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Wrongful Death at General Maritime Law - The Moragne Decision

James L. Williams IV

NOTES

WRONGFUL DEATH AT GENERAL MARITIME LAW—THE MORAGNE DECISION

A longshoreman performing duties on board a vessel in Florida's navigable waters was killed when a disengaged hatch struck him. His widow brought an action in state court against the vessel's owner under Florida's wrongful death[1] and survival[2] statutes based upon the negligence of the shipowner and unseaworthiness of the vessel. Defendant removed to federal court[3] and sought dismissal of that part of the complaint predicated upon unseaworthiness, alleging that general maritime law provided no remedy for wrongful death in state waters and that the Florida wrongful death statute did not encompass unseaworthiness.[4] The district court granted dismissal. On appeal the Fifth Circuit utilized a Florida procedure[5] which allows the state supreme court to deliver written opinions to federal appellate courts concerning interpretations of state law deemed essential to the determination of the case. After receiving the Florida Supreme Court's determination that the state statute did not encompass unseaworthiness,[6] the Court of Appeals affirmed the district court's order.[7] The Supreme Court of the United States granted certiorari and *held* that an action lies under the general maritime law for death caused by violation of maritime duties. *Moragne v. States Marine Lines, Inc.*, 398 U. S. 375 (1970).

Prior to 1886, admiralty courts of the United States varied on whether general maritime law afforded a cause of action for wrongful death.[8] In *The Harrisburg*,[9] the United States Supreme

1. FLA. STATS. § 768.01 (1955).
2. FLA. STATS. § 45.11 (1955).
3. 28 U.S.C. §§ 1332, 1441 (1948).
4. Since The Harrisburg, 119 U.S. 199 (1886), discussed later, general maritime law has been held not to allow recovery for wrongful death. But, applicable state statutes have been used to provide such a remedy. In the interim between *The Harrisburg* and the case under consideration, the courts at times have interpreted state wrongful death acts to include the concept of unseaworthiness (*see* note 21 *infra* and accompanying text) as a basis of liability for wrongful death, where there would otherwise be no recovery.
5. FLA. STATS. § 25.031 (1955).
6. 211 So.2d 161 (Fla. 1968). It is interesting to note that this was the first time a state court was consulted on whether or not its wrongful death statute encompassed unseaworthiness.
7. 409 F.2d 32 (5th Cir. 1969).
8. Although all cases reviewed seemed to admit that wrongful death actions were maintainable in an admiralty court, there was a split on the proper origin of the action. Some cases held that wrongful death actions were maintainable through general maritime law alone, *e.g.* The Manhasset,

Court settled the question by holding that general maritime law provided no recovery for wrongful death. However, the *Harrisburg* Court would allow redress for maritime deaths by congressional act or a state statute. The Court dwelled upon the analogy furnished by *Insurance Co. v. Brame*,[10] which had held that the common law of the United States allowed no recovery for wrongful death. The *Harrisburg* Court's decision was further buttressed by the consideration that neither English admiralty nor common law afforded such recovery.[11]

As no federal legislation existed on this subject in the years following *Harrisburg*, state statutes provided the sole basis for wrongful death recovery in admiralty courts until the passage of the Death on the High Seas[12] and Jones Act[13] in 1920. The Death on the High Seas Act allowed recovery for the death of *anyone* killed by wrongful act on the high seas; [14] the Jones Act was limited to negligence actions by seamen[15] against their employers for injury or death occurring in the course of their employment.[16] The provisions of the two acts for class and

18 F. 918 (B.D. Va. 1884); The Towanda, 24 F. Cas. 74 (No. 14,109) (C.C. E.D. Pa. 1877); and The Sea Gull, 21 F. Cas. 909 (No. 12,578) (C.C. D.Md. 1865). Others denied the applicability of general maritime law to wrongful death actions, but permitted such actions via state wrongful death statutes if the deaths occurred within territorial waters, *e.g.*, The Garland, 5 F. 924 (E.D. Mich. 1881); Holmes v. Oregon & C. Ry., 5 F. 75 (D. Ore. 1880); and The Highland Light, 12 F. Cas. 138 (No. 6,477) (C.C. D. Md. 1867) (dictum).

9. 119 U.S. 199 (1886).

10. 95 U.S. 754 (1877).

11. The Harrisburg, 119 U.S. 199, 205 (1886). At English common law the wrongful death action was precluded by the felony-merger doctrine. Civil recovery was not allowed for an act constituting both a tort and a felony, as the tort was less serious than the felony and was merged into the more serious offense against the Crown. Since all of the property of the felon was forfeited to the Crown, there remained nothing on which a civil action could be based.

