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The Effect of Changes in the Purchasing Power of the Dollar on the Quantum of Damages in Personal Injury and Wrongful Death Cases¹

Some Louisiana decisions state that there is no fixed rule for determining the quantum of damages in personal injury and wrongful death cases and that the question of quantum is addressed largely to the discretion of the judge.² Others, however, indicate that the courts should look to earlier cases involving comparable damage to aid them in arriving at just awards.³ Two recent decisions, one by a state and the other by a federal court, recognize that Louisiana judges look to prior cases to maintain uniformity among recoveries.⁴ In other jurisdictions, appellate courts frequently consider prior recoveries for similar types of damage to determine whether or not a jury verdict is excessive.⁵ But some courts have abandoned this practice, reasoning that the fluctuation in the purchasing power of the dollar is such⁶

1. See Comment, *Damages for Personal Injuries and the Shrinking Dollar*, 7 LOUISIANA LAW REVIEW 580 (1947); Annot., 12 A.L.R.2d 611 (1950).

2. *Hecht v. Toye Bros. Yellow Cab Co.*, 62 So.2d 520 (La. App. 1953); *Ernst v. New Orleans Public Belt R.R.*, 55 So.2d 657 (La. App. 1951); *Grissom v. Heard*, 47 So.2d 108 (La. App. 1950); *Hare v. New Amsterdam Casualty Co.*, 1 So.2d 439 (La. App. 1941); *LeBlanc v. Checker Cab Co.*, 8 La. App. 472 (1928); *Parks v. Hall*, 182 So. 347 (La. App. 1938).

3. *Grissom v. Heard*, 47 So.2d 108 (La. App. 1950); *Eleazar v. Illinois Central R.R.*, 24 So.2d 387 (La. App. 1946); *Hare v. New Amsterdam Casualty Co.*, 1 So.2d 439 (La. App. 1941); *Hobbs v. Employers Liability Assur. Corp.*, 188 So. 191 (La. App. 1939); *Wilcox v. B. Olinde & Sons*, 182 So. 149 (La. App. 1938); *Matheny v. United States Fidelity & Guaranty Co.*, 181 So. 647 (La. App. 1938).

4. *Gillen v. Phoenix Indemnity Co.*, 198 F.2d 147 (5th Cir. 1952); *Wainwright v. Globe Indemnity Co.*, 75 So.2d 554 (La. App. 1954).

5. See, e.g., *Aetna Oil Co. v. Metcalf*, 300 Ky. 817, 190 S.W.2d 562 (1945); cases are collected in Annot., 16 A.L.R.2d 3, 27 (1951).

6. The following table illustrates the changes in the purchasing power of the dollar for the period from 1913 to the present. It is the United States Bureau of Labor Statistics Consumer Price Index which was originated as an aid in the settlement of wage negotiations. It is still widely used for this purpose. The index is obtained by combining six group indexes: (1) food; (2) clothing; (3) rent; (4) fuel, electricity, and ice; (5) house furnishings; (6) miscellaneous goods and services. As the price index rises, the purchasing power of the dollar falls proportionately. The base figure of 100 is computed on the price level of 1947-1949.

CONSUMER PRICE INDEX—UNITED STATES AVERAGE
ALL ITEMS

Year	Price Index	Year	Price Index
1913	42.3	1934	57.2
1914	42.9	1935	58.7
1915	43.4	1936	59.3

that comparison of cases from different periods is of little value.⁷ It has recently been held that, in diversity of citizenship cases, federal district courts sitting in Louisiana may not instruct the jury to consider, in arriving at the amount of damages, prior state court awards for comparable damage.⁸

Awards in personal injury and wrongful death cases purport to be indemnifications for two types of damages, pecuniary and non-pecuniary in character. In fixing the amount of recovery for such items of pecuniary damage as medical expenses and the loss of past earnings, the relevance of prior cases is questionable. The amount of recovery for this type of damage can be determined simply by considering the actual loss of expenditure of money. The same is true of the loss of probable future earnings,

