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Torts - Wrongful Death - Expected Inheritance as an Element of Damages

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TORTS—WRONGFUL DEATH—EXPECTED INHERITANCE AS AN ELEMENT OF DAMAGES—Plaintiff, the widow of a railroad employee who was killed as the result of the defendant's negligence, instituted this action under the Federal Employers' Liability Act¹ to recover damages for his death. The lower court in awarding a judgment refused to include the plaintiff's expectancy of inheritance in the measure of damages. On appeal, *held*, reversed. The expectancy of an inheritance from the deceased is a pecuniary benefit which the beneficiary of the action might reasonably have received if the deceased had not died of his injuries. *Martin v. Atlantic Coast Line Railroad Company*, (5th Cir. 1959) 268 F. (2d) 397.²

The Federal Employers' Liability Act is a wrongful death act³ which creates a right in designated beneficiaries⁴ to recover compensation for the pecuniary loss⁵ sustained by them. The recovery should compensate for the deprivation of the "reasonable expectation of pecuniary benefits" that would have resulted from the continued life of the decedent.⁶ In holding that a widow's interest in the expected inheritance from her husband is a "pecuniary benefit"⁷ for purposes of the Federal Employers' Liability Act,⁸

¹ 35 Stat. 65 (1908), 45 U.S.C. (1958) §51.

² In a case decided the same day, an action had been instituted under the Death on the High Seas Act, 41 Stat. 537 (1920), 46 U.S.C. (1958) §761, to recover damages to plaintiff resulting from the death of her husband which was caused by the defendant's negligence. The lower court awarded \$250,000 in damages. On appeal, *held*, affirmed, one judge dissenting. The wife's interest (under Louisiana community property law) in one-half of her husband's future accumulations, and also her interest in his half by inheritance, are proper elements to be considered by the trial court in assessing damages. *National Airlines, Inc. v. Stiles*, (5th Cir. 1959) 268 F. (2d) 400.

³ For a historical discussion of wrongful death actions, see Michigan Cent. R. Co. v. Vreeland, 227 U.S. 59 at 68-72 (1913). See also Hughes, "Death Actions in Admiralty," 31 YALE L.J. 115 (1921). See, generally, TIFFANY, DEATH BY WRONGFUL ACT, 2d ed. (1913).

⁴ Michigan Cent. R. Co. v. Vreeland, note 3 *supra*; Hughes, "Death Actions in Admiralty," 31 YALE L.J. 115 at 120 (1921).

⁵ Although the Federal Employers' Liability Act sets out no measure of damages, it has been held that the recoveries for death should be commensurate with the pecuniary loss according to the rules developed under Lord Campbell's act [9 & 10 Vict., c. 93 (1846)] and comparable state wrongful death statutes. Michigan Cent. R. Co. v. Vreeland, note 3 *supra*, at 71. The Death on the High Seas Act, note 2 *supra*, expressly states that "recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained. . . ."

⁶ Michigan Cent. R. Co. v. Vreeland, note 3 *supra*, at 70; Middleton v. Luckenbach S.S. Co., (2d Cir. 1934) 70 F. (2d) 326 at 330, cert. den. 293 U.S. 577 (1934).

⁷ Principal case at 399.

⁸ The court in the principal case, in declining to follow the only other decision on this issue arising under FELA [*Mobile & O. R. Co. v. Williams*, 219 Ala. 238, 121 S. 722 (1929)], stated that that decision "resulted from the court's failure to recognize that the FELA was a Lord Campbell Act type of statute and from the court's mistaken belief that the Supreme Court had construed the FELA otherwise. . . ." Principal case at 399-400. Also, in *National Airlines, Inc. v. Stiles*, note 2 *supra*, this issue was ruled on for the first time under the Death on the High Seas Act.

the principal case is in full accord with leading commentators⁹ and is consistent with a number of decisions construing state wrongful death statutes of similar type.¹⁰ Decisions permitting the consideration of expected inheritance in the assessment of damages reason that such consideration is necessary out of fairness to the survivor. If a wife outlives her husband, she is generally entitled to a share of his estate. If her husband had been accumulating an estate as the years of his life went by, the wife would suffer a loss from his untimely death with regard to what she might have inherited as well as what she might have had from her husband for support.¹¹ Denial of recovery for expected inheritance is based on the premise that expected inheritance is not a reasonable expectation of a pecuniary benefit because it is too speculative.¹² In effect, a wife's expected inheritance depends upon three contingencies: that her husband would have increased his estate, that he would not have made a will disinheriting her and that she would have survived him.¹³ Taking account of expected inheritance should be no more difficult than estimating future contributions, which all courts allow to be considered by a jury in assessing damages. Damages for wrongful death cannot be assessed with any mathematical certainty as they are based upon a mass of probabilities¹⁴ and much depends upon the policy of the court as to what evidence is necessary to establish such probabilities. Since the actual loss¹⁵ sustained by survivors is generally greater than the

⁹ See McCORMICK, DAMAGES 350 (1935); TIFFANY, DEATH BY WRONGFUL ACT, 2d ed., 378 (1913); SEDGWICK, MEASURE OF DAMAGES, 9th ed., 1109 (1920); 5 SUTHERLAND, DAMAGES, 4th ed., 4873 (1916).

