

**8.11 DAMAGES CHARGES — GENERAL**

**E. DISABILITY, IMPAIRMENT AND LOSS OF THE ENJOYMENT OF LIFE, PAIN AND SUFFERING**  
(Approved 12/96)

If you find for *[plaintiff]*, he/she is entitled to recover fair and reasonable money damages for the full extent of the harm caused, no more and no less.

A plaintiff who is awarded a verdict is entitled to fair and reasonable compensation for any permanent or temporary injury resulting in disability to or impairment of his/her faculties, health, or ability to participate in activities, as a proximate result of the defendant's negligence (or other wrongdoing). Disability or impairment means worsening, weakening or loss of faculties, health or ability to participate in activities. It includes the inability to pursue one's normal pleasure and enjoyment.<sup>1</sup> You must determine how the injury has deprived *[plaintiff]* of his/her customary activities as a whole person.<sup>2</sup> This measure of damages is what a reasonable person would consider to be adequate and just under all the circumstances of the case to compensate *[plaintiff]* for his/her injury and his/her consequent disability, impairment, and the loss of the enjoyment of life.

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<sup>1</sup> *Evoma v. Falco*, 247 N.J. Super. 435, 452 (App. Div. 1991).

<sup>2</sup> *Id.* at 452.

The law also recognizes as proper items for recovery, the pain, physical and mental suffering, discomfort, and distress that a person may endure as a natural consequence of the injury. The measure of damages is what a reasonable person would consider to be adequate and just under all the circumstances to compensate *[plaintiff]*.

Here are some factors you may want to take into account when fixing the amount of the award for disability impairment, loss of enjoyment of life, pain and suffering. You may consider *[plaintiff's]* age, usual activities, occupation, family responsibilities and similar relevant facts in evaluating the probable consequences of any injuries you find he/she has suffered. You are to consider the nature, character and seriousness of any injury, discomfort or disfigurement. You must also consider their duration, as any award you make must cover the damages suffered by *[plaintiff]* since the accident, to the present time, and even into the future if you find that *[plaintiff's]* injury and its consequence have continued to the present time or can reasonably be expected to continue into the future.

The law does not provide you with any table, schedule or formula by which a person's pain and suffering disability, impairment, loss of enjoyment of life may be measured in terms of money. The amount is left to your sound discretion. You are to use your discretion to attempt to make the plaintiff whole, so far as money can do so, based upon reason and sound judgment, without any passion, prejudice,

bias or sympathy. You each know from your common experience the nature of pain and suffering, disability, impairment and loss of enjoyment of life and you also know the nature and function of money. The task of equating the two so as to arrive at a fair and reasonable award of damages requires a high order of human judgment. For this reason, the law can provide no better yardstick for your guidance than your own impartial judgment and experience.

You are to exercise sound judgment as to what is fair, just and reasonable under all the circumstances. You should, of course, consider the testimony of *[plaintiff]* on the subject of his/her discomforts. You should scrutinize all the other evidence presented by both parties on this subject, including, of course, the testimony of the doctors who appeared. After considering the evidence, you shall award a lump sum of money that will fairly and reasonably compensate *[plaintiff]* for his/her pain, suffering, disability, impairment, and loss of enjoyment of life.

**Cases:**

*Simmel v. N.J. Coop Co.*, 28 N.J. 1 (1958). See also *Botta v. Brunner*, 26 N.J. 82 (1958); *Mengle v. Shields*, 53 N.J. Super. 76 (App. Div. 1958).

Damages may be awarded for future disability and impairment. *Coll v. Sherry*, 29 N.J. 166 (1959).

Damages may be awarded for mental or nervous impairment consequent upon a physical injury. *Greenberg v. Stanley*, 51 N.J. Super. 90 (App. Div. 1958).