

ALLOCATION OF PAIN AND SUFFERING AWARDS FOR CONSUMER PRODUCT ACCIDENTS: EFFECTS OF LEVEL OF ECONOMIC DAMAGES

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A study was carried out to explore the effects of the level of economic damage awards on the amount of pain and suffering awards in a product liability litigation context. Two separate accident scenarios were presented to participants who were instructed to consider themselves in the role of jurors. One scenario involved a vehicle accident resulting in permanent quadriplegia and the other described a work place incident where an employee received chemical burns on 65% of his body. Two levels of economic damages were manipulated for each scenario as a between-participants variable. Following the presentation of each scenario, including the economic damages award, participants were asked to make a pain and suffering award. There were no constraints on the size of the awards. Results indicated significant differences in pain and suffering allocations for the two scenarios (means in dollars were: quad = 2.3 million, burn = 1.4 million). While mean pain and suffering awards were higher for the condition of higher economic damage awards (2.0 million) than for lower economic damage awards (1.5 million), the difference was not statistically significant. Substantial variance in the pain and suffering awards was also found, which poses interesting challenges to juries in reaching agreement on such awards.

INTRODUCTION

A number of recent studies have explored the effects of various factors on the allocation of responsibility for consumer product accidents and injuries. Included in the factors that have been explored are product warnings (Laughery, Laughery, Lovvoll and McQuilkin, 1998), injury severity (Laughery, Laughery, McQuilkin and Lovvoll, 1997), risk taking (Meingast, Laughery, Laughery and Lovvoll, 1999), manufacturer's safety reputation (Kalsher, Wogalter and Williams, 1999; Resnick, Tschen and Kalsher, 1999) and expert testimony (Wogalter, Brantley, Laughery and Lovvoll, 1998). These studies have implications for understanding jury decision making in product liability litigation. Specifically, they provide results that may assist in understanding how the various

factors may influence liability decisions; that is, how responsibility for an accident and injury is allocated.

In addition to liability or fault allocations, juries in civil litigation are also called upon to make decisions about compensatory damages. Such decisions include awards for economic losses (such as medical expenses and lost earnings) and awards for non-economic harm, usually referred to as pain and suffering. Pain and suffering generally includes damages such as bodily harm (pain, disfigurement and disability), emotional distress (fear, anxiety, depression and embarrassment), and loss of enjoyment of life (limitations on lifestyle).

This paper presents results of a study addressing decisions about pain and suffering awards. To date, only a very modest amount of research has been reported on the topic of pain and suffering decisions

in product liability litigation. For a recent review of work on this topic see Wissler, Evans, Hart, Morry and Saks (1977). The specific issue addressed in the study was the extent to which pain and suffering awards are influenced by the amount of economic damage awards. The hypothesis is that as greater economic damages and awards are assessed, pain and suffering awards will be greater.

METHOD

The methodology consisted of presenting two accident-injury scenarios to participants. Each scenario was described as representing a product liability civil litigation case in which the participant was to consider him/herself a member of the jury. The scenarios described the accident, the injuries, other relevant information, the results of the liability decision, and the amount of economic damages awarded. After reviewing each scenario, the participant decided on an award for pain and suffering. No constraints, small or large, were placed on the amount of the awards. The amount of economic damages awarded was manipulated as a between-participants variable.

Participants

The participants were 33 undergraduate students enrolled in an introductory psychology course at Rice University. Participation satisfied a course requirement. There were 11 males and 22 females, and they ranged in age from 17 to 21.

Design

The study was a simple one-factor experiment where the variable manipulated was the amount of economic damages awarded. Two separate scenarios were presented to participants, each calling for a pain and suffering allocation decision. The participants were run in two groups. The first group consisted of 22 participants and received the high economic damages scenarios. The second group consisted of 11 participants and was presented with the low economic damages scenarios.

Materials

The first scenario described an automobile accident in which the driver's injuries resulted in permanent quadriplegia. The high and low economic damages awards for this scenario were 4.5 million and 1.8 million dollars. The second scenario described a workplace accident in which an employee received severe chemical burns as a result of chemicals erupting from a tank. The high and low economic damages awards were 1.59 million and 780 thousand dollars. While the two scenarios differed in the type of accident and the nature of the injuries, they also differed in other respects. The allocation of responsibility (liability) in the first scenario was 90% to the defendant and 10% to the plaintiff. In the second scenario the responsibility allocation was 60% to the defendant and 40% to the plaintiff. Also, there were plaintiff differences in the two scenarios such as age, education level and family (married vs. single). These differences were intentional and represented an effort to define two different sets of circumstances in which the effects of economic damage awards on pain and suffering awards could be examined. Following is the text of the first scenario with low economic damages:

Scenario #1. Jack Wilson is a 37-year-old engineer who worked at a refinery in Baytown, Texas. Jack has two daughters, ages 11 and 13, and his wife is an elementary school teacher. He had been with the same company for 14 years, and he held the title of project manager. On October 3, 1996 he was driving home from work in his 1995 Toyota Camry on the freeway when the belts separated on his right front tire. As a result of the tire failure, Jack lost control of the car, it went off the roadway to the right where the ground sloped downward, and rolled over twice. As a result of the accident, he suffered a broken neck and is a permanent quadriplegic confined to a wheelchair.

