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Damages

Ronald P. Johnson

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DAMAGES

I. IN GENERAL

In *W.D. Bourne Supply Co. v. Southeastern Freight Lines*¹ the defendant's negligent operation of a truck in a flooded street allegedly produced a wave which inundated the plaintiff's store. The plaintiff claimed that water, mud, and silt caused extensive damage to his building, goods, and equipment. After the trial court rendered judgment for the plaintiff, the defendant appealed to the supreme court. The defendant contended that the plaintiff had failed to offer evidence of the salvage value of the damaged merchandise, thereby depriving the jury of the usual "before and after" test for assessing loss. The court affirmed, however, holding that the plaintiff's testimony, indicating a specific amount of damage and the condition of the goods and premises following the flood, created a jury question as to the amount of damages sustained.

II. DAMAGES IN WRONGFUL DEATH ACTIONS

*Smoak v. Seaboard Coast Line R.R.*² concerned the trial court's refusal to grant the defendant's motion for a new trial based on allegedly excessive damages. In this common law action for wrongful death by the parents of the eighteen-year-old deceased, the trial court awarded \$75,000 actual damages and \$25,000 punitive damages. Reviewing these damages, the supreme court said, "This Court will reverse the refusal of a motion for a new trial on the contention that a verdict is excessive only when the verdict is so grossly excessive as to shock the conscience of the Court."³ In upholding the damages as clearly not unreasonable or excessive, the court expressed doubt about the validity of comparing "today's verdict[s] to those of yesterday"⁴ and further stated, "Adequacy, inadequacy, and excessiveness must be thought of in connection with buying power."⁵

1. 259 S.C. 139, 191 S.E.2d 4 (1972).

2. 193 S.E.2d 594 (S.C. 1972).

3. *Id.* at 597.

4. *Id.* The case used for comparison was *Mock v. Atlantic Coast Line R.R.*, 227 S.C. 245, 87 S.E.2d 830 (1955), in which under similar circumstances the court awarded \$50,000 actual damages and \$15,000 punitive damages to the father of a deceased twelve-year-old boy.

5. 193 S.E.2d at 597.

The Federal District Court for the District of South Carolina in *Adams v. Hunter*⁶ was equally concerned with the correct measure of damages in an action under the South Carolina Wrongful Death Act.⁷ This case, like *Smoak*, was an action brought by a father for the death of his son.⁸ Nineteen-year-old Darrel Adams was killed when the defendant drove onto the highway from a service station without yielding to the Adams vehicle. The defendant violated several South Carolina statutes: failing to yield the right-of-way,⁹ driving while intoxicated,¹⁰ and driving with reckless disregard of the rights of others on the highway.¹¹ He entered a plea of guilty to involuntary manslaughter and at trial admitted liability for actual damages. Thus, the only issues to be determined by the court were the amount of actual damages plus the existence of liability for, and the amount of, punitive damages resulting from the defendant's gross negligence and recklessness.

The court reiterated that the measure of actual damages is governed by the Wrongful Death Act, which provides for damages in proportion "to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought."¹² *Adams* reaffirmed the general elements of actual damages set forth in *Mishoe v. Atlantic Coast Line R.R.*¹³ as follows:

- (1) Pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6)

6. 343 F. Supp. 1284 (D.S.C. 1972).

7. S.C. CODE ANN. §§ 10-1951 *et seq.* (1962). Section 10-1951 provides as follows: Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, although the death shall have been caused under such circumstances as makes the killing in law a felony. In the event of the death of the wrongdoer, such cause of action shall survive against his personal representative.

8. "In determining the amount of the damages to be awarded in an action under the statute for wrongful death, the question is not one of the value of the human life, but is rather the damages sustained by the beneficiaries . . . from the death of the deceased." *Zorn v. Crawford*, 252 S.C. 127, 136-37, 165 S.E.2d 640, 645 (1969).

9. S.C. CODE ANN. § 46-424 (1962).

10. *Id.* § 46-343 (1962).

11. *Id.* § 16-55.1 (Cum. Supp. 1971).

12. *Id.* § 10-1954 (1962).

13. 186 S.C. 402, 197 S.E. 97 (1938).

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 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.¹⁴

Although recognizing that case law had rejected the presumption of pecuniary loss in the wrongful death of a minor child,¹⁵ the court found sufficient financial contribution to the family to justify making a rough calculation of the pecuniary loss at \$4500. The court held the *Brooks v. United States*¹⁶ formula inapplicable to damages resulting from the death of a minor. Instead, the court decided that damages were recoverable only for the period of a child's minority and for such benefits after minority as were probable and reasonably calculable from the evidence.

