

Death Cases

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Wrongful death cases are complicated matters. If someone you love has died as a result of negligence, consult a personal injury attorney. If an injury case is not the type Kenneth Vercammen, Esq. can handle, we will try to refer you to another competent trial attorney.

In a Wrongful death jury trial in New Jersey, we [your trial attorney] will research the current caselaw.

The plaintiff brings this lawsuit as the representative of the survivors of the decedent and seeks to recover damages from the defendant contending that defendant's fault was responsible for the death of the decedent. The money damages sought on behalf of the survivors of the decedent represent the actual pecuniary or financial loss which plaintiff contends has been and will in the future be suffered by the survivors due to the death of the decedent. This claim for pecuniary or financial loss is distinguished from any physical injuries or suffering that may have been sustained by the decedent, such as any pain and suffering or disability sustained by the decedent. In the event that you find in favor of the plaintiff, that is, that the defendant was at fault, which fault was a proximate cause of plaintiff decedent's death, you must limit your consideration to

whatever financial loss was suffered by the survivors as measured by what they would have received from the decedent within a reasonable degree of probability if the decedent had survived. I instruct you that the pecuniary injuries or money losses in this case should not include emotional distress, anguish, grief and sorrow or loss of emotional satisfaction derived from the society and companionship of the decedent. These matters, though real and very distressing, cannot be considered in determining the extent of the financial or pecuniary loss suffered by the survivors who are represented in this action by the plaintiff. The financial loss does include, however, not only actual monies which would have been contributed to or earned for the benefit of the survivors, but it also includes the reasonable value of benefits which would have been received in the nature of services, assistance and care as well as training, guidance and counsel that the decedent's survivors (such as children, parents or spouse) would have received had the decedent lived. To determine the amount of damages to be awarded, i.e., the extent of the financial loss caused by the premature death of the decedent, all circumstances and probabilities which bear upon that financial loss may be considered. The following are factors that you may weigh: 1. You may consider the age and general state of health of the decedent and of the survivors. [You will recall that there was testimony concerning their life expectancies as of the date of the decedent's death (and the decedent's work life expectancy). These figures are in evidence and are assumptions based on probable length of life which have been computed from statistical data. They are general rules and you should therefore use them with caution in any individual case. Except for this incident the decedent might have lived much longer than estimated by the actuarial period of time. You should consider the expectancy figures in your determination of damages, if any, to be awarded for financial losses in accordance with my instructions in this case, but you must exercise your sound judgment in computing them. Do not treat them as a necessary or fixed rule.] See footnote 1 2. You should consider the net earnings of the decedent after taxes as of the time of his/her death. You should give due regard to any evidence concerning [the decedent's income tax liability and you should also consider] See

footnote 2 the decedents potential future net income during the balance of his/her working life expectancy. The reason for considering net income is that only that portion of his/her income after taxes, not gross income, would have been available for the benefit of the decedents survivors who are represented by the plaintiff in this case.

[Add where decedent is a minor child:

In this case, since the decedent is a minor child, you, the jury, should consider the value of the reasonably anticipated direct financial contributions which would have been made by the child to the survivors after he/she became a wage earner. You should also take into consideration any actual financial contributions, if any, which the decedent, while living, may have made to the survivors in determining the pecuniary loss to them.] 3. You should also consider the decedents own personal expenses. Therefore, it is necessary that you find to what extent the net earnings of the decedent were necessary for his/her own use, maintenance and personal needs. In determining the pecuniary loss of the survivors there must be deducted from the net earnings of the decedent whatever sums fairly represent expenses for his/her own maintenance since it is obvious that these monies could not have been used for the benefit of the survivors. 4. You may also consider the benefit given by the decedent to a survivor or survivors in the form or services or assistance rendered by the decedent and in guidance and training which may have been offered by the decedent to the survivors. You must determine the reasonable value to be placed on the services or benefits that will be lost by reason of the death of the decedent.

[Add where decedent is a minor child:

In this case, since the decedent is a minor child, your assessment of damages for the loss of services and assistance may be somewhat complicated, so let me elaborate on this point further. In addition to the loss of anticipated direct financial contributions from the decedent to the survivors which I noted previously, you, the jury, should also consider the pecuniary value of the

loss of the child's anticipated services to the survivors, such as household chores and baby-sitting for younger siblings, for example. You should also consider the value of the parents [or other survivors, where applicable] loss of the child's care, companionship, advice and guidance as they grow older. You must remember, however, that your award for damages for these losses will be confined to their pecuniary value, excluding emotional loss. With respect to companionship, care, and advice you must initially distinguish between their emotional value and their pecuniary, or economic, value. We recognize that children may provide valuable services such as companionship, care, advice and guidance over time as the parents face advanced age or declining health.

