

106.32 PERSONAL INJURY DAMAGES - PARENT'S CLAIM FOR NEGLIGENT
INJURY TO MINOR CHILD.

NOTE WELL: Although the claims of a parent and an injured child as a result of a single act of negligent conduct can be joined under N.C. Gen. Stat. 1A-1, Rule 20, they remain separate damage issues.

The *(state number)* issue reads:

"What amount is *(name parent)* entitled to recover for the personal injury¹ to *(name child)*?"

If you have answered the *(state number)* issue in favor of *(name child)*, *(name parent)* is entitled to nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by *(name parent)*.

(Name parent) may also be entitled to recover actual damages. On this issue the burden of proof is on *(name parent)*. This means *(name parent)* must prove, by the greater weight of the evidence, the amount of actual damages proximately caused by the negligence of the defendant. *(Name parent)* is entitled to fair compensation for the actual

[loss of services of *(name child)*]

[loss of earnings of *(name child)*]

[necessary expenses incurred for medical treatment of *(name child's)* injuries]

proximately caused by the negligence of the defendant. In considering this issue, you must not duplicate any damages you have already

awarded to (*name child*). Thus, any damages you award (*name parent*) may not include any compensation which can only be claimed by (*name child*), such as [loss of earnings after the age of majority] [scars or disfigurement] [loss (of use) of part of the body] [pain and suffering] [permanent injury] [*state any other type of damage at issue in child's case-in-chief*]. You must limit your consideration to (*name parent's*) actual [loss of services of (*name child*)] [loss of earnings of (*name child*)] [necessary expenses incurred for medical treatment of (*name child's*) injuries]. The total of all damages are to be awarded in one lump sum. I will now explain the law of damages as it relates to each of these.

[*Loss of Services*. A parent is entitled to the services of his child during minority.² Where the child's services are lost as a proximate result of the negligence of a person, the parent is entitled to fair compensation. Loss of services, whether voluntary or obligatory, includes the monetary value of reasonably expected services, protection, care and assistance from the child.³

[*Loss of Earnings*. A parent is entitled to the earnings of his child during minority. Where these earnings are lost as a proximate result of the negligence of a person, the parent is entitled to fair compensation. Loss of earnings includes the amount the child would have earned but for the [loss of time] [the inability to work] [the reduced capacity to earn money] [proximately caused by the negligence] of another. You may consider:

[the child's age and occupation]

[the nature and extent of the child's employment]

[the value of the child's services]

[the amount of the child's income from fixed salary or wages at the
time of his injury]

[disability or disfigurement affecting the child's earning capacity]

[loss of profits from the child's business or profession]

[*specify any other factor supported by the evidence*].]

[*Necessary Medical Expenses.* A parent is under a duty to support
his child during minority, including a duty to care for the child.⁴ As such,
a parent is liable for any necessary medical treatment received by the
child. Thus, a parent is entitled to fair compensation for any reasonably
necessary medical expenses for the child proximately resulting from the
negligence of a person. Medical expenses include the actual amounts
paid or incurred by the parent for hospital, doctors' and drug bills, and
other reasonably necessary medical expenses.]

You are instructed that (*name parent*) is entitled to recover for [the
loss of services of (*name child*)] [the loss of earnings of (*name child*)]
[the necessary expenses incurred for the medical treatment of (*name
child's*) injuries] only for so long as (*name child*) is a minor. Once (*name
child*) [attains the age of eighteen] [becomes emancipated]⁵, (*name
parent*) is no longer entitled to [(*name child's*) services] [(*name child's*)
earnings] [reimbursement for (*name child's*) necessary medical
expenses].⁶ Any damages you award (*name parent*) must be limited to
the period of time before (*name child*) [turns eighteen] [becomes
emancipated].

(*Use the next paragraph only if there is evidence which would
justify a finding that services or earnings will be lost or additional*

medical expenses will be incurred in the future: [Lost services] [Lost earnings] [Necessary medical expenses] also include the amount which you find, by the greater weight of the evidence, will hereafter [be lost] [be paid or incurred by (*name parent*) for necessary medical expenses] as a proximate result of the negligence of the defendant until the time (*name child*) reaches eighteen.⁷ However, any amount you allow for future [lost services] [lost earnings] [necessary medical expenses] must be reduced to its present value, because a smaller sum received now is equal to a larger sum received in the future. These future losses are limited to the period from now until the child reaches the age of eighteen.) (There is evidence before you that (*name parent's*) actual damages for future [lost services] [lost earnings] [necessary medical expenses] have already been reduced to their present value. Whether they have in fact been so reduced is for you to determine from the evidence and from your logic and common sense. However, if you find that (*name parent's*) actual damages for future [lost services] [lost earnings] [necessary medical expenses] have already been reduced to present value, you must not reduce them again.))

I instruct you that your findings on the (*state number*) issue must be based upon the evidence and the rules of law I have given you with respect to the measure of damages. You are not required to accept the amount of damages suggested by the parties or their attorneys. Your award must be fair and just. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to the (*state number*) issue on which (*name parent*) has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages proximately caused by the negligence of the

defendant, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

1. If the child dies as a result of his injuries, the wrongful death statute displaces a parents' claim under this instruction and, accordingly, the wrongful death instructions should be given. See N.C.P.I.-Civil 810.40. Only the personal representative or the collector of the estate of the deceased may bring a wrongful death action. N.C. Gen. Stat. § 28A-18-2. *Burcl v. North Carolina Baptist Hospital*, 306 N.C. 214, 293 S.E.2d 85 (1962). Thus, a parent cannot bring an action in his own name for the death of a minor child. *Killian v. Southern Ry Co.*, 128 N.C. 261, 38 S.E. 873 (1901); *Scarlett v. Norwood*, 115 N.C. 284, 20 S.E. 459 (1894) (*dictum*). Likewise, a parent has on right of action for medical and funeral expenses incurred on behalf of deceased unemancipated minor children. *Christenburg v. Hedrick*, 32 N.C. App. 708, 712, 234 S.E.2d 3, 5 (1977). See also *Keys v. Duke University*, 112 N.C. App. 518, 520, 435 S.E.2d 820, 821 (1993).

2. *Smith v. Hewett*, 235 N.C. 615, 617, 70 S.E.2d 825, 827 (1952).

3. *Id.*

4. *Smith, supra.*

5. See N.C. Gen. Stat. § 7B-3500 *et. seq.*

6. Ordinarily, the obligation of the parent to support the child ends with the attainment of majority. However, if the child is too weak in mind or body that he is unable to support himself and remains in the parent's home unmarried, the parents' duty to support continues. *Ramsey v. Todd*, 25 N.C. App. 605, 214 S.E.2d 307 (1975).

7. *But see* note 6.