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## DEATH OF THE HEAD OF THE FAMILY— ELEMENTS OF DAMAGES UNDER SOUTH CAROLINA'S LORD CAMPBELL'S ACT

### *A. Common Law and Lord Campbell's Act*

Negligently causing the death of another person at common law carried far less onerous legal consequences than did negligently causing a much lesser degree of bodily harm. The law recognized no cause of action in the decedent's relations for loss of his prospective services,<sup>1</sup> and the decedent's estate could not recover because actions for personal injury did not survive.<sup>2</sup>

Abatement of causes of action as the consequence of the death of one of the parties has been called "one of the least rational parts of . . . [common] law."<sup>3</sup> To be sure, the original presumably rational basis for the rule has been obscured by the centuries,<sup>4</sup> but the absence of an articulated rationale did not precipitate rapid reform. On the contrary, remedy came only very gradually. Although an early statute provided for the survival of causes of action arising out of trespass to a deceased plaintiff's personal property,<sup>5</sup> survival of actions concerning damages to real property was not permitted in England until 1833,<sup>6</sup> and still another century passed before the English allowed personal injury actions to survive.<sup>7</sup>

During this century, however, an entirely different kind of statutory remedy was invented. Known as Lord Campbell's Act,<sup>8</sup> this 1846 statute created a cause of action for the benefit of certain members of the family of a wrongfully killed decedent. South Carolina, along with most American states, rather quickly followed the lead of the English and passed a similar measure.<sup>9</sup> Commenting on the passage of the South Carolina act, an early case included the following statement:

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1. The husband of an injured wife did have a cause of action for loss of his wife's services; but, although the action did not abate at her death, the recovery was limited to damages sustained by the husband before her death. PROSSER, *TORTS* § 119, at 911 (3d ed. 1964); see, e.g., *Bailey v. Long*, 172 N.C. 661, 90 S.E. 809 (1916).

2. See, e.g., *TIFFANY, DEATH BY WRONGFUL ACT* § 1 (2d ed. 1913).

3. *POLLOCK, TORTS* 71 (American—From 3d English ed. 1894).

4. See *PROSSER, TORTS* § 120, at 920 (3d ed. 1964).

5. 4 Edw. 3, c. 7 (1330).

6. 3 & 4 Will. 4, c. 42 (1833).

7. Law Reform Act, 1934, 24 & 25 Geo. 5, c. 41.

8. The Fatal Accidents Act, 1846, 9 & 10 Vict., c. 93.

9. S.C. Acts & J. Res. 1859, No. 4480.

The evil here at the passage of the act of 1859 . . . was, that personal actions, *ex delicto*, at common law died with the person. This was regarded as a great hardship on the surviving family, especially the widow and minor children, and so many disasters occurring upon railroads and other new agencies, touching the pecuniary interests and welfare of such survivors, it was thought wise in 1859 to enact here said Lord Campbell's act, repealing and amending the common law, by giving a right of action in all common law cases of injury resulting from wrongful acts, neglect, or defaults, to the surviving family of a deceased, where, if he had lived, an action could have been maintained by him.<sup>10</sup>

South Carolina made other encroachments on the irrationality of this area of the common law by enacting statutes to provide for the survival of causes of action growing out of damage to real estate<sup>11</sup> and injuries to the person and personal property.<sup>12</sup>

As a result, in South Carolina today there are two causes of action for wrongful death. The Survival Act<sup>13</sup> provides for the survival of an action for the injuries to the deceased; the recovery goes to his estate.<sup>14</sup> The focus is on the deceased, and no recovery is permitted for damage to his family.<sup>15</sup> South Carolina's present version of Lord Campbell's Act,<sup>16</sup> on the other hand, creates a cause of action for certain named beneficiaries, and the recovery is for damages resulting to the beneficiaries.

### B. *The Distinctive Character of the South Carolina Act*

A minority of the statutes enacted by American states rejected the remedial approach adopted by the English act. Concerned with the loss to the decedent's estate, these statutes took as the measure of damages the loss of the amount the decedent would have accumulated throughout his normal life expectancy,<sup>17</sup> or,

10. *All v. County of Barnwell*, 29 S.C. 161, 168, 7 S.E. 58, 59-60 (1888).

