

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 1: Civil Procedure

§ 14. Wrongful death

Cite as: 12 CNCA § 14

A. A claim for wrongful death may be brought against a person who, by his negligence or by willful, wanton or reckless acts, causes the death of another under such circumstances that the deceased could have recovered damages for personal injuries if death had not resulted.

B. A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants to the same extent and subject to the same limits as he would be liable under this section for his own act.

C. An action to recover damages under this section shall be commenced within five (5) years from the date of death, or within five years from the date when the deceased's executor or next of kin knew, or in the exercise of reasonable diligence, should have known of all the elements for a cause of action.

D. The damages recoverable in actions for wrongful death as provided in this section shall include the following:

1. Medical and burial expenses which shall be distributed to the person who paid the expenses or to the decedent's estate if paid by the estate;
2. The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse;
3. The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent;
4. The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss;
5. The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship;

6. The fair monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to, compensation for the loss of the reasonably expected income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered;

7. Punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or his representative if such person be deceased, in such case as the decedent's death was caused by the malicious, willful, wanton, or reckless conduct of the defendant or by the gross negligence of the defendant. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

E. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division;

F. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

Historical Data

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.