

106.08 PERSONAL INJURY DAMAGES - PAIN AND SUFFERING.¹

Damages for personal injury also include fair compensation for the actual [past] [present] [future]² physical pain and mental suffering³ experienced by the plaintiff as a proximate result of the negligence of the defendant.⁴ There is no fixed formula for placing a value on physical pain and mental suffering. You will determine what is fair compensation by applying logic and common sense to the evidence.

1. The evidence may be such as to require elaboration of this instruction in one or more of the following respects:

Recoverable damages for pain and suffering include such caused by delay in treatment or unsuccessful treatment. *See Heath v. Kirkman*, 240 N.C. 303, 310, 82 S.E.2d 104, 108-09 (1954).

Recoverable damages for pain and suffering include those caused by negligence of the original treating physician, unless the injured person was negligent in selecting the physician. *See Bost v. Metcalf*, 219 N.C. 607, 609, 14 S.E.2d 648, 651 (1941); *see also Warren v. Colombo*, 93 N.C. App. 92, 105, 377 S.E.2d 249, 256 (1989).

2. If there is evidence of future pain and suffering, whether temporary or permanent, give N.C.P.I.-Civil 106.16 ("Personal Injury Damages-Future Worth in Present Value"). In addition, if there is evidence that the pain and suffering will be permanent, give N.C.P.I.-Civil 106.14 ("Personal Injury Damages-Permanent Injury").

3. There may, of course, be specific proof of mental suffering, but "[a]s a general rule, in personal injury cases where mental pain and suffering form an element of recoverable damages by reason of mutilation or disfigurement of the person, direct proof of such pain and suffering is not necessary, but it may be inferred by the jury from the facts of the case . . ." *King v. Britt*, 267 N.C. 594, 598, 148 S.E.2d 594, 598 (1966); *see also King v. Higgins*, 272 N.C. 267, 158 S.E.2d 67 (1967); *Williamson v. Bennett*, 251 N.C. 498, 112 S.E.2d 48 (1960). However, the Supreme Court has indicated that a "verdict allowing the exact amount of medical expenses, but awarding nothing for pain and suffering where claim therefore was properly made and clearly proven, is invalid and cannot stand." *Robertson v. Stanly*, 285 N.C. 561, 565, 206 S.E.2d 190, 194 (1974). Moreover, " 'pain and suffering' may be a discrete basis for recovery" even absent proof of *physical* pain and suffering because "pain and suffering damages are intended to redress a wide array of injuries ranging from physical pain to anxiety, depression, and the resulting adverse impact upon the injured party's lifestyle." *Iadanza v. Harper*, 169 N.C. App. 776, 780, 611 S.E.2d 217, 222 (2005).

4. *King v. Britt*, 267 N.C. 594, 597, 148 S.E.2d 594, 597 (1966).