

COMPENSATION IN A TENNESSEE PERSONAL INJURY LAWSUIT

*If You Have Been Injured in a Personal Injury Accident
and Someone Else's Negligence Caused,
or Contributed to, the Accident, You May Be Entitled
to Compensation for Your Injuries*



Personal injury accidents come in many forms, occur in many different settings, and can happen to anyone. If you have been injured in a personal injury accident and someone else's negligence caused, or contributed to, the accident, you may be entitled to compensation for your injuries. Understandably, victims of a personal injury accident generally want to know *how much* compensation they will receive for their injuries. Because of the numerous factors that go into determining the value of a personal injury accident case, only an experienced Tennessee personal injury attorney can evaluate the unique facts and circumstances of your case and provide you with a detailed analysis; however, a better understanding of the factors that go into determining how much compensation a victim is entitled to may be helpful in the meantime.

What Qualifies as a "Personal Injury Accident?"

The term "personal injury accident" covers a broad spectrum of scenarios in which a victim is injured. "Torts" is the formal name for the area of the law that addresses injuries to persons or property. Torts covers a variety of different types of injury accidents, such as:

- Car accidents
- Dog bites
- Medical errors
- Slip and fall accidents
- Premises liability
- Product liability
- Workplace accidents where third party liability applies
- Industrial disease
- Wrongful death

Intentional Torts, Strict Liability and Negligence



Sometimes, an accident is truly and accident; however, more often than not, what we commonly refer to as an “accident” was actually caused, at least in part, by someone else’s conduct. As a victim, you are only entitled to compensation if your injuries were caused by the intentional or negligent conduct of another party or if strict liability

applies. A basic understanding of the three is essential.

- **Intentional torts** – an intentional tort occurs when someone’s intentional conduct causes injury. For example, if you were an innocent bystander during a bar fight and one of the combatants struck you that assault could form the basis of a personal injury lawsuit. Often, intentional torts are also charged as a criminal offense; however, as the victim you may also be able to file a civil personal injury lawsuit to recover damages that are not available through the criminal courts.
- **Strict liability** – strict liability does not look at the mindset, or mensrea, of the defendant. When strict liability applies a victim is entitled to recover for damages simply by showing that he or she was injured. Strict liability often applies to dog bite cases. Tennessee, in particular, uses a strict liability standard for most dog bite injuries which makes the dog’s owner liable for injuries regardless of actions taken, or not taken, on the part of the owner to prevent the injuries.
- **Negligence** –most personal injury accident cases are evaluated using a negligence standard. Negligence requires that a legal duty to existed from the defendant to the victim to do everything reasonably possible to prevent harm to the victim and that the defendant breached that duty. A motorist operating a vehicle on a public highway, for

instance, owes a duty of care to everyone else on the roadway. Driving aggressively, speeding, texting while driving, or driving under the influence would all potentially be considered a breach of that duty of care if an accident resulted.

Comparative Negligence in Tennessee

When a victim is injured in a personal injury accident it may be that another party was completely to blame for the accident, or it could be that the victim shared some of the fault as well. In addition, some accidents, particularly motor vehicle collisions, involve numerous potential at-fault parties. The law has to have a mechanism for sorting out who was at fault and who is entitled to recover damages. Two systems of negligence are used in the United States – contributory and comparative negligence. Contributory negligence forbids a victim



from being compensated if the victim was even one percent at fault in the accident. Fortunately for victims, only four states and the District of Columbia use contributory negligence. All other states, including Tennessee, use some form of comparative negligence.

Pure comparative fault (negligence) allows a victim to recover damages even if the victim is 99 percent at fault in the accident. Because that type of a system makes little sense, states use a modified comparative fault. Tennessee uses the "50 percent Bar Rule" which essentially means that a victim may recover if the victim was 49 percent or less at fault.

The amount of compensation you are entitled to will be affected by your degree of fault in the accident. For example, if you are involved in a trucking accident and you suffer damages

totaling \$50,000 but you were 20 percent at fault in the accident you would only be entitled to recover \$40,000.

Damages –Economic, Non-Economic and Punitive

As a victim of a Tennessee personal injury accident you may be entitled to both economic and non-economic damages. These damages are compensatory in nature, meaning they are intended to compensate the victim for injuries, not punish the defendant. Economic damages are intended to cover out of pocket expenses such as medical bills, property damage, and lost wages that result from the accident.

Non-economic damages are what people often refer to as “pain and suffering”, though they actually cover much more than that. In Tennessee, non-economic damages may include compensation for:

- physical and emotional pain
- suffering
- inconvenience
- physical impairment
- disfigurement
- mental anguish
- emotional distress
- loss of society, companionship and consortium
- injury to reputation
- humiliation
- non - economic effects of disability, including loss of enjoyment of normal activities, benefits and pleasures of life
- loss of mental or physical health, well-being or bodily functions
- all other non-pecuniary losses of any kind or nature

Unlike economic and non-economic damages, punitive damages **are** intended to punish the defendant in a personal injury lawsuit. Therefore, they are not routinely awarded. In situations where punitive damages are potentially available, the victim has to prove that the defendant's conduct was malicious, intentional, fraudulent, or reckless.

Calculating Damages

Calculating the amount of economic damages you are entitled to is usually fairly simple as your economic damages award represents actual, pecuniary expenses for which you usually have a bill or receipt. Your non-economic damages, on the other hand, are much more difficult to calculate because they are subjective in nature. Despite what many people believe, there is no "magic formula" used by insurance adjusters and/or attorneys to determine the value of the non-economic portion of your case. Some factors that will be considered when calculating the value of your non-economic award/settlement include:

- Type of injuries suffered
- Extent/severity of injuries
- Number of injuries
- Prognosis (will future treatment/surgery likely be required?)
- Age and overall health of victim prior to accident
- Family relationships that suffer as a result of the injuries
- Professional/career consequences of injuries

As a general rule, the more serious the physical injuries are that a victim suffers the higher the non-economic compensation award will be; however, there are exceptions to this general rule. If a professional athlete suffers a broken ankle that ends his/her career, for example, it may increase the value of the non-economic compensation because the mental anguish and emotional distress are, arguably, greater than if someone else suffered the same injury.

Because every victim is unique and every personal injury accident involves slightly different facts and circumstances the only way to obtain a reliable estimate of the value of your Tennessee personal injury accident case is to consult with an experienced Tennessee personal injury attorney.

Claims Journal, [Understanding Comparative Fault, Contributory Negligence, and Joint and Several Liability](#)

State of Tennessee, [House Bill No. 2008](#)

ALLLAW, [Tennessee Personal Injury Laws & Statutory Rules](#)

Animal Legal and Historical Center, [Tennessee](#)

About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional and trustworthy services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.