

IN THE DISTRICT COURT OF IOWA IN AND FOR ADAMS COUNTY

TS BANK, as CONSERVATOR for H.L.O.,
A.N.O., H.M.O, A.D.O.; and WANNITA L.
OLSON,

Plaintiffs,

vs.

ESTATE OF KAREN GRABILL and
PETERSEN HARVESTING, LLC,
Defendants.

NO. LACV016545

JURY INSTRUCTIONS

THOMAS P. MURPHY, JUDGE

MEMBERS OF THE JURY:

The plaintiffs are TS Bank, as conservator for children Harley, Harper, Alexis, and Ava Olson; and Wannita Olson, who is a plaintiff and the children's mother. They allege that they were injured when they were in a vehicle that was in a collision with Karen Grabill, who was driving a truck owned by defendant Petersen Harvesting, LLC. Ms. Grabill's estate is also a defendant.

The plaintiffs allege that Karen Grabill was negligent and that her negligence caused their injuries. The plaintiffs allege that the defendant Petersen Harvesting, LLC, owned the truck and that it is liable because it permitted Karen Grabill to drive it.

The plaintiffs seek damages. The defendants admit that they caused the collision but they dispute the nature and amount of damages that should be awarded to the plaintiffs.

Do not consider this summary as proof of any claim. The fact that a claim is made by any party is not, of itself, proof or evidence of the facts or state of facts claimed. Decide the facts from the evidence and apply the law which I will now give you.

Instruction No. 1

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Instruction No. 2

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Instruction No. 3

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony.
2. Exhibits received by the court.
3. Any other matter admitted.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Instruction No. 4

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Instruction No. 5

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Instruction No. 6

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

Instruction No. 7

It is alleged that a witness or witnesses made statements before this trial while not under oath which were inconsistent with what the witness or witnesses said in this trial.

Because the alleged statements were not made under oath, you may use them only to help you decide if you believe the witness or witnesses.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

Instruction No. 8

If you find Wannita Olson is entitled to recover damages, you shall consider the following items:

Past medical expenses

The present value of future medical expenses

Past pain and suffering

The present value of future pain and suffering

Past loss of function of the mind and body

The present value of future loss of function of the mind and body

Lost earnings

Past loss of the children's consortium for Harley, Harper, and Ava

Future loss of the children's consortium for Harley, Harper, and Ava

If you find Harley Olson is entitled to recover damages, you shall consider the following items:

Past medical expenses

The present value of future medical expenses

Past pain and suffering

The present value of future pain and suffering

Past loss of function of the mind and body

Past loss of parental consortium

Future loss of parental consortium

If you find Harper Olson is entitled to recover damages, you shall consider the following items:

- Past medical expenses
- The present value of future medical expenses
- Past pain and suffering
- The present value of future pain and suffering
- Past loss of function of the mind and body
- Past loss of parental consortium
- Future loss of parental consortium

If you find Alexis Olson is entitled to recover damages, you shall consider the following items:

- Past medical expenses
- The present value of future medical expenses
- Past pain and suffering
- The present value of future pain and suffering
- Past loss of function of the mind and body

If you find Ava Olson is entitled to recover damages, you shall consider the following items:

- Past medical expenses
- The present value of future medical expenses
- Past pain and suffering
- The present value of future pain and suffering
- Past loss of function of the mind and body
- Past loss of parental consortium
- Future loss of parental consortium

Instruction No. 9

Past medical expenses are the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services related to the accident from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions or other medical services, you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense.

Future medical expenses are the present value of the reasonable and necessary hospital charges, doctor charges, prescriptions, other medical services which will be incurred in the future.

Past physical and mental pain and suffering from the date of injury to the present time may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Future physical pain and suffering is the present value of future physical pain and suffering.

Past loss of function of the full mind and body is the loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner.

Future loss of function of the full mind and body is the present value of future loss of function of the mind and body.

Loss of earnings is the reasonable value of lost wages.

Loss of future earning capacity is the present value of the reduction in the ability to work and earn money generally, rather than in a particular job.

Instruction No. 10

“Children’s consortium” is a parent’s lost companionship, cooperation and affection of the parent’s children. If you find Wannita Olson is entitled to recover for damage sustained by her as the result of the injury to Harley, Harper, and/or Ava, then, it is your duty to determine the amount. In doing so you shall consider the following items:

1. The reasonable value of the past loss of services, which include loss of companionship and society of the child, from the date of the child's injury to the present time, minus the probable cost of the child's board and maintenance during that time period.
2. The present value of the future loss of services, which includes loss of companionship and society of the child, from the present time until the child reaches age eighteen years minus the present value of the probable cost of child support and maintenance during that same time period.

