

SIMONA MANZANARES, PLAINTIFF AND APPELLEE, VS. RAFAEL MORETA, DEFENDANT AND APPELLANT.*G. R. No. 12306. October 22, 1918*

Ponente: TORRES, J.

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In this case which is brought for the recovery of the damages resulting from the death of the child Salvador Bona, of from 8 to 9 years of age, who had been run over by an automobile driven and managed by the defendant on the morning of March 5, 1916, a judgment was rendered on August 3, 1916, whereby the