South Carolina Law Review

Volume 11 | Issue 1 Article 9

Fall 1958

Damages

Marshall T. Mays

DAMAGES

MARSHALL T. MAYS*

Excessive Damages

A review of the decisions under *Damages* in the South Carolina Digest reveals that during the twenty-three year period, 1934-1957, there were thirty decisions concerning the question of excessive damages. In none of these cases were the damages awarded held to be excessive. During the last year, however, there were seven cases before the Supreme Court involving this question. In four[1] of the seven cases the trial court, in the exercise of its discretion, had required a remission of part of the verdict rendered by the jury. Three of these four were affirmed, but in the fourth, *Nelson v. Charleston & Western Carolina Railway Co.*,[2] the Court held that an award of $29,000.00 (reduced by the trial court from $35,000.00) was excessive. Of the three remaining cases in which the trial court gave judgment on the verdict, one[3] was reversed as excessive, and two[4] were affirmed.

It would certainly appear from these decisions that there is an increasing tendency on the part of trial courts to require remission of a part of an excessive verdict, and a tendency on the part of the Supreme Court to reverse judgments which it deems excessive. Such a tendency may surprise those members of the bar who feel that juries today do not appreciate the decreased purchasing power of the dollar.

The test applied by the Court in all of these cases concerning the reasonableness of the verdict is whether the verdict was so excessive as to warrant the inference that it

*Member of the firm of Mays & Mays, Greenwood; B.S., 1945, U. S. Naval Academy; LL.B., 1950, University of South Carolina and Harvard Law School, 1951; member Greenwood, South Carolina and American Bar Associations.

1. Nelson v. Charleston & W. C. Rwy. Co., 231 S. C. 351, 98 S. E. 2d 798 (1957); Jeffers v. Hardeman, 231 S. C. 578, 99 S. E. 2d 402 (1957); Benton v. Pellum, 232 S. C. 26, 100 S. E. 2d 534 (1957); Taylor v. Hardee, 232 S. C. 338, 102 S. E. 2d 218 (1958).

2. Note 1 *supra.*

3. Winchester v. United Ins. Co., 231 S. C. 462, 99 S. E. 2d 28 (1957).

4. Parnell v. Carolina Coca-Cola Bottling Co., 231 S. C. 426, 98 S. E. 2d 834 (1957); Elletson v. Dixie Home Stores, 231 S. C. 565, 99 S. E. 2d 384 (1957).

was the result of caprice, passion, prejudice or other considerations not founded on the evidence. The most widely accepted formula for determining whether or not a verdict is excessive is attributed to Chancellor Kent:

> The damages, therefore, must be so excessive as to strike mankind, at first blush, as being, beyond all measure, unreasonable, and outrageous, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be flagrantly outrageous and extra-vagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess.[5]

While using the language of Chancellor Kent, our courts, as well as those in many other jurisdictions, appear to require considerably less extravagance on the part of the jury, and lesser degrees of passion and prejudice, to justify a reversal. The language of Justice Oxner in the *Nelson* case, *supra*, is indicative of this:

> The delicate question is whether the compensation awarded for these elements [mental suffering and loss of companionship] is so grossly excessive as to warrant the inference that it was the result of caprice, passion, prejudice or other considerations not founded on the evidence. This phrase like the unhappily framed expression "abuse of discretion" is frequently misunderstood.[6]
>
> We have held that the term "abuse of discretion" does not "carry with it an implication of conduct deserving censure", and does not imply "any reflection" upon the person in whom the discretion is vested. So, too, the phrase "passion and prejudice" does not necessarily imply bad faith, wrongful purpose or moral delinquency.[7]

Chancellor Kent said that the courts have no standard by which to ascertain the excess of a verdict, and thus far our courts appear to have laid down no definite standard. Each case stands on its peculiar facts and circumstances.

Damages for Breach of Contract

Four cases during the period of this survey dealt with damages related to breach of contract; all affirmed established principles of law. *Monroe v. Bankers Life & Casualty Co.*[8]

5. 15 AM. JUR., Damages § 205 (1938).
6. 231 S. C. at 361, 98 S. E. 2d at 802 (1957).
7. *Id.* at 362, 98 S. E. 2d at 802.
8. 232 S. C. 363, 102 S. E. 2d 207 (1958).

followed the well established rule that there must be allegation and proof of actual or nominal damages in order to sustain a verdict for punitive damages, accordingly a judgment for punitive damages, without actual damages, for fraudulent breach of an insurance contract was reversed. In the same decision the Court reasserted in clear language that there must be a fraudulent act as distinguished from a fraudulent intent to sustain an action for fradulent breach of contract. The same rule was followed in *Roberts v. Fore.*[9]

Tate v. LeMaster[10] was an action to recover a deposit paid by the plaintiff to the defendant in a verbal transaction relating to the sale of real estate. The Court held that the trial court could not as a matter of law rule that the deposit was "liquidated damages" and not a "penalty" when the defendant in correspondence had referred to the deposit as a "forfeit". There was apparently no attempt to prove actual damages.

Punitive Damages

In *Green v. Sparks,*[11] an action for personal injuries, the plaintiff attempted to show evidence of defendant's wealth relevant to punitive damages by introducing evidence that the defendant had collected damages from Lockhart Power Company for his personal injuries. The trial court admitted the evidence, but the Supreme Court held the evidence to be improper and irrelevant to any issue in the case, but recognized that other evidence of the defendant's wealth would have been proper.

In one instance, *Pennsylvania Threshermen & Farmers' Mutual Casualty Ins. Co. v. Thornton,*[12] the U. S. Court of Appeals, 4th Circuit, construed the South Carolina law concerning punitive damages, in an action on an automobile liability policy which excluded from coverage intentional acts of the insured. In an opinion by Judge Sobeloff, the court held:

> Negligent conduct may be so gross as to merit characterization as willful and wanton in the sense of the rule for punitive damages, yet fall far short of an assault and battery which would distinguish it from an accidental event and withdraw it from the coverage of the policy.

9. 231 S. C. 311, 98 S. E. 2d 766 (1957).
10. 231 S. C. 429, 99 S. E. 2d 39 (1957).
11. 232 S. C. 414, 102 S. E. 2d 435 (1958).
12. 244 F. 2d 823 (4th Cir. 1957).