<i>Year</i>	<i>Price Index</i>	<i>Year</i>	<i>Price Index</i>
1916	46.6	1937	61.4
1917	54.8	1938	60.3
1918	64.3	1939	59.4
1919	74.0	1940	59.9
1920	85.7	1941	62.9
1921	76.4	1942	69.7
1922	71.6	1943	74.0
1923	72.9	1944	75.2
1924	73.1	1945	76.9
1925	75.0	1946	83.4
1926	75.6	1947	95.5
1927	74.2	1948	102.8
1928	73.3	1949	101.8
1929	73.3	1950	102.8
1930	71.4	1951	111.0
1931	65.0	1952	113.5
1932	58.4	1953	114.4
1933	55.3	1954	115.1*

* A yearly index is not yet available. The index for June 1954 is used.

Source: U.S. Bureau of Labor Statistics, Dep't of Labor, 77 MONTHLY LABOR REV. 1185 (October 1954).

In order to find the number of 1953 dollars necessary to equal the purchasing power of \$1000 in 1933, a proportion can be set up as follows:

\$1000 is to 55.3 as \$*x* is to 114.4

$$\frac{1000}{55.3} = \frac{x}{114.4}$$

$$55.3x = 114.400$$

$$x = 2068$$

It would take approximately \$2068 in 1953 in order to equal \$1000 in 1933.

7. See, *e.g.*, Taylor-Green Gas Co. v. Newcomb, 302 Ky. 564, 195 S.W.2d 307 (1946); Koenigs v. Thome, 226 Minn. 14, 31 N.W.2d 534 (1948); cases are collected in Annot., 12 A.L.R.2d 611, 627 (1950).

8. Gillen v. Phoenix Indemnity Co., 198 F.2d 147 (5th Cir. 1952); State Farm Mutual Auto Ins. Co. v. Scott, 198 F.2d 152 (5th Cir. 1952) (no error in trial judge's refusal to allow counsel to argue to the jury quantum of awards made in similar Louisiana cases).

which should be calculated on the basis of life expectancy and typical occupational experience. However, there may be justification for consulting prior cases involving comparable damage to determine the amount of recovery for pain and suffering, for the loss of limbs and human faculties, and for the family's bereavement in wrongful death cases. This type of non-pecuniary damage does not readily lend itself to measurement in terms of money, and the courts may need the guidance of prior cases to arrive at a just award. Moreover, the practice maintains a certain uniformity among similar cases, and this result may be desirable. Many Louisiana decisions take into account this important difference in the relevancy of prior cases to different types of damage.⁹ In others, the courts have simply compared the trial court's award as a whole to the judgments in similar cases without segregating the items of pecuniary and non-pecuniary damage.¹⁰ Even when the use of prior cases is limited to the determination of the quantum of damages for non-pecuniary harms, however, injustice will result if the change in the purchasing power of the dollar since those cases were decided is not taken into consideration.

In view of this possible injustice, Louisiana courts do consider increases and decreases in the value of the dollar.¹¹ This

9. *Morgan v. Kreppier*, 60 So.2d 139 (La. App. 1952); *Eleazar v. Illinois Central Ry.*, 24 So.2d 387 (La. App. 1946); *Brown v. Homer-Doyline Bus Lines*, 23 So.2d 348 (La. App. 1945); *Stromer v. Dupont*, 150 So. 32 (La. App. 1933). See also *Hawkins v. Fidelity & Casualty Co.*, 74 So.2d 323 (La. App. 1954); *Richey v. Service Dry Cleaners*, 28 So.2d 284 (La. App. 1946) (award to wife for injuries, to husband for expenses; award to wife raised on appeal); *Hero v. Toye Bros. Yellow Cab Co.*, 19 So.2d 887 (La. App. 1944); *Weadock v. Eagle Indemnity Co.*, 15 So.2d 132 (La. App. 1943); *Killian v. Modern Iron Works*, 15 So.2d 532 (La. App. 1943); *Hartman v. Aschaffenburg*, 12 So.2d 282 (La. App. 1943).

