

SOUTH CAROLINA

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

Actual damages (general and special) are available to Plaintiffs in South Carolina. *See e.g. Payne v. Holiday Towers, Inc.*, 283 S. C. 210, 216, 321 S. E. 2d 179, 182 (Ct. App. 1984) (contract case) (citing *Laird v. Nationwide Ins. Co.*, 243 S. C. 388, 134 S. E. 2d 206 (1964) (tort case)). *See also Wade v. Columbia Electric Street R. L. & P. Co.*, 51 S. C. 296, 29 S. E. 233 (1898).

The Plaintiff may recover both tangible and intangible losses, including but not limited to: (1) past and future medical bills; (2) disfigurement; (3) loss of enjoyment of life; (4) disability, (5) pain and suffering, both past and present, (6) loss of society; and (7) lost income, wages, or earnings. (See e.g. *Pearson v. Bridges*, 344 S.C. 366, 544 S.E.2d 617 (2001); *Boan v. Blackwell*, 343 S.C. 498, 501, 541 S.E.2d 242, 244 (2001); S.C. CODE ANN. § 15-75-20).

A Plaintiff may also recover punitive damages if the Defendant's violation of his rights is proven by clear and convincing evidence to be reckless, willful, wanton, or malicious. S.C. Code Ann. §15-32-520; *see also Gilbert v. Duke Power Co.*, 255 S.C. 495, 500, 179 S.E.2d 720, 723 (1971).

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

Generally there are no caps on damages. Two exceptions are for governmental entities entitled to the protections of the South Carolina Tort Claims Act, which allow for limited actual damages but not punitive damages, exemplary damages, or prejudgment interest (S.C. CODE ANN. § 15-78-120. *et seq.*, currently set at \$300,000 per person or \$600,000 per occurrence); for charities under S.C. CODE ANN. § 33-56-180(A) which limits recovery against charitable organizations to the same limit as those imposed by the Tort Claims Act.

In addition, there are limitations applicable to punitive damages sought under South Carolina law. A defendant may request a bifurcated trial on the issue. Punitive damage awards are capped to the greater of either three times the amount of compensatory damages or \$500,000. In certain situations, where the

defendant's actions could subject the defendant to conviction for a felony and such actions were the proximate cause of the plaintiff's damages or where the wrongful conduct was motivated primarily by unreasonable financial gain and known, or approved by, a person responsible for making policy decisions on behalf of the defendant, the cap can be increased to four times the compensatory damages or \$2 million, whichever is greater. Finally, there is no cap on a punitive damages award where the defendant acted with an intent to harm; was convicted of a felony for the same conduct which caused the plaintiff's damages; or acted, or failed to act, while under the influence of alcohol, drugs, or other substances which impaired the defendant's judgment. S.C. Code Ann. § 15-32-530 (C).

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

Attorneys' fees are not generally awarded in the absence of a statutory, contractual, or equitable basis.

Attorneys' fees may be awarded on the following statutory bases: (1) South Carolina Code § 15-77-300 provides that the court may allow the prevailing party to recover 'reasonable attorney's fees to be taxed as court costs against the appropriate agency' in any civil action brought by the State, except in certain specified proceedings; (2) the South Carolina Unfair Trade Practices Act provides the court shall award reasonable attorney's fees and costs to the person establishing a violation under the act; (3) under the statutory regulation of manufacturers, distributors, and dealers of automobiles, a specialized kind of Unfair Trade Practices Act, a party injured by anything forbidden by the statute; "shall recover . . . the cost of suit, including a reasonable attorney's fee; (4) suits against insurers where failure to pay was 'without reasonable cause or in bad faith,' and (5) various acts and rules that address frivolous actions or other litigation misconduct and authorize attorney fees as a sanction for improper litigation of litigation misconduct. Attorneys' fees may also be awarded if such fees are incurred as part of damages in a tort case, such as in cases involving abuse of process or malicious prosecution, or other foreseeable results of a Defendant's conduct.

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

Prejudgment interest is not usually recoverable on an unliquidated claim in the absence of an agreement or statute providing such recovery. F. PATRICK HUBBARD & ROBERT L. FELIX, S.C. LAW OF TORTS 566 (3d ed. 1990); see also Builders Transp., Inc. v. South Property & Cas. Ins. Guar. Ass'n, 307 S.C. 398, 406, 415 S.E.2d 419, 424 (Ct. App. 1992); Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993).

Interest is generally not recoverable for bodily injury and emotional distress or for lost profits or similar consequential loss, but is recoverable for loss of or damage to property. *Id.* at 567. Prejudgment interest has also been awarded from the date of loss in claims against insurance companies for bad faith refusal to pay. *Id.*

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

The existence, causation, or amount of damages cannot be left to conjecture, guesswork or speculation. However, proof of amount of loss with absolute or mathematical certainty is not required. Damages must be proved with a reasonable degree of certainty. The evidence presented by the plaintiff must enable the jury to determine what amount is fair, just and reasonable. *See Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981)(in order for damages to be recoverable, evidence should enable jury to determine amount thereof with reasonable certainty and cannot be left to conjecture, guess, and speculation).

The plaintiff bears the burden of proving by the preponderance of the evidence that he is entitled to compensatory damages.

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

No. The plaintiff bears the same burden of proving by the preponderance of the evidence that he is entitled to non-economic damages and that the damages sought are fair, just, and reasonable.