

KANSAS

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

Under Kansas law, all injuries that are a “natural and probable result” of a wrongful act are recoverable. *Foster v. Humburg*, 180 Kan. 64, 68, 299 P.2d 46, 50 (1956). These damages include pain, suffering, disabilities, disfigurement, present and future mental anguish, reasonable medical expenses, loss of income and aggravation of a pre-existing condition. *Albin v. Munsell*, 189 Kan. 304, 311, 369 P.2d 323, 328-30(1962).

These damages are classified as economic/pecuniary damages or non-economic damages. The Kansas Supreme Court has defined economic/pecuniary damages as damages that “can be estimated in and compensated by money.” *McCart v. Muir*, 230 Kan. 618, 626, 641 P.2d 384 (1982). Damages for “pain and suffering, mental anguish, injury and disfigurement not affecting earning capacity, and losses which cannot be easily expressed in dollars and cents” are classified as non-economic damages. *Miller v. Johnson*, 295 Kan. 644, 289 P.3d 1098, 1107 (2012), (quoting *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336, 789 P.2d 541, Syl. ¶ 6 (1990)).

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

Yes. Under Kansas law, the amount recoverable for non-economic loss in personal injury actions is capped. K.S.A. § 19a02 provides that in any personal injury action, the total amount recoverable by each party from all defendants for all claims for non-economic loss shall not exceed a sum total of:

- (1) \$250,000 for causes of action accruing on or after July 1, 1988, and before July 1, 2014;
- (2) \$300,000 for causes of action accruing on or after July 1, 2014, and before July 1, 2018;

- (3) \$325,000 for causes of action accruing on or after July 1, 2018, and before July 1, 2022; or
(4) \$350,000 for causes of action accruing on or after July 1, 2022.

Additionally, in wrongful death actions, non-pecuniary losses are capped at \$250,000. K.S.A. § 60-1903a.

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

Generally, attorney's fees are not recoverable in tort actions. *Rexroad v. Kan. Power & Light Co.*, 192 Kan. 343, 352, 388 P.2d 832, 840 (1964); *Overbaugh v. Strange*, 254 Kan. 605, 616, 867 P.2d 1016, 1023-24 (1994).

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

The allowance of pre-judgment interest is typically only awarded in contract cases. *See e.g. Miller v. Botwin*, 258 Kan. 108, 119, 899 P.2d 1004, 1011 (1995).

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

In a negligence action, recovery may be had only where there is evidence showing with reasonable certainty the damage was sustained as a result of the complained-of negligence. *Cerretti v. Flint Hills Rural Electric Coop. Ass'n*, 251 Kan. 347, 363, 872 P.2d 330 (1992). Recovery may not be had where the alleged damages are too conjectural or speculative to form a basis for measurement. *Id.* To warrant recovery of damages, therefore, there must be some reasonable basis for computation which will enable the trier of fact to arrive at an estimate of the amount of loss. *Id.* (citing *Morris v. Francisco*, 238 Kan. 71, Syl. para. 3, 708 P.2d 498 (1985); *Stang v. Caragianis*, 243 Kan. 249, 261, 757 P.2d 279 (1998) (“The recovery for objective elements of damage, such as loss of past and future income, . . . are grounded in mathematical calculation.”)).

Kansas courts recognized that “all damages . . . are subject to some uncertainties and contingencies, especially those that seek to compensate for future injuries.” *Morris*, 238 Kan. at 78. Accordingly, in order to warrant a recovery for impairment of earning capacity in personal injury actions, the impairment of earning capacity must be shown with reasonable certainty or reasonable probability, and there must be evidence which will permit the jury to arrive at a pecuniary value of the loss. *Id.* at 78. Similarly, the recovery of damages for future medical expenses is proper only when the plaintiff has introduced evidence of the need of the future treatment and its reasonable cost. *See Albin v. Munsell*, 189 Kan. 304, 311, 369 P.2d 323, 328-330 (1962); *Gannaway v. Missouri-*

Kansas-Texas Rid. Co., 2 Kan. App. 2d 81, 84-85, 575 P.2d 566 (1978). Therefore, future medical damages are recoverable only when sufficient evidence has been introduced from which the amount of these damages may be calculated with reasonable certainty or probability. *Albin*, 189 Kan. at 311. The evidence does not have to be such that these future damages may be calculated with mathematical certainty; however, the jury must be given a basis upon which to make the determination. *Albin*, 189 Kan. at 311-12; *see also Morris*, 238 Kan. at 78.

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

Yes. The amount recoverable for non-economic damages in personal injury actions is capped. K.S.A. § 19a02. Similarly, in wrongful death actions, non-pecuniary losses are capped. K.S.A. § 60-1903a. There is no damages cap on economic/pecuniary damages.