11. S.C. Acts & J. Res. 1892, No. 15.

12. S.C. Acts & J. Res. 1905, No. 471.

13. S.C. CODE ANN. § 10-209 (1962).

14. *E.g.*, *Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 81 S.E. 189 (1914).

15. *E.g.*, *Croft v. Hall*, 208 S.C. 187, 37 S.E.2d 537 (1946) (by implication).

16. S.C. CODE ANN. §§ 10-1951 to -1956 (1962).

17. *E.g.*, *Tedrow v. Fort Des Moines Servs., Inc.*, 254 Iowa 193, 117 N.W.2d 62 (1962).

in some states, the amount he would have earned, less his personal expenses, had he lived out his life expectancy.<sup>18</sup> Essentially these statutes were broadened survival acts.<sup>19</sup>

South Carolina's Death Act, however, was very closely patterned after the original English act. In language taken directly from the English act, the original South Carolina act provided:

[T]he jury may give such damages as they may think proportioned to the injury resulting from such death, to the parties respectively for whom, and for whose benefit such action shall be brought. . . .<sup>20</sup>

Although based squarely on the original Lord Campbell's Act, South Carolina's Death Act has acquired a distinctive character, particularly with respect to damages. This is primarily the result of two statutory amendments and a series of judicial interpretations.<sup>21</sup>

The original South Carolina act made no distinction between the named beneficiaries. The action could be maintained for the benefit of the spouse, children and parents of the decedent.<sup>22</sup> In 1898 the statute was amended so as to divide the beneficiaries into three classes: spouse and children, parents, and heirs at law.<sup>23</sup> The classes as listed were in descending order of preference, and the existence of beneficiaries in one class barred recovery by beneficiaries in a less preferred class. This is the statutory scheme presently employed.<sup>24</sup>

The other two salient historical features of our Death Act spring from South Carolina's reaction to early interpretation of the English act limiting damages to the pecuniary loss of the beneficiaries:

There may be a calculation of the pecuniary loss sustained by the different members of the family from the death of

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18. *E.g.*, *Mendenhall v. North Carolina R.R.*, 123 N.C. 275, 31 S.E. 480 (1898).

19. At least one state enacted a strictly punitive wrongful death statute. See, *e.g.*, *Richmond & D. R.R. v. Freeman*, 98 Ala. 289, 11 So. 800 (1892).

20. S.C. Acts & J. Res. 1859, No. 4480.

21. Although it is of no practical importance today, it is perhaps interesting to note that at one time the South Carolina act required, as a condition precedent to any recovery, proof of the beneficiary's dependency on the decedent. S.C. Acts & J. Res. 1898, No. 491. This limitation was rather quickly stricken from the act. S.C. Acts & J. Res. 1902, No. 579.

22. S.C. Acts & J. Res. 1859, No. 4480.

23. S.C. Acts & J. Res. 1898, No. 491.

24. S.C. CODE ANN. § 10-1952 (1962).

one of them: but, if the jury were to proceed to estimate the respective degrees of mental anguish of a widow and twelve children from the death of the father of the family, a serious danger might arise of damages being given to the ruin of defendants. We must recollect that the Act we are construing applies not only to great railway companies but to little tradesmen who send out a cart and horse in the care of an apprentice.<sup>25</sup>

Contrary to the majority of American states,<sup>26</sup> South Carolina has not only declined to restrict recovery to pecuniary loss,<sup>27</sup> but also has by statutory amendment permitted beneficiaries to recover punitive damages in appropriate cases.<sup>28</sup>

### C. *Pecuniary Loss "Plus"*

The view that only damages for pecuniary loss could be recovered in actions under South Carolina's Death Act was apparently the accepted view of the bar in the early cases.<sup>29</sup> The South Carolina Supreme Court, however, in *Nohrden v. North-eastern R.R.*<sup>30</sup> repudiated the English construction of the act. In discussing whether the jury may take into consideration the wounded feelings of the beneficiaries resulting from the death of their relative, the court said that the damages allowed by the statute are "whatever damages the jury may think are a proper compensation to the parties for whose benefit the action is brought . . . whether arising from pecuniary loss or otherwise. . . ."<sup>31</sup>

South Carolina's position was further clarified in *Brickman v. Southern Ry.*<sup>32</sup> where the court specifically upheld the following charge of the trial court:

25. *Blake v. Midland R.R.*, 10 Q.B. 93, 111, 118 Eng. Rep. Reprint 35, 42 (1852).