¹⁰ The inclusion of this factor as an element of wages was allowed nearly a century ago under an Illinois statute. *Railroad Co. v. Barron*, 5 Wall. (72 U.S.) 90 (1866). Although 28 or more states have such statutes, only about half of them have settled this issue and those have done so with little discussion. *Accord: Colorado*, *Denver* and *R.G. R. Co. v. Spencer*, 27 Colo. 313, 61 P. 606 (1900); *Florida*, *United States v. Compania Cubana De Aviacion, S.A.*, (5th Cir. 1955) 224 F. (2d) 811 (1955); *Illinois*, *Denton v. Midwest Dairy Products Corp.*, 284 Ill. App. 279, 1 N.E. (2d) 807 (1936); *Indiana*, *Lake Erie & W.R. Co. v. Mugg*, 132 Ind. 168, 31 N.E. 564 (1892); *Missouri*, *Bagley v. St. Louis*, 268 Mo. 259, 186 S.W. 966 (1916); *New Hampshire*, *Adams v. Severance*, 93 N.H. 289, 41 A. (2d) 233 (1945); *Oregon*, *Nordland v. Lewis & Clark R. Co.*, 141 Ore. 83, 15 P. (2d) 980 (1932); *Pennsylvania*, *Catawissa R. Co. v. Armstrong*, 52 Pa. 282 (1866); *Texas*, *International-Great Northern R. Co. v. Acker*, (Tex. Civ. App. 1939) 128 S.W. (2d) 506; *Utah*, *Burbridge v. Utah Light & Traction Co.*, 57 Utah 566, 196 P. 556 (1921); *Wisconsin*, *Ryan v. Oshkosh Gaslight Co.*, 138 Wis. 466, 120 N.W. 264 (1909). *Contra, Michigan*, *Baker v. Slack*, 319 Mich. 703, 30 N.W. (2d) 403 (1948).

¹¹ *O'Toole v. United States*, (3d Cir. 1957) 242 F. (2d) 308.

¹² "Does this [pecuniary injury] include things so speculative and nebulous as the fondly nurtured hope of an inheritance, enhanced by redress for the decedent's wrongful death, but suspended by the tenuous cord of the decedent's possible intestacy? Assuredly not." *Baker v. Slack*, note 10 supra, at 714.

¹³ See 4 SUTHERLAND, DAMAGES, 3d ed., 1276 (1903), quoted with approval in *Rhoads v. Chicago & A.R. Co.*, 227 Ill. 328, 81 N.E. 371 (1907).

¹⁴ In assessing damages a jury may consider "the age, health, and expectancy of the deceased, his earning capacity, his mode of treatment to his family, and the amount contributed out of his wages for their support. . . ." *Cobia v. Atlantic Coast Line R. Co.*, 188 N.C. 487 at 493, 125 S.E. 18 (1924).

¹⁵ Actual loss would include such factors as loss of husband's love, loss of society, and resulting mental anguish.

pecuniary loss for which they may recover, it seems reasonable that an effort be made by the court to give full meaning to pecuniary loss. Although the principal case provides sound precedent upon which claims for expected inheritance can be based, in most such suits this element is not likely to be a major factor, if considered at all.¹⁶ The reason for this is that, generally, cases arising under the Federal Employers' Liability Act involve persons of low income who are not likely to be amassing sizeable estates.¹⁷ With the general increase in the standard of living, however, even survivors in this category may be in a position to assert pecuniary loss of expected inheritance because of the premature death of the decedent.

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¹⁶ But it is likely that the recovery in *National Airlines, Inc. v. Stiles*, note 2 *supra*, could have been reduced by as much as \$100,000 if consideration of expected inheritance had not been allowed. Further, increased air travel over the high seas is likely to result in a number of crashes causing the deaths of persons of high income, the survivors of whom may well claim to have lost a sizeable expected inheritance because of the accident.

¹⁷ "The average railroad worker for whose death recovery is sought under the Federal Employers' Liability Act is a man of moderate means. He has no excess income to put into savings. Instead his contributions to his family are closely related to his earning capacity. In most railroad households, the paycheck is turned over to the worker's wife, and she gives him a small allowance for his own living expenses. The amount given the wife, less the allowance for the worker, represents the 'contributions.'" DeParcq and Wright, "Damages Under the Federal Employers' Liability Act," 17 *Ohio St. L.J.* 430 at 445 (1956). A majority of the claims under the Death on the High Seas Act involve deaths of seamen whose financial condition is similar to that described above.