Calculating Personal Injury Damages

Learn About It

If you are injured in an accident, at some point you will have determine how much money you think you are owed. This often happens soon after your injury, when an insurance company steps in and tries to negotiate a settlement with you. If no insurance is involved, or if you are unable to settle out of court, you will need to make this decision before filing your lawsuit, so you know whether you will be filing a small claims, limited civil, or unlimited civil case.

Responsibility

Generally, the person liable for the injury (or that person's insurance company) is responsible for reimbursing the injured party for all expenses related to their injury, as well as compensating the injured party for any pain, suffering, or emotional damage they experienced as a result of the injury. For more information about the types of damages that may be awarded in personal injury case, see the Nolo Press article, "Damages: How Much is a Personal Injury Case Worth? (http://www.nolo.com/legal-encyclopedia/damages-how-much-personal-injury-32264.html) "

Calculating Damages

Unfortunately, the law does not provide a specific method or formula for determining the amount you're owed. Instead, personal injury damages are based on a combination actual expenses and compensation for pain and suffering. There are many factors to be considered when determining the amount you are owed. When estimating how much an injury claim is worth, many attorneys and insurance companies use a mathematical formula to estimate the value of an injury, and determine a starting point for their negotiations.

Three separate numbers need to be determined to make these calculations: special damages, medical special damages, and general damages.

Special Damages

Special damages are typically easy to calculate. These include costs to repair or replace damaged property, lost wages, sick or vacation time you used during your recovery, and any other out-of-pocket expenses you incurred because of the injury. You may also be compensated for lost future earnings if the injury will prevent you from being promoted to a better job, or requires you to be moved to a lesser-paying job. You are entitled to full reimbursement for your actual expenses, so be sure to keep records of all these types of expenditures.

Medical Damages

You are also entitled to full reimbursement of medical special damages. This includes ambulances, doctor visits, x-rays, medications, etc. When determining the amount of medical special damages for *negotiation* purposes, many attorneys and insurance companies will use the amount billed, even if the medical bills were covered by insurance, or if, as is very common, the medical provider and insurance company eventually agreed on a reduced amount. As discussed below, the amount of medical special damages is being used to determine the severity of the injury, so it makes sense to use the billed amounts for medical treatment. When determining the amount of special damages for reimbursement in a *lawsuit*, you will need to be more accurate; a recent California case (*Howell vs. Hamilton Meats & Provisions* (https://scocal.stanford.edu/opinion/howell-v-hamilton-meats-34008) , 52 Cal.4th 541), limits the amount a personal injury plaintiff may recover to the actual amount paid by their insurance provider.

General Damages

Once you've calculated these amounts, you are ready to determine the amount of your general damages. General damages, commonly called "pain and suffering," are intended to compensate you for non-monetary injuries you experience, such as pain, anxiety, and other suffering you have to endure because of your injury. For most types of cases, there is no law that dictates the amount of general damages you may receive in a general personal injury case. Instead, this amount is based on a variety of factors, including the nature and severity of the injury, the amount of pain you experience, length of recovery, and the disruption of your life. Most of these are fairly subjective, which can make it difficult to arrive at a number.

To get a reasonable starting number for negotiating general damages, many insurance companies and attorneys multiply the amount of medical special damages by a factor of 1.5 to 5, depending on the severity of the injuries. In extreme cases, a factor of more than 5 may be used.

Relatively minor injuries would be on the low end of the multiplier range, while serious or long-lasting injuries would likely be at the high end of the range. For example, if the plaintiff suffered a minor injury with $1000 in medical bills he may want to ask for $1500 in general damages ($1000 x 1.5). If the plaintiff suffered a more serious injury, with $100,000 in medical bills, he may want to ask for $500,000 ($100,000 x 5) in general damages.

The theory behind estimating general damages based on special damages is that more serious injuries will result in higher medical special damages, and will likely cause the plaintiff greater pain and suffering. The multiplier is used to make adjustments based on the severity of the injury the plaintiff suffers. However, this is just a starting point; you need to consider other facts about your accident and your injuries, including how painful your injury type is, how invasive or long lasting your treatment, or how serious or visible any permanent effects of your injury will be. Once you've calculated your general damages, you will add together your special, medical special, and general damages to arrive at a good starting point for your negotiations.

For more information on this method of estimating damages, see this informative Nolo Press article, "How do Insurers Value an Injury? (http://www.nolo.com/legal-encyclopedia/how-do-insurers-value-injury-29976.html) "

The Jury's Role in Damage Awards

Although this method is an easy way to arrive at a number, it does not take into effect one important aspect of litigation: the jury. If your case does get to the jury trial stage, the jury will ultimately determine the amount of damages to award. Juries will be swayed by things you have little control over, such as the effectiveness of your witnesses, a sympathetic defendant, or the dramatic nature of your accident or injury. These types of intangible factors can greatly influence the jury, and therefore the outcome of your case.

For this reason, many attorneys like to see what juries have awarded in similar cases. There are several print and electronic resources that may be used for this type of research. See the Law Library's guide on Verdicts and Settlements (https://www.saclaw.org/resource_library/jury-verdicts-and-settlements/) for more information.

Additional Factors

Finally, there are many other factors that may complicate your situation, or make it more difficult to estimate damages. The library has several resources that you may find useful in assessing your situation and calculating damages, including “How to Win Your Personal Injury Claim” by Nolo Press, which includes a very detailed chapter on determining how much your claim for injuries is worth, as well as tips for negotiating a settlement with the defendant.

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