26. *E.g.*, *McCORMICK, DAMAGES* § 99, at 347 (1935).

27. *E.g.*, *Mishoe v. Atlantic Coast Line R.R.*, 186 S.C. 402, 197 S.E. 97 (1938).

28. S.C. CODE ANN. § 10-1954 (1962).

29. See *Petrie v. Columbia & Greenville R.R.*, 29 S.C. 303, 7 S.E. 515 (1888), where, although the supreme court had no occasion to discuss the question, the record indicates that the trial judge had instructed the jury that they could consider only *pecuniary* loss. *Id.* at 307.

30. 59 S.C. 87, 37 S.E. 228 (1900).

31. *Id.* at 108, 37 S.E. at 240.

32. 74 S.C. 306, 54 S.E. 553 (1906).

You [the jury] can also take into consideration any injury which these parties have sustained by reason of mental anguish or suffering by reason of the death of . . . [the deceased husband and father], and . . . any damages . . . that they have sustained by loss of his companionship as a father and a husband. . . .<sup>33</sup>

The cases have also made it plain that the existence of pecuniary damage is in no sense a condition precedent to recovery for other damages.<sup>34</sup>

What has come to be the standard statement of the elements of recovery in actions under the South Carolina Death Act was made in the leading case of *Mishoe v. Atlantic Coast Line R.R.*:<sup>35</sup>

[T]he elements of damage, in actions for wrongful death, include: (1) Pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries, in addition to the loss of his ability to earn money for the support, maintenance, care and protection of his wife and children, and for the education and training of the latter. . . . And, since only one action may be maintained, it is proper to include all damages, present and prospective, which are naturally the proximate consequence of the wrongful act.<sup>36</sup>

This liberal interpretation of South Carolina's Death Act seems to be the better view for at least two reasons. The purpose of the act is compensation for the loss of a family member, a person whose worth to the beneficiary is only partially pecuniary; and, even in jurisdictions which ostensibly adhere to the pecuniary loss standard, courts are often disinclined to strike down large verdicts in cases where the element of pecuniary loss is, in reality, absent and obvious substantial sentimental loss is present.<sup>37</sup>

33. *Id.* at 310, 54 S.E. at 554. *But cf.* *Stuckey v. Atlantic Coast Line R. R.*, 60 S.C. 237, 38 S.E. 416 (1901).

34. *E.g.*, *Nelson v. Charleston & W. Carolina Ry.*, 231 S.C. 351, 98 S.E.2d 798 (1957) (by implication).

35. 186 S.C. 402, 197 S.E. 97 (1938).

36. *Id.* at 418-19, 197 S.E. at 104-05.

37. See, *e.g.*, *Reed v. Eubanks*, 232 Miss. 27, 98 So. 2d 132 (1957).

#### D. *Valuation of the Family's Loss*

Armed with the liberal statement of South Carolina's approach to damages in actions under the Death Act, the plaintiff has the task of placing before the jury such facts as will aid them in their estimation of the damages to the beneficiaries for whom the action is brought. Particularly in the case of the death of the income-producing head of a family, a primary element of damages is the loss of the decedent's financial contributions. The actual damage is the present value of the amount the decedent would have earned if he had lived out his normal life, less his personal expenses, accumulations and taxes.<sup>38</sup>

Material to a determination of this amount, of course, is the question of how long the decedent would have provided financial support. In South Carolina there is a statutory mortality table<sup>39</sup> on the basis of which the judge may charge the jury as to the decedent's life expectancy.<sup>40</sup> The mortality table, however, is only a part of the possible evidence of life expectancy. The health and habits of the deceased are also important considerations.<sup>41</sup>

Aside from this, however, life expectancy is not the proper consideration with respect to loss of financial support. The material determination is rather the number of years which the decedent would have worked and made financial contribution to the support of the beneficiaries. Evidence of mandatory retirement at a certain age, for example, would be extremely relevant.

In addition to time considerations, other types of information are necessary to ascertain a reasonable estimation of damages from loss of contributions. Evidence tending to show the income of the deceased, his prospects for advancement, his industry and ambition, his particular abilities, his habits of economy and his disposition to contribute to his family is important.<sup>42</sup> Inflation is also a proper consideration.<sup>43</sup>

38. See generally Hofflander, *Loss Of Income Due To Wrongful Death: A Method Of Measurement*, 1965 *INS. L.J.* 92. On the propriety of considering income tax liability in computing loss of earnings, see Annot., 9 *A.L.R.2d* 320 (1950).