10. *Schneller v. Louisiana State Rice Milling Co.*, 148 La. 88, 86 So. 663 (1920); *Cross v. Lee Lumber Co.*, 130 La. 66, 57 So. 631 (1912) (no reference to specific prior cases); *Dole v. New Orleans Ry. & Light Co.*, 121 La. 945, 46 So. 929 (1908) (no reference to specific prior cases); *Jakubec v. Southern Bus Lines*, 31 So.2d 282 (La. App. 1947); *Bell v. First Nat. Life Ins. Co.*, 141 So. 484 (La. App. 1932) (prior cases cited).

11. *Schneller v. Louisiana State Rice Milling Co.*, 148 La. 88, 86 So. 663 (1920); *Cross v. Lee Lumber Co.*, 130 La. 66, 57 So. 631 (1912); *Rogers v. Allen Lumber Co.*, 129 La. 900, 57 So. 166 (1912); *Dole v. New Orleans Railway & Light Co.*, 121 La. 945, 46 So. 929 (1908); *Short v. Central Louisiana Electric Co.*, 36 So.2d 658 (La. App. 1948); *Jakubec v. Southern Bus Lines*, 31 So.2d 282 (La. App. 1947); *Richey v. Service Dry Cleaners*, 28 So.2d 284 (La. App. 1946); *Eleazar v. Illinois Central R.R.*, 24 So.2d 387 (La. App. 1946); *Brown v. Homer-Doyline Bus Lines*, 23 So.2d 348 (La. App. 1945); *Levy v. New Orleans & N.E.R.R.*, 20 So.2d 559 (La. App. 1945); *Hero v. Toye Bros. Yellow Cab Co.*, 19 So.2d 887 (La. App. 1944); *Killian v. Modern Iron Works*, 15 So.2d 532 (La. App. 1943); *Weadock v. Eagle Indemnity Co.*, 15 So.2d 132 (La. App. 1943); *Kelly v. Neff*, 14 So.2d 657 (La. App. 1943); *Scott v. Claiborne Electric Cooperative*, 13 So.2d 524 (La. App. 1943); *Hartman v. Aschaffenburg*, 12 So.2d 282 (La. App. 1943); *Kaough v. Hadley*, 165 So. 748 (La. App.

is the view taken in other American jurisdictions¹² and also in Canada.¹³ It is clear that without the use of former cases, the quantum of damages in a personal injury or wrongful death case would naturally be based upon the amount of money required to indemnify plaintiff in terms of the purchasing power of the dollar at the moment of judgment. Consequently, since in diversity of citizenship cases, federal courts sitting in Louisiana may not instruct the jury to consider prior awards, there is no need for instructing them to consider changes in the purchasing power of the dollar.¹⁴ It would seem that the Louisiana courts may take judicial notice of official statistics compiled by such government agencies as the Bureau of Labor Statistics,¹⁵ but they will not accept figures arrived at by writers in ordinary trade journals.¹⁶

Although the Louisiana courts have frequently considered the change in the purchasing power of the dollar,¹⁷ their treatment of this factor has not been uniform. In many cases the court has merely mentioned the change without reference to any

1936); *Van Baast v. Thibaut Feed Mills*, 151 So. 226 (La. App. 1933); *Donaldson v. Riddling's Succession*, 145 So. 804 (La. App. 1933); *Stromer v. Dupont*, 150 So. 32 (La. App. 1933); *Wyble v. Putfork*, 141 So. 776 (La. App. 1932); *Bell v. First National Life Insurance Co.*, 141 So. 484 (La. App. 1932); *New Amsterdam Casualty Co. v. Soileau*, 167 F.2d 767 (5th Cir. 1948).