Care and companionship, lost by death, to be compensable must be that which would have provided services substantially similar to those provided by the companions or homemakers often hired today by the aged or the infirm, or substantially equivalent to services provided by nurses or practical nurses. [Companionship in this sense, however, will not include true nursing services unless the decedent had or was likely to have special training.] The value of these services must be confined to what the marketplace would pay a stranger with similar qualifications for performing such services. [In interpreting the criteria or similar qualifications you may also attach a pecuniary value to the knowledge of the parent's likes, dislikes and habits which the decedent may have possessed.] Remember, however, that no pecuniary value may be attached to the emotional satisfaction gained by the parent when the child performs these services.) The loss of the decedent's guidance, advice and counsel to the survivors is likewise to be confined to its pecuniary element. It is not the loss simply of the exchange of views, no matter how perceptive, when the child and parent (or other survivor, where appropriate) are together; it is certainly not the loss of pleasure which accompanies such an exchange. Rather, it is the loss of guidance, advice and counsel which all of us need from time to time in particular situations, for specific purposes, perhaps as an aid in making a business decision, or a decision affecting one's

life generally, or even advice and counsel needed to relieve depression or personal dilemmas. It must be the kind of advice and guidance that could be purchased from a business advisor, a therapist, or a trained counselor, for instance. Now, taking the foregoing principles into consideration, it is up to you, the jury, to decide what services the decedent would have rendered to the survivors, and what the value of these services is. In doing so, remember that there need be no proof that the parents (or other survivors, where appropriate) will probably purchase such companionship and advice; it is sufficient that the deceased would have rendered them if he/she had lived. 5. In considering those various factors, and in ascertaining the probabilities of pecuniary loss, you should also consider the decedents personality and character, his/her habits and customs and the relationship that existed between the decedent and the survivors. If you find that plaintiff is entitled to an award, the amount that is recoverable is comprised of two parts: (a) the amount of the loss to date; and (b) the present value of future financial loss.

However, you will announce your verdict in one lump sum of money totaling these two parts. The first thing that you must determine, once you have decided that the plaintiff is entitled to recover, is the amount of the financial loss from the date of death to the present date. To do this you must agree on an amount which will represent the loss sustained by the survivors each year, and simply add these amounts for each year elapsed since the date of decedents death to the present time. The next determination you must make is the present value of the loss that may reasonably be anticipated from this time on into the future. This computation is a little more complicated. In arriving at such present value of future loss, it would be improper to take the amount of loss, such as a certain number of dollars per year, and simply multiply that amount by the number of years which you find constitutes the time that the decedent would have continued to contribute to the survivors. The reason for this is that if plaintiff is entitled to an award, the survivors will receive their award of damages in one lump sum, whereas, had the decedent lived, the financial contribution to the survivors would have been spread over a period of time. A sum

of money due at some future time is worth less today because, if paid today in a lump sum rather than in installments, the lump sum received today can be invested to earn interest. For example, if you were to determine that the amount of survivors yearly loss was \$100 and that this loss would extend over a period of 10 years and then you simply multiplied $\$100 \times 10$, your award of \$1,000 would be too much. This is so because the lump sum awarded now can be invested and produce interest income. Such an award, therefore, would have a greater value than just \$100 a year. It would have a value of \$100 a year plus the interest. Therefore, if you were to make an award (merely by multiplying $\$100 \times 10$ years), the survivors would receive more than their actual loss, or \$1,000 plus the interest it would earn. For this reason, the proper method of determining the present value of future losses requires that the total amount of future losses be reduced by a certain amount. This is done by making an allowance for the interest that this total sum of money would earn for such period of time. This allowance is calculated by a process called discounting or reducing the total future financial losses during the period of expectancy by applying a fixed interest figure. In other words, you should determine the amount of survivors yearly loss, if any, and then award a lump sum which when invested will pay out from that lump sum, plus the interest it will earn, an amount equal to the yearly loss to the survivor.