39. S.C. CODE ANN. § 26-12 (1962).

40. *E.g.*, *Hambright v. Atlanta & Charlotte A.L. Ry.*, 102 S.C. 166, 86 S.E. 375 (1915).

41. S.C. CODE ANN. § 26-12 (1962).

42. See, *e.g.*, *Leppard v. Southern Ry.*, 174 S.C. 237, 177 S.E. 129 (1934) (dictum) (habitual use of intoxicants).

43. *Accord*, *Newman v. Brown*, 228 S.C. 472, 90 S.E.2d 649 (1955); *Rogers v. Atlantic Coast Line R.R.*, 222 S.C. 66, 71 S.E.2d 585 (1952).

Another factor which seems highly relevant to a determination of the actual loss of contributions suffered by the beneficiaries is the life expectancies of the beneficiaries. Obviously one cannot receive financial contributions for his support for a period extending beyond his life. Our court, however, has chosen to exclude this factor from the jury's consideration: "We fail to see wherein the probable duration of the father's life [the action was brought for the benefit of the decedent's father] has any relevance to the issues involved. . . ."44

This position is perhaps appropriate in most cases where a wife and children are the beneficiaries of an action for the wrongful death of the husband and father. In these cases it is quite reasonable to infer that the decedent's life expectancy was less than that of the beneficiaries and, consequently, that his life expectancy is the only one material to a determination of damages. In other cases, however, where the beneficiary is the parent of a deceased adult child, the life expectancy of the beneficiary is quite relevant to a determination of the actual loss suffered.

The life expectancy of the beneficiary is also material to the evaluation of another possible element of damages, namely, loss of expectancy of inheritance from the decedent. Apparently no South Carolina cases have discussed this element. If the jury is permitted to take the total probable earnings of the decedent as the measure of loss of contributions, then, arguably, there is no room for consideration of loss of inheritance. The more accurate approach would seem to be, however, to consider the loss of contributions during the decedent's lifetime and the loss of inheritance expectancy separately.

There is a sharp split among the authorities in other jurisdictions, but a majority of those which have considered the question have allowed loss of expectancy of inheritance to be considered by the jury where evidence of such loss was presented.<sup>45</sup> The jurisdictions which have disallowed this element have done so largely on the ground that such damages are too speculative.<sup>46</sup> If this danger is mitigated by evidence of the decedent's savings and investment habits and his disposition to contribute to his

44. *Trimnier v. Atlanta & Charlotte Air Line Ry.*, 81 S.C. 203, 213, 62 S.E. 209, 212 (1908); *accord*, *Turbyfill v. Atlanta & Charlotte Air Line Ry.*, 86 S.C. 379, 68 S.E. 687 (1910).

45. See Annot., 91 A.L.R.2d 477 (1963).

46. *Id.* at 485 n. 10.



family, consideration of loss of expectancy of inheritance would seem to be eminently reasonable.

An element of damages long recognized in South Carolina is recovery for funeral expenses.

[N]ormally funeral expenses do not constitute an item of damages in a Lord Campbell's Act case. . . . The law, however, is settled in this State that where such expenses are paid by the beneficiary they are a proper element of damages.<sup>47</sup>

In the same general area is the element of medical expenses incurred prior to death as a result of the wrongful injury. Our court has apparently not had occasion to discuss this question. Recovery for medical expenses is not strictly comparable to recovery for funeral expenses because the former are incurred prior to death and obviously are not part of the consequences of death. The statute says that "the jury may give such damages . . . as they may think proportioned to the *injury resulting from such death*. . . ."<sup>48</sup> Although many states allow recovery for medical expenses if the beneficiary is liable for same,<sup>49</sup> it seems that such expenses would not be recoverable under the South Carolina Death Act.<sup>50</sup>

The remaining obviously pecuniarily valuable element is loss of the decedent's services. With this element, as well as the non-pecuniary elements to be mentioned later, life expectancy is relevant.<sup>51</sup> In this area, however, estimation of monetary value is more difficult. Important to a determination of the value of lost services are such things as prospective moral, intellectual and physical education of children, special activities or abilities such as maintenance of a family garden or workshop, and knowledge and experience in financial and other decisions of

47. *Gomillion v. Forsythe*, 218 S.C. 211, 225-26, 62 S.E.2d 297, 303 (1950). Since 1962 recovery for funeral expenses has alternatively been allowed in actions under the Survival Act. S.C. CODE ANN. § 10-209.1 (Supp. 1966).

