. Pecuniary Loss Occurring Before Trial

These damages are calculated and serve to reimburse a claimant for any 'out of pocket' expenses incurred up until the date of trial. These can include:

- any medical expenses including costs for prescriptions, physiotherapy, crutches and any other medical costs not covered by health care;
- transportation costs to medical appointments;
- lost wages as a result of the injury; and
- any other out of pocket expenses directly related to the injury.

Pecuniary damages need to be proven at trial and therefore a record of all receipts



and proof of expenses should be retained. Special damages may also be granted for services such as housekeeping and yard work. Where the spouse of an injured claimant leaves work to care for the claimant, special damages may be granted for his or her loss of earnings, provided it does not exceed what would have been expended for a nurse or similar health care professional.

II. Loss of Earning Capacity

In determining a loss of future income or earnings awards, the court must estimate what a claimant would have earned had they not been injured. A number of considerations are taken into account including the level of earnings of the claimant at the time of injury, the age of the claimant, and the length of working life remaining, and whether the claimant was undergoing schooling or retraining. The courts will decrease recovery by a factor to take into account various contingencies which might have affected future earnings, such as unemployment, illness, accidents and economic downturns.

Damages in Personal Injury Cases continued...

III. Costs of Future Care

In addition to the pecuniary compensation for medical expenses paid up until a trial, the court also estimates the potential future cost of care including future medical expenses, costs for rehabilitation, and where necessary, costs of home care. Courts will also take into consideration a person's life expectancy and can decrease awards to account for the contingencies and hazards of life. An allowance can also be made for the impact of income tax on an award for the cost of future care.

Non Pecuniary Damages

The last area of recovery granted in personal injury cases are non-pecuniary damages, which are not calculable, but rather try to compensate with money something that cannot be replaced or restored. Non pecuniary losses can include compensation for pain and suffering, loss of amenities, loss of expectation of life, shock and trauma. In determining what award to grant a victim, courts will look at a number of factors, including:

- The age of the injured person;
- The severity of the injury;
- The length of time it will take to heal from the injury, including the length of time in the hospital and length of rehabilitation;
- Whether the injured person will have a permanent impairment;
- The extent of the treatment required;
- The physical and emotional limitations that an injured person has in the short and long term; and
- Any pre-existing injuries that the injured person may have had.

In a trilogy of cases in 1978, *Andrews v. Grand & Toy Alberta Ltd.*¹, *Teno v. Arnold*², and, *Thornton v. Prince George School District No. 57*³, the Supreme Court of Canada established a cap on the recovery of non-pecuniary damages for pain and suffering. The court stated in *Andrews* that "I would adopt as the appropriate award in the case of a young quadriplegic



like Andrews the amount of \$100,000. Save in exceptional circumstances, this should be regarded as an upper limit of non-pecuniary loss in cases of this nature." Through subsequent decisions, this award has been adjusted for inflation, but the cap continues to be in force in Canada, limiting recovery for pain and suffering.

If you have been injured in a car accident or any other type of accident, contact a legal professional to discuss your potential rights and remedies.

The lawyers at Mann & Partners provide legal services to persons who are injured in motor vehicle accidents and other types of accidents. Our approach to personal injury litigation is different from that of our competition. Your well-being and peace of mind is our number one priority.

¹. [1978] S.C.J. No. 6

². [1978] S.C.J. No. 8

³. [1978] S.C.J. No. 7

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Please visit our website for more information (www.mannlawyers.com) or contact **Kevin Butler** at 613-722-1500 ext. 263 (kevin@mannlawyers.com), **Kathleen Wright** at 613-722-1500 ext. 232 (Kathleen@mannlawyers.com) or **Erin Reynolds** at 613-722-1500 ext. 236 (erin@mannlawyers.com) if you have been injured in an accident.

This publication is intended to discuss personal injury matters of interest. Comments provided reflect the views of the author and are not intended as legal advice. Persons who wish to be informed of the specific implications of any of the matters discussed or decisions referenced herein should consult with a lawyer.

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