

December 2019

Mental Anguish in Personal Injury Cases

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Recommended Citation

M. L. van Benschoten, *Mental Anguish in Personal Injury Cases*, 5 Wyo. L.J. 87 (1950)
Available at: <https://scholarship.law.uwyo.edu/wlj/vol5/iss2/4>

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owner and operator of a motor vehicle which is involved in an accident in which a person is killed or injured or from which damages to such motor vehicle or to any other property to the extent of seventy-five dollars or more results when it appears to the commissioner, after a full investigation, that the operator of the vehicle was at fault.¹⁰ These states are the only ones found which require the administrator to make a finding of fault before he can enforce the financial provisions of the act.

The purpose of the financial responsibility laws are to place every person who may be found legally responsible for damages arising from an automobile accident in a position to pay such damages and this purpose is to be accomplished by requiring proof of ability to respond in damages from those who may be likely to cause harm. Drivers who should be required to be financially competent have been classified by the financial responsibility laws; and the administrators of those acts should not be impeded from segregating those drivers as quickly as possible. It is therefore contended that the imposing of a duty upon an administrator to make a provisional finding of fault before enforcing the financial provisions of such acts runs contra to the purposes of those acts, and this contention is supported by the fact that all but three states, which have such laws, have seen fit not to impose such a duty upon the administrators of their laws. The primary objective of the state is to see that the purpose of the act is achieved and it is not to argue questions of negligence with those persons who should be required to furnish proof of financial responsibility. However, the principal case has imposed such a duty upon the state highway superintendent of Wyoming and because of a lack of funds and personnel necessary to carry out this duty, the claim that the act has been made unworkable from an administrative viewpoint cannot be denied. The result of the decision in this case would seem to enable an operator who has had his license revoked for failure to file proof of financial responsibility as required by the act to file a petition to have the order reviewed, and because the superintendent does not have the funds or personnel to make a preliminary finding of fault, the operator will be given a judgment on non-liability by default and the order of suspension will be rescinded. The cure would seem to be either an increase in funds and personnel to aid carrying out such investigations or the elimination of fault or possible fault from the operation of the financial responsibility act.

DAVID A. SCOTT.

MENTAL ANGUISH IN PERSONAL INJURY CASES

The fundamental law of damages in personal injury cases allows the jury to fix such sum as will reasonably compensate the injured party for

10. Public Laws of Vermont c. 213 sec. 5190 subsec. 3 (1933).

the loss occasioned by the injury.¹ The elements of such damage vary according to the nature of the injury: such expenses as have been incurred and may reasonably be expected to accrue in the future; loss of past and future income which the injured party may suffer; and, such pain and suffering which the injured party has suffered, and which he may be reasonably expected to suffer in the future.² It is this latter element of damages which has apparently caused the courts much trouble. The judiciary has, in many instances, sought to limit recovery to those injuries which they classify as physical impediments, and they have said that pain and suffering is such a component of the injury as to be an element of damages.³ However, in saying "thus far and no further" some of the courts have, in the past, turned a deaf ear to the injured party's mental and emotional reaction to the injury.⁴ Humiliation, grief and mental anguish which might result from disfigurement,⁵ or the inability to enjoy pleasurable activities as in the past,⁶ have been regarded as too remote, speculative, and not subject to exact measurement.⁷ However, there has been no objection to allowing recovery based on physical suffering even though such an element might be subjective and difficult to measure with any certainty.⁸ Also, the fact that physical suffering is bound to differ with the individual whether he is lethargic, or a sensitive, active man of affairs, will, of necessity, have some effect upon the degree of suffering and the ultimate recovery.⁹

It has been said that uncertainty as to the amount of damages is not the criteria, but certainty as to the wrongful injury is controlling,¹⁰ and that damages are not uncertain merely because they cannot be computed with mathematical accuracy.¹¹ A reasonable method of calculation is all that is necessary, and the result need only be proximate.¹²