12. 46 U.S.C. §§ 761-768 (1920).

13. 46 U.S.C. § 688 (1920).

14. As used in this paper "high seas" will denote waters outside three geographical miles from the shores of the states, and "state territorial waters" will describe navigable waters within the three-mile limit, excepting Texas and Florida, whose boundaries are three marine leagues (approximately nine geographical miles) from the state boundaries as they existed at the time of admittance and readmittance to the Union. *See* United States v. Louisiana, 389 U.S. 155 (1967), *rehearing denied*, 389 U.S. 1059 (1967); United States v. Florida, 363 U.S. 121 (1960); and United States v. Louisiana, 363 U.S. 1 (1960).

15. Courts have liberally construed the term "seaman" for Jones Act purposes. It is deemed essentially a question of fact for jury determination. Texas Co. v. Gianfala, 350 U.S. 879 (1955). For a thorough treatment of this point, *see* Comment, 27 LA. L. REV. 757 (1967).

16. "Course of employment" has been defined as engaging in any activities incidental to required duties, and, for Jones Act purposes, includes going to and from work. For a compilation of the numerous cases treating

order of beneficiaries were similar.[17] Although the Supreme Court held that longshoremen were entitled to protection under the Jones Act in 1926,[18] Congress removed this coverage by passing the Longshoremen's and Harbor Workers' Compensation Act[19] in 1927. This act provides the exclusive remedy for longshoremen and harbor workers against their employers.[20]

Shortly after the passage of the Jones and Death on the High Seas Acts, admiralty courts applied the doctrine of unseaworthiness to personal injury cases for the first time.[21] The duty of seaworthiness has been defined as one to furnish a vessel and appurtenances which are reasonably fit for their intended use.[22] Shipowners owe this duty to seamen and those performing duties traditionally undertaken by seamen.[23] The duty has finally evolved to be non-delegable and is couched in terms of strict liability.[24] More pertinent to the present inquiry, however, the doctrine was gradually extended to statutory wrongful death actions. Although not applicable to Jones Act wrongful death claims because the act provides an exclusive negligence standard,[25] the doctrine of unseaworthiness fit nicely into the language of the Death on the High Seas Act.[26] As to death actions

this issue *see* G. GILMORE AND C. BLACK, THE LAW OF ADMIRALTY § 6-21 at 284 (1957) (hereinafter cited as GILMORE AND BLACK), and H. BAER, ADMIRALTY LAW OF THE SUPREME COURT (1963) (hereinafter cited as BAER).

17. The Jones Act action is awarded to the surviving widow or husband and children of the employee; the employee's parents; then the next of kin dependent upon such employee. Each class of beneficiaries has been held to be exclusive in descending order, so that an action may not be maintained by beneficiaries in a class until the preceding class or classes have been eliminated. Chicago, B. & Q. R.R. v. Wells-Dickey Trust Co., 275 U.S. 161, 163 (1927). The Death on the High Seas Act transposes the surviving child and parent in the class of beneficiaries.

18. International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926).

19. 33 U.S.C. §§ 901-905 (1927).

20. 33 U.S.C. § 905 (1927).

21. Carlisle Packing Co. v. Sandanger, 259 U.S. 255 (1922). The *Carlisle* decision was based on a statement by the Court in The Osceola, 189 U.S. 159 (1903). Note seaworthiness was considered a general maritime standard of care and was not embodied explicitly in either of the wrongful death acts or in state wrongful death acts. For a comprehensive discussion of this plaintiff-oriented concept *see* GILMORE AND BLACK § 6-38 (1957).

22. Mitchell v. Trawler Racer Inc., 362 U.S. 539 (1960).

23. Pope & Talbot v. Hawn, 346 U.S. 406 (1953) (repairmen on board ship); Sieracki v. Seas Shipping Co., 328 U.S. 85 (1946) (longshoremen on board ship).

