

## Damages

### Basic principles

**Restitutio in integrum** → put plaintiff in the position as if he had not sustained the injuries

“**Once and for all**” → lump sum (cannot expect defendant to make periodic payments)

*Murphy v Stone Wallwork (Charlton) Ltd* → court attempts to find the reasonable figure

**Damages awarded unconditionally** → no concern with how the funds are used (*Todoric v Waller*)

### Assessment of damages

#### Date of assessment

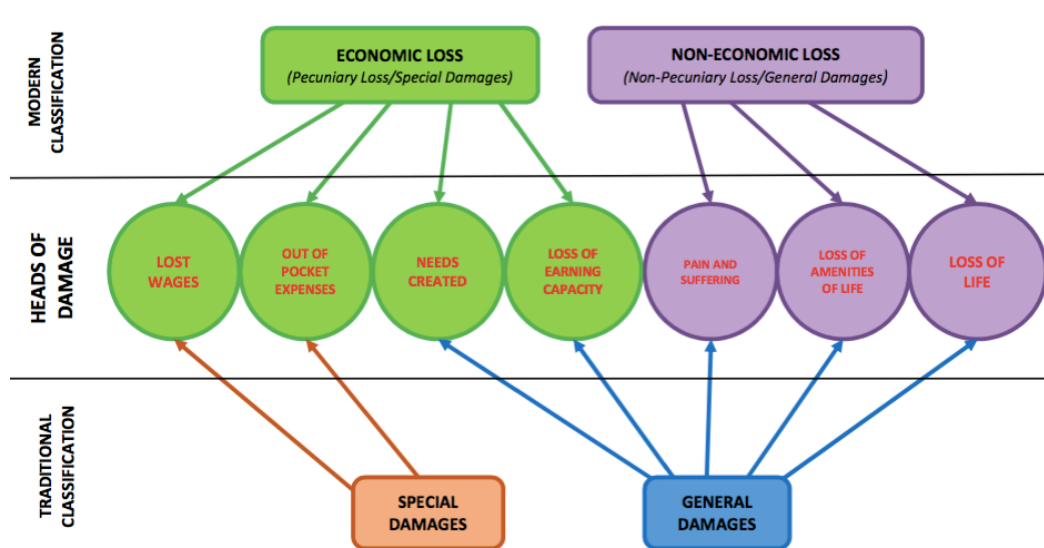
*Johnson v Perez*

- Starting date → date of making the award
- Greater accuracy in determining personal circumstances

#### Recoverable heads of loss → itemize award

*CSR Ltd v Eddy*

- Non pecuniary losses
- Loss of earning capacity both before and after trial
- Actual financial loss



## Damages for economic loss

### Loss of earnings

S 12 Damages for past or future economic loss—maximum for loss of earnings etc

(1) This section applies to an award of damages:

(a) for **past economic loss due to loss of earnings** or the deprivation or impairment of earning capacity, or

(2) In the case of any such award, the court is to disregard the amount (if any) by which the claimant's gross weekly earnings would (but for the injury or death) have exceeded an amount that is **3 times** the amount of **average weekly earnings** at the date of the award. (Places limit on award)

(3) For the purposes of this section, the amount of average weekly earnings at the date of an award is:

(a) Estimated by Australian Statistician (Statewide average)

### Out of pocket expenses

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- All medical expenses that have been incurred up until the date of the verdict (*British Westinghouse Electric & Manufacturing Co Ltd v Underground Electric Railways Co of London Ltd*)
- What a reasonable person would have done assuming he was faced by all the circumstances of the case (*Glavonjic v Foster*)

### Needs created

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#### Gratuitous attendant care services

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*Griffiths v Kerkemeyer*

1. Is it reasonably necessary to provide the services and would it be reasonably necessary to do so at a cost?
  - a. If yes - likely to be productive of financial loss
2. Is the character of the benefit which the plaintiff receives by the gratuitous provision of the services?
  - a. It ought to be brought into account in relief by the gratuitous provision of the services
  - b. It ought to be brought into account in relief of the wrongdoer

S 15 Damages for gratuitous attendant care services:

**Attendant care services** means any of the following:

- (a) services of a domestic nature,
- (b) services relating to nursing,
- (c) services that aim to alleviate the consequences of an injury.

**Gratuitous attendant care services** means attendant care services:

- (a) that have been or are to be provided by another person to a claimant, and
- (b) for which the claimant has not paid or is not liable to pay.

S 15(2) No damages may be awarded to a claimant for gratuitous attendant care services unless the court is satisfied that:

- (a) there is (or was) a reasonable need for the services to be provided, and

- (b) the need has arisen (or arose) solely because of the injury to which the damages relate, and
- (c) the services would not be (or would not have been) provided to the claimant but for the injury.

S 15(3) Minimum period

- (a) For at least 6 hours per week
- (b) A period of at least 6 consecutive months

S 15(4) → If > 40 hours of care, the award must not exceed the average weekly total earnings.

S 15(5) → If <40 hours of care, the award must not exceed that calculated at an hourly rate one-fortieth of that under s 15(4)

S 15B Damages for loss of capacity to provide domestic services

Services that were once provided, defendant not capable themselves due to age or physical or mental incapacity, care would have been for more than 6h/week, 6 months, need for care is reasonable

### Loss of Earning Capacity

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*Cullen v Trappell* → damages for lost capacity not to merely replace wages

*Sharman v Evans*

- Lost years (money made during these years), deducts amount he would have expended on himself
- New economic needs → reasonableness of treatment (UNDER NEEDS CREATED)
  - Required for new **life expectancy (age)**
  - Once life expectancy is calculated → no vicissitudes discount

Eggshell Skull rule → plaintiff's history of stable employment

Net earnings → Outgoings necessary for the realisation of that capacity/hypothetical work (e.g. transport, equipment) (*Wynn v NSW Insurance Ministerial Corp*)

Loss of entitlements → sick pay, holiday pay, pensions (Social Security Act 1991 (Cth))

Gifts → NOT included (*Zeng v Cai*)

S 15C Damages for loss of superannuation entitlements

Minimum percentage required by law 9.5% paid by employer

AMOUNT IS AFTER TAX

Residual capacity → subtracted from most likely future scenario (*McCracken v Melbourne Storm Rugby League Football Club Ltd*)

ALSO restricted by s 12 (S 12(1)(b)) → 3x average