

A four-year-old child sustained serious injuries when a playmate pushed him from between two parked cars into the street, where he was struck by a car. The child, by his representative, sued the driver of the car, the playmate's parents, and his own parents. At trial, the child's total damages were determined to be \$100,000. The playmate's parents were determined to be 20% at fault because they had failed to adequately supervise her. The driver was found to be 50% at fault. The child's own parents were determined to be 30% at fault for failure to adequately supervise him.

The court has adopted the pure comparative negligence doctrine, with joint and several liability, in place of the common law rules relating to plaintiff's fault. In addition, the common law doctrines relating to intra-family liability have been abrogated.

What is the maximum amount, if anything, that the child's representative can recover from the driver?

- A. \$30,000.
- B. \$50,000.
- C. \$100,000.
- D. Nothing.

Explanation:

Liability of multiple tortfeasors for indivisible harm

Joint & several liability* Any tortfeasor can be held liable for plaintiff's *total* amount of damages
Tortfeasors can sue each other for contribution

Several liability Each tortfeasor is liable for *portion* of damages corresponding to his/her proportionate fault (eg, 15% of damages for 15% fault)

*Default rule on MBE.

This jurisdiction has **adopted** the following:

Pure comparative negligence (default rule on MBE) – when the plaintiff's own negligence contributes to his/her harm, the plaintiff's **recovery is reduced** by his/her **proportionate share of fault**

Joint and several liability – when multiple defendants cause the plaintiff indivisible harm, the plaintiff can recover the **total amount of damages** from **any defendant** (who can then sue the others for contribution)

Additionally, this jurisdiction has **abandoned** the common law rules of **intra-family liability**. As a result, the fault of a child's parents will not be imputed to the child or vice versa.

Here, the court determined that multiple defendants were at fault for causing the child's injuries: the playmate's parents (20%), the driver (50%), and the child's parents (30%). The child was not at fault. And since his parents' fault will not be imputed to him, his recovery will not be reduced for comparative negligence. Therefore, the child can recover his total damages (\$100,000) from *any* of the defendants—including the driver.

(Choices A & B) If liability were only several (not seen here), each tortfeasor would only be liable for the portion of damages that corresponds to his/her proportionate fault. In that case, the child could only recover \$30,000 from his parents (30% of total damages) and \$50,000 from the driver (50% of total damages).

(Choice D) If traditional common law rules regarding intra-family liability and **contributory negligence** applied, the fault of the child's parents would be imputed to the child and bar all recovery. But these rules have been abandoned or replaced in this jurisdiction.

Educational objective:

Under the pure comparative negligence doctrine, a negligent plaintiff's recovery is reduced by his/her proportionate share of fault. And under joint and several liability, any one of

multiple tortious defendants who caused the plaintiff indivisible harm can be held liable for the plaintiff's total amount of damages.

References

Restatement (Second) of Torts § 488 (Am. Law Inst. 1965) (explaining that a parent's negligence is no longer imputed to his/her child and a child's negligence will not be imputed to his/her parent).

Restatement (Second) of Torts § 875 (Am. Law Inst. 1979) (explaining that multiple tortfeasors who cause an indivisible harm can be held liable individually for the entire harm).

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