Michigan Law Review

Volume 44 | Issue 3

1945

TORTS-DAMAGES FROM SHOCK-LIABILITY FOR MENTAL INJURY CAUSED BY DEFENDANT'S SUICIDE IN PLAINTIFF'S HOME

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TORTS—DAMAGES FROM SHOCK—LIABILITY FOR MENTAL INJURY CAUSED BY DEFENDANT'S SUICIDE IN PLAINTIFF'S HOME—Decedent was the close neighbor of the plaintiff and her husband. While they were absent from home, decedent, at that time a guest in the home, committed suicide in plaintiff's kitchen. When plaintiff opened the door she saw the body, and started to fall but was caught by her husband. A physician to whom she was taken pronounced her condition as one of shock. Subsequently she was restless, nervous and found difficulty in sleeping. She now sues the estate of decedent for damages resulting from what she alleges was the willful act of decedent. The trial court gave a directed verdict for defendant on the ground that the cause of action did not arise before decedent's death and, therefore, there could be no action against the estate under the survival statue. *Held:* For purposes of the survival statute the cause of action arose before, and survived, decedent's death; therefore, the jury must decide if decedent's act was willful, since if it was, there can be recovery for mental injury caused by fright, even in the absence of other physical injury. *Blakeley v. Shortal's Estate,* (Iowa 1945) 20 N.W. (2d) 28 (1945).

The court had no trouble finding that the "ghastly" sight caused the shock and that "such shock was the natural, though not the necessary or inevitable, result of his wrongful act." [1] Then, relying heavily on language contained in a prior case involving a willful assault,[2] the court said that the rule which denies liability for mental injury where no physical injury is shown does not apply when the fright is the result of a willful act. At one time the law was clear that there could be no redress for "mental pain or anxiety," [3] though it was usually held that the jury need not overlook feelings in determining the amount of damages where there has been other material damage,[4] such damage award being termed "parasitic" by one writer.[5] The confused state of the cases involving purely mental injury has been caused in large part by the failure of the courts to thoroughly analyze the cases as to the fundamentals of tort law, particularly as

[1] Principal case at 31.

[2] Holdorf v. Holdorf, 185 Iowa 838 at 842, 169 N.W. 737(1919), "The rule, however, denying liability for injuries resulting from fright caused by negligence, where no physical injury is shown, cannot be invoked where it is shown that the fright was due to a willful act."

[3] Lynch v. Knight, 9 H.L. Cases 577 at 598, 11 Eng. Rep. 854(1861). This statement and its ramifications and meaning today are discussed by Magruder, "Mental and Emotional Disturbance in the Law of Torts," 49 HARV. L. REV. 1033 at 1033 (1936); Prosser, "Intentional Infliction of Mental Suffering: A New Tort," 37 MICH. L. REV. 874 at 875(1939). See also BOHLEN, STUDIES IN THE LAW OF TORTS at 263(1926), "Mere fright, mental suffering or nervous shock has never been, nor is now regarded by the courts as legal injury."

[4] This distinction has been sharply criticized by several writers on the ground that it is just as hard to measure in one case as in the other. See articles cited supra, note 3. See also Goodrich, "Emotional Disturbance as Legal Damages," 20 MICH. L. REV. 497 (1922).

[5] 1 STREET, THE FOUNDATIONS OF LEGAL LIABILITY 470(1906).

regards foreseeable harm and causal relation in negligence actions.[6] The reason for the rule of no recovery, however, has usually been stated in terms of the impracticability of determining harm purely mental or psychological in nature, thereby creating greater likelihood of fraudulent claims; to hold otherwise, it is argued, would extend liability to unknown limits.[7] At first the courts required at least a technical "impact,"[8] but some soon removed this restriction if the fright were for one's own safety,[9] and others, later, even where the safety of a third person was involved.[10] When negligence only was shown, the cases required that the third person be a member of plaintiff's family.[11] If the act was willful, however, a few courts allowed recovery when the third person was a stranger and plaintiff himself was outside the zone of foreseeable harm.[12] Even when the act was willful, though, it was required that the emotional disturbance be nearly contemporaneous with the defendant's act.[13] Another requirement was that some manifest injury must result from the emotional shock; mere nervousness and inability to sleep not being sufficient.[14] A comparatively recent Nebraska case,[15] however, allowed recovery in a negligence case when the emotional disturbance

