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Damages

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Henderson, Salley & Cushman (Aiken, SC)

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DAMAGES

HENRY SUMMERALL, JR.*

The cases on this subject during the period covered by this Survey were of more than routine interest and may be discussed under these headings: Excessive Damages, Inadequate Damages, Interest, Funeral Expenses, and Damages for Fraud.

Excessive Damages

*Beasley v. Ford Motor Co.*¹ was an action for damages resulting from negligence in the construction and inspection of a new Lincoln automobile which had caught fire. The plaintiff, a passenger in the automobile and the wife of the purchaser, had alighted from the burning automobile without having suffered any burns or other physical injuries. She was not hospitalized and there was no evidence of other expense. The evidence was that the plaintiff was frightened and made extremely nervous by the fire, and that a year after the fire she was still nervous, suffering from nightmares and not sleeping well, and continued taking phenobarbital. The plaintiff's husband testified that the accident had made her very nervous, a poor sleeper and irritable. The prayer of the complaint was for \$10,000.00, actual and punitive damages. The issue of punitive damages was eliminated from the case, and the jury verdict was in favor of the plaintiff in the amount of \$10,000.00 actual damages which was reduced by the trial judge to \$7,500.00. The Supreme Court felt constrained to reverse the case and to grant a new trial absolute on the ground that in view of the slight injuries sustained by the plaintiff, the verdict was grossly excessive and the result of caprice, prejudice and bias. It is noteworthy that the Court considered the fact that the jury's verdict was for the full amount of the damages sought in the complaint even after removal of the issue of punitive damages from the case as rather conclusively showing disregard by the jury of the issues and the instructions of the court, or their failure to heed them. Two justices concurred in result, stating that in their opinion the record revealed no injuries for which damages may be recovered, but noting that such question had not been raised by any exceptions.

*Henderson, Salley & Cushman, Aiken, S. C.

1. 237 S. C. 506, 117 S. E. 2d 863 (1961).

In *Indemnity Ins. Co. of No. America v. Odom*², a wrongful death action, one of the grounds of appeal was that the amount awarded by the jury's verdict was so grossly excessive as to indicate that it was the result of passion, prejudice and caprice. The verdict was for \$60,000.00 actual damages for the wrongful death of a man who apparently earned \$58.00 per week, who had a life expectancy under the mortuary table of 35.15 years, and whose statutory beneficiaries were four minor children and a widow who had remarried six months after his death. The Supreme Court held that the amount awarded was not excessive.

Inadequacy of Damages

In *Fuller v. Bailey*,³ where the jury had awarded a \$2,000.00 verdict for the wrongful death of a thirty-nine year old housewife with a life expectancy of 30.8 years, leaving as beneficiaries her husband, a nineteen month old infant, and two married daughters by a former marriage, the Supreme Court held that the trial judge had not abused his discretion in granting a new trial on the sole ground that the damages awarded were grossly inadequate.

Interest

In *Freeman v. King Pontiac Co.*⁴ the holding of the Court as to interest is thus summarized in the applicable syllabus:

Amounts recovered by plaintiff in action for breach of employment contract, from employer, and amounts recovered by employer, on counterclaim for automobile purchased by employee, were liquidated and interest thereon was properly awarded at legal rate.⁵

The defendant did not raise in the court below the ground that interest was not recoverable because not demanded in the complaint, and therefore that ground was not passed upon by the Supreme Court.

In *South Carolina Highway Dep't. v. Miller*,⁶ a highway condemnation case, after a jury verdict in favor of the respondents in the amount of \$11,865.00, they moved that interest be added thereto at the rate of six per cent (6%) per

2. 237 S. C. 167, 116 S. E. 2d 22 (1960).

3. 237 S. C. 573, 118 S. E. 2d 340 (1961).

4. 236 S. C. 335, 114 S. E. 2d 478 (1960).

5. 236 S. C. at 337, 114 S. E. 2d at 479 (1960).