The court determined that separate values could not be assigned to each of the other five elements but concluded that \$125,000 was a reasonable approximation of these elements. The court also allowed compensation for funeral expenses.¹⁷ Although observing that some courts do not approve of punitive damages, the district court noted that South Carolina adheres to the principles underlying punitive damages in order "to vindicate a private wrong, to punish the wrongdoer, and to set an example for other persons."¹⁸ The court felt that the facts of the case justified an extremely high award of punitive damages and accordingly set the amount at \$25,000.

14. *Id.* at 419, 197 S.E. at 104-05.

15. *See, e.g.,* Patrick v. United States, 316 F.2d 9 (4th Cir. 1963); Mock v. Atlantic Coast Line R.R., 227 S.C. 245, 87 S.E.2d 830 (1955).

16. 273 F. Supp. 619 (D.S.C. 1967). *Brooks* stated that the following factors were controlling in fixing pecuniary loss: (1) the prospective earnings of the decedent subsequent to death, (2) calculated on the basis of his work expectancy, and (3) the extent to which his statutory beneficiaries might logically and reasonably have expected to share in such prospective earnings. Although the court in *Adams* said that the deceased's expected income after he reached maturity could not be considered an element of damage, the expectation of the father of the enjoyment of the son as a business associate over the years could be measured.

17. S.C. CODE ANN. § 10-209.1 (Cum. Supp. 1971) provides in part: "Damages recoverable under . . . § 10-1951 may include reasonable funeral expenses . . ." *See also* Tollerson v. Atlantic Coast Line R.R., 188 S.C. 67, 198 S.E. 164 (1938).

18. 343 F. Supp. at 1291.

III. TRADE SECRETS AND THE DUTY OF LOYALTY OWED AN EMPLOYER

In *Lowndes Products, Inc. v. Brower*,¹⁹ an employer sued to enjoin its former employees from utilizing "misappropriated" trade secrets and to recover damages for such misappropriation and the breach of the duty of loyalty by those employees. The plaintiff was using a confidential technique to manufacture non-woven fabric, and the defendants were certain "key employees" and customers of the plaintiff.

The first issue confronting the supreme court was whether, in fact, there was a trade secret to be misappropriated. "Trade secret" is defined as follows:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it Generally it relates to the production of goods, as for example, a machine or formula for the production of an article.²⁰

This and other definitions of trade secrets²¹ led the court to conclude that the plaintiff had proved that the equipment, formulas, and techniques, which it had developed over a long period of time, qualified as trade secrets. Despite this finding, the court noted that not all trade secrets are entitled to the protection of a court of equity. The totality of the evidence convinced the court that Lowndes had failed to take proper and reasonable steps to protect its trade secrets; therefore the injunctive relief sought was denied.

The court, however, did find that the plaintiff suffered damages because of the disloyalty of former employees who engaged in active competition with their erstwhile employer. The court recognized an employee's duty of fidelity to his employer apart

19. 259 S.C. 322, 191 S.E.2d 761 (1972).

20. RESTATEMENT OF TORTS, Explanatory Notes § 757, comment b, at 5 (1939).

21. 2 R. CALLMANN, THE LAW OF UNFAIR COMPETITION, TRADEMARKS, AND MONOPOLIES (3d ed. 1968) contains the following definitions:

Almost anything may be in the nature of a trade secret. *Id.* § 52.

A trade secret can exist in the unique combination of otherwise known components; although each of its parts, by itself, may be in the public domain, the unified process, design and operation of the combination may be the essence of the secret. *Id.* § 52.1.

[A] trade secret need not be essentially new, novel or unique *Id.*

from his obligation to maintain the confidentiality of the employer's processes. It found numerous incidents of activities by various defendants that were wholly inconsistent with their duty of loyalty to the plaintiff while they were still on its payroll. Several of the key employees left the plaintiff's employment without giving notice and induced other employees to depart, leaving the plaintiff's factory in turmoil. They also appropriated the carefully cultivated seller-customer relationship existing between the plaintiff and a leading customer, who was also a defendant in the action because of his active cooperation with the plaintiff's former employees. The supreme court, therefore, found that Lowndes was entitled to all damages which it incurred as a proximate result of the disloyalty of the defendants and remanded the case to the lower court for a determination of the amount.

RONALD P. JOHNSON