12. Purchasing power of the dollar is an element to be considered: *American Bus Lines v. Merritt*, 221 Ark. 596, 254 S.W.2d 963 (1953); *Gaster v. Hicks*, 181 Ark. 299, 25 S.W.2d 760 (1930); *Barnett v. Furst*, 99 Cal. App.2d 767, 222 P.2d 470 (1950); *Hayward v. Yost*, 72 Idaho 415, 242 P.2d 971 (1952); *King's Indiana Billiard Co. v. Winters*, 106 N.E.2d 713 (Ind. App. 1952); *J. C. Penney Co. v. Livingston*, 271 S.W.2d 906 (Ky. App. 1954); *Johnson v. St. Paul City R.R.*, 67 Minn. 260, 69 N.W. 900 (1897); *Gale v. New York Central & H.R.R.*, 13 Hun 1 (N.Y. 1878); *Fort Worth & Denver City Ry. v. Gifford*, 252 S.W.2d 204 (Tex. Civ. App. 1952). *Contra*, *Canfield v. Chicago R.I. & P. Ry.*, 142 Iowa 658, 121 N.W. 186 (1909) (the court said that plaintiff's salary had not increased with the rise in cost of living, and, therefore, had he lived to his full expectancy, he would not have accumulated as much as he would have before the increase in the cost of living. The court did not consider the fact that wages will increase generally as prices increase, though at a slower rate).

Courts take judicial notice of change in purchasing power: *Missouri Pac. R.R. v. Elvins*, 176 Ark. 737, 4 S.W.2d 528 (1928); *Hooton v. City of Burley*, 70 Idaho 369, 219 P.2d 651 (1950); *Swanson v. J. L. Shiely Co.*, 234 Minn. 548, 48 N.W.2d 848 (1951); *Moore v. Public Service Coordinated Transport*, 15 N.J. Super. 499, 83 A.2d 725 (1951).

13. *Donoghue v. Magee & Barron*, 1 W.W.R. 70 (1949); *Rodzinski v. Modern Dairies Ltd.*, 2 W.W.R. 456 (1949); *Carter, Assessment of Damages for Personal Injuries or Death in the Courts of the Common-law Provinces*, 32 CAN. B. REV. 713 (1954).

14. *But see* *New Amsterdam Casualty Co. v. Soileau*, 167 F.2d 767 (5th Cir. 1948), decided before cases cited in note 8 *supra*.

15. *See* *Armentrout v. Virginian Ry.*, 72 F. Supp. 997 (S.D. W.Va. 1947).

16. *Bell v. First National Life Ins. Co.*, 141 So. 484 (La. App. 1932).

17. *See* cases cited note 11 *supra*.

specific periods.¹⁸ In others, the court has mentioned the change without reference to any previous case.¹⁹ In still others, prior awards for comparable damage have been considered and the general change in the purchasing power of the dollar from the time of the prior case to the present has been mentioned. The usual practice has been to refer to the general change in purchasing power instead of specific figures. For example, in *Eleazar v. Illinois Central R.R.* (1946),²⁰ the court considered the award of \$3000 in a 1942 case, *Hero v. Toye Bros. Yellow Cab Co.*,²¹ involving similar injuries, mentioned the decreased purchasing power of the dollar, and sustained a trial court judgment of \$4000. The court was undoubtedly influenced, however, by the fact that plaintiff's injuries were more serious than those of the plaintiff in the previous case. In the *Hero* case,²² the court reviewed prior recoveries for injuries similar to plaintiff's injuries and upheld a slightly higher trial court judgment,²³ taking into account the decreased purchasing power of the dollar. Similarly, in *Levy v. New Orleans N.E.R.R.*²⁴ and *Stromer v. DuPont*,²⁵ consideration of the change in purchasing power led to the upholding of trial court awards slightly different from those in earlier comparable cases. In these cases, the change in the dollar's purchasing power was mentioned in support of the court's refusal to disturb a trial court award alleged to be excessive or inadequate. In *Morgan v. Kreppier*,²⁶ decided in 1952, however, the court of appeal, finding that the amount of damages allowed