[6] One of the first cases in which this failure was recognized is Larson v. Chase, 47 Minn. 307 at 311, 50 N.W. 238(1891). The court suggests there should always be a duty breached, which invaded a legal right of plaintiff, which breach was the proximate cause of the injury. See also cases infra, note 20.

[7] Prosser, "Intentional Infliction of Mental Suffering: A New Tort," 37 MICH. L. REV. 874 at 877(1939); Magruder, "Mental and Emotional Disturbance in the Law of Torts," 49 HARV. L. REV. 1033 at 1035(1936); "A Novel Extension of 'Fright' Liability," 48 YALE L. J. 303(1938).

[8] Bohlen and Polikoff, "Liability in New York for the Physical Consequences of Emotional Disturbance," 32 COL. L. REV. 409, note 2(1932); BOHLEN, STUDIES IN THE LAW OF TORTS 258 (1926).

[9] TORTS RESTATEMENT, § 436(2)(1934); Harper and McNeely, "A Re-examination of the Basis for Liability for Emotional Distress," 1938 WIS. L. REV. 426 at 429.

[10] Bowman v. Williams, 164 Md. 397, 165 A. 182(1933); and dictum in Hambrook v. Stokes Bros., [1925] 1 K.B. 141(1925). See also "A Novel Extension of 'Fright' Liability," 48 YALE L.J. 303 at 304, note 5 (1938).

[11] Since this element has been present in nearly all, if not all the cases where recovery was allowed, the courts have not had to determine liability on this point but the fact is always emphasized. Perhaps the courts are unconsciously applying a "foreseeable harm" test since it is much more likely that the shock will seriously affect a member of the family as compared with a third person. See caveat, TORTS RESTATEMENT, § 436(1934).

[12] Watson v. Dilts, 116 Iowa 249, 89 N.W. 1068(1902); Ala. Fuel and Iron Co. v. Baladoni, 15 Ala. App. 316, 73 S. 205(1916); Lambert v. Brewster, 97 W. Va. 124, 125 S. E. 244(1924). See also Harper and McNeely, "A Re-examination of the Basis for Liability for Emotional Distress," 1938 WIS. L. REV. 426 at 431.

[13] Magruder, "Mental and Emotional Disturbance in the Law of Torts," 49 HARV. L. REV. 1033 at 1039(1936); Hambrook v. Stokes Bros., [1925] 1 K.B. 141 at 152(1925); Clough v. Steen, 3 Cal. App. (2d) 392, 39 P. (2d) 889(1934).

[14] Colsher v. Tennessee Elec. Power Co., 19 Tenn. App. 166, 84 S. W. (2d) 117(1935). But see Barnett v. Collection Service Co., 214 Iowa 1303, 242 N.W. 25(1932), as indicative of the very liberal treatment the Iowa court has given claims for damages in this general field. See collection of cases 122 A.L.R. 1486(1939).

