

## "WHAT'S MY CASE WORTH?": A COMMONLY ASKED QUESTION OF ACCIDENT VICTIMS



A good and experienced personal injury attorney will never tell you exactly what your case is worth at your initial consultation. This is because there are a variety of factors involved.

If you're considering filing a personal injury lawsuit over a car accident, slip and fall, or any other kind of injury, you may be wondering "What is my case worth?" The answer comes down to "damages" - a legal term for the physical, emotional and financial harm you have sustained which can be compensated under the law.

Below you will find an explanation of the different kinds of damages that are common in many personal injury cases and how a personal injury damages award can be affected by the plaintiff's action or inaction.

## WHAT TYPE OF DAMAGES CAN I RECOVER?

Most personal injury damages are classified as "compensatory," meaning that they are intended to compensate the injured plaintiff for what was lost due to the accident or injury. A compensatory damages award is meant to make the injured plaintiff "whole" again from a monetary standpoint (to the extent this is possible). Compensatory damages include:

- Damages for past and future "pain and suffering;"
  - The age of the plaintiff will affect future pain and suffering. This is because future pain and suffering takes into account the life expectancy of the plaintiff.
  - The age of the plaintiff is also a relevant factor in wrongful death proceedings in which an important element of damages involves the amount of conscious pain and suffering.
- Emotional distress;
- Lost earnings; and
- Medical expenses.

Certain forms of compensatory damages are easier to quantify than others. Placing a monetary value on pain and suffering or the loss of ability to enjoy life is different than evaluating losses for out of pocket expenses.

It is important to remember that all recoverable damages are subject to the applicable insurance policy limits of the defendant. This means, that if there is an available insurance policy of \$25,000.00, the maximum amount recoverable from that defendant would be \$25,000.00 - regardless of how seriously one has been injured. However, there might be umbrella or <sup>under-</sup>insurance policies that can provide additional coverage to an injured party. This is why it is important to have the assistance of an attorney in determining all available insurance coverage.

## RELEVANT FACTORS

In some cases, an injured person's role, or liability, in causing an accident -- or their inaction after being injured -- can diminish the amount of damages available in a personal injury case. Different actions and their consequences are explained in further detail below:

- **Prior Injuries:** In many injury accident cases, the injured party may face opposition from a defendant's insurance company based on the fact that the plaintiff has a preexisting injury. Although a plaintiff may not collect damages for any condition that existed before the conduct causing the injury took place, the plaintiff is entitled to damages for physical or mental conditions that were made worse. For these claimants, how they handle their preexisting injuries could either negatively or favorably affect their injury claims.
- **Proof of Pain and Suffering:** When a person makes a personal injury claim, their medical treatment and more importantly, their medical evidence is the basic foundation to support the strength of the case. The medical treatment records, including doctor's opinions and diagnostic test results help the attorney prove how serious, severe and/or debilitating the injuries have been for the person. Conversely, the medical records can also help the insurance company or defense attorney prove how minor the injuries have been and show how the patient has failed to follow the doctor's treatment recommendations.

It cannot be stressed enough that in a personal injury case, the injured person's medical treatment records are often the **most important evidence** in the case. The records will often be referred to by the medical experts during trial and may also be shown to the jury to illustrate the severity or minor nature of the injuries being claimed. Without adequate medical records you typically cannot prove that you are injured and without medical records you do not have a case. Additionally, the age of the injured party is relevant with respect to quantifying future damages, as a plaintiff can only recover future damages for the number of years which constitute his or her life expectancy as prescribed by law.



## Venue and Jury

Another factor that weighs on your ultimate award, but is sometimes forgotten about is Venue. Where your case is pending will have a great impact on the potential value of your injury case. Believe it or not, the same injury in Suffolk County may not have the same value as in the Bronx.

Although attorneys would like to pick where their client's case is held, we can't always choose. The choice of venue is often determined by:



- Where the injured victim lives; or
- Where the person who caused the accident lives; and
- When suing a municipality, the case is venued in the county where the accident occurred.

Also with regard to venue, when the law says that an injured person has a right to a jury of one's peers, it doesn't mean that you're entitled to a jury of all women between the age of 30-35, similar to you. Members of the jury pool come from all over the county where your case is pending. A "jury of one's peers" is a misnomer. Different venues have different jurors who make up the jury pool and a jury in Brooklyn is often very different than one in Rockland.

## SETTLING YOUR PERSONAL INJURY CASE

There is no guarantee that a personal injury case will be successful at trial or that you will ultimately recover monies. "Settling a case" means resolving a dispute before the end of a trial. Why settle a case? Trial is a long, expensive process. Most people do not file a suit simply for the thrill of the courtroom experience. Instead, people file suit because they feel they have been wronged in some way, and they cannot find a good solution on their own. Settling a case may offer a way to avoid the expense of trial while still being compensated for the damages sustained.

An attorney should never promise or guarantee success. Likewise, an attorney should never place a dollar amount on what your case is worth at the beginning of a case before he or she has conducted an investigation of all the relevant evidence. As you can see, determining what a case is worth is not simple. It is only through careful and diligent evaluation that we can determine what your case is worth and what you should expect to receive for your case. To determine what you should get, utilize and analyze the above factors. It will let you figure out what your case is worth. Consider all your damages incurred to date and those you will incur in the future.

It is a common saying that, "A good settlement is when both sides have made concessions and neither is happy." However, trial is a huge risk and it is usually always better to settle a case if possible.

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