Saturday, August 28, 2021

How is a loss-of-income claim measured? In federal courts, that claim is measured by net post-tax earnings. But certain states have concluded the loss of income should be measured by gross pre-tax earnings. Which one applies to Nevada claims?

In a case decided by the Nevada Supreme Court on August 19, 2021, the question arose from the death of a hand surgeon who was bicycling when he died. At trial the jury awarded $18,746,003.62, of which $2,700,000 was for income loss. The defense argued the income loss damages were improper because the jury was presented evidence only as to the surgeon’s gross income. The Nevada Supreme Court examined the conflicting rulings in federal and state courts, and concluded “gross income is the most workable and realistic measure of what salary would be used to support” a claimant. Using net income was too speculative because it requires predicting future tax policy.
This ruling broadening the damages allowed in state courts might again underscore the potential value of removing a case to federal courts that allow a narrower scope of damages.

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