

WRONGFUL DEATH DAMAGES--PRESENT MONETARY VALUE OF DECEASED TO NEXT-OF-KIN.¹

Damages for (*name deceased's*) death also include fair compensation for the present monetary value of (*name deceased*) to his next-of-kin.² (In this case, (*name deceased's*) next-of-kin are (*name persons and specify relationships*).)

There is no fixed formula for determining the present monetary value of (*name deceased*) to his next of kin. You must determine what is fair compensation by applying logic and common sense to the evidence.³ You may consider:

[The net income (*name deceased*) would have earned during the remainder of *his* life. You must subtract from (*name deceased's*) reasonably expected income the amount *he* would have spent on *himself* or for other purposes which would not have benefitted *his* next of kin.⁴ The amount *he* would have earned depends upon *his* prospects in life, health, character, ability, industry and [the means *he* had for making money] [the business in which *he* was employed]. It also depends upon

¹N.C.G.S. §28A-18-2(b)(4).

²If the decedent's next-of-kin has not been stipulated or determined by the Court as a matter of law, a separate issue must be submitted.

³The jury may also consider all negative factors that would tend to diminish the present value of the deceased to his or her next-of-kin. Thus, a young decedent's low level of educational achievement, lack of regular employment, dependency on parents for financial support and history of substance abuse was relevant. *Pearce v. Fletcher*, 74 N.C. App. 543, 328 S.E.2d 889 (1985). See also *Hales v. Thompson*, 111 N.C. App. 350, 432 S.E.2d 388 (1993).

⁴N.C.G.S. §28A-18-2(b)(4)a. Only the net income of the deceased can be considered. *State v. Smith*, 90 N.C. App. 161, 368 S.E.2d 33 (1988), *aff'd*, 323 N.C. 703, 374 S.E.2d 866, *cert. Denied*, 490 U.S. 1100, 109 S.Ct. 2453, 104 L.Ed.2d 1007 (1989).

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his life expectancy--that is, the length of time he could reasonably have been expected to live but for the [negligence] [wrongful conduct] of the defendant.]

[The services, protection, care and assistance of (name deceased), whether voluntary or obligatory, to his next-of-kin.⁵ These words are to be given their ordinary meanings. You may consider the family and personal relations between (name deceased) and his next-of-kin, and what you find to be the reasonable value of the loss to them of these things over the life expectancy of (name deceased)⁶ (or, as I will explain to you, over a shorter period).⁷]

[The society, companionship, comfort, guidance, kindly offices and advice of (name deceased) to his next-of-kin.⁸ These words are to be given their ordinary meaning. You may consider the family and personal relations between (name deceased) and his next-of-kin and what you find to be the reasonable value of the loss to them of these

⁵N.C.G.S. §28A-18-2(b)(4)b.

⁶*Bowen v. Constructors Equip. Rental Co.*, 16 N.C. App. 70, 191 S.E.2d 419 (1972), *aff'd*, 283 N.C. 395, 196 S.E.2d 789 (1973).

⁷*Id.* This and other parenthetical statements in the instruction keyed to this footnote should be used when there is evidence tending to show that the expectancy of one or more next-of-kin is shorter than that of the deceased.

⁸N.C.G.S. §28A-18-2(b)(4)c.

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things over the life expectancy of (*name deceased*)⁹ (or, as I will explain to you, over a shorter period.)]

As I have indicated, in determining (*name deceased's*) [net income expectancy] [the value of *his* services, protection, care and assistance] [the value of *his* society, companionship, comfort, guidance, kindly offices and advice], you must consider *his* life expectancy.¹⁰ Life expectancy is the period of time (*name deceased*) may reasonably have been expected to live but for the [negligence] [wrongful conduct] of the defendant. The life expectancy tables are in evidence.¹¹ They show that for one of (*name deceased's*) age at the time of *his* death, *his* life expectancy would have been (*state expectancy*) years. In determining (*name deceased's*) life expectancy, you will consider not only these tables, but also all other evidence as to *his* health, *his* constitution and *his* habits.¹²

⁹These damages are not available where the deceased is a stillborn child. *DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489, rehearing denied, 320 N.C. 799, 361 S.E.2d 73 (1987). Loss of decedents (particularly grandchildren) are not grounds for recovery under this section. *Livingston v. United States*, 817 F.Supp. 601 (E.D.N.C. 1993).

¹⁰*Bowen v. Constructors Equip. Rental Co.*, 16 N.C. App. 70, 191 S.E.2d 419 (1972), *aff'd*, 283 N.C. 395, 196 S.E.2d 789 (1973).

¹¹"The mortuary table is statutory, N.C.G.S. §8-46, and need not be introduced but may receive judicial notice when facts are in evidence requiring or permitting its application." *Chandler v. Chemical Co.*, 270 N.C. 395, 154 S.E.2d 502 (1967).

¹²A failure to include this sentence, or its equivalent, is reversible error. See *Kinsey v. Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965); *Harris v. Greyhound Corp.*, 243 N.C. 346, 90 S.E.2d 710 (1956).

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(The life expectancy tables show that, at the time of the death of *(name deceased)*, the life expectancy for *(name next-of-kin)* was *(state expectancy)*, which was shorter than the expectancy shown by the tables for *(name deceased)*. Therefore, you must determine the expectancy of *(name next-of-kin)* as well as the expectancy of *(name deceased)*. In determining the expectancy of *(name next-of-kin)*, you will consider not only these tables, but also all other evidence as to *his* health, *his* constitution and *his* habits. If you find that the expectancy of *(name next-of-kin)* is shorter than that of *(name deceased)*, you will determine the monetary value of the *(name deceased)* to *(name next-of-kin)* by the shorter of the two life expectancies. In other words, when the expectancy of a next-of-kin is shorter than that of a deceased, the award to the next-of-kin is limited to the value of benefits *he* might have expected to receive during *his* own life.)¹³

In determining the amount of actual damages to be awarded to *(name deceased's)* next-of-kin, you are not limited to the things which I have mentioned. You may consider any other evidence which reasonably tends to establish the monetary value of *(name deceased)* to *his* next-of-kin.

¹³See footnote 7. However, the above parenthetical paragraph will need revision if the contention of a shorter life expectancy for the next of kin is based upon health evidence (e.g., terminal cancer) rather than age.

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Any amount you allow as damages for the future monetary value of (*name deceased*) to *his* next-of-kin must be reduced to its present value, because a smaller sum received now is equal to a larger sum received in the future. (There is evidence before you that (*name deceased's*) future monetary value to *his* next-of-kin has already been reduced to its present value. Whether it has 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 decedent's*) monetary value to *his* next-of-kin has already been reduced to present value, you must not reduce it again.)

