

New York Injury Cases Blog

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\$2,450,000 for Wrongful Death of 6 Year Old Boy

A six year old California boy died during a family trip when the rear tire on the rental car his father was driving blew out and the car rolled over.



[According to the family attorney, William Berman of San Diego](#), after years in court, forensic experts and deposition testimony revealed that the rental car firm allowed the failed tire to run for a prolonged time in a severely under-inflated state. The defendant finally admitted liability and a **\$2,450,000 wrongful death settlement** was reached.

Had this case been brought in New York or governed by New York's wrongful death laws, the result would have been drastically different.

Under New York's wrongful death statute - **EPTL Section 5-4.3** - there are two categories of damages in death cases:

1. special damages - such as funeral, medical and nursing expenses
2. general damages - the pecuniary (i.e., monetary) loss to the decedent's survivors

There are no damages allowed in New York wrongful death cases for the parents' grief or emotional loss (unless the parents were at the scene and either physically injured in the same accident or within the zone of danger).

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Here is what the judges read to the juries, right from New York's Pattern Jury Instructions, before submitting these types of claims for their consideration:



- **You may not consider or make any award for sorrow, mental anguish, injury to feelings or loss of companionship.**
- **You must determine the economic value of the decedent to his distributees (his heirs)**

This is in distinction to most other states, such as **California**, and something the plaintiff's bar in New York has for many years, unsuccessfully, tried to have changed legislatively.

The only other significant category of recovery in wrongful death cases involving minors in New York is **pre-death conscious pain and suffering**. That's often not relevant (e.g., instant death from an accident, death from medical malpractice while under anesthesia). [We've discussed in a recent post important cases dealing with the pre-death pain and suffering aspect in wrongful death cases.](#)

So the main claim the families of minors in New York are often left with is that the decedent would

have contributed his or her net income to, or otherwise would have financially helped, the survivors.

How do you prove that a two year old would have become a significant income earner and would have given over to his parents significant amounts during their lifetime? Plaintiffs' attorneys are relegated to issues such as the infant's intelligence, likely education, statements that were made regarding future support, the parents' own economic situation, how much the kid helped around the house and the like. Very difficult and sometimes impossible to prove.

Here are some cases in which there were verdicts awarding damages for the loss of an infant's future financial support:

- [Cepeda v. New York City Health and Hospitals Corp](#) - **\$83,000** jury award for future pecuniary loss for the death of a 12 day old infant went unchallenged on appeal
- [Kruger v. Wilde](#) - **\$100,000** for pecuniary loss for the death of a 14 year old girl who was a good student and worked part-time
- [Alcalay v. Town of North Hempstead](#) [unreported case] - **\$200,000** for pecuniary loss for death of 12 year old

Insider's tip: Even in the absence of any verifiable proof, attorneys in New York representing the heirs of a deceased infant will usually make a wrongful death claim. At a minimum, they have the parents testify as to the help they expected the deceased infant to contribute to the family (i.e., household chores) and, if there was a part-time job or any scintilla of evidence (school report cards, the child's stated aspirations), then proof is adduced as to career goals too. If the jury has any basis at all to award pecuniary damages then its award may stand or at worst be reduced somewhat on appeal.

To end on a positive note of sorts, I leave you with references to **some recent lawsuit victories in wrongful death cases of minors** brought in states other than New York:

- [Chicago Injury Attorney Blog reports](#) on a **\$9,000,000** appellate court win in a medical malpractice a case involving the death of a 12 year old boy
- [Alabama Personal Injury Blog reports](#) on a **\$3,000,000** settlement for the wrongful death of a 12 year old boy in an ATV accident
- [Chicago Accident Lawyer Blog reports](#) on a **\$10,000,000** trial judge decision for the wrongful death of a 15 year old boy in a car accident

We will follow the cases and trends in this emerging area of wrongful death litigation and encourage readers from all areas to report new developments as they break.

Comments (0) Read through and enter the discussion with the form at the end

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