

1890 DAMAGES: DEATH OF MINOR CHILD: PREMAJORITY PECUNIARY LOSS

(Plaintiffs), as parents of (child), claim loss of wages and services they would have received from (child) during (child)'s minority had (he) (she) continued to live.

Although parents are responsible for the cost of providing for the care and maintenance of their child until the child reaches age 18, they are entitled to the value of the wages and services that their child was reasonably capable of (earning) (providing to the parents) until (he) (she) reached age 18. If you find that the value of these wages or services would have exceeded the costs (parents) would have incurred in raising (child) to age 18, you should insert the difference in answer to question __.

While the plaintiff has the burden of establishing pecuniary loss, the evidence relating to this item need not be as exact or precise as evidence needed to support your findings as to other items of damage. The reason for this rule is that the concept of pecuniary loss requires that you consider factors which, by their very nature, do not admit of any precise or fixed rule. You, therefore, are not required in determining the pecuniary loss to base your answer on evidence which is exact or precise but rather upon evidence which, under all of the circumstances of the case, reasonably supports your determination of damages.

COMMENT

The instruction and comment were approved in 1978 and revised in 1997 and 2000.

Wis. Stat. § 895.04(4).

Premajority pecuniary loss is measured by the value of the wrongfully killed minor child's probable wages and services to the time of majority less the costs the parents probably would have incurred in raising the child to age 18. Prunty v. Schwantes, 40 Wis.2d 418, 426, 162 N.W.2d 34 (1968). The fact that the parents allowed or would have allowed the child to keep his or her earnings does not prevent the parents having the value of such wages and services considered and included in determining whether the wages and services of the child during his or her minority have a probable value exceeding the probable expenses the parents would have incurred for the reasonable care, maintenance, and necessities during the child's minority. Luessen v. Oshkosh Elec. Light & Power Co., 109 Wis. 94, 85 N.W. 124 (1901); Peot v. Ferraro, 83 Wis.2d 727, 266 N.W.2d 586 (1978).

Peot holds that, with respect to premajority pecuniary loss, the fact that the child would or would not have turned over his wages to the parents or would or would not have performed services is irrelevant. However, if both premajority and postmajority pecuniary loss is claimed arising out of the death of a child, evidence relating to what contributions were made during minority is relevant on the postmajority pecuniary loss claim.

It may be necessary under some circumstances where both premajority and postpecuniary loss is claimed to instruct the jury that they are not to consider in arriving at the answer to the premajority pecuniary loss question whether the deceased child was allowed to keep his or her wages or was not required to contribute his services (since neither event prevents the parents from having the value of the wages and services considered and included in determining whether the wages and services of the child before age 18 would have a probable value exceeding the probable expenses the parents would have incurred to raise the child to age 18), but that such evidence is relevant and can be considered by the jury with respect to the answer to the question concerning postmajority pecuniary loss.

For burden of proof, see Wis JI-Civil 202. Wis JI-Civil 1892 covers damages for postmajority pecuniary loss due to death of child. Wis JI-Civil 1796 covers the computation of the present value of future losses.

The value of pecuniary loss suffered as the result of wrongful death cannot be ascertained precisely or by mathematical formula; the jurors, on the basis of their common knowledge and judgment, can determine the value from data that is reasonably supported in the evidence. Redepenning v. Dore, 56 Wis.2d 129, 201 N.W.2d 580 (1972). "Wisconsin cases have recognized that, in order to show the impairment of future earning capacity, a plaintiff must be permitted to introduce evidence that is more speculative and uncertain than would be acceptable for proof of historical facts (citations)." McCrossen v. Nekoosa Edwards Paper Co., 59 Wis.2d 245, 208 N.W.2d 148 (1973).

Pecuniary injury for the wrongful death of a minor cannot be precisely established. See Peot v. Ferraro, *supra*.

Evidence of Loss. The last paragraph of the instruction was previously contained in Wis JI-Civil 1705 as a general instruction. The committee believed it was important and more convenient to users to add this general language from Wis JI-Civil 1705 to each instruction on future loss of earning capacity and pecuniary loss.