

1940

DAMAGES - MENTAL ANGUISH - RECOVERY DENIED FOR MENTAL ANGUISH ARISING OUT OF NEGLIGENT INJURY TO PERSONAL PROPERTY

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Recommended Citation

Robert M. Warren, *DAMAGES - MENTAL ANGUISH - RECOVERY DENIED FOR MENTAL ANGUISH ARISING OUT OF NEGLIGENT INJURY TO PERSONAL PROPERTY*, 38 MICH. L. REV. 407 (1940).

Available at: <https://repository.law.umich.edu/mlr/vol38/iss3/16>

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DAMAGES — MENTAL ANGUISH — RECOVERY DENIED FOR MENTAL ANGUISH ARISING OUT OF NEGLIGENT INJURY TO PERSONAL PROPERTY — Plaintiff placed an order with defendant pharmacist to have a rare photograph of plaintiff's deceased mother reproduced, the work to be done by defendant corporation. When the original picture was returned to plaintiff, it was stained, cracked, and otherwise disfigured, by reason of which plaintiff claimed he was caused physical and mental anguish. *Held*, plaintiff's recovery is limited to nominal damages. *Furlan v. Rayan Photo Works, Inc.*, 171 Misc. 839, 12 N. Y. S. (2d) 921 (1939).

In denying recovery for mental anguish arising out of the negligent destruction of personal property, this decision is consistent with the general attitude that accords a very limited recognition to the interest in mental peace.¹ It is

¹ Goodrich, "Emotional Disturbance as Legal Damage," 20 MICH. L. REV. 497 (1922); Farage, "Mental Distress as an Independent Basis for Recovery," 40 DICKINSON L. REV. 1 (1935); Magruder, "Mental and Emotional Disturbance in the Law of Torts," 49 Harv. L. Rev. 1033 (1936); Prosser, "Intentional Infliction of Mental Suffering: A New Tort," 37 MICH. L. REV. 874 (1939). At 47 L. R. A. (N. S.) 1120 at 1121 (1914), it is said: "In jurisdictions in which a recovery for mental

also the generally accepted view that damages cannot be recovered for mental anguish arising out of a breach of contract.² Where mental peace has been recognized as an interest subject to the law's protection, it has been treated as a parasitic element of damages.³ Most courts say that no compensation can be made when mental suffering alone is caused by a negligent act, but these courts compensate for mental suffering when it is linked with physical injury.⁴ It is often said that the policy factors which underlie the reluctance of courts to allow recovery for unintentional infliction of mental suffering are (1) that such suffering cannot be measured accurately in terms of money, and (2) that fabrication and feigned causes of action would be too feasible were recovery allowed.⁵ These reasons, advanced by the courts to justify their restrictive attitude, have been severely criticized.⁶ But even if some other cause of action must exist as a

anguish alone is permissible in any case, it would seem that a recovery for the loss of a photograph would be allowed in a proper case, since there can be no question but that mental anguish might follow the loss of a photograph of a deceased relative or friend. . . ." But the authorities cited are few and unconvincing. Cf. *Thomason v. Hackney & Moale Co.*, 159 N. C. 299, 74 S. E. 1022 (1912). In *Buchanan v. Stout*, 123 App. Div. 648, 108 N. Y. S. 38 (1908), plaintiff was denied recovery for mental distress caused by seeing her pet cat mangled by defendant's dog.

² 17 C. J. 837 (1919); *McCORMICK, DAMAGES* 592 (1935); "whether the damages are given for breach of contract or for negligence, the rule is the same with regard to mental suffering," *Curtin v. Western Union Tel. Co.*, 13 App. Div. 253 at 255, 42 N. Y. S. 1109 (1897). In *Plummer v. Hollis*, 213 Ind. 43, 11 N. E. (2d) 140 (1937), defendant, an undertaker, negligently allowed the body of plaintiff's minor daughter to be buried without having a photograph made. The photograph was part of the contract for which defendant was compensated. Defendant knew that plaintiff had no other picture of the child. On suit by plaintiff for mental anguish arising out of the breach of contract, it was held that a contract action cannot be maintained for mental anguish alone.

³ The interest in the peace and comfort of one's own thoughts and emotions is not given independent protection; such redress as the law affords for its invasion is "parasitic" upon a cause of action for the violation of some other recognized legal right. *I STREET, FOUNDATIONS OF LEGAL LIABILITY* 470 (1906). See the articles cited in note 1, *supra*.

