

34.00

DAMAGES--FUTURE DAMAGES--LENGTH OF TIME DAMAGES WILL CONTINUE--DISCOUNT OF DAMAGES--MORTALITY TABLES

34.01 Damages Arising in the Future--Extent and Amount

If you find that [a] [the] plaintiff is entitled to damages arising in the future [because of injuries] [or] [because of future (medical) (caretaking) expenses] [or] [because of loss of earnings] [or] [loss of the services of [name of minor child]] [or] [because of (loss of society) (or) (loss of companionship and sexual relations)], you must determine the amount of these damages which will arise in the future. [If these damages are of a continuing nature, you may consider how long they will continue.] [If these damages are permanent in nature, then in computing these damages you may consider how long the plaintiff (and his spouse) (is) (are) likely to live.] [With respect to a loss of future earnings, you may consider that some persons work all their lives and others do not; that a person's earnings may remain the same or may increase or decrease in the future.]

Notes on Use

The elements of damages used in the first paragraph of this instruction must be consistent with the elements of damages used in other damages instructions, *e.g.*, IPI 30.06-30.09, 31.13, and 32.02-32.04.

This instruction is intended to inform the jury that they should consider the length of time the various elements of damage will continue, point out that earnings may not equal life expectancy and may vary, and lay the basis for the instruction on discounting particular elements of damages to present cash value. *See* IPI 34.02.

The instruction is drawn to cover both temporary and permanent future damages. If there is evidence to support a finding that future damages are continuing but not permanent, use the first sentence of the second paragraph. If there is evidence sufficient to support a finding that future damages are permanent, use the second sentence of the second paragraph. *Buskirk v. Burlington N., Inc.*, 103 Ill.App.3d 414, 431 N.E.2d 410, 412, 59 Ill.Dec. 125, 127 (5th Dist.1982), *cert. denied*, 459 U.S. 910, 103 S.Ct. 217, 74 L.Ed.2d 173 (1982). If the evidence would support both findings, both sentences should be used.

The last paragraph will be used only when there is evidence of a loss of future earnings.

If mortality tables are in evidence, also use IPI 34.04.

On the issue of the use of “value” or “expense” for medical care, treatment and services, see 30.06 Notes on Use.

Comment

See Comment to IPI 32.06 concerning the parent's right to recover for the loss of the services of an unemancipated minor child.

34.02 Damages Arising in the Future--Discount to Present Cash Value

In computing the damages arising in the future [because of future (medical) (caretaking) expenses] [or] [because of the loss of (future earnings) (benefits) (or) (services)] you must determine their present cash value. “Present cash value” means the sum of money needed now, which, when added to what that sum may reasonably be expected to earn in the future, will equal the amount of the [expenses] [and] [earnings] [benefits] at the time in the future when [the expenses must be paid] [or] [the earnings (benefits) would have been received]. Damages for [pain and suffering] [disability] [loss of a normal life] [and] [disfigurement] [loss of (society) (companionship) (and) (sexual relations)] are not reduced to present cash value.

Notes on Use

This instruction may be used with IPI 34.01. If mortality tables are in evidence, also use IPI 34.04.

On the issue of the use of “value” or “expense” for medical care, treatment and services, see 30.06 Notes on Use.

Comment

This instruction has been modified from earlier versions. Prior 34.02 included the phrase “... you must not [simply multiply the (expenses) (earnings) (benefits) (by the length of time you have found they will continue) (or) (by the number of years you have found that the plaintiff is likely to live)].”

Inclusion of this phrase requires the court to favor one method of determining present cash value over another. There is a sound economic basis (though certainly not the only one) that permits present cash value to be determined in exactly the manner prohibited by the former instruction. This is known as the “total offset method.” See *Beaubien v. Elliot*, 434 P.2d 665 (Alaska 1967) and *Kaczkowski v. Bolubasz*, 461 Pa. 561, 421 A.2d 1027 (1980), wherein two state supreme courts have judicially adopted this method. Also see 104 Dick. L. Rev. 679 (Summer 2000). The Illinois Supreme Court in *Richardson v. Chapman*, 175 Ill.2d 98, 676 N.E.2d 621, 221 Ill.Dec. 818 (1997) approved of this method of determining present cash value in the “upper bound” figures used by plaintiff’s expert. However, the Court did not adopt this method or indicate it was preferred over other methods. Therefore, the committee makes no recommendation as to which of several methods may be used to determine present cash value.

Future damages except for pain and suffering, disfigurement, disability, loss of normal life, and loss of society and consortium are to be reduced to present cash value. *Allendorf v. Elgin, J. & E. Ry. Co.*, 8 Ill.2d 164, 133 N.E.2d 288 (1956), *cert. denied*, 352 U.S. 833, 77 S.Ct. 49, 1 L.Ed.2d 53 (1956); *Avance v. Thompson*, 387 Ill. 77, 55 N.E.2d 57 (1944), *cert. denied*, 323 U.S. 753, 65 S.Ct. 82, 89 L.Ed. 603 (1944); *Howard v. Gulf, M. & O.R.Co.*, 13 Ill.App.2d 482, 142 N.E.2d 825 (4th Dist.1957). *Cf. Lorenz v. Air Illinois, Inc.*, 168 Ill.App.3d 1060, 522 N.E.2d 1352, 119 Ill.Dec. 493 (1st Dist.1988), and *Exchange Nat'l Bank v. Air Illinois, Inc.*, 167 Ill.App.3d 1081, 522 N.E.2d 146, 118 Ill.Dec. 691 (1st Dist.1988) and *Drews v. Global Freight*

Lines, Inc., 144 Ill.2d 84, 161 Ill.Dec. 324, 578 N.E.2d 970 (1991) (damages for loss of consortium and society not reduced to present cash value in a wrongful death case).

