

DAMAGES

By CHARLES A. MOYE, JR.* AND THEODORE M. FORBES, JR.**

STATUTES

None of the acts of the 1965 General Assembly has any direct relation to the law of damages.

JUDICIAL DECISIONS

While there have been a few cases of general interest involving damages questions during the survey period, there have been none which substantially changed the law of damages. The more interesting of these will be discussed below.

BREACH OF CONTRACT FOR PROFESSIONAL SERVICES

*Southern Land, Timber & Pulp Corp. v. Davis & Floyd Eng'rs, Inc.*¹ involved a suit by a firm of professional engineers which had been employed by the defendant land company to assist in the selection and development of a site for the construction of a paper mill. The site was selected and a plot plan drawn; then contracts were entered covering plaintiff firm's further employment to prepare plans, survey, supervise construction, and do all necessary professional engineering and testing services at certain rates per hour. About seven months after the execution of the contracts, defendant, allegedly in bad faith and without cause, ordered plaintiffs off the job. Plaintiffs were paid for services actually rendered; the suit involved compensation for the further services contemplated by the contract, but as to which performance had been prevented. Plaintiffs sought damages in the amount of the difference between the total compensation they would have received for completing the performance, less their costs, alleging the specific services necessary to complete performance, their contractual value and the cost of furnishing them. The court upheld this measure of damages as proper as against defendant's contention that such damages were speculative and impossible to ascertain. The court pointed out that the allegations of the petition must be taken as true where they have any basis in probability, and,

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1. 109 Ga. App. 191, 135 S.E.2d 454 (1964).

based upon such allegations, the damages claimed were capable of exact computation.

In *Turner v. Houser*,² an architect brought an action against the owner to recover for his services in connection with the preparation of plans and specifications for a nursing home under a contract with the owner. The petition alleged a refusal by the owner to perform under the contract. The first count of the petition was held subject to general demurrer since it sought "actual out-of-pocket costs," a measure of damages inconsistent with the terms of the contract itself. The second count was in quantum meruit, seeking the reasonable value of the services rendered, and was held not to be subject to general demurrer.

PUNITIVE DAMAGES

In *Kilgore v. National Life and Acc. Ins. Co.*,³ the plaintiff, in addition to seeking recovery under an insurance policy for loss of sight in one eye, also sought punitive damages by reason of the alleged bad faith of the insurance company in wrongfully refusing to deliver the policy to the plaintiff. The paragraph of the petition seeking recovery for punitive damages did not show that plaintiff had sustained any actual damages as a result thereof. The court pointed out that punitive damages are given only as additional damages and are not recoverable in the absence of actual damages.

The Court of Appeals in *Bradley v. Sherwin*⁴ affirmed a judgment for \$13,651.50 general damages and \$500 punitive damages where the claim for punitive damages was based upon the allegations that defendant was driving while intoxicated and had left the scene of the accident.

*City Motor Exch. v. Ballinger*⁵ stands for the proposition that the trial judge has no authority to control the amount of punitive damages to be awarded a plaintiff in a jury trial by conditioning his overruling of a new trial upon the reduction of the punitive damages so awarded. Presiding Judge Bell, speaking for the court, stated:

It is our wish to make it clear that nothing held here or in any of the authorities cited is subject to the inference that a trial judge is restricted in the exercise of his exclusive discretion to grant or deny a motion for new trial on the general grounds. We do emphasize that where the determining of the amount of a particular class of damages lies exclusively with the jury, the trial court must either grant or deny a new trial on the basis of the jury's award. The trial judge cannot condition the exercise of his discretion in granting or denying a new trial on an acceptance by the parties of a different sum selected by him.

2. 110 Ga. App. 379, 138 S.E.2d 619 (1964).

3. 110 Ga. App. 280, 138 S.E.2d 397 (1964).

4. 110 Ga. App. 632, 139 S.E.2d 512 (1964).

5. 110 Ga. App. 496, 138 S.E.2d 925 (1964).

The court found that a new trial had to be granted since the trial court in effect disapproved the verdict by declaring the award of punitive damages to be excessive.

In *Gulf Life Ins. Co. v. Howard*,⁶ the Court of Appeals found as a matter of law that defendant insurance company could not be held guilty of bad faith in refusing to pay the plaintiff's claim on the basis of the information in its possession, and that therefore the jury's award of attorney's fees was not authorized. The judgment for plaintiff which included such attorney's fees was affirmed, however, on condition that the entire amount attributable to attorney's fees (which could be separated from the rest of the judgment) be written off by the plaintiff before the judgment became the judgment of the trial court.

DAMAGES IN PERSONAL INJURY ACTIONS

In *Cagle Poultry & Egg Co. v. Busick*,⁷ the Court of Appeals approved a charge by the trial court authorizing the jury to consider impairment in the capacity of the plaintiff to work and labor as an element of pain and suffering over the defendant's objection that there was no evidence of any permanent reduction in plaintiff's earning capacity. The court's application of the rule is underscored here by plaintiff's concession that reduction in earning capacity was not an issue to be submitted to the jury.

Floyd v. Stevens-Davenport Funeral Home,⁸ an action in which plaintiff sought recovery for the disturbing of the grave of her mother, simply held that "it is well settled that recovery of damages for mental pain and anguish and wounded feelings, unattended by damage to person or purse, must be predicated upon an intentional tort or the legal equivalent of the same and cannot be based upon mere negligence." In *Towler v. Jackson*,⁹ the plaintiff claimed her miscarriage was due to a telephone call by defendants inquiring as to whereabouts of her husband. The court held that "an innocent telephone call and an unforeseen miscarriage is the sum and substance of plaintiff's purported cause of action," and that no cause of action was set forth since, where injuries alleged result solely from fright or shock, unaccompanied by physical contact, such injuries must be the natural and proximate result of such fright and shock, and foreseeable as such, or else the result of the deliberate and malicious intention on the part of the defendant to injure the plaintiff.

6. 110 Ga. App. 76, 137 S.E.2d 749 (1964).

7. 110 Ga. App. 551, 139 S.E.2d 461 (1964).

8. 110 Ga. App. 271, 138 S.E.2d 333 (1964).

9. 111 Ga. App. 8, 140 S.E.2d 295 (1965).

LOSS OF CONSORTIUM

Consortium cannot extend beyond the married life of the matrimonial pair. Therefore, in cases where permanent loss of consortium is sought as an element of damages, the jury should be instructed that they would not be authorized to award damages for loss of consortium and services for a period extending beyond the life expectancy of the husband or wife, whichever is the shorter.¹⁰

10. *Beavers v. Davis*, 110 Ga. App. 248, 138 S.E.2d 110 (1964).