Michigan Law Review

Volume 40 | Issue 1

1941

MUNICIPAL CORPORATIONS - TORT LIABILITY - EXEMPLARY DAMAGES

Michigan Law Review

MUNICIPAL CORPORATIONS — TORT LIABILITY — EXEMPLARY DAMAGES — Plaintiff was injured in a collision between the car in which she was riding and a negligently driven fire truck owned by the defendant municipality. Plaintiff's declaration alleged that the fire trucks had been habitually driven in a grossly negligent manner, but the evidence offered at the trial did not substantiate this allegation. The trial court instructed the jury that it could include in the verdict such sum as might be warranted by the evidence as punitive or exemplary damages. The jury awarded $5,000 damages. *Held*, that plaintiff could recover for torts committed by the fire department, and that although $5,000 was such a small amount that it did not appear to be punitive, the trial

court did not err in instructing the jury that they could assess punitive or exemplary damages. *City of Miami v. McCorkle,* 145 Fla. 109, 199 So. 575 (1940).

It is often suggested that municipalities should be liable for the torts of their fire departments, but the Florida court is almost unique in following such a view.[1] The traditional theory is that the functions of municipalities are divided into two groups: those which are governmental in nature and as such carry with them governmental immunity, and those which are merely proprietary and therefore lack such immunity. The activities of fire departments are almost uniformly considered governmental.[2] Governmental immunity is based on three grounds:[3] (1) the rule that the sovereign is immune from suit; (2) the idea that it is better that an individual should suffer than that the public should be put to an inconvenience; and (3) the feeling that the agents of the city would hesitate to do their duty efficiently if they felt the city might be held liable in a tort action. None of these bases appears to be well-founded and most writers today agree that there is no sound basis for municipal immunity from tort liability.[4] The fact that it is desirable for the plaintiff to recover for his injuries is, however, no justification for the allowance of punitive damages against the municipality. Where recovery is allowed at all, the usual language is that the municipality shall be liable the same as though the tort had been committed by a private corporation, and yet punitive damages are seldom, if ever, allowed.[5] In order to allow recovery of exemplary or punitive damages from a private corporation or an individual there must be conscious wrongdoing, ill-will, or malice.[6] An argument might be made for allowing punitive damages against a

[1] Doddridge, "Distinction Between Governmental and Proprietary Functions of Municipal Corporations," 23 MICH. L. REV. 325 (1925); Borchard, "Government Liability in Tort," 34 YALE L. J. 1, 129, 229 (1924); Borchard, "Governmental Responsibility in Tort," 36 YALE L. J. 1, 757, 1039 (1926-1927); Fuller and Casner, "Municipal Tort Liability in Operation," 54 HARV. L. REV. 437 (1941).

[2] HARPER, TORTS, § 295 (1933); 26 ILL. L. REV. 709 (1932); 9 A. L. R. 143 (1920); 33 A. L. R. 688 (1924); 84 A. L. R. 514 (1933); 110 A. L. R. 1117 at 1121 (1937), stating: "In a few instances the courts have limited the rule of governmental immunity in the operation of fire trucks to the actual going to and returning from a fire . . ."; 120 A. L. R. 1376 (1939); 4 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 1660 (1911); 6 MCQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., 530 (1937). Liability may be imposed by statute, 85 A. L. R. 696 (1933); 89 A. L. R. 394 (1934).

[3] Doddridge, "Distinction Between Governmental and Proprietary Functions of Municipal Corporations," 23 MICH. L. REV. 325 at 337 (1925).

[4] See note 1, supra.

[5] Newcastle Products v. School Dist. of Blair Township, (D. C. Pa. 1936) 18 F. Supp. 335 at 336: "The great weight of authority outside of Pennsylvania is to the effect that municipal corporations are not liable for punitive damages." 1 SEDGWICK, DAMAGES, 9th ed., § 380b (1912); 4 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 1712 at pp. 3001-3002 (1911): "*Actual damages only* can in general be recovered. The case would be exceptional, indeed, when the plaintiff could properly recover vindictive, or more than compensatory damages."

[6] MCCORMICK, DAMAGES, § 79 (1935): "Since these damages are assessed for punishment and not for reparation, a positive element of conscious wrongdoing is

municipality if there had been previous flagrant negligence of which the municipality had knowledge. In such a case exemplary damages might operate as they do upon individuals: to punish for malicious conduct, and to prevent recurrence of such action. On the other hand, it would be a rare occasion when such conduct on the part of the agents of the city could be attributed to the municipality, and further, the mere allowance of recovery for actual damages would probably be as great a deterrent as punitive damages.[7] Since the court did not in the principal case require any proof of habitual negligence, the most logical basis for the imposition of exemplary damages is destroyed. The great weight of authority is to the effect that a municipal corporation should not under any circumstances be made liable for punitive damages.[8] It is felt that the municipality is functioning for the public interest, and the public should not be burdened by punishment for willful or malicious acts of its servants.[9] Though it seems highly advisable to abandon the distinction between governmental and proprietary functions for the determination of municipal liability for torts, there would seem to be no cogent reason for allowing punitive or exemplary damages to be imposed.

always required. It must be shown either that the defendant was actuated by ill will, malice, or evil motive . . . or by fraudulent purposes, or that he was so wanton and reckless as to evince a conscious disregard of the rights of others. . . . The word most frequently used to describe this element of conscious wrongdoing is 'malice.' "

[7] Chicago v. Martin, 49 Ill. 241 at 246 (1868).

[8] Decatur v. Fisher, 53 Ill. 407 (1870); Newton v. Wilson, 128 Miss. 726, 91 So. 419 (1922); Wilson v. Wheeling, 4 Watts (19 W. Va.) 323 (1882); 6 McQUILLIN, MUNICIPAL CORPORATIONS, 2d ed., 1015, note 15 (1937). And see note 5, supra.

[9] Costich v. Rochester, 68 App. Div. 623 at 631-632, 73 N. Y. S. 835 (1902): "There are weighty reasons, whether we seek to designate them by that very general term, 'public policy,' or otherwise, which oppose the application of the doctrine of punitive damages to municipal corporations. . . . It would be a very rigorous and severe rule to . . . make a municipality and the property which it represents liable for damages in excess of compensation when some representative or agent became absolutely derelict to the duty for which he was selected and entered upon a course or act of defiant illegality. There is not any corresponding hardship to the injured party in denying this liability. He is entitled in a proper case to have full compensation for all injuries actually sustained." See also Fuller and Cosner, "Municipal Tort Liability in Operation," 54 HARV. L. REV. 437 (1941). The authors suggest that damages be limited to compensation for actual losses because of the great variance of verdicts due to the moral sensibilities of juries.