18. *Schneller v. Louisiana Rice Milling Co.*, 148 La. 88, 86 So. 663 (1920); *Dole v. New Orleans Ry. & Light Co.*, 121 La. 945, 46 So. 929 (1908) (upholding a verdict alleged to be excessive); *Hawkins v. Fidelity & Casualty Co.*, 74 So.2d 323 (La. App. 1954); *Short v. Central Louisiana Electric Co.*, 36 So.2d 658 (La. App. 1948) (to uphold a verdict alleged to be excessive); *Scott v. Claiborne Electric Cooperative*, 13 So.2d 524 (La. App. 1943) (to uphold a verdict alleged to be excessive); *Hartman v. Aschaffenburg*, 12 So.2d 282 (La. App. 1943); *Kaough v. Hadley*, 165 So. 748 (La. App. 1936); *Wyble v. Putfork*, 141 So. 776 (La. App. 1932) (upholding a verdict alleged to be inadequate).

19. *Richey v. Service Dry Cleaners*, 28 So.2d 284 (La. App. 1946) (the award would be adequate "if made a few years ago"); *Killian v. Modern Iron Works*, 15 So.2d 532 (La. App. 1943) (the value of the dollar is "approximately 25% less than a few years ago"); *Donaldson v. Riddling's Succession*, 145 So. 804 (La. App. 1933) ("the purchasing power of the dollar now is very much greater than it was three years ago").

20. 24 So.2d 387 (La. App. 1946).

21. 19 So.2d 887 (La. App. 1944).

22. *Ibid.*

23. The court sustained an award of \$3000. The largest prior award in a similar case was \$2500 in 1933. *Selby v. Manning*, 145 So. 555 (La. App. 1933).

24. 20 So.2d 559 (La. App. 1945).

25. 150 So. 32 (La. App. 1933).

26. 60 So.2d 139 (La. App. 1952).

by the trial court was based on the recovery in a 1938 case,²⁷ increased the trial court's award to take into account the intervening change in the purchasing power of the dollar. Similarly, in *Bell v. First National Life Ins. Co.*,²⁸ decided in 1932, the court of appeal found that the trial court, in allowing \$5000 in damages, had based its decision on a 1927 case,²⁹ and thereupon reduced the trial court's judgment of \$4000 to reflect the change in the value of the dollar since 1927.

The latest Louisiana decision on the effect of such changes on the quantum of damages in personal injury cases is *Wainwright v. Globe Indemnity Co.*³⁰ In that case, the court stated that "the unprecedented decrease in the purchasing power of money"³¹ is a factor to be considered in fixing the quantum of damages. The court considered eight cases cited by counsel for the defendant in an effort to have the trial court's judgment of \$15,000 reduced, and awarded plaintiff \$10,000, stating that this would be more in keeping with awards in similar cases.

This case seems representative of the manner in which the factor of change in purchasing power has been treated by the Louisiana courts. Usually, the courts have looked to the prior recoveries brought to their attention and then mentioned in general terms the change in purchasing power in support of their conclusion that an award is proper. Statistics have seldom been cited by the courts. But if counsel can show that a recovery based on similar cases is excessive or inadequate in view of the exact change in the purchasing power of the dollar, the court will probably, in view of the jurisprudence, adjust the award on that basis. This is especially true if counsel's request is supported by reliable statistics such as those published by the Bureau of Labor Statistics. However, whether the courts merely cite the change in purchasing power as a matter of common knowledge or look to actual figures furnished by counsel, it is apparent that this factor is an important one to consider in arriving at a just award in personal injury and wrongful death cases.

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27. *Coste v. H.G. Hill Stores*, 178 So. 512 (La. App. 1938).

28. 141 So. 484 (La. App. 1932).

29. *Gallman v. Young*, 6 La. App. 137 (1927).

30. 75 So.2d 554 (La. App. 1954).

31. *Id.* at 556.