

MARYLAND

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

Maryland recognizes three types of damages: non-economic, economic and punitive damages. Non-economic damages that may be awarded in personal injury actions include, but are not limited to: pain, suffering, physical impairment, loss of consortium, and in wrongful death actions, mental anguish, and emotional pain and suffering, etc. Md. Code Ann. Cts. & Jud. Proc. § 11-108. Economic damages may be awarded for loss of earnings and medical expenses. *Id.* § 11-109. Generally, punitive damages are only recoverable in tort actions in which the defendant tortfeasor acted with actual malice—where defendant tortfeasor’s conduct was characterized by conscious and deliberate wrongdoing, evil motive, intent to injure, ill will or fraud. *Bowden v. Caldor, Inc.*, 350 Md. 4, 23 (1998).

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

Maryland has a cap on non-economic damages for personal injury and wrongful death actions. *See* Md. Code Ann. Cts. & Jud. Proc. § 11-108. The cap increases every year on October 1st by \$15,000.00. *Id.* In 2017, the cap on non-economic damages is \$830,000.00. Md. Code Ann. Cts. & Jud. Proc. § 11-108. However, in a wrongful death action made by two or more surviving family members, the recovery “may not exceed 150%” of \$830,000.00, which amounts to \$1,234,000.00. *Id.* In medical malpractice actions, caps are determined by a formula provided in Md. Code Ann. Cts. & Jud. Proc. § 3-2A-09. The caps in medical malpractice actions are dependent upon the jury award, and no exact number will apply to each individual medical malpractice action. *Id.* Maryland does not cap economic or punitive damages. Md. Code Ann. Cts. & Jud. Proc. § 11-109; *Bowden*, 350 Md. at 47.

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

Generally, a prevailing party is not entitled to collect reasonable attorney’s fees as an element of damages. *St. Luke Evangelical Lutheran Church, Inc. v. Smith*, 318 Md. 337,

338 (1990). In Maryland, there are exceptions to this general rule and attorney's fees may be awarded when: (1) contracting parties have an agreement to such effect, *Webster v. People's Loan, Savings & Deposit Bank of Cambridge*, 160 Md. 57 (1931); (2) statutory law permits recovery of such fees, *Freedman v. Seidler*, 233 Md. 39, 47 (1963); (3) the defendant's wrongful conduct compels a plaintiff into litigation with a third party, *Empire Realty Co. Inc. v. Fleisher*, 269 Md. 278, 286 (1973); or (4) a plaintiff is forced to defend against a malicious prosecution, *Tully v. Dasher*, 250 Md. 424, 442 (1968).

Additionally, in any civil actions, including tort, "if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court . . . may require the offending party . . . to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it." Md. Rule § 1-341.

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

Generally, tort actions do not allow for recovery for pre-judgment interest. Recoveries for bodily harm, emotional distress, or similar intangible elements of damages are not capable of being measured with precision, therefore the additional allowance of pre-judgment interest is denied. *Taylor v. Wahby*, 271 Md. 101, 113 (1974). However, "where valuation is reasonably estimable," such as for the loss of a chattel, pre-judgment interest is recoverable "upon the value of chattels tortuously converted, destroyed, or damaged." *Id.* at 112 (quoting *Robert C. Herd & Co. v. Krawill Mach. Corp.*, 256 F.2d 946 (4th Cir. 1958)). The court permits recovery in such an instance because "the injury is ordinarily not redressed by allowing only the value of the chattel in disregard of loss of the use of money thereby occasioned." *Robert C. Herd & Co.*, 256 F.2d at 952.

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

In order to recover for medical expenses, there must be evidence that the amounts charged are fair, reasonable, and necessary. Simply introducing the amount or payment of medical bills *does not* prove that the services provided were reasonable and/or necessary. *Desua v. Yokim*, 137 Md. App. 138, 142-43 (2001). Expert testimony or other competent evidence is needed to establish that the amount was fair, reasonable, and necessary. *See id.* Expert testimony is also needed to establish causation between the injuries stated in the medical records and the alleged negligence from a defendant tortfeasor. *Wiseman v. Walmart Stores, Inc.*, No. 1:16-cv-04030-SAG, 2017 WL 2865013, at *4 (D. Md. July 5, 2017).

An injured party may recover for lost wages if the damages are a “direct result of the defendant’s wrongful act and is proven with sufficient certainty.” *Mullan v. Belbin*, 130 Md. 313 (1917). To recover for lost wages, the injured plaintiff must establish that his or her earning capacity is impaired, and once confirmed, he or she must “submit evidence so that the extent of the impairment can reasonably be determined.” *Anderson v. Litzenberg*, 115 Md. App. 549, 573 (1997). The injured party may introduce evidence of “salary, wages, or other income derived from personal services, earned by a plaintiff before and after sustaining an injury . . . for the purpose of comparison in proof of diminished earning power.” *Adams v. Benson*, 208 Md. 261, 272-64 (1955). Lost earning capacity is measured by the difference between the amount the injured party was able to earn before his or her injury and what he or she is capable of earning thereafter. *Anderson*, 115 Md. App. at 573.

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

As shown above, recovery for economic damages must be established with direct evidence that shows verifiable monetary losses. To recover non-economic damages, such as for pain and suffering, the burden of proof is on the plaintiff to prove, by a preponderance of evidence, that the defendant’s negligence was the direct and proximate cause of the injury. *Tri-State Poultry Co-op. v. Carey*, 190 Md. 116, 125 (1948). Maryland law does not provide a designated formula to prove non-economic damages, but chances of recovery are enhanced by presenting evidence such as expert testimony by a physician, medication history, a plaintiff’s testimony describing her own pain and suffering, eyewitness testimony, research studies, etc. *See* Md. Code Regs. 25.02.03.05.

Additionally, in an action for damages in a personal injury or wrongful death claim, an itemized verdict sheet must be submitted to the trier of fact, regardless of the type of damages. Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 11-109, “the trier of fact shall itemize the award to reflect the monetary amount intended for: (1) past medical expenses; (2) future medical expenses; (3) past loss of earnings; (4) future loss of earnings; (5) noneconomic damages; and (6) other damages.”