

ARKANSAS

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1. **In your state, what are the categories of damages that are available in tort?**

Compensatory (e.g., conscious pain and suffering, mental anguish, disfigurement, lost wages, loss of earning capacity, shortened life expectancy, etc.) and punitive damages.

2. **Are there any limitations or caps on recovery in tort actions?**

There is no cap on compensatory damages. As for punitive damages, while there is no bright line measure, the Arkansas Court of Appeals has stated that a ratio of single digits between punitive and compensatory damage does not raise constitutional concerns. *Brown v. Blake*, 86 Ark. App. 107, 161 S.W.3d 298 (2004). Additionally, a fact-finder cannot award punitive damages based on a common law cause of action unless a finding of compensatory damage was decided affirmatively. *Maxwell v. Walser*, 296 Ark. 70, 751 S.W. 2d 351 (1988). But in a statutory remedy, compensatory damages are not necessary to support punitive damages. *J. Michael Enterprises, Inc. v. Oliver*, 101 Ark. App. 48, 270 S.W.3d 388 (2007). Also, nominal damages do not support an award for punitive damages. *Stoner v. Houston*, 265 Ark. 928, 582 S.W.2d 28 (1979). “A damages award is not a lottery ticket; the amount of damages must be supported by substantial evidence.” *Vaccaro Lumber v. Fesperman*, 100 Ark. App. 267, 267 S.W.3d 619 (2007).

Also, political subdivisions are immune from liability except to the extent they are covered by liability insurance. A.C.A. §21-9-301. The State of Arkansas may pay actual but not punitive damages. A.C.A. §21-9-203. “With the exception of death and disability benefit claims paid under §21-5-701 et seq., no award may be paid in excess of fifteen thousand dollars (\$15,000). If the award is greater than fifteen thousand dollars (\$15,000), the claim shall be referred to the General Assembly for an appropriation.” Ark. Code Ann. §19-10-215.

3. **Are attorneys’ fees available in tort actions? If so, under what circumstances?**

Attorney’s fees are not an element of damages in personal injury and tort actions, and thus are not available. *Nef v. Ag Services of America Inc.*, 79 Ark. App. 100, 86 S.W.3d 4

(2002); *Bowen v. Saxton*, 255 Ark. 298, 499 S.W.2d 867 (1973). However, statutes that allow for attorney fees are enforced.

4. **Are there any instances in tort actions when pre-judgment interest is available for recovery?**

Yes. A court will award prejudgment interest when “the amount of damages was definitely ascertainable by mathematical computation” or the “evidence furnishes data that makes it possible to compute the amount without reliance on opinion or discretion.” *Sonrob Hosts, LLC v. Lafayette Ins. Co.*, 2012 WL 5336966 (W.D. Ark. 2012); *Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guar. Co.*, 353 Ark. 201, 114 S.W. 3d 189 (2003). In determining pre-judgment interest, the time of loss or injury must be “capable of exact determination.” *Baptist Memorial Hosp.-Forrest City, Inc. v. Neblett*, 2012 Ark. App. 191, 393 S.W.3d 573 (2012).

5. **In your state what proof is necessary to establish a right of recovery for economic damages, i.e. lost wages, medical expenses, etc.?**

Arkansas uses an economic loss rule which “bars recovery for economic losses on a tort claim, unless the negligent conduct also caused personal injuries or physical harm.” Howard W. Brill, *Arkansas Practice Series: Law of Damages* § 4:6, at 74 (6th ed. 2014). In tort actions, the evidence to recover economic damages must provide a basis for establishing the losses with reasonable certainty. *St. Louis-San Francisco Ry. Co. v. Spradley*, 199 Ark. 174, 133 S.W.2d 5, 8 (1939). As for lost wages, the plaintiff must demonstrate with reasonable certainty: (1) the amount of wages paid for a certain period, and (2) the future period over which the wages will be lost. Howard W. Brill, *Arkansas Practice Series: Law of Damages* § 29:3, at 646 (6th ed. 2014)(citing *Davis v. Davis*, 313 Ark. 549, 856 S.W.2d 284 (1993)).

6. **Is there any distinction in your state relative to recovery for economic versus non-economic damages?**

Awards for non-economic damages are not reduced to present value. AMI 2205 (note); *Jackson v. United States*, 526 F. Supp. 1149 (E.D. Ark 1981). Also, in medical malpractice cases, if the award for future damages exceeds \$100,000.00, the court shall, at the request of either party, order any payments over the \$100,000.00 be made in periodic payments rather than a lump sum. A.C.A. §16-114-208.