

TENNESSEE

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

Compensatory and Punitive damages are available in tort in Tennessee.

Economic and Non-Economic Damages are the main categories of compensatory damages available in tort in Tennessee. Economic damages can include medical expenses and loss of earning capacity (or loss of business profits), for example. Non-economic compensatory damages include pain and suffering, loss of enjoyment of life, disfigurement, permanent injury. A spouse can also claim he/she is owed his/her expenses in attending the injured spouse in the hospital, and a sum for the lost companionship and acts of love and affection that would have been shared during marriage.

The purpose of punitive damages is not to further compensate the plaintiff but to punish a wrongdoer and deter others from committing similar wrongs in the future, and can only be awarded if compensatory damages have already been awarded. Punitive damages are only used for egregious conduct, and may be considered if, and only if, the plaintiff has shown by clear and convincing evidence that a defendant has acted either intentionally, recklessly, maliciously, or fraudulently.

See T.P.I. Civil § 14 et seq.

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

Yes. There are caps in Tennessee which are codified at Tenn. Code Ann. § 29-39-102.

Compensation for any noneconomic damages suffered by each injured plaintiff are not to exceed \$750,000 for all injuries and occurrences that were or could have been asserted, even if multiple defendants are found liable under the principle of comparative fault.

If the injury or loss is catastrophic, however, the noneconomic damages are capped at \$1,000,000.

The caps referenced herein do not apply, however, when the defendant had specific intent to inflict serious injury, if the defendant intentionally destroyed or altered records, if the defendant was under the influence of alcohol or drugs, or if the defendant's act or omission results in a felony conviction.

Punitive damages are also capped, and codified at Tenn. Code Ann. § 29-39-104.

Punitives shall not exceed an amount equal to or greater than two times the total amount of compensatory damages awarded or \$500,000. The cap on punitive damages shall also not apply when factors mentioned above also release the cap on noneconomic damages.

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

Generally, no. Tennessee follows the "American Rule," and a party in a civil action may recover attorney fees only if a contractual or statutory provision creates a right to recover attorney fees. See Cracker Barrel Old Country Store, Inc. v. Epperson, 284 S.W.3d 303, 308 (Tenn. 2009) (other citations omitted).

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

No. While pre-judgment interest is allowed under certain circumstances in contract cases, Tennessee law does not provide for the recovery of pre-judgment interest in tort actions.

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 Tennessee, "a plaintiff may be compensated for any economic or pecuniary losses that naturally result from the defendant's wrongful conduct. Economic damages include out-of-pocket medical expenses, future medical expenses, lost wages, and lost earning potential. The plaintiff bears the burden of proving damages to such a degree that, while perhaps not mathematically precise, will allow the jury to make a reasoned assessment of the plaintiff's injury and loss." Meals ex rel. Meals v. Ford Motor Co., 417 S.W.3d 414, 419 (Tenn. 2013).

A plaintiff may recover damages for loss of future earning capacity if the injured person proves, “with reasonable certainty that the injury has or will impair his or her earning capacity. Then, the injured party must introduce evidence concerning the extent of the impairment of his or her earning capacity.” Hyde v. S. Cent. Tenn. Dev. Dist., 2017 Tenn.App. LEXIS 478, *10 (Tenn. App. 2017).

Before a plaintiff may recover damages for medical expenses, the plaintiff must first prove that the medical expenses are both necessary and reasonable. Borner v. Autry, 284 S.W.3d 216, 218 (Tenn. 2009). Testimony from a plaintiff’s treating physician may suffice to establish the reasonableness and necessity of medical expenses. Monypeny v. Kheiv, 2015 Tenn.App. LEXIS 187, *67 (Tenn. App. 2015).

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

Yes. While there is no cap on the recovery of economic damages in Tennessee, non-economic damages are limited to \$750,000.00 per plaintiff. Tenn. Code. Ann. § 29-39-102(a). (See also #2 above for additional information regarding the cap on non-economic damages.)

To receive punitive damages, a plaintiff must show that the defendant acted intentionally, fraudulently, maliciously, or recklessly. Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 (Tenn. 1992).

Once the defendant is found liable for punitive damages, the fact finder is allowed to consider the following factors in arriving at the proper amount:

- (1) The defendant's financial affairs, financial condition, and net worth;
- (2) The nature and reprehensibility of defendant's wrongdoing, for example
 - (A) The impact of defendant's conduct on the plaintiff, or
 - (B) The relationship of defendant to plaintiff;
- (3) The defendant's awareness of the amount of harm being caused and defendant's motivation in causing the harm;
- (4) The duration of defendant's misconduct and whether defendant attempted to conceal the conduct;
- (5) The expense plaintiff has borne in the attempt to recover the losses;
- (6) Whether defendant profited from the activity, and if defendant did profit, whether the punitive award should be in excess of the profit in order to deter similar future behavior;
- (7) Whether, and the extent to which, defendant has been subjected to previous punitive damage awards based upon the same wrongful act;

(8) Whether, once the misconduct became known to defendant, defendant took remedial action or attempted to make amends by offering a prompt and fair settlement for actual harm caused; and

(9) Any other circumstances shown by the evidence that bear on determining the proper amount of the punitive award.

Hodges, 901-902.