[15] Rasmussen v. Benson, 135 Neb. 232, 280 N.W. 890(1938), noted in 37

was not contemporaneous but there was manifest physical injury in that the victim died nine months later. The desirability of even this extension of liability for mental injury was seriously questioned at the time on grounds of opening "possible avenues of fraud." [16] The present case would appear to have completely removed the former restrictions on recovery for this kind of injury, at least when the court finds a willful act. In holding that there was enough evidence of willfulness in decedent's act to present a jury question the court would seem to have placed undue reliance on the earlier Iowa case.[17] That case involved an obviously willful assault, accompanied by threatening gestures, which resulted in plaintiff's miscarriage, certainly a manifest physical injury. The willfulness of the act in the present case seems of an entirely different character, if, indeed, it could be called willful in a tort sense. It would seem much more an act of negligence rather than of willful intent as to plaintiff.[18] If so, the court's opinion would be much more enlightening if it followed the duty analysis propounded by Cardozo in the *Palsgraf* case.[19] His emphasis on duty, also found in several other well-reasoned American cases [20] and in the dissenting opinion in an English case,[21] would seem to lend itself very well to just such cases as the present one where only mental injury is claimed. Certainly, if the Iowa court is going to wipe out all the restrictions heretofore found in the cases, and it would appear to be doing just that, a clear analysis of the question involved and the reasons for liability, or the criteria on which it is to be based, would be most helpful. Obviously the court is greatly increasing the area of liability for acts that at least border very closely on negligence, and more clearly defined limits would be in order.[22] Heretofore, other than in the Nebraska and the English

MICH. L. REV. 328(1938); 87 UNIV. PA. L. REV. 245(1938); and 48 YALE L. J. 303(1938).

[16] 48 YALE L. J. 303 at 306, 307(1938). And see discussions cited supra, note 15.

[17] Holdorf v. Holdorf, 185 Iowa 838, 169 N.W. 737(1919).

[18] At common law decedent was committing a wrongful act when he killed himself and perhaps this is true in some states today by statute. But he was a guest in plaintiff's home so it can hardly be said that he was a trespasser. Nor would it seem that his intention was to frighten the plaintiff. It would seem a little far to go in frightening another person intentionally, at least to this writer. The Ohio court had a very similar problem in Koontz v. Miller, 52 Ohio App. 265, 3 N.E. (2d) 694(1936), where the court said the intent to beat and kill the sister of plaintiff was not necessarily an intent to frighten plaintiff, even if the body were left where plaintiff could see it. Noted, 35 MICH L. REV. 1197(1937). That something more than a mere lack of appreciation of the possible effects of the sight of a bloody body is required when courts extend liability in this new direction is really the basic assumption of all three articles cited supra, note 7.

[19] Palsgraf v. Long Island R.R., 248 N.Y. 339, 162 N.E. 99(1928).

[20] Excellent analyses of negligence cases on the duty theory are to be found in Waube v. Warrington, 216 Wis. 603, 258 N.W. 497(1935); Chiuchiolo v. New Eng. Wholesale Tailors, 84 N.H. 329, 150 A. 540(1930); Larson v. Chase, 47 Minn. 307, 50 N.W. 238(1891).

[21] Hambrook v. Stokes Bros., [1925] 1 K.B. 141 at 152, 156(1925).

[22] As one writer suggests, 48 YALE L. J. 303 at 307, note 19(1938), what if the famous Martian broadcast in 1938 were to create liability? Some limits to unre-

cases,[23] when recovery has been allowed for purely mental injury the courts have tied it to some other breach of duty such as assault, trespass, contract, and those found in certain public service cases,[24] with one possible exception, the comparatively recently recognized "right of privacy." [25]

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stricted liability seem absolutely necessary. See Bohlen, "Fifty Years of Torts," 50 HARV. L. REV. 725 at 735(1937).

[23] Supra, notes 20, 21.

[24] For a very complete collection of cases on mental injury as well as an excellent discussion of them, see 23 A.L.R. 361(1923), as supplemented by 44 A.L.R. 428 (1926), and 56 A.L.R. 657(1928). For a more complete list of wrongs to which mental injury recovery has been attached see 8 R.C.L. 531(1915).

[25] See Harper and McNeely, "A Re-examination of the Basis for Liability for Emotional Distress," 1938 WIS. L. REV. 426 at 445; Nizer, "The Right of Privacy: A Half Century's Development," 39 MICH. L. REV. 526(1941); 138 A.L.R. 22(1942). Certainly the damage in such cases is usually purely mental. It is equally certain it is no longer even partly true that the courts will not allow recovery for mental injury, Magruder, "Mental and Emotional Disturbance in the Law of Torts," 49 HARV. L. REV. 1033 at 1067(1936).