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## WHAT IS MY CASE WORTH?

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If you've been injured in an accident, one of the questions that will likely cross your mind is "what is my case worth?" The following is a brief explanation of how the court arrives at an answer to this inevitable question.

The purpose of compensation in personal injury claims is to put the injured person (the plaintiff in a court proceeding) back into the same position he or she would have been in if the accident had never happened. As this is not possible, the court does the best it can by compensating the plaintiff financially.

There are several different categories by which the court can award damages to accomplish this goal. The basic categories are summarized in the following paragraphs. If you have been seriously injured there are other categories that may apply to your case that are not discussed in this article.

Damages for **Pain and Suffering** (also known as non-pecuniary damages) are designed to compensate the plaintiff for the pain and suffering endured as a result of the accident. The amount awarded for pain and suffering is determined by comparing the plaintiff's injuries and effect of those injuries on the plaintiff's life to similar cases. As no two cases are identical, there is often a range of what can be awarded.

Damages for **Past Wage Loss** are designed to compensate the plaintiff for wages lost as a result of the accident from the date of the accident to trial or settlement.

Damages for **Future Wage Loss** (also known as Future Loss of Earning Capacity) are designed to compensate the plaintiff for money the plaintiff would have received in the future through work, business, or some other relationship, but will no longer receive as a result of the accident.

Damages for Future Wage Loss are generally only awarded where the plaintiff can establish there is a real possibility that the loss would have occurred. Future Wage Loss is often one of the most difficult categories to assess, particularly where the plaintiff's career path was uncertain at the time of the accident or the length or effect of the disability is uncertain.

**Special Damages** are awarded to compensate the plaintiff for all reasonable out-of-pocket expenses already paid for by the plaintiff as a result of the accident, other than legal expenses (i.e. medication, physiotherapy fees, massage therapy fees, transportation, medical equipment, etc.).

Damages for **Future Cost of Care** are awarded to compensate the plaintiff for reasonable future care costs. The plaintiff needs to establish that there is a real possibility that the care will be required and the care is medically justified before these damages will be awarded.

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**“In Trust” Claims** are awarded to compensate friends and family who provide the plaintiff with assistance as a result of the plaintiff’s injuries that they would not ordinarily provide. The amount is based on the types of services provided and the length of time they were provided.

Damages for past and future **Loss of Housekeeping Capacity** are awarded to the plaintiff where he or she is unable to perform all or part of the housekeeping tasks that the plaintiff would normally have performed but can no longer do as a result of the accident. Damages for Loss of Housekeeping Capacity may be awarded as a separate item or as part of one or more of the categories already mentioned.

All of the above amounts are added together for a total, which may be reduced for various reasons.

One reason damages may be reduced is contributory negligence. If the plaintiff is found to be partially responsible for the accident the award will be reduced by the percentage the plaintiff is found to be at fault. For example, if the plaintiff is found to be 10% at fault the award will be reduced by 10%. If the plaintiff is found to be 100% at fault, no damages will be recoverable.

Other issues that commonly arise are pre-existing health conditions and other possible causes of injury. A defendant is only responsible to put the plaintiff back in the same position he or she would have been in but for the accident. As a result, if the plaintiff has a pre-existing health condition or a condition that occurred after the accident but was not caused by the accident, the defendant is not responsible for compensating the plaintiff for those injuries. Often times, the plaintiff may have a pre-existing health condition that is made worse by the accident. This may be due to a previous injury in the area or a disease. While the plaintiff will not be entitled to recover compensation for all problems caused by that injury or disease, the plaintiff will be able to recover an amount for the degree to which the accident made the situation worse.

In summary, determining the value of a personal injury case is not a simple matter. It is the subject of numerous text books and articles. However, hopefully the above information has provided you with some insight on how the value of an injury claim is determined.

*\*Important Note: The information contained in this column should not be treated by readers as legal advice and should not be relied on without detailed legal counsel being sought.*

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