To forbid consideration of the elements of mental suffering, or anguish, which are caused by disfigurement on the ground that they are remote, speculative, and not subject to exact measurement, amounts to a condemnation of the accepted method of measuring damages for those injuries for which recovery may be had. Without going into a discussion of the relationship of mind and body from a medical or psychological point of

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1. *Pixley v. Catey*, 102 Ind. App. 213, 1 N.E. (2d) 658, 659 (1936).
 2. *Standard Oil Co. of California v. Shields*, 58 Ariz. 239, 119 P. (2d) 116, 119 (1941).
 3. *Southern Pacific Co. v. Hetzer*, 135 F. 272, 274 (C.C.A. 8th 1905); *Knickerbocker Ice Company v. Oliver K. Leyda*, 128 Ill. App. 66, 71 (1906); *Colonial Coal and Coke Co. v. Hobson*, 208 Ky. 268, 271 S.W. 680, 681 (1925).
 4. *Maynard v. Oregon R. & Nav. Co.*, 46 Ore. 15, 78 Pac. 983, 984 (1904); *Camenzind v. Freeland Furniture Co.*, 89 Ore. 158, 174 Pac. 139, 148 (1918); *Contra: Fehely v. Senders*, 170 Ore. 457, 135 P. (2d) 283, 288 (1943).
 5. *Gulf, C. & S. F. Ry. Co. v. Dickens*, 54 Tex. Civ. App. 637, 118 S.W. 612, 616 (1909).
 6. *South Bend Brick Co. v. Goller*, 46 Ind. App. 531, 93 N.E. 37, 39 (1910).
 7. *Ibid.*
 8. *Pan-American Petroleum Corporation v. Pate*, 157 Miss. 822, 126 So. 480, 483 (1930).
 9. *Merrill v. Los Angeles Gas & Electric Co.*, 158 Cal. 499, 111 Pac. 534, 540 (1910).
 10. *Edens-Birch Lumber Co. v. Wood*, Ct. of Civ. App. Tex., 139 S.W. (2d) 881, 887 (1940).
 11. *Fehely v. Senders*, 170 Ore. 457, 135 P. (2d) 283, 288 (1943).
 12. *Owen v. Taylor*, 62 Idaho 408, 114 P. (2d) 258, 260 (1941).

view, it is sufficient to observe that neither can exist without the other. It is unconscionable to allow recovery for injury to the body without allowing recovery for anguish, humiliation, inability to enjoy life as before the injury, and any grief and worry which the physical injury may produce if such mental anguish appears to be reasonable in the light of all existing circumstances and conditions. Fortunately, there has been an ever-increasing tendency to award damages for mental distress and this trend is evidenced by the course of recent decisions.¹³

Almost all courts now allow recovery for humiliation and embarrassment caused by scars or other disfigurement.¹⁴ This element is not, however, usually considered a distinct item of damages, but is considered a component of mental suffering.¹⁵ Here, as in cases of physical pain and suffering, compensation cannot be calculated with any degree of accuracy, but the courts will only disturb a verdict which it considers unreasonable.¹⁶ Previous verdicts rendered for the same type of injury serve as a guide in determining whether the verdict is excessive or inadequate,¹⁷ with the purchasing power of money taken into consideration.¹⁸

Loss of ability to enjoy life to the same extent as before the injury has met with a divided view by the courts. Where the plaintiff sought to recover on the ground that the injury to her hand deprived her of the pleasure of playing the violin the court refused to consider it as an element upon which recovery might be had on the ground that the loss of enjoyment was "too speculative and conjectural to form a sound basis for damages";¹⁹ but it is interesting to note that the conjectural element was not found where damages were asked for pain and suffering.²⁰

Recovery of damages due to mental anguish resulting from disfigurement is not new to the courts. In 1848, the Supreme Judicial Court of Massachusetts allowed the plaintiff to recover for mental suffering where facial disfigurement was involved.²¹ In 1893, the Missouri court said that mere consciousness of the fact that the plaintiff would be crippled for life was sufficient justification to allow recovery for mental anguish.²² The passing of time has shown an expansion in the acceptable elements of mental suffering. Past and future inconvenience,²³ deprivation of a

13. *Fehely v. Senders*, see note 11.