24. Mahnich v. Southern S.S. Co., 321 U.S. 96 (1944). *See also* GILMORE AND BLACK § 6-39 at 317-320 (1957).

25. The Jones Act applies the negligence standard from the Federal Employer's Liability Act, 45 U.S.C. § 51 (1939).

26. "Whenever the death of a person shall be caused by wrongful act, neglect, or default . . . " 46 U.S.C. § 761 (1920). The Supreme Court intimated that the concept of unseaworthiness could be included in this act.

arising in territorial waters, application of unseaworthiness was accomplished by admiralty courts' postulating that such a concept was embodied in state wrongful death statutes.[27] Therefore, even though the Jones Act was not available as a vehicle for the application of unseaworthiness, the restrictive provisions of the act were circumvented by seamen's representatives claiming the doctrine's availability through either state statutes or the Death on the High Seas Act, depending upon the location of the death. In 1964, this tactic was limited in territorial waters by the Supreme Court's holding in *Gillespie v. United States Steel Corp.*[28] that Jones Act seamen's representatives were limited to the exclusive use of that act. Thus, at the time of *Moragne*, Jones Act seamen's representatives had resort to the doctrine of unseaworthiness only if the death occurred on high seas. However, representatives of those maritime workers who were not considered seamen for Jones Act purposes, but who were deemed seamen for the application of unseaworthiness, had access to unseaworthiness regardless of the location of decedent's death. Representatives of all other persons killed on navigable waters had access to negligence actions[29] under the Death on the High Seas Act and state wrongful death statutes, depending upon the location of the death.

The use of state wrongful death statutes was obviously at odds with the admiralty principle that general maritime law should be uniform throughout the United States.[30] The Supreme Court drifted even further from uniformity in *The Tungus v. Skovgaard*,[31] which held that when a federal court sitting in admiralty adopted a state cause of action for wrongful death, this action had to be applied as an integrated whole. The *Tungus* dissenters maintained that state statutes were available for merely remedial purposes and that application of that remedy to a breach of maritime duty would not disturb the general characteristics of the general maritime law. *Hess v. United States*[32] held that in cases requiring the use of state statutes, the conduct

Kernan v. American Dredging Co., 355 U.S. 426 (1958). The application could only be extended to seamen or those who performed duties traditionally undertaken by seamen.

27. The Tungus v. Skovgaard, 358 U.S. 588 (1959); Holland v. Steag, 143 F. Supp. 203 (D. Mass. 1956).

28. 379 U.S. 148 (1964).

29. *See* note 21 *supra* and accompanying text.

30. The Lottawanna, 88 U.S. (21 Wall.) 558, 575 (1874).

31. 358 U.S. 588 (1959).

32. 361 U.S. 314 (1960).

was to be measured by state rather than federal standards. As Justice Harlan observed, this decision came dangerously close to abrogating the constitutional principle of supremacy of federal substantive law governing cases arising within admiralty jurisdiction and caused vagueness to appear where the framers of the Constitution had envisioned uniformity.[33] In a related case decided in the same term[34] certain members of the Court expressed doubts as to when state law was to be applied.[35] Thus at the time of the *Moragne* decision, the law governing maritime wrongful deaths was both complex and confusing.

By overruling *The Harrisburg*, the *Moragne* Court achieved two heretofore illusive objectives: (1) establishment of a basis for the uniform enforcement of the law concerning maritime wrongful deaths, and (2) elimination of the incongruous absence of a wrongful death action in the rather liberal scheme of general maritime law. The Court found that it was the policy of the United States to allow recovery for wrongful death by observing that every state had allowed such recovery by statute, as had Congress.[36] The overruling of *The Harrisburg* was justified by emphasizing that much of that decision was based on the English felony-merger doctrine,[37] which, even at the time of *The Harrisburg*, had all but disappeared from the English common law.[38] To quiet any possible apprehension among shipowners, the Court clearly stated that this ruling would not change the substantive duties shipowners were obliged to fulfill.[39]

While today the general maritime law affords an action[40] for

33. *Id.* at 322.

34. Goett v. Union Carbide, 361 U.S. 340 (1960).

35. "The Chief Justice, Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan join this opinion, but solely under compulsion of the Court's ruling in *The Tungus*. . . . They believe that as long as the view of the law represented by that ruling prevails in the Court, it should be applied evenhandedly, despite the contrary view of some of those originally joining it that the measure of recovery when it helps the defendant, . . . is not the measure of recovery when it militates against the defendant . . . . However, they note their continued disagreement with the ruling in *The Tungus*, and reserve their position as to whether it should be overruled, particularly in light of the controversy application of it has engendered among its original subscribers." *Id.* at 344.

36. Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).

37. *See* note 11 *supra*. For a thorough treatment of the historic development of felony-merger, *see* Malone, *Ruminations on the Role of Fault in the History of the Common Law of Tort*, 31 LA. L. REV. 1 (1970).

38. Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).

39. *Id.* at .....

