

RHODE ISLAND

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

There are three recognized categories of damages: compensatory, punitive, and nominal damages. *Murphy v. United Steelworkers of America Local No. 5705, AFL-CIO*, 507 A.2d 1342, 1346 (R.I. 1986).

Tort Action: A plaintiff may recover compensatory damages – the amount of money which will replace, as near as possible the loss or harm caused to the person. Damages do not need to be proven with exactitude, but should be based on reasonable and probable estimates of the injury sustained. *See Banville v. Brennan*, 84 A.3d 424 (R.I. 2014) (quoting *Butera v. Boucher*, 798 A.2d 340, 350 (R.I. 2002)).

Medical Bills: A plaintiff may recover the reasonable expenses of his or her medical care and treatment. *Cicilline v. Ford Motor Credit Co.*, 751 A.2d 1278 (R.I. 2000). The costs claimed must necessarily be incurred in providing care and treatment. Subsequent ailments that are not attributable to the accident or injury will not be recoverable. *Grimes v. United Electric Rys. Co.*, 193 A. 740 (R.I. 1937).

A plaintiff may also recover future medical expenses that can be shown with such a degree of probability that there is a reasonable certainty he or she will incur those future expenses. *See Shepardson v. Consol. Med. Equip.*, 714 A.2d 1181, 1184 (R.I. 1998).

Disfigurement: Disfigurement is compensable in damages. Plaintiff may also recover for the mental suffering arising from the consciousness of a facial or bodily scar. *Arlan v. Cervini*, 478 A.2d 976, 980 (R.I. 1984); *Coombs v. King*, 78 A. 468, 469-70 (1910). There must be a direct relationship between the injury suffered and the mental anguish that results. *Perrotti v. Gonicberg*, 877 A.2d 631, 639 (R.I. 2005).

Loss of Normal Life: A person who suffers damages because of another's tortious acts may recover any and all losses caused by the tortfeasor's conduct, including

loss of enjoyment of life or reduced life expectancy. *Vallinoto v. DiSandro*, 688 A.2d 830, 849 (R.I. 1997); *Kaya v. Partington*, 681 A.2d 256, 263 (R.I. 1996).

Disability: The plaintiff may recover for the bodily injury sustained as a proximate result of the accident and for any impairment or disability that resulted from those bodily injuries. *Shayer v. Bohan*, 708 A.2d 158 (R.I. 1998).

Past Pain and Suffering: There is no particular formula to which the Rhode Island Court adheres to for computation of damages due to a plaintiff for pain and suffering. *Pimental v. Postoian*, 393 A.2d 1097, 1101 (R.I. 1978). Unless the jury award shocks the conscience, damages awarded for pain and suffering will be upheld. *See Proffit v. Ricci*, 463 A.2d 514, 518-19 (R.I. 1983).

Future Pain and Suffering: A plaintiff may recover for future pain and suffering by proving he or she is reasonably certain to experience future pain and suffering. The standard requires proof of more than just speculation or the possibility thereof. *See Markham v. Cross Transp., Inc.*, 376 A.2d 1259 (R.I. 1977).

Loss of Society:

- 1) (a) A married person may recover damages for loss of consortium caused by tortious injury to his or her spouse. 9 R.I. Gen. Laws Ann. § 9-1-41 (West).
- 2) (b) An unemancipated minor is entitled to recover damages for the loss of parental society and companionship caused by tortious injury to his or her parent. 9 R.I. Gen. Laws Ann. § 9-1-41 (West).
- 3) (c) Parents are entitled to recover damages for the loss of their unemancipated minor child's society and companionship caused by tortious injury to the minor. 9 R.I. Gen. Laws Ann. § 9-1-41 (West).

Lost income, wages, earnings: A plaintiff may recover for the amount of income, wages, or earnings he or she was reasonably certain to have earned if she had not been injured. *Rusoff v. Brien*, 206 A.2d 209 (R.I. 1965); *Jackson v. Choquette & Co.*, 80 A.2d 172, 175 (R.I. 1951).