48. S.C. CODE ANN. § 10-1954 (1962). (Emphasis added.)

49. 25A C.J.S. *Death* § 108 (1966).

50. Cf. *Claussen v. Brothers*, 148 S.C. 1, 4, 145 S.E. 539, 540 (1928) where the court, in construing the Survival Act, said: "While the Act is remedial, and a liberal construction should be given to its provisions . . . we must resort, in arriving at the intent of the Legislature, to the actual words used in the statute. . . ."

51. *Nelson v. Charleston & W. Carolina Ry.*, 231 S.C. 351, 98 S.E.2d 798 (1957).

52. *E.g.*, *Mishoe v. Atlantic Coast Line R.R.*, 186 S.C. 402, 197 S.E. 97 (1938).

the family.<sup>52</sup> "There is probably no limit to the type of services for which value may be recovered, and the imagination and ingenuity of trial counsel can be given full rein."<sup>53</sup>

Other elements allowed for the jury's consideration by our decisions can be conveniently grouped together as non-pecuniary losses. Included are the elements of grief and sorrow, loss of companionship, loss of society, comfort and protection, and the wounded feelings of the beneficiaries.<sup>54</sup> In this area, of course, by definition the elements have no monetarily measurable value. The decision as to reasonable compensation, based on all of the facts and circumstances of the case, must be left to the sound discretion of the jury.<sup>55</sup> Although their estimation may be enhanced by evidence of the closeness of the family and the affectionate or kindly disposition of the deceased,<sup>56</sup> the existence of this kind of loss, in the absence of evidence to the contrary, is normally assumed by the jury, and an instruction that they may consider this will often be sufficient.

In South Carolina, plaintiffs in some situations have the benefit of presumptions of certain damages. In *Gilliam v. Southern Ry.*<sup>57</sup> the court enunciated a presumption of *pecuniary* damages to a wife and minor child from the death of the husband and father. The court reasoned that since it was a misdemeanor for an able-bodied man to, without just cause, fail to support his wife and minor children, "*prima facie* and presumptively, the widow and minor unmarried child of deceased had a legal pecuniary interest in the continuance of his life."<sup>58</sup>

Later, in a case where the deceased was the twelve year old son of the plaintiff parents, the court said: "It will be *assumed* that he was held in loving esteem by his parents and that they experienced the *natural feelings of grief* in the loss of a loving son."<sup>59</sup>

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53. Page, *Damages For Wrongful Death Under FELA*, 30 NACCA L.J. 271, 274 (1964) quoting from Spangenberg, *Proof Of Damages For Wrongful Death, WRONGFUL DEATH AND SURVIVORSHIP: NACCA 6th CIRCUIT SEMINAR* 72 (Beall ed. 1958).

54. *E.g.*, *Gomillion v. Forsythe*, 218 S.C. 211, 62 S.E.2d 297 (1950); *Jennings v. McCowan*, 215 S.C. 404, 55 S.E.2d 522 (1949), *cert. denied*, 338 U.S. 956 (1950).

55. *E.g.*, *Lynch v. Alexander*, 242 S.C. 208, 130 S.E.2d 563 (1963).

56. See Werchick, *Unmeasurable Damages and a Yardstick*, 17 HASTINGS L.J. 263 (1965).

57. 108 S.C. 195, 93 S.E. 865 (1917).

58. *Id.* at 199, 93 S.E. at 866.

59. *Mock v. Atlantic Coast Line R.R.*, 227 S.C. 245, 259, 87 S.E.2d 830, 836 (1955). (Emphasis added.)

Referring to this statement in a case where the beneficiaries were brothers of the deceased, the court said:

However, in the case of collateral relatives, the presumption, if any, of this kind would not be a strong one. Where the action is brought for the benefit of brothers and sisters, the amount of recovery must necessarily be gauged by the intimacy of the relation, association, and the feelings of the beneficiaries toward the deceased.<sup>60</sup>

It seems to be a fair inference from these cases that where the action is for the benefit of the decedent's wife and minor children, non-pecuniary as well as pecuniary damages may be presumed in the absence of evidence to the contrary.