6. 237 S. C. 386, 117 S. E. 2d 561 (1960).

annum from the date upon which the appellant entered upon and took possession of the land for highway purposes. The trial judge ruled that such interest was allowable, and from this ruling the Highway Department appealed after paying the amount of the verdict. The appellant presented two contentions to the Court: (1) that interest is not recoverable under the condemnation statutes⁷ which limit assessments and damages to the actual value of the land taken and any special damages resulting therefrom; and (2) that the verdict of the jury was final and embraced all damages accrued to the date thereof. As to the first contention, the Supreme Court assumed, without deciding, that the "just compensation" required by the Constitution⁸ includes interest where the property is taken before payment, citing 36 A. L. R. 2d beginning at page 451. The Court's actual holding was that even if the foregoing principle is applicable, it was improper for the trial judge to add interest to the verdict. The Court stated that the respondents had the duty of calling the matter of interest on the award to the attention of the trial judge and of requesting an instruction on that point so that the jury could, by its verdict, determine what was "just compensation." The Court implied that the order of the trial judge adding interest to the amount of the verdict could not be justified as amending or readjusting the verdict, since the trial judge's order did not give the option of a new trial nisi to the appellant.

Funeral Expenses

In *Gowan v. Thomas*⁹ the Supreme Court held that funeral expenses are not recoverable in an action brought under the Survival Statute.¹⁰ It is rather surprising that this issue had not been squarely passed on previously. However, the Court had no trouble deciding as it did, in accordance with the general rule elsewhere,¹¹ and in line with logic and indications contained in other South Carolina decisions. There seem to be two reasons for the Court's holding: (1) Only those actions which could have been brought by the decedent had he lived can be brought under the Survival Act, and, obviously, one cannot sue for his own funeral expenses; (2) It had been squarely held previously in *Petrie v. Columbia & Greenville*

7. CODE OF LAWS OF SOUTH CAROLINA § 33-121 to -148 (1952).

8. S. C. CONST. art I, § 17.

9. 237 S. C. 223, 116 S. E. 2d 761 (1960).

10. CODE OF LAWS OF SOUTH CAROLINA § 10-209 (1952).

11. See annotation in 163 A. L. R. 253, at 260.

*R.R.*¹² that funeral expenses are a proper element of damages in an action for wrongful death, and to hold that they are also recoverable in an action brought under the Survival Act would make the wrongdoer doubly liable for such element of damages.

Damages for Fraud

The case of *Warr v. Carolina Power & Light Co.*¹³ was an action in tort for fraud and deceit arising from the plaintiff's sale to the defendant company of a tract of land. The Supreme Court held that the demurrer to the plaintiff's complaint should have been sustained because it failed to allege that the plaintiff suffered damage as a result of the alleged fraudulent misrepresentation as to the use which the purchaser proposed to make of the land. Although the complaint contained allegations to the effect that the defendant company paid the plaintiff a great deal less than it paid for similar nearby lands, it did not allege that the plaintiff's land was worth any more than he received for it. The Court relied on the principle that " 'fraud without damage or damage without fraud is not actionable.' "¹⁴ As to the measure of damages, the Court stated as follows:

In an action for fraud and deceit in the transfer of property, the measure of damage is the difference between the actual and represented value. *Beasley v. Swinton*, 46 S. C. 426, 24 S. E. 313; *Godfrey v. E. P. Burton Lumber Company*, 88 S. C. 132, 70 S. E. 396. In *Culbreath v. Investors Syndicate et al.*, 203 S. C. 213, 26 S. E. (2d) 809, 147 A. L. R. 1144, it was held that the measure of damage with reference to stock is the difference between the value of the stock and the value it was represented to have, or the difference between the contract price and the actual value.¹⁵

12. 29 S. C. 303, 7 S. E. 515 (1888).

13. 237 S. C. 121, 115 S. E. 2d 799 (1960).

14. *Williams v. Haverty Furniture Co.*, 182 S. C. 100, 104, 188 S. E. 512, 513 (1936), quoting from *Baily v. Merrell*, 3 Bulstr. 94, 81 Eng. Rep. 81.

15. 237 S. C. at 132, 115 S. E. 2d at 805 (1960).