Punitive Damages: Punitive damages are “awarded, not to compensate a plaintiff for his or her injuries, but rather to ‘punish the offender and to deter future misconduct.’” *Carrozza v. Voccola*, 90 A.3d 142, 166 (R.I. 2014) (quoting *Greater Providence Deposit Corp. v. Jenison*, 485 A.2d 1242, 1244 (R.I. 1984)).

A party seeking punitive damages must produce “evidence of such willfulness, recklessness, or wickedness, on the part of the party at fault as amounts to criminality that should be punished.” *Fenwick v. Oberman*, 847 A.2d 852, 854 (R.I. 2004). Punitive damages may be awarded in torts involving malice,

wantonness, willfulness, or bad faith. *Hargraves v. Ballou*, 131 A. 643, 646 (R.I. 1926).

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

Damages for tort action against the State of Rhode Island or subdivision thereof, or cities, or towns or fire districts in Rhode Island may not exceed \$100,000; provided that, the state was engaged in a governmental not a proprietary function. R.I. Gen. Laws § 9-31-; *See also Lepore v. Rhode Island Public Transit Auth.*, 524 A.2d 574, 575 (R.I. 1987); *Andrade v. State*, 448 A.2d 1293, 1296 (R.I. 1982).

There is no monetary limitation on punitive damages, but a trial justice may set aside an award if the award is clearly excessive or shocks the conscience. *See Palmisano v. Toth*, 624 A.2d 314, 318-19 (R.I. 1993).

Wrongful Death: Whenever any person or corporation is found liable under §§ 10-7-1 - 10-7-4 he or she or it shall be liable in damages in the sum of not less than two hundred fifty thousand dollars (\$250,000). R.I. Gen. Laws § 10-7 et seq.

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

Rhode Island follows the "American Rule" which requires each litigant to pay its own attorneys' fees absent statutory authority or contractual liability. *Moore v. Ballard*, 914 A.2d 487, 490 (R.I. 2007).

Attorneys' fees may be awarded when statutorily or contractually authorized at the sound discretion of the judge. *Muldowney v. Masopust*, 943 A.2d 1029, 1035 (R.I. 2008).

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

Pre-Judgment Interest is calculated at 12% per annum thereon from the date the cause of action accrued in most civil actions. R.I. Gen. Laws. § 9-21-10(a).

Pre-Judgment interest does not apply to personal injury or wrongful death in medical malpractice cases. The interest rate of 12% per annum accrues from the date of the written notice of the claimant to the medical insurer or medical provider itself, or from the filing of the civil action, whichever is first. R.I. Gen. Laws § 9-21-10(b).

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

Damages for economic losses are recoverable as long as they were proximately caused by defendant's alleged negligence and were reasonably foreseeable at the time of that alleged negligence. *Flanagan v. Wesselhoeft*, 712 A.2d 365 (R.I. 1998).

When assessing damages, the trier of fact may only assess damages that will fairly and reasonably compensate plaintiff insofar as the same may be computed in money. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

In awarding damages for medical expenses, the medical costs claimed by the plaintiff must be reasonable, and those costs must necessarily be incurred in providing care, treatment and medical attendance. *See Markham v. Cross Transp., Inc.*, 376 A.2d 1359, 1367 (R.I. 1977).

The trier of fact may consider the type of physical injuries sustained, the extent and severity of those injuries, the length of time and nature of medical care required, the degree to which impairment has affected or will affect plaintiff's day to day functioning, among other factors. *See Dilone v. Anchor Class Container Corp.*, 755 A.2d 818 (R.I. 2000); *MacDonald v. State*, 187 A.2d 519, 521 (R.I. 1963).

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

When assessing economic damages, the trier of fact may only assess damages that will fairly and reasonably compensate plaintiff insofar as the same may be computed in money. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

The Supreme Court does not recognize any particular formula for ascertaining compensability of pain and suffering in terms of money. *Calci v. Brown*, 186 A.2d 234 (R.I. 1962).