

31.04 Measure of Damages--Wrongful Death--Adult Decedent--Widow and/or Lineal Next of Kin Surviving

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the [lineal next of kin, e.g., widow] of the decedent for the pecuniary loss proved by the evidence to have resulted to the [lineal next of kin] of the decedent. "Pecuniary loss" may include loss of money, benefits, goods, services, [and] society [and sexual relations].

Where a decedent leaves [lineal next of kin], the law recognizes a presumption that the [lineal next of kin] have sustained some substantial pecuniary loss by reason of the death. The weight to be given this presumption is for you to decide from the evidence in this case.

In determining pecuniary loss, you may consider what the evidence shows concerning the following:

[1. What (money,) (benefits,) (goods,) (and) (services) the decedent customarily contributed in the past;]

[2. What (money,) (benefits,) (goods,) (and) (services) the decedent was likely to have contributed in the future;]

[3. Decedent's personal expenses (and other deductions);]

[4. What instruction, moral training, and superintendence of education the decedent might reasonably have been expected to give decedent's child had decedent lived;]

[5. Decedent's age;]

[6. Decedent's health;]

[7. Decedent's habits of (industry,) (sobriety,) (and) (thrift);]

[8. Decedent's occupational abilities;]

[9. The grief, sorrow, and mental suffering of [next of kin];]

[10. The relationship between [lineal next of kin, e.g. son] and [decedent].]

[11. The marital relationship that existed between [widow/widower] and [decedent].]

[Widow/widower] is not entitled to damages for loss of [decedent's] society and sexual relations after [date of remarriage].

Instruction and Notes on Use revised June 2021; Comment revised October 2007.

Notes on Use

Use only those factors 1-11 which are applicable to the facts of this case. If the surviving spouse has remarried, the bracketed paragraph should be utilized to insert the date of the remarriage. *See Carter v. Chi. & Ill. Midland Ry. Co.*, 130 Ill.App.3d 431, 474 N.E.2d 458, 85 Ill.Dec. 730 (4th Dist. 1985).

This instruction should be used with IPI 31.09 which explains why the suit is brought in the name of the personal representative of the deceased.

This instruction should be used with IPI 31.11 defining “society” whenever loss of society is claimed.

Item 9 is a new addition to the instruction. Its inclusion is based on the 2007 amendment to the Wrongful Death Act, 740 ILCS 180/2. That amendment (P.A. 95-3) permits the recovery of damages for grief, sorrow, and mental suffering of the next of kin and applies to causes of action accruing on and after its effective date, May 31, 2007.

Comment

Various factors in addition to loss of support or monetary contributions are proper in determining pecuniary damages. *Rasmussen v. Clark*, 346 Ill.App. 181, 104 N.E.2d 325 (2d Dist. 1952) (decedent's payment of utility bills and personal services at home); *Hudnut v. Schmidt*, 324 Ill.App. 548, 58 N.E.2d 929 (3d Dist. 1944) (mental and physical capacity, habits of industry and sobriety, usual earnings and probability of future earnings); *O'Brien v. Chi. & N.W. Ry. Co.*, 329 Ill.App. 382, 68 N.E.2d 638 (2d Dist. 1946) (prospects of increased earnings from inflation and rise of cost of living); *Hall v. Gillins*, 13 Ill.2d 26, 147 N.E.2d 352 (1958) (loss of father's instruction and moral training); *Flynn v. Fogarty*, 106 Ill. 263 (1883) (net income); *Kaiserman v. Bright*, 61 Ill.App.3d 67, 377 N.E.2d 261, 18 Ill.Dec. 108 (1st Dist. 1978) (future support and attention, care, superintendence, and education); *Ill. Cent. R. Co. v. Baches*, 55 Ill. 379 (1870) (prospective pecuniary benefits); *Graul v. Adrian*, 32 Ill.2d 345, 205 N.E.2d 444 (1965) (value of decedent's contributions to family unit); *Elliott v. Willis*, 92 Ill.2d 530, 442 N.E.2d 163, 65 Ill.Dec. 852 (1982) (loss of consortium, consisting of society, companionship, and sexual relations, by the surviving spouse); *Bullard v. Barnes*, 102 Ill.2d 505, 468 N.E.2d 1228, 82 Ill.Dec. 448 (1984) (loss of a minor child's society by the parent); *Prendergast v. Cox*, 128 Ill.App.3d 84, 470 N.E.2d 34, 83 Ill.Dec. 279 (1st Dist. 1984) (loss of unmarried adult child's society by parents); *In re Estate of Keeling*, 133 Ill.App.3d 226, 478 N.E.2d 871, 88 Ill.Dec. 380 (3d Dist. 1985) (loss of parent's society by an adult child).

“Other deductions” do not include income taxes. *See Klawonn v. Mitchell*, 105 Ill.2d 450, 475 N.E.2d 857, 86 Ill.Dec. 478 (1985); *cf. McCann v. Lisle--Woodridge Fire Prot. Dist.*, 115 Ill.App.3d 702, 450 N.E.2d 1311, 71 Ill.Dec. 432 (2d Dist. 1983).

In *Carter v. Chi. & Ill. Midland Ry. Co.*, 130 Ill.App.3d 431, 474 N.E.2d 458, 85 Ill.Dec. 730 (4th Dist. 1985), it was held that there can be no claim for loss of consortium by a spouse for the period of time after his or her remarriage.