

Damages or Remedies in Tort (Negligence/ Occupiers Liability)

Damages are a sum of money paid by the defendant to the claimant once liability is established in compensation for the harm suffered by the claimant. It is not meant to punish the defendant but compensate the claimant. The purpose of awarding damages for injury to the person, damage to the property or economic loss and can be an entirely artificial remedy for the claimant. The purpose of damages in tort is as far as possible to put the claimant into the position they would have been in had the tort /negligence never occurred. It therefore requires speculation in calculating the damages so a C can be over/under compensated as well as being a false remedy, as money will not always repair the harm done in cases of serious disabling injuries. A claimant can have pecuniary and non pecuniary

Define: Pecuniary and non-pecuniary loss

Pecuniary loss is a loss that can be easily calculated in money terms e.g. the cost hiring a car while the claimants own care is being repaired

Non-pecuniary loss is loss that is not wholly money based. This can include:

- Pain and suffering as a result of the accident
- Loss of amenity or a change in lifestyle, such as not being able to play a sport

Damages – Special and General

Special damages

1. What are these also known as? **Pecuniary loss**
2. What period do they cover? **Calculated specifically up to the date of trial or settlement**
3. What do they include? **Cost of repairing a vehicle and the hire cost of a replacement, replacing other damaged clothes or bags. Any loss of earnings while recovering from the accident can also be claimed**

General damages

1. What are these also known as? **Non-pecuniary loss**
2. What period do they cover? **Looking forwards from the trial or settlement date**
3. What do they include? **An amount for pain and suffering, loss of amenity, future loss of earnings and future medical expenses including adapting a house or car to be suitable for a severely injured person and paying for specialist care**
4. Why are these damages speculative? What will be needed to prove them? **They must be obtained to support the claim. Medical evidence is needed of the effect of the accident on the victim and how long the suffering or injuries will take to heal**
5. How are future loss of earnings and future medical expenses calculated? **There's an annual calculation of the loss and this will be multiplied by the number of years of the loss**

The maximum multiplier is usually 18 years. In **Collett v Smith 2008** how much compensation was awarded to the young footballer? What was the multiplier here? **during the game, he was tackled by the first defendant. The tackle was high and "over the ball" and, consequently, the claimant suffered a fracture of the tibia and fibula of his right leg. The claimant claims damages for personal injury, loss and damage caused by the negligence of the first defendant, for which the second defendant was vicariously liable. In particular, he claims damages for the loss of earnings which he has sustained as a result of being deprived of the chance of pursuing a successful career as a professional footballer and, thereafter, as a football manager or coach. The judge awarded him 4.5M**

6. How can a claimant mitigate their loss? **if he/she can work part time or at a lower wage, he/she will be expected to do so, and the amount of this wage will be deducted from the award**

Make brief notes from p.258-259 on:

1.Lump sums and structured settlements under Damages Act 1996 2.Mitigation of loss

Lump sums and structured settlements -

When courts make an award for pain and suffering and loss of amenity, they can only award a lump sum – a once only award. The claimant can't come back to court and say they've exhausted the damages.

This can be unfair to the claimant whose condition may become worse in the future + where large award is made for future medical expenses, there is a problem of inflation Lump sum might also be unfair to the defendant if the claimant's condition improves considerably and there is no longer a need to pay for care

To deal with these situations, the Damages Act 1996 allows for structured settlements to be set. Allows parties who settle a claim to agree that all or part of the damages can be paid as periodical payments e.g. monthly or yearly. This is arranged by the defendant who will purchase an annuity through a financial company who then pays a set amount at regular intervals to the claimant. This Act also allows parties to agree that the payments may be made for life or for a specific period e.g. 10 years and the amount can be reassessed at intervals to ensure that its value in real terms is maintained. This type of settlement protects the claimant whose condition may become worse and fair that the defendant will only have to pay whilst the claimant's condition requires it. The courts have no power to order such structured settlements

Mitigation of loss -

Claimant is entitled to be compensated for his loss, but he is under a duty to keep the loss at a reasonable level. This is called mitigation loss. E.g. the claimant cannot claim for private treatment of the injury if there is suitable treatment under the NHS. However, if treatment is only available privately, the cost of the private treatment can be claimed. The same principles apply to property damage. If property has been damaged beyond repair, the cost of replacing the property can be claimed. Replacing the item with a more expensive replacement would not be allowed