An analysis of the accident revealed that Jack was traveling approximately 63 mph (speed limit was 65 mph) at the time of the tire failure and he was wearing his seat belt. Because the car rolled on its side, the air bags did not deploy. The tire that failed was manufactured by Torsion Tire Company

in February, 1995 and it was on the car when Jack purchased it new. It had 17, 486 miles on it.

As a result of the accident and injuries Jack filed a lawsuit against Torsion Company contending that design and manufacturing defects in the tire caused it to fail, which in turn caused the accident and injuries. Evidence presented at the trial included the following:

1. The particular model of Torsion tire that failed had a history of greater than average probability of failures (belt separations). The normal rate for tire failures is about 1%, the rate for this model tire was slightly over 4%. Torsion had been aware of these failure rates for the previous five years.

2. Approximately 85% of on-highway tire failures such as occurred in this accident do not result in a loss of vehicle control and subsequent accident. The defense (Torsion) contended that Jack should have been able to maintain control following the belt separation.

3. Medical testimony indicated that Jack is quadriplegic. Speech, hearing and vision are normal. He has no feeling in or control of his body from the chest down. Respiratory, cardiac and digestive systems are functional, but he has no control over body elimination functions (urination & defecation). He has some ability for gross arm movements, but hand and finger control and movement is quite limited. He is permanently confined to a wheelchair.

4. An expert economist evaluated the economic damages in the case and presented (testified to) the following information:

Past and future medical costs and care	\$ 900,000
Past and future lost wages	1,300,000
Other economic considerations, such as hiring people to do things that Jack did	<u>100,000</u>
Total	\$2,300,000

In determining the liability (fault), the jury decided that Torsion Company was 90% responsible and Jack was 10% responsible.

The jury awarded Jack \$2,000,000 for economic damages. This meant that given the 90% liability decision, Torsion would be required to pay Jack \$1,800,000 for economic damages.

The plaintiffs (Jack and his family) have also sued for pain and suffering damages. This category includes physical pain, the loss of consortium with his wife (such as sexual interaction), limitations on the types of interactions he can have with his children and future grandchildren, inability to engage in many activities he previously enjoyed, and a loss of self esteem. The jury must now decide whether to award for pain and suffering, and if, so how much.

Write what you would award on the line below.

Procedure

The participants were run in groups in a university classroom. Each participant was provided a packet consisting of a number of sheets. The first sheet contained instructions for the study, and was followed by the two scenario descriptions. The last sheet requested gender and age information.

RESULTS

Table 1 shows the mean of the pain and suffering awards for the high and low economic damages award conditions for each of the scenarios.

Table 1. *Pain and Suffering Awards in Millions of Dollars*

		Scenario	
		Quad	Burns
Economic Damages Award	High	2.4	1.6
	Low	1.9	1.1

An analysis of variance was carried out with the two variables, scenario and economic damages award level. Pain and suffering awards differed significantly for the two scenarios, $F(1,31) = 4.3$, $p < .05$. However, while the means were in the direction of lower pain and suffering awards for the

lower economic damages awards, this difference was not statistically significant. There was substantial variation in the pain and suffering awards across participants. For the quadriplegic scenario awards ranged from \$25,000 to \$10,000,000, and for the burns scenario the range was zero to \$6,000,000.

DISCUSSION

The hypothesis stated in the introduction was based on the assumption that economic damages and pain and suffering damages would not be viewed as independent; that is, the amount of economic damages would influence the pain and suffering award decision. In both scenarios pain and suffering was held constant across the two economic damages conditions. It is recognized, of course, that pain and suffering may often be correlated with economic damages. A more severe injury may result in greater medical expenses as well as greater pain and disability. The results were not consistent with the hypothesis; there was no significant effect of the level of economic damages on pain and suffering awards.

The significant difference in the pain and suffering awards for the two scenarios is of interest, but possible explanations are difficult since several factors were confounded. However, the substantial differences in awards raises some interesting questions. Two aspects of the scenarios that were different were the level of liability/responsibility assigned to the defendant (90% and 60%) and the type of injury (quadriplegia and burns). Wissler et al. (1997) have reported that injury severity influenced pain and suffering awards, but that perceived fault had little influence on the awards.

Finally, it is interesting to note there was considerable variability in the awards made by different participants. This variance suggests that variables or characteristics associated with the person making the pain and suffering award may play an important role in the decision.

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