

# How do You Determine the Value of Your Personal Injury Case?<sup>1</sup>

By B. Keith Williams

There is no mathematical formula for determining the value of a personal injury case. It is not like selling your used car. You can't pick up a book and determine the value of your case. If this was possible there would be no need for the Civil Justice System.

In the plainest terms, the value of your case is what a jury of your peers would award at trial. That's the value that insurance companies use and that is the value you must use in valuing your case. Of course, as I already stated, there is no set mathematical formula used to know with 100% accuracy what that amount would be. However, it is possible to look at various factors and come up with a reasonable prediction.

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Through past experience, I have seen that juries generally have no problem awarding medical expenses, property damage, or lost wages. These are things that have set numbers which a jury can see by looking at medical bills, repair bills, paychecks, tax returns, etc. On the other hand, it is more difficult to assess what, if anything, a jury will award for other damages that do not come with a verifiable number. For these types of damages, a jury must usually be truly convinced that you have suffered these losses. Examples of these types of damages include the loss of your *future* earnings (sometimes called "lost earning capacity"), *future* medical costs, lost business profits, and pain and suffering—which includes things such as physical pain and suffering, mental or emotional pain and suffering, and loss of capacity to enjoy life. In a Wrongful Death action, the next of kin can recover for their loss of the person, including amounts

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<sup>1</sup> **This article does not constitute, nor is it a substitute for, legal advice.** Legally and ethically I am not allowed to give legal advice until I meet with you and review the particular facts and circumstances of your cases after we agree to enter an attorney/client relationship. I have created this publication with the intent of providing the reader with accurate information concerning the subject matter covered, however it is not in any way intended to give or constitute legal advice, or to serve as a substitute for the advice of your own legal counsel about your case. By creating and publishing this article, neither I, nor any attorney with the Williams Law Group is engaged in rendering legal or other professional advice, and this article is not a substitute for independent research, assessment, or advice from an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

for lost support and the loss of “consortium” with the person. This includes amounts for lost attention, guidance, care, protection, training, companionship, cooperation, affection, love, and in the case of a spouse, sexual relations.

As you can see many of the recoverable damages are intangible and a proper amount of damage is subject to great debate. These intangible harms and losses that you have suffered are the hardest to calculate. Most of the time it depends on who and what type of person is doing the calculations. These intangible harms and losses are very subjective and the value placed on them by different jurors largely depends on each juror’s background and beliefs.

Once a claim arises, the injured party’s attorney and the at-fault person’s insurance company (and their attorneys) both must assess how they think a jury would evaluate the value of the particular case. Each side assigns a value to the case and tries to get the other side to see that their value is more correct. This is what is commonly referred to as the “negotiation phase” of a case.

In the “negotiation phase” the insurance company, through their experienced adjusters and insurance lawyers, has the upper hand on the injured party if the injured party is not represented by an experienced personal injury attorney. For example, it is a common practice of insurance companies to “hold out” in order to “starve” the injured party into accepting less than

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the case is worth. In fact, this is the way insurance adjusters are trained and taught. Again, an insurance adjuster is there to make money for his or her boss, the insurance company, *not* for you! It is their job to pay you, the injured party less than the “fair value” of the claim. On the other hand, it is the job of

the experienced personal injury attorney to obtain the “fair value” of the claim for his or her client.

It can take months or even years to obtain the “fair value” of a case. One reason for this lapse of time may be that the injured party’s medical recovery takes a great length of time. The fair value of a case cannot be assessed until the injured party reaches “Maximum Medical Improvement,” which is commonly referred to as “MMI”. MMI is simply a fancy medical term meaning that the patient’s medical condition is as good as it is going to get.

As you can see from the list of recoverable damages above, the fair value of a case is primarily assessed on the extent of the injuries, medical bills incurred, need for future medical treatment and the amount of lost wages, as well as any lost support or loss of consortium. An

experienced personal injury attorney will also rely on other factors and his or her experience obtained in other cases, as well as the opinions of expert witnesses. Some of the factors an experienced personal injury attorney will consider include: the venue of the case (where the case will be tried), the client's likeability as a witness, his or her credibility as a witness, the particular facts of the case, the at fault party, the age of the client, the defense attorneys involved, and most importantly, the dollar amount of comparable settlements for similar cases in the same or similar counties.

An experienced injury attorney will have settled or tried to verdict several cases similar to yours and will have those past experiences to use in properly valuing your case. This author and every associate in his firm reads a "verdict reporter" on a monthly basis which reports every trial verdict in every county across the State of Tennessee.

These monthly reporters are stored and referred to each time one of our client's case reaches the "negotiation phase."

The main point that you should take from this chapter is that no two cases are exactly alike. While they may be similar on the surface of the facts, there are several factors that go into properly valuing a case.

These evaluations require a lot of knowledge and

experience. Without the experience of doing this several times before, injured parties lacking this experience will find themselves at a serious disadvantage when negotiating with an experienced insurance adjuster and their insurance defense lawyers. An experienced personal injury attorney is in the business of placing the proper value on each particular case and negotiating with the insurance companies and their legal teams. In most instances, you will be well served and financially rewarded by hiring an experienced personal injury attorney.

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