40. There is some semantic inconsistency reflected in the Court's indiscriminate inter-changing of the terms "remedy" and "right of action." It is

the wrongful death of any person[41] on waters subject to admiralty jurisdiction, the *Moragne* decision has left many unanswered questions in its wake. The action was bestowed without any designation of the class and order of beneficiaries. However, the Court seemed to favor applying the class and order of beneficiaries provided by the Death on the High Seas Act as it is the only maritime legislation dealing exclusively with wrongful death.[42] Survival actions,[43] long corollaries to wrongful death statutes, were neglected entirely by the *Moragne* Court. But, the emphasis placed upon uniformity in general maritime law and the concern manifested for providing plaintiffs with a vehicle for recovery indicate a strong possibility that survival actions will be allowed. In question also is the prescriptive period applicable to wrongful death actions. A resort to state statutes of limitations would seem contrary to the Court's stated policy of returning uniformity to admiralty law. A better solution would be the application of the equitable doctrine of laches—a solution apparently favored in *Moragne*.[44]

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possible that the decision was termed remedial to enable its implementation retroactively.

41. *See* note 29 *supra* and accompanying text.

42. "[The Death on the High Seas Act] is the congressional enactment that deals specifically and exclusively with actions for wrongful death, and that simply provides a remedy—for deaths on the high seas—for breaches of the duties imposed by general maritime law. In contrast, the beneficiary provisions of the Jones Act are applicable only to a specific class of actions —claims by seamen against their employers—based on violations of the special standard of negligence that has been imposed under the Federal Employer's Liability Act. . . . Further, although the Longshoremen's and Harbor Workers' Compensation Act is applicable to longshoremen such as petitioner's late husband, its principles of recovery are wholly foreign to those of general maritime law. . . . The only one of these statutes that applies not just to a class of workers but to any 'person,' and that bases liability on conduct violative of general maritime law, is the Death on the High Seas Act." Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).

43. Survival actions are causes of action for injury to the person, which are brought after the death of that person. The cause of action which survives is for the wrong to the person, and not for the wrong to the survivors.

44. "However, petitioner and the United States respond that since we have simply removed the barrier to general maritime actions for fatal injuries, there is no reason—in federal admiralty suits at least—that such actions should not share the doctrine of laches immemorially attached to admiralty claims. In applying that doctrine, the argument runs, the courts should give consideration to the two-year statute of limitations in the Death on the High Seas Act, just as they have always looked for analogy to appropriate state or foreign statutes of limitations. . . . We need not decide this question now, because the present case was brought within a few months of the accident and no question of timeliness has been raised. The argument demonstrates, however, that the difficulties should be slight in applying accepted maritime law to actions for wrongful death." Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).

The necessity for resorting to state wrongful death statutes is eliminated by this decision, although plaintiffs will probably still be allowed to take advantage of their provisions.[45] Moreover, Jones Act seamen's representatives can use the doctrine of unseaworthiness in wrongful death actions arising in territorial waters,[46] thereby increasing their chances for recovery. The practical obsolescence of state statutes removes the dilemma of trying to "accommodate state remedial statutes to exclusively maritime . . . concepts,"[47] and the resultant uniformity would "give effect to the constitutionally based principle that federal admiralty law should be 'a system of law coextensive with, and operating uniformly in, the whole country.' "[48]

The Court chose to await further litigation on the question of damage computation. State statutes and the Death on the High Seas Act were suggested as possible criteria for measuring damages.[49] The Death on the High Seas Act seems more appropriate as it is designed exclusively for maritime wrongful deaths. In addition, the use of this act would foster uniformity more than the application of state statutes.

The issues settled by this case are obviously outnumbered by the ones left unsettled. Admiralty courts are faced with the unenviable task of fashioning a uniform body of law to govern maritime wrongful deaths. In order to save the federal courts the years of effort required to fully implement the *Moragne* decision, it would seem that the time is ripe for Congress to enact a comprehensive regime of law to govern that segment of society which looks to the water as a mode of income, pleasure and transportation.

James L. Williams, IV

REMISSION OF DEBT—DONATION NOT IN AUTHENTIC FORM

The sole heirs and legatees of the owner of a mortgage note brought suit against the maker of the note and against the Clerk of Court to have themselves declared owners of the note and to

45. *E.g.*, Admiralty courts traditionally have not followed the common law custom of jury trials. However, if plaintiffs choose to bring actions in state courts, a jury trial would seem to be available.
46. *See* note 21 *supra* and accompanying text.
47. Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970).
48. *Id.* at .....
49. *Id.* at .....