⁴ See 23 A. L. R. 361 at 366 (1923) and 44 A. L. R. 428 (1926). "The interest in mental and emotional tranquility and, therefore, in freedom from mental and emotional disturbances is not, as a thing in itself, regarded as of sufficient importance to require others to refrain from conduct intended or recognizably likely to cause such a disturbance." *1 TORTS RESTATEMENT, § 46, comment c* (1934). "An injury to the feelings, independently and alone, is something too vague to enter into the domain of pecuniary damages; too elusive to be left, in assessing compensation therefor, to the discretion of a jury. . . . These conditions are shadowy, unequal, and uncertain in the extreme. When they exist, in connection with physical injuries, they can be examined and tested. Existing alone and independently, they are easily simulated, and the simulation is hard to detect." *Curtin v. Western Union Tel. Co.*, 13 App. Div. 253 at 256, 42 N. Y. S. 1109 (1897).

⁵ See the discussion of these policy reasons in the majority and dissenting opinions in *Wadsworth v. Western Union Tel. Co.*, 86 Tenn. 695, 8 S. W. 574 (1888).

⁶ " . . . the law . . . is now in a position which can hardly be logically justified That a plaintiff's recovery must be in money damages need cause us little more

peg upon which to hang damages for mental anguish, it can be argued that the destruction of personal property or the breach of contract should suffice.⁷ The principal case refused to allow recovery for the sentimental value which plaintiff attached to the portrait of his deceased mother. Portraits of deceased relatives have presented a peculiarly difficult problem of damages, inasmuch as they have no market value and they cannot be replaced. It is universally agreed that the measure of damages for such articles as household goods, plate, heirlooms, keepsakes and the like—articles which have no market value—is the “value to the owners.”⁸ But the critical question in cases where portraits have been converted, lost, or damaged is whether or not the “value to the owner” includes any sentimental value. Almost all the courts that have dealt with the problems have denied recovery for any sentimental value to the owner.⁹ In denying substantial damages to the plaintiff, the principal case can be justified on the ground that the law does not attempt to secure peace of mind in every situation. At times it is necessary and proper for the law to evaluate emotional distress, but in situations like the principal case, it may be said that “a certain toughening of the mental hide is a better protection than the law could ever be.”¹⁰

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difficulty in cases of emotional disturbance than in any other instance of non-pecuniary loss; the pain of a shattered foot, the loss of reputation from a defamation, the loss of liberty from false imprisonment. A judgment for money is a clumsy device, but it is the best the law has.” Goodrich, “Emotional Disturbance as Legal Damage,” 20 MICH. L. REV. 497 at 509 (1922). See also Magruder, “Mental and Emotional Disturbance in the Law of Torts,” 49 HARV. L. REV. 1033 (1936), and Prosser, “Intentional Infliction of Mental Suffering: A New Tort,” 37 MICH. L. REV. 874 (1939).

⁷ “The injury aside from this element [emotional disturbance] need not be substantial. It is sufficient if the cause of action exists as a peg to hang the parasitic element upon.” Goodrich, “Emotional Disturbance as Legal Damage,” 20 MICH. L. REV. 497 at 509-510 (1922). See 13 IND. L. J. 583 (1937).

⁸ See notes in 63 A. L. R. 240 (1929) and L. R. A. 1917D 495 and cases there cited.

⁹ “Value to the owner” means its value as a painting, not the satisfaction and pleasure which the possession of it gives. 1 SEDGWICK, DAMAGES, 9th ed., § 251a (1912). No damages can be given for the sentimental value to the owner or for the associations which the owner connects with the portrait. *Valentino v. Nasio Studio*, 136 Misc. 826, 242 N. Y. S. 277 (1930); *Kahn v. Cole*, (Tex. Civ. App. 1921) 227 S. W. 556; *Barker v. Lewis Storage & Transfer Co.*, 78 Conn. 198, 61 A. 363 (1905); and *Louisville & N. R. R. v. Stewart*, 78 Miss. 600, 29 So. 394 (1901). But see 4 SUTHERLAND, DAMAGES, 4th ed., § 1099 (1916): “Such articles as family pictures, plate and heirlooms should be valued with reasonable consideration of, and sympathy with the feelings of the owner.” To this effect, see *Pennington v. Redman Van & Storage Co.*, 34 Utah 223, 97 P. 115 (1908).

¹⁰ Magruder, “Mental and Emotional Disturbance in the Law of Torts,” 49 HARV. L. REV. 1033 at 1035 (1936).