

1 **13-916. Amount of damages; injury; not death.**

2 If you should decide for the plaintiff on the question of liability, you should first determine  
3 the amount of the plaintiff<sup>[']</sup>'s damages [without reference to plaintiff<sup>[']</sup>'s contributory  
4 negligence]. You must fix the amount of money which will reasonably and fairly compensate  
5 ~~[[him] [her]]~~ plaintiff for any of the following elements of damages proved by the plaintiff to have  
6 resulted from the negligence of the defendant railroad:

7 (NOTE: Here insert the proper elements of damage such as, UJI 13-1803 through 13-1809  
8 NMRA, and UJI 13-1822 through 13-1824 NMRA.)

9 Whether any of these elements of damages have been proved by the evidence is for you to  
10 determine. Your verdict must be based upon proof and not upon speculation, guess or conjecture.

11 Further, sympathy or prejudice, for or against a party should not affect your verdict and is  
12 not a proper basis for determining damages.

13 USE NOTES

14 Bracketed material to be used only where contributory negligence is an issue.  
15 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-  
16 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

17 **Committee commentary.** — This instruction follows the format of UJI 13-1802 NMRA, but it is  
18 felt that a distinct and separate instruction is necessary under this chapter because of the fact that  
19 contributory negligence does not bar a recovery under the F.E.L.A.

20 Similarly, in the case of an action involving a death under the F.E.L.A., an instruction may be  
21 drawn following the format of UJI 13-1817 NMRA, but with the admonition that damages must  
22 first be determined without reference to the decedent's contributory negligence.

1 It is to be noted that the appellate review of verdicts for excessiveness is a procedural matter and  
2 thus governed by the law of the forum, not by the federal decisional law. *Vivian v. Atchison, T. &*  
3 *S.F. Ry.*, 1961-NMSC-093, 69 N.M. 6, 363 P.2d 620[~~(1961)~~]; *Rivera v. Atchison, T. & S.F. Ry.*,  
4 1956-NMSC-072, 61 N.M. 314, 299 P.2d 1090[~~(1956)~~].  
5 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]