

8.11 DAMAGES CHARGES — GENERAL

E. DISABILITY, IMPAIRMENT AND LOSS OF THE ENJOYMENT OF LIFE, PAIN AND SUFFERING

(Approved 12/1996; Revised 05/2017)

If you find for [*Plaintiff*], [*he*] [*she*] is entitled to recover fair and reasonable compensation for the full extent of the harm and losses caused, no more and no less.

Fair and reasonable compensation means to make [*Plaintiff*] whole for any permanent or temporary injury and the consequences of that injury (or injuries) caused by the defendant's negligence (or other fault).

The law on compensation recognizes that a plaintiff may recover for any disability or impairment that he or she suffers as a result of his or her injuries. Disability or impairment means worsening, weakening or loss of faculties, health or ability to participate in activities. The law also permits a plaintiff to recover for the loss of enjoyment of life, which means the inability to pursue one's normal pleasure and enjoyment.¹ You must determine how the injury has deprived [*Plaintiff*] of [*his*] [*her*] customary activities as a whole person.² This measure of compensation is what a reasonable person would consider to be adequate and just under all the circumstances of the case to make [*Plaintiff*] whole for [*his*] [*her*]

¹ *Evoma v. Falco*, 247 N.J. Super. 435, 452 (App. Div. 1991).

² *Id.* at 452.

injury and [*his*] [*her*] consequent disability, impairment, and the loss of the enjoyment of life. The law also recognizes as proper items for recovery, the pain, physical and mental suffering, discomfort, and distress that a person may endure as a natural consequence of the injury. Again, this item of recovery is what a reasonable person would consider to be adequate and just under all the circumstances to compensate [*Plaintiff*].

Here are some factors you may want to take into account when fixing the amount of the verdict for disability impairment, loss of enjoyment of life, pain and suffering. You may consider [*Plaintiff's*] age, usual activities, occupation, family responsibilities and similar relevant facts in evaluating the probable consequences of any injuries you find [*he*] [*she*] has suffered. You are to consider the nature, character and seriousness of any injury, discomfort or disfigurement. You must also consider their duration, as any verdict you make must cover the harms and losses suffered by [*Plaintiff*] since the accident, to the present time, and even into the future if you find that [*Plaintiff's*] injury and its consequence have continued to the present time or can reasonably be expected to continue into the future.

The law does not provide you with any table, schedule or formula by which a person's pain and suffering, disability, impairment, and loss of enjoyment of life may be measured in terms of money. The amount is left to your sound discretion.

You are to use your sound discretion to attempt to make the plaintiff whole, so far as money can do so, based upon reason and sound judgment, without any passion, prejudice, bias or sympathy. You each know from your common experience the nature of pain and suffering, disability, impairment and loss of enjoyment of life and you also know the nature and function of money. The task of equating the two so as to arrive at a fair and reasonable award of compensation requires a high order of human judgment. For this reason, the law can provide no better yardstick for your guidance than your own impartial judgment and experience.

You are to exercise sound judgment as to what is fair, just and reasonable under all the circumstances. You should, of course, consider the testimony of [*Plaintiff*] on the subject of [*his*] [*her*] discomforts. You should also scrutinize all the other evidence presented by both parties on this subject, including the testimony of the doctors. After considering the evidence, you shall award a lump sum of money that will fairly and reasonably compensate [*Plaintiff*] for [*his*] [*her*] pain, suffering, disability, impairment, and loss of enjoyment of life proximately caused by defendant's negligence (or other fault).

Cases:

Simmel v. N.J. Coop Co., 28 N.J. 1 (1958). See also *Botta v. Brunner*, 26 N.J. 82 (1958); *Mengle v. Shields*, 53 N.J. Super. 76 (App. Div. 1958).

Damages may be awarded for future disability and impairment. *Coll v. Sherry*, 29 N.J. 166 (1959).

Damages may be awarded for mental or nervous impairment consequent upon a physical injury. *Greenberg v. Stanley*, 51 N.J. Super. 90 (App. Div. 1958).