

Everything You Need to Know About a Wrongful Death Lawsuit, Part 2: Survival Actions

In part one of *Everything You Need to Know About a Wrongful Death Lawsuit* we looked at the scope of a wrongful death lawsuit as it pertains to personal injury. We also explained how damages are determined in a court of law in regard to wrongful death. We delved into how it differs from a lawsuit filed due to an accident, and how the surviving family members circumstances are a major component of “pecuniary loss”.

As a refresher course, let’s define “pecuniary loss” within the scope of personal injury law:

A loss that can be evaluated in money terms; money lost by a dependent when a support person dies.

Knowing this, it’s important to remember that the actual process of determining pecuniary loss has multiple steps that must be allowed for to ensure that the outcome of the wrongful death lawsuit is fair and just for the family of the decedent. The relevant details collected in a court of law range from the decedent’s age to their earning capacity over a lifetime had they not suffered a wrongful death.

Expert testimony and an experienced attorney go hand-in-hand

Now, we must look at how expert testimony plays a role within the scope of a wrongful death lawsuit.

During a wrongful death lawsuit, attorneys representing the plaintiffs have the right to present the testimony of financial experts to establish a financial value on the deceased to his or her family. This may sound cruel and unusual to the reader, but if the family of the deceased has a board certified civil trial attorney, they are there to protect their rights and uphold their dignity throughout the trying legal process.

A family member is invaluable, and the court knows this

Losing a loved one due to someone else’s negligence that results in a wrongful death is tragic as well as financially destructive to a family. With this in mind, courts have changed their approach. It is now admissible to allow testimony from a financial expert even if the decedent did not work outside the home. When the deceased did not work outside the home, the financial impact will be determined by providing proof to the court of increased spending to maintain the service he or she provided to the family had he or she lived.

Many times, the jury is not informed enough on the subject to make a decision on an unemployed decedent’s financial value and therefore experts are admissible during the trial. This helps the jury to better understand the impact the family has incurred as a result of losing their loved one.

Compensation is not straightforward, and a family may be entitled to more

To better understand “punitive damages”, first we must look at the definition of the term.

The dictionary defines “punitive damages” as follows:

Damages exceeding simple compensation and awarded to punish the defendant.

Knowing this, we can better understand why the defendant is often subject to paying punitive damages to the surviving family members after a wrongful death lawsuit.

Wrongful deaths are traumatic, tragic; survival actions come into play

Furthermore, an attorney for the family may be able to obtain damages for personal injury as related to the accident that caused the wrongful death. This area of a personal injury attorney’s practice of law is known as

pursuing *survival actions*. In the case of a wrongful death, a personal injury has still been brought upon the deceased as a result of an accident—they may have suffered in terrible pain before they passed away.

An attorney representing the deceased's interests may pursue survival actions along with the wrongful death lawsuit. To be able to do this, the jury looks at several factors when considering survival actions on behalf of the family:

1. Severity of pain and suffering prior to the death
2. Fear of impending death
3. Duration of the deceased's suffering

The jury uses these considerations to determine the amount of punitive damages awarded to the family. An experienced attorney will know the best course of action in pursuing survival actions on behalf of the grieving family.

Contact us to schedule a complimentary consultation. There's no obligation. Take the first step and call today: (877). 529-0080

© Sagi Shaked Esq.