Damages in Tractor Trailer Cases— Tips and Techniques to Maximize Recovery

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 A common misconception among trial lawyers is that proving damages is easier in trucking cases than in other cases. Another misconception is that damages in trucking cases are no different than in other personal injury cases, and that discussing damages in trucking cases is redundant.

 Is it easier to prove a person sustained a herniated disc when they were struck by a truck rather than being struck by a car? Maybe? Is it easier to settle a case for $50,000 when the defendant’s vehicle is a truck rather than a car? Probably. Overlooked in answering these two questions is the fact that the person struck by the truck likely suffered more significant injuries than the person struck by a car. As a result, they generally deserve greater compensation. Also overlooked is the fact that trucking defense lawyers, as a whole, are more experienced, harder working, and have greater resources available to them to question damages and causation than a typical car accident insurance defense lawyer.

 Tip #1- Use the liability case to help prove damages

 In a trucking case the Bill of Lading is often a valuable document that assists in determining the roles of various parties as well as point of origin and destination. Trucking lawyers use it to assist in determining if the truck driver was within his hours of service, as well to identify brokers and shippers. Another thing the Bill of Lading and related documents provide is a description of what is being hauled. If the truck that hit the plaintiff’s car from behind was hauling clothing, that doesn’t sound as significant as if it were hauling cement blocks. In both situations however, it helps you determine if your client was struck by a 30,000 truck, a 50,000 truck, or an overweight 84,000 pound truck. You can make a point to the jury, without using a biomechanical expert, that 70,000 pounds striking 3500 pounds is 20 times the weight, and must be a lot of force. This is not the same as a 6000 pound SUV or another 3500 pound car. You can ask the defense doctor: “Did you consider the fact that the defendant’s truck weighed 70,000 pounds and was travelling at 30 miles per hour at impact when you came to your opinion that John could not have a suffered a herniated disc in this accident?”

 Another aspect of the liability case that you can rely upon is the way the accident happened. For instance, in a U-Turn case with a side underride, the pictures of the wreck will speak for themselves. However, when you question the safety director for the trucking company, you can ask questions about the risks of U-Turns that go directly to your damages. “Why are U-Turns so dangerous?” “Is there a greater risk of injury due to a lack of guarding on the side of trucks as opposed to the rear of trucks? “
Your liability questions can foreshadow damages, or go directly to damages, depending on your comfort level and the rules of your jurisdiction. Eventually you will get to your damages questions, but you will have help cement the conclusions your experts will draw before they even testify.

 Tip #2- Make sure you don’t overlook injuries

 It is the rare case where you knew your client before their accident. For most of our cases, we meet our client for the first time shortly after their accident. On some occasion another lawyer had the case and we don’t get involved until months, and sometimes years, after the wreck. About half the time we will meet the client and a family member, but rarely do we meet extended family or friends of the client.

 Doctors tend to treat the most severe injuries, and regardless of the fact we advocate that our client’s injuries are objective, and not subjective as the defense claims, the truth is most of our client’s injuries can’t be treated properly unless they complain about them.

 Brain injuries are very common in trucking collisions. Many times the client will not realize they are having memory issues because they are suffering from other injuries and taking medications. Sometimes the changes will be subtle. In current society we depend on electronic devices and pop up reminders for our schedule and appointments. We no longer memorize phone numbers but simply Call Mom. We don’t use folding maps or try to remember oral directions, but now use a GPS unit, ask Siri or use a Map application. Its harder to tell if someone has a brain injury. Its your duty as a trial lawyer to inquire. Don’t feel like you are trying to create damages. You are simply ruling out, or ruling in, injuries like a doctor would during their evaluation of the same crash victim. Hopefully your client is fine and your inquiry takes a few minutes. However, if the signs are there, and persist after a year, neuro-psych testing might be vital to helping your client identify an area of injury and might help make their future years more manageable.

 Radiating pain from neck and back injuries are also common. Sometimes they can separate mask shoulder or hip injuries, because the pain radiates from point A to point B. If the majority of the client’s treatment is with a provider who concentrates on only one area, such a chiropractor with a spinal concentration, orthopedic injuries to the hip or shoulder or other body parts can be overlooked.

 Psychiatric injuries, or even depression, is often a component when litigating injury cases. Fear of driving is also present. In most cases the client is too proud to do anything about it, or you as an advocate feel a jury would be dismissive. Trucking cases are different. Virtually every juror is afraid of driving alongside trucks. If your client continues to have a fear of driving, particularly when passing or being passed by trucks, consider having them evaluated. Even if you don’t proceed with this claim at trial, your client will thank you for making their daily routine better. Again, you are not creating damages, but just inquiring.

 Lastly, ask your client for the opportunity for you to speak with their family members or friends that may be helpful a quality of life witnesses. The day of trial testimony or a deposition is not the time to first meet a quality of life witness. I’m not suggesting you do this at your initial intake stage, but after you have decided to litigate a claim and prior to serving your client’s interrogatory answers (or your jurisdiction’s equivalent), meet the damages folks.

 Tip #3—Mention the Truck throughout your Damages Case

 Semi, tractor-trailer, and truck should be interwoven into your questions on damages. Use wreck or crash rather than accident. If you are forced to use a more neutral word, or feel your case doesn’t fit the terms crash or wreck, then use collision. For instance, when questioning your client’s treating orthopedic doctor: “When was the first time after the truck wreck of March 3, 2015 that John came to your office for treatment?” What was done for him? “What injuries did John sustain as a direct result of the tractor trailer striking his car?” “Doctor, to a reasonable of medical certainty, what injuries did John sustain as a direct result of the tractor trailer vs. car collision of March 3, 2015?” “I am going to show you pictures of the semi truck and John’s car. Does this affect, in any way, your opinion that John sustained a herniated lumbar disc compressing the spinal column from the truck wreck?”

 “Mrs. Jones, has John been able to contribute at home the same as he was before the truck wreck?

 Tip #4---Use Themes that Transition from Liability to Damages

Some examples, depending on your case:

 Changing Lanes, Changing Lives.

 Broken Lights, Broken Dreams.

 Box Truck, Box Coffin.

 Bad Brakes, Bad Breaks

 Over the Line, Under the Ground

Rules of the Road are important in holding the trucking company responsible, but themes are helpful on damages. Be creative without being corny. Don’t overuse the theme. Opening and Closing. Maybe in Voir Dire if the time you have is long enough and you have developed a legitimate rapport.

Tip #5— More insurance coverage in Trucking cases, More Experts?

Quite simply you aren’t going to hire a life care planner or vocational expert in a $100,000 policy auto case. However, in a trucking case with $750,000, $1 Million, or more in insurance coverage, its arguably malpractice if you don’t hire experts that can provide larger economic damages. You have to think carefully and not get lost in the busy day to day practice. The client with hardware that will need a future operation, if it’s a trucking case, needs an expert report describing the procedure and the cost.

Tip #6—Demonstrative Evidence—Not just cool, its required

Don’t spend money on an animation for liability and ignore damages. Colorized x-rays, boards describing surgical procedures, and charts showing future lost income must be part of your damages case. The defense will always make you work on liability, and it is easy to take damages for granted in a trucking case. Don’t ever do that!