There is no requirement that actuarial or statistical evidence be present to guide the jury in its determination of present cash value when this instruction is given. *Robinson v. Greeley & Hansen*, 114 Ill.App.3d 720, 449 N.E.2d 250, 253; 70 Ill.Dec. 376, 379 (2d Dist.1983); *Crabtree v. St. L.-S.F. Ry. Co.*, 89 Ill.App.3d 35, 411 N.E.2d 19, 44 Ill.Dec. 113 (5th Dist.1980); *Kirk v. Walter E. Deuchler Associates, Inc.*, 79 Ill.App.3d 416, 426-427; 398 N.E.2d 603, 610; 34 Ill.Dec. 780, 787 (2d Dist.1979).

See also *Schaffner v. Chicago & North Western Transportation Company*, 129 Ill.2d 1, 541 N.E.2d 643, 133 Ill.Dec. 432 (1989) (improper for defendant to argue that any sum awarded Plaintiff could be invested to produce a "stream of income"); *Lorenz v. Air Illinois, Inc.*, 168 Ill.App.3d 1060, 522 N.E.2d 1352, 1356; 119 Ill.Dec. 493, 497 (1st Dist.1988) (expert testimony as to cost of annuity properly excluded on issue of present cash value); *Singh v. Air Illinois, Inc.*, 165 Ill.App.3d 923, 520 N.E.2d 852, 856-857; 117 Ill.Dec. 501, 505-506 (1st Dist.1988) (same); *Exchange Nat'l Bank v. Air Illinois, Inc.*, 167 Ill.App.3d 1081, 522 N.E.2d 146, 150-151; 118 Ill.Dec. 691, 695-696 (1st Dist.1988) (same; reference to "inflation" in closing argument not prejudicial error)

34.03 Death Case--Discount of Future Damages

Comment

This instruction is now IPI 31.12.

34.04 Damages Arising in the Future--Mortality Tables as Evidence of Damages--Injury Case

According to a table of mortality in evidence, the life expectancy of a person aged ____ years is ____ years. This figure is not conclusive. It is the average life expectancy of persons who have reached the age of _____. It may be considered by you in connection with other evidence relating to the probable life expectancy of the plaintiff in this case, including evidence of his occupation, health, habits, and other activities, bearing in mind that some persons live longer and some persons less than the average.

Notes on Use

The age of the injured person at the time of the trial and the expectancy of a person of his age as shown by the mortality tables in evidence should be inserted in the blank spaces in this instruction.

If mortality tables are in evidence, this instruction should be given in addition to any other instructions on the calculation of damages, such as IPI 34.01 or 34.02.

Comment

Mortality tables are admissible in evidence in personal injury cases where there is evidence that the injuries are of a permanent nature. *Avance v. Thompson*, 387 Ill. 77, 55 N.E.2d 57 (1944), *cert. denied*, 323 U.S. 753, 65 S.Ct. 82, 89 L.Ed. 603 (1944); *Howard v. Gulf, M. & O.R. Co.*, 13 Ill.App.2d 482, 142 N.E.2d 825 (4th Dist.1957).

In *Avance v. Thompson, supra*, the Illinois Supreme Court held that: "The jury should be carefully instructed as to the purposes for which such tables may be considered in fixing pecuniary damages." The court indicated that it was the responsibility of the party offering the tables to accompany the offer with a proper instruction to the jury. In *Nickell v. Baltimore & O.R. Co.*, 347 Ill.App. 202, 210; 106 N.E.2d 738, 741-742 (4th Dist.1952), the defendant contended that the court committed reversible error when it failed to instruct the jury on the application of mortality tables which had been introduced into evidence by the plaintiff. The court held it was incumbent upon the defendant to make a request for an instruction relative to the application of mortality tables and that it was not reversible error for the court to fail to instruct on this subject in the absence of tender of such an instruction. Illinois Supreme Court Rule 366(b) (2) (i) states, "No party may raise on appeal the failure to give an instruction unless he shall have tendered it."

In *Crabtree v. St. Louis-San Francisco Ry. Co.*, 89 Ill.App.3d 35, 39; 411 N.E.2d 19, 22; 44 Ill.Dec. 113, 116 (5th Dist.1980), the court, in rejecting an objection to IPI 34.04, noted that there is no requirement in Illinois that plaintiff introduce actuarial or statistical evidence to guide the jury in determining the present cash value of future lost earnings, although such evidence is

“often helpful to juries in reducing damages to monetary figures and could have been presented by defendant had it felt the necessity therefor.”

This instruction has been approved in various cases. *Jurney v. Lubeznik*, 72 Ill.App.2d 117, 218 N.E.2d 799, 806 (1st Dist.1966); *Sherman v. City of Springfield*, 111 Ill.App.2d 391, 401; 250 N.E.2d 537, 546 (4th Dist.1969); *Avery v. Moews Seed Corn Co.*, 131 Ill.App.2d 842, 268 N.E.2d 561 (3d Dist.1971); *Canales v. Dominick's Finer Foods, Inc.*, 92 Ill.App.3d 773, 416 N.E.2d 303, 48 Ill.Dec. 272 (1st Dist.1981); *Ciborowski v. Philip Dressler & Associates*, 110 Ill.App.3d 981, 443 N.E.2d 618, 66 Ill.Dec. 692 (1st Dist.1982); *Martin v. Kralis Poultry Co.*, 12 Ill.App.3d 453, 465; 297 N.E.2d 610, 619 (5th Dist.1973).

This instruction was previously an alternative to IPI 34.01 or 34.02 but is now given in addition to those instructions or any other instructions referring to mortality tables.

34.05 Mortality Tables as Evidence of Damages--Death Case

Comment

This instruction is now IPI 31.13.