One particularly troublesome situation concerning "evidence to the contrary" in South Carolina is the effect of evidence of separation or marital misconduct on actions for wrongful death. The general rule in most jurisdictions is that marital misconduct and separation short of divorce, while they certainly may influence the amount of damages, do not deprive the surviving spouse of his or her status as a beneficiary in Death Act cases.<sup>61</sup> In South Carolina, however, it seems to be settled law that, although the wife is not barred from recovery by the husband's abandonment of his family or by her adultery after such abandonment,<sup>62</sup> the wife's adultery prior to abandonment by the husband or the wife's desertion of the husband not only rebuts any presumption of damages but absolutely bars recovery.<sup>63</sup>

60. *Nelson v. Charleston & W. Carolina R.R.*, 231 S.C. 351, 360, 98 S.E.2d 798, 801-02 (1957).

61. 22 AM. JUR. 2d *Death* § 68 (1965).

62. *Gilliam v. Southern Ry.*, 108 S.C. 195, 93 S.E. 865 (1917).

63. South Carolina's minority position was originally enunciated by the South Carolina Supreme Court in *Lytle v. Southern Ry.*, 152 S.C. 161, 149 S.E. 692 (1929), a case under the Federal Employers' Liability Act. In this decision the court affirmed the order of the circuit court overruling a demurrer of the defendant. After trial, the court readily accepted the opportunity afforded by the defendant's new appeal to elaborate the holding in the prior decision. *Lytle v. Southern Ry.*, 171 S.C. 221, 171 S.E. 42, *cert. denied*, 290 U.S. 645 (1933). The court based its decision on an interpretation of the word *widow* in the FELA. 45 U.S.C.A. § 51 (1954).

In *Folk v. United States*, 102 F. Supp. 736 (W.D.S.C.), *rev'd on other grounds*, 199 F.2d 889 (4th Cir. 1952), the federal court, although dealing with a case under the South Carolina Death Act, cited *Lytle* as controlling. *Id.* at 740. *Accord*, *Sanders v. Green*, 208 F. Supp. 873 (E.D.S.C. 1962).

### E. *Other Decedents*

The foregoing discussion, although it has concentrated on the damages recoverable in the event of the wrongful death of the family breadwinner, applies also, in some particulars, to cases of deaths of wives and children. Although outside the scope of this article, it should be noted that deaths of non-income producing members of the family present different challenges. Introducing evidence sufficient to enable the jury to fully comprehend the loss of a wife and mother and to translate that loss into dollars is a formidable if not impossible task.<sup>64</sup> With a deceased child, the difficulties are multiplied; the monetarily measurable elements comprise a still smaller fraction of the total loss and are, if present at all, extremely speculative.<sup>65</sup> The difficulties with these decedents offer still further substantiation of South Carolina's liberal position on non-pecuniary damages.

### F. *Conclusion*

It is apparent that the various statements purporting to be the measure of damages in Death Act cases in South Carolina are, at most, necessarily broad generalities. Whether cause or effect, the concomitant fact is an almost omnipotent jury.<sup>66</sup> Add to this the liberal position of our court in the matter of non-pecuniary damages and the fact that a jury in a South Carolina Death Act case may assess punitive damages<sup>67</sup> and the result might reasonably be expected to be a pattern of recognizably high awards. However, as difficult as it is to compare awards made in cases under different statutes including different evidence and different facts, attempts at comparison seem to indicate, if anything, a rather consistent pattern of conservative awards.<sup>68</sup>

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64. See generally Lambert, *How Much Is A Good Wife Worth?*, 41 B.U.L. REV. 328 (1961).

65. See generally Lambert, *Wrongful Death Of A Child*, 30 NACCA L.J. 188 (1964).

66. See, e.g., *Mock v. Atlantic Coast Line R.R.*, 227 S.C. 245, 266-68, 87 S.E.2d 830, 839-40 (1955).

67. S.C. CODE ANN. § 10-1954 (1962).

68. See, e.g., 6 BELLI, MODERN TRIALS § 279 (1963).