14. *Ibid.*

15. *L. S. Ayres & Co. v. Hicks*, 220 Ind. 86, 41 N.E. (2d) 195, 196 (1941); *Wilson v. Kurn*, —Mo. —, 183 S.W. (2d) 553, 556 (1944).

16. *McCartie v. Muth*, 230 Wis. 604, 284 N.W. 529, 530 (1939); *Waggaman v. General Finance Co.*, 116 F. (2d) 254, 259 (C.C.A. 3rd 1940).

17. *Hare v. New Amsterdam Casualty Co.*, Lt. Ct. of App., 1 So. (2d) 439, 441 (1941).

18. *Kimbriel Produce Co. v. Webster*, Tex. Ct. of Civ. App., 185 S.W. (2d) 198, 202 (1944).

19. *Hogan v. Santa Fe Trail Transportation Co.*, 148 Kan. 720, 85 P. (2d) 28, 33 (1938).

20. *Ibid.*

21. *Edward Canning v. The Inhabitants of Williamstown*, 55 Mass. (1 Cush.) 451, 452 (1848).

22. *Schmitz v. St. Louis, I. M. & S. Ry. Co.*, 119 Mo. 256, 24 S.W. 472, 477 (1893).

23. *Avance v. Thompson*, 320 Ill. App. 406, 51 N.E. (2d) 334, 337 (1943).

normal life, and inability to enjoy life as before the injury²⁴ have all been considered elements of damage where the plaintiff has suffered some form of mental anguish which was the result of disfigurement;²⁵ and, in a recent disfigurement case, the court instructed the jury that they might consider the plaintiff's evidence in a light most favorable to him.²⁶

It has been said that when a court instructs the jury to disregard all the elements of mental suffering except that arising from physical suffering, it does so under the naive impression that the jury will sublimate their personal reaction to such mutilation, and substitute for it the impersonal rule of the court; and, that, it would be unrealistic to think that persons who are charged with the responsibility of weighing the elements of damages will take an abstract view of the sufferings of others.²⁷

Whether the change in the law of damages was due to the practicalities involved, or whether it was the product of an altruistic attitude on the part of the court is not really important. What is important, is the fact that the members of society are no longer considered economic units which have no ability to feel pain. The recognition that psychological differences of individuals affects the degree of the injury, is but a recognition of human qualities which individual dignity demands.

M. L. VAN BENSCHOTEN.

BLOOD TESTS AS EVIDENCE OF NON-PATERNITY

X sued Y in a bastardy proceeding charging Y as the father of X's twins. Blood tests were taken by order of the court, and a medical expert testified that from the results of the tests Y could not possibly be the father of the twins. Nevertheless, the jury found against Y on the issue. Y moved for a new trial. *Held*, motion sustained; the jury could not determine how much weight should be given to blood tests, but could only determine whether the tests were properly made, and if so made, non-parentage of Y irresistibly followed. Here, a finding that the tests were not properly made would have been set aside, as not supported by the evidence. *Jordan v. Mace*, 69 A. (2d) 670 (Maine 1949). A prior decision by this same court held that the statute compelling submission to a blood test at the request of a party is not to be construed as providing that the test results should be conclusive evidence;¹ i.e., the court cannot enter judgment solely on the basis of the test results.

24. *Howard v. Baltimore & O. C. T. R. Co.*, 327 Ill. App. 83, 63 N.E. (2d) 774, 783 (1945).

25. *Thompson v. City of Seattle*, —Wash.—, 211 P. (2d) 500, 502 (1949).

26. *Bartlebaugh v. Pennsylvania R. Co.*, 149 Ohio 538, 78 N.E. (2d) 410, 415 (1948), appeal dismissed 79 N.E. (2d) 912.

27. *Merrill v. Los Angeles Gas & Electric Co.*, supra note 9.

1. *Jordan v. Davis*, 57 A. (2d) 209 (Maine 1948).