Furthermore, the fund you create must be completely used up or exhausted at the end of the period of the loss. In making this computation you may also take into account the extent to which inflation will probably reduce the value of money during the period of the loss. You may determine to what extent the purchasing power of the dollar will be recovered because of inflation, you should increase the total amount of your award for anticipated future financial losses in order to offset the extent by which inflation will reduce the value of the dollar in the future. You should also know that any award you may make is not subject to Federal income tax. However, the interest earned on the amount of your award will be subject to income taxation. And, therefore, you should increase the fund to account for the survivors increased tax liability. So, in evaluating future losses, there are several factors which should be considered by you in

arriving at your computation of future losses. Remember with respect to future losses that you are creating a present fund which will be used to pay plaintiff from the principal sum and the interest it earns in an amount equal to a survivors yearly loss so that at the end of the period of time you determine this loss will be sustained, the fund plus the interest will be used up. Let me repeat the factors you should consider when determining an amount to compensate plaintiff for future losses: (1) The amount of the survivors yearly loss. (2) The period of time over which said loss will be incurred in the future, i.e., from todays date forward for that period of time you determine to be the balance of decedents work life expectancy. (Remember you will have already determined the loss from the date of death to today). (3) That the fund should be discounted to reflect the interest the fund will earn. (4) The extent to which inflation may or may not affect the value of the financial loss. (5) That no income tax will be imposed on the sum awarded but that the interest earned by the fund will be subject to Federal income tax. I am now going to give each of you a sheet of paper which contains a step by step illustration of how to compute the present value of a survivors future pecuniary loss. The sheet also contains an example from an imaginary case to show you how the various formulas are applied. Keep in mind that the numbers used in the example are not taken from this case and are not intended to suggest what figures you should use. The amount of any given survivors financial loss, interest rates and discount rates must be based upon your own sound judgment resulting from your understanding and analysis of the evidence in the case as well as your collective experience and common sense. [An expert testified as to his/her analysis of future wage increases and discount rates relative to inflation and gave you his/her opinion of what the discount and inflation rates should be in this case. giving due regard to his/her credibility, you may use those trends and rates in arriving at your own independent single appraisal of the survivors actual pecuniary losses]. See footnote 3 Arriving at a figure that represents the plaintiffs financial and pecuniary loss due to the decedents premature death is difficult. Remember that your decision should be based upon your own common sense judgment of the amount of money and the value of services and

guidance decedent would have contributed to the welfare of the plaintiff.

Thus, to recapitulate, if you find plaintiffs are entitled to an award based upon the rules of law I have given you, then in determining the amount of award because of the premature death of decedent you must first determine the amount of financial loss suffered from the date of death to the present time. To arrive at that figure you must add the amount of plaintiffs yearly loss for the number of years from the date of death to the present time. Next, you should add to that amount a sum which represents the future loss from today calculated in accordance with my instructions.

COMPUTATION OF PRESENT VALUE OF FUTURE FINANCIAL LOSS:

1. Insert here the total amount of money the survivor has lost by reason of the death. \$_____ 2. Insert here the average annual rate of interest for the period of the survivors loss. _____% 3. Insert here the amount of money which is necessary to be invested at the rate determined in 2. in order to yield the loss determine in 2. [Formula: Subtract the rate set forth in 2. from 100%. Then multiply the number in 1. by that percentage]. \$_____ 4. Insert here the average annual rate of inflation for the period of the survivors loss. _____% 5. Insert here the amount of money necessary to add to the survivors loss to account for inflation. [Formula: Multiply the inflation factor in 4. by the loss set forth in 1.] \$_____ 6. Insert here the amount of money necessary to compensate the survivor taking into consideration both investment and inflation factors. [Formula: Add 3. to 5.]. \$_____

Example: Assuming a loss to the survivor of \$1,500/year for four years with an average interest rate of eight percent and an average inflation rate of six percent: Step One: \$1,500/year x four years \$6,000

Step Two: Interest rate (averaged for four years) 8%

Step Three: $(100\% - 8\% = 92\%) (\$6,000 \times 92\% = \$5,520) \$5,520$

Step Four: Inflation rate (averaged for four years) 6%

Step Five: $(\$6,000 \times 6\% = \$360) \$ 360$

Step Six: $(\$5,520 + \$360 = \$5,880) \$5,880$

Footnote: 1 This passage in brackets should be used only where evidence of the decedents work life has been offered or where evidence of a survivors life expectancy is relevant to a determination of pecuniary loss and the Court has been asked to take judicial notice of the life expectancy tables.

Footnote: 2 In the event that no evidence has been produced as to decedents income tax liability, the trial judge should consider whether this phrase should be included in the charge.

Footnote: 3 The Committee expresses no opinion as to the need for expert testimony on interest (discount) or inflation factors. It recognizes that cases involving wrongful death claims are tried without expert testimony. The charge is structured to be used in either event.

The Committee also acknowledges that *Matthews v. Nelson*, 57 N.J. Super. 515 (App. Div. 1959) permits the use of annuity tables contained in the Civil Practice Rules. Those tables express certain interest rates but no corresponding inflation factors.

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