Items 1 and 2 include Wannita Olson’s right to the intangible benefits of companionship, cooperation and affection of Harley, Harper, and Ava. They do not include mental anguish by the parent caused by the injury to the child.

In determining loss of companionship and society, you may consider the circumstances of the life of the child including:

1. The child's age, health, strength, intelligence, character, interests and personality.
2. Activities in the household and community.
3. All other facts and circumstances bearing on the issue.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Instruction No. 11

"Parental consortium" is the relationship between parent and child and the right of the child to the benefits of companionship, comfort, guidance, affection, the aid of the parent in every parental relation, general usefulness, industry and attention within the family. It does not include the loss of financial support from Wannita Olson, nor mental anguish caused by the parent's injury.

If you find Wannita Olson is entitled to recover damages on behalf of Harley, Harper, and/or Ava, it is your duty to determine the amount. In doing so you shall consider the following items;

1. The reasonable value of loss of parental consortium which the child would otherwise have received from the date of injury until the present time.
2. The present value of loss of parental consortium which the child would otherwise have received in the future.

A child is not entitled to damages for loss of parental consortium unless the injury to the parent has caused a significant disruption or diminution of the parent-child relationship. Damages for loss of parental consortium are limited in time to the shorter of the child's or parent's normal life expectancy.

In determining the value for loss of parental consortium, you may consider:

1. The circumstances of Wannita Olson's life.
2. Wannita Olson's and Harley, Harper, and Ava's ages at the time of Wannita Olson's injury.
3. The health, strength, character and life expectancy of Wannita Olson and each child.
4. Wannita Olson's capabilities and efficiencies in performing the duties as a

parent.

5. Wannita Olson's skills and abilities in providing instruction, guidance, advice and assistance to the children.
6. Harley, Harper, and Ava's needs.
7. All other facts and circumstances bearing on the issue.

Instruction No. 12

The amount you assess for physical pain and suffering in the past and future, future earning capacity, loss of function of the body in the past and future, and loss of consortium in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

Instruction No. 13

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate Wannita Olson for future losses.

Instruction No. 14

If you find that Wannita Olson had a condition before this incident and that the condition was aggravated by this incident causing further suffering or disability then Wannita Olson is entitled to recover damages caused by the aggravation. Wannita Olson is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which she now has which were not caused by the defendants' actions.

Instruction No. 15

If Wannita Olson had a condition making her more susceptible to injury than a person in normal health, then the defendants are responsible for all injuries and damages which are experienced by Wannita Olson that are caused by defendants' actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a normal person under the same circumstances.

Instruction No. 16

If you find that Wannita Olson was injured by another act after this incident, she cannot recover for any later injury or aggravation of injury not caused by this incident.

Instruction No. 17

To award damages, you must find they were caused by the collision. A collision is a cause of damage when the damage would not have happened except for the collision.

Instruction No. 18

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Wannita Olson at the time of trial is 26.57 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Wannita Olson's health, habits, occupation and lifestyle, when deciding issues of future damages.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Harley Olson at the time of trial is 70.05 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Harley Olson's health, habits, occupation and lifestyle, when deciding issues of future damages.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Harper Olson at the time of trial is 72.02 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Harper Olson's health, habits, occupation and lifestyle, when deciding issues of future damages.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Alexis Olson at the time of trial is 73.00 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Alexa Olson's health, habits, occupation and lifestyle, when deciding issues of future damages.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Ava Olson at the time of trial is 74.97 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Ava Olson's health, habits, occupation and lifestyle, when deciding issues of future damages.

Instruction No. 19

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

Instruction No. 20

Upon retiring you shall select a foreperson. It will be the foreperson's duty to see that discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

Instruction No. 21

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, LinkedIn, YouTube, Twitter, other social media, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. The parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

Instruction No. 22

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the attorneys. I have tried to use language that is generally understandable. Usually, questions about instructions can be answered by carefully rereading them. If, however, any of you feel it is necessary to ask a question, you must do so in writing, signed by your foreperson, and deliver the question to the judicial assistant.

I cannot communicate with you without first discussing your questions and potential answers with the parties and attorneys. This process naturally takes time and deliberation before I can respond. When I respond, it will be in writing, and the foreperson must read the response to the jury. Keep the written questions and response and return it to open court with the Verdict.

The judicial assistant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have reached a verdict. Please do not ask her to violate that oath by asking her questions about the case.

Instruction No. 23

I am giving you five verdict forms with subparts. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict and answers to questions must be signed by your foreperson.

After deliberating for six hours from 1153 o'clock 9.m. excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict form and questions must be signed by all seven jurors who agree.

When you have agreed upon the verdict and answers to questions and appropriately signed it, tell the judicial assistant.

Dated this 8th day of November, 2023.



Thomas P. Murphy
Judge, Fifth Judicial District