



Center for Justice & Democracy
90 Broad Street, Suite 401
New York, NY 10004
Tel: 212.267.2801
centerjd@centerjd.org
<http://centerjd.org>

UNDERSTANDING NON-ECONOMIC DAMAGES

When an injured victim who needs medical care “wins” the case and obtains compensation, where does the money go?

When a jury awards compensation to cover a victims’ medical expenses, the money does not go to the victim at all. It goes to health care providers to pay for the medical care the patient did not need until the person was injured. In other words, fully paying for all medical care means fully compensating the medical industry for the treatment of the injuries that sometimes, as in the case of medical malpractice, the industry itself has inflicted.

What is the discriminatory impact of limiting non-economic damages and paying only full economic damages?

In most cases, lost earnings make up the largest part of the economic damages that go directly to the injured victim. Essentially, then, limiting non-economic damages results in valuing the destruction of an individual’s life based on what that person would have earned in the marketplace but for the injury. The lives of low wage earners, children, seniors, and women who do not work outside the home, are thus deemed worth less than the life of businessmen. Capping non-economic damages would promote a kind of caste system by branding entire classes of low- or non-earners in our society as worth less than their wealthier counterparts.

Basing the value of someone’s life on what they could earn in the marketplace says to seniors, for example, that despite having spent their lives paying their dues and playing by the rules, now, due to the negligence of a wrongdoer, they have lost what their years have earned them: the prospect of an enjoyable, vigorous and happy old age. Is a stay-at-home mom less valuable than a mother who goes to work in an office? There is more to a human being than the amount of that person’s weekly paycheck.

What kinds of injuries do non-economic damages compensate for and why are non-economic damages so important?

The joy of life - what makes it really worth living - is not the earning of money to pay to others for life’s necessities. When a person is seriously injured, the greatest loss is the loss of the enjoyment of life, the pleasure, the satisfaction or the utility that human beings derive from life, separate and apart from earnings. These are non-economic injuries.

What is truly valuable to us as human beings is our ability to live life on a daily basis free of any debilitating physical or emotional problems that diminish our capacity to enjoy life and compromise our sense of self-worth, dignity, and integrity.

The pleasure of living lies in our ability to participate fully in the give and take of marriage, family and career. It lies in our experience of the ordinary day: waking up without pain; drinking a cup of coffee without someone's help; dressing a child in mismatched clothes that she insists on wearing, rather than have that child dress you; walking to the bus stop or subway in the brisk air, rather than being wheeled to a lift van; accomplishing a job well done at work, rather than being limited to a make-work project for the disabled; deciding what to make for dinner and preparing it; these and thousands of everyday things are what we live for.

In addition to physical pain and suffering, the seriously injured victim suffers great mental anguish, anxiety and often shame at being transposed from an able-bodied working person respected for his or her accomplishments and contributions to others to an individual who is dependent on others. A seriously injured person is compromised in his or her ability to make decisions and realize them, to take independent action, and to reciprocate when someone helps them. A seriously injured person is also deprived of the pleasure of engaging as equals with other people, including family members, or participating in athletic activities, social and civic events, hobbies, volunteer activities and other interpersonal interactions.

These are sufferings which seriously injured people encounter each time they attempt to perform any of the myriad tasks of daily life the rest of us take for granted. This is the loss that the law describes as "non-noneconomic," and which goes to the very essence of our quality of life.