

A driver negligently ran into a pedestrian who was walking along a road. The pedestrian sustained an injury to his knee, causing it to buckle from time to time. Several months later, the pedestrian sustained an injury to his shoulder when his knee buckled, causing him to fall down a flight of stairs. The pedestrian then brought an action against the driver for the injuries to his knee and shoulder.

In his action against the driver, for which of his injuries may the pedestrian recover damages?

- A. For the injuries to his knee and shoulder, because the driver takes the victim as he finds him.
- B. For the injuries to his knee and shoulder, if the jury finds that the pedestrian's fall down a flight of stairs was a normal consequence of his original injury.
- C. For the injury to his knee only, because the injury to the pedestrian's shoulder is separable.
- D. For the injury to his knee only, if the jury finds that the driver could not have foreseen that his negligent driving would cause the pedestrian to fall down a flight of stairs.

Explanation:

To prevail on a **negligence** claim, the plaintiff must prove each **element** by a preponderance of the evidence. Once the plaintiff has done so, he/she is entitled to recover **compensatory damages** for (1) his/her **initial physical harm** (ie, personal injury, property damage) and (2) any **subsequent harm**—physical, economic, or emotional—that occurs as a **normal consequence** of that initial harm.

Here, the pedestrian suffered a knee injury when he was struck by the driver. Several months later, the pedestrian's knee buckled, causing him to fall and injure his shoulder. The pedestrian can recover compensatory damages for his knee injury because it was caused by the driver's negligence. And if the jury finds that the pedestrian's fall was a normal consequence of his original knee injury, then he can also recover compensatory damages for his shoulder injury.

(Choice A) Under the eggshell-skull rule, a tortfeasor "takes the victim as he finds him." This means that a tortfeasor is liable for the full extent of the victim's harm, even if the victim was unusually vulnerable. But here, there is no indication that the pedestrian was unusually vulnerable to either injury when the driver hit him.

(Choice C) When multiple tortfeasors cause the plaintiff to sustain separable (ie, distinct) injuries, each tortfeasor is only liable for the specific injury he/she caused—ie, no joint and several liability. But here, the separability of the pedestrian's injuries is irrelevant since they were both caused by a single tortfeasor.

(Choice D) Foreseeability applies to duty and **proximate cause**—not damages. Therefore, the driver could be liable for *both* of the pedestrian's injuries even if the driver could not have foreseen that his negligent driving would cause the pedestrian to fall down a flight of stairs.

Educational objective:

A successful plaintiff for negligence and other tort claims can recover compensatory damages for (1) the initial harm caused by the defendant's tort and (2) any subsequent harm that was a normal consequence of that initial harm.

References

Restatement (Second) of Torts § 460 (Am. Law Inst. 1965) (explaining that a negligent defendant is liable for subsequent harm when it was a normal consequence of the initial harm).

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Recovery of compensatory damages
(initial harm + normal consequences)

Initial physical harm



Subsequent physical harm



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Subsequent economic harm



Subsequent emotional harm

