



1930

Compensation - Damages

North Dakota Law Review

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Recommended Citation

North Dakota Law Review (1930) "Compensation - Damages," *North Dakota Law Review*: Vol. 7: No. 7, Article 3.

Available at: <https://commons.und.edu/ndlr/vol7/iss7/3>

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August 19th, 1931

Morning

9:00 Breakfast at home of Lieutenant Governor J. W. Carr

Afternoon

1:00 Luncheon, home of Mr. and Mrs. S. E. Ellsworth

4:00 Seeing Jamestown, the City Beautiful

Auto Ride: Parks, Public Buildings, Hospitals, Asylum, College

THURSDAY, AUGUST 20

Morning

(At Town and Country Club and Municipal Golf Courses)

9:00 Golf; Visiting; Resting

Afternoon

2:00 Golf; Visiting; Resting; Baseball; Going Home

*Annual Dinner Tickets and City Information may be had
at desk of Registration Clerk*

COMPENSATION—DAMAGES

The trial of cases involving workmen's compensation usually develops testimony, in the courts, that has no bearing upon the amount of the payment due. This is on account of the fact that lawyers, as a rule, do not grasp the point that there is no such thing as "damages" under the compensation act.

In cases of injury, which involve only temporary disability, the material facts needed are: 1. How long was the claimant unable to perform any work? 2. For what additional period, if any, did the injury prevent him from doing more than part-time work or light work? 3. What is the extent of the permanent disability, if any?

Total temporary disability, the period during which the claimant is unable to perform any work, is usually the healing period, and ends with the healing of the wounds. Occasionally, however, the end of the healing period does not cover the full period of temporary disability. The injury may have been so severe that the ending of the healing period does not mean full recovery. The measure of payment for such further disability, called temporary or partial temporary disability, is a percentage of total. If he actually goes back to work, and, by working part time, earns \$20 of the \$30 that he earned prior to the injury, his loss is \$10 per week, and he is entitled to two-thirds of that amount. If he does not go back to work, or can not find work, but his physical condition is such as to enable him to do 50% of his former regular work, or similar work, he is entitled to 50% of the award he would receive if the disability were temporary total. As soon as he is able to do full work, his temporary disability ceases, no matter what his earnings may be, or what permanent disability he may have.

Permanent disability, on the other hand, is the disability that will remain for life. If it involves a member (finger, hand, arm, leg) the law provides the number of weeks of compensation that must be paid. Just a short time ago a case involved the loss of the great toe. Evidence was offered showing the size of the claimant's family, his property holdings, his incumbrances, and claimant himself stated that he could never again earn as much as he had previously earned. The statute, however, specifically provides the amount to be paid for the loss of the great toe, which is compensation for 19.5 weeks. The ability to earn or not to earn has no bearing. This is further illustrated by the case of a county engineer a few years ago. He suffered an injury, which resulted in a permanent disability of the arm (through ankylosis, stiffness) amounting to 30% of loss of use of the arm at the shoulder. At the time of the injury he was earning \$225 per month. Within six weeks after recovery, he obtained another job at \$275 per month, doing the same type of work. He had lost the use of one arm to the extent of 30%, however, and, under the law, he received an award for that loss of use. Total loss of use of the arm at the shoulder being listed at compensation for 234 weeks in the law, he was entitled to receive, and did receive, an award for 70.2 weeks, which, at the maximum of \$20 per week, amounted to \$1,404.00. The measure is the ability to use, not the ability to earn.

The disability schedule under paragraph E of Section 3 of the Act, specifying the number of weeks for various disabilities from 1% to 90% relates to what is termed "disability of the whole body." It has no connection with the schedules for specific injuries, but involves such permanent disabilities as may result from head injuries, back injuries and internal injuries. The percentage of disability, of course, is not easy of determination, but medical experts have come to some measure of agreement upon the basis for fixing percentages, the employee's age and occupation entering into the computations under this provision of the law.

Permanent partial disability is any permanent disability less than total and applies to both parts of paragraph E of Section 3.

WE MAY HAVE TO FIGHT

The First National Bank & Trust Company, of Fargo, is sending out a pamphlet entitled "What becomes of my property if I die without leaving a will?" It is quite likely that others are doing the same thing.

We believe this pamphlet is indictable on two grounds. First, it presumes to give legal advice; and, secondly, it solicits legal business. Where the authority to do either is obtained by banks and trust companies is beyond our comprehension.

North Dakota banks and trust companies would speedily take steps to curtail the activities of any lawyers or groups of lawyers who attempted to do a banking business, suggested their ability to provide reliable depositories, or otherwise engage in the most casual type of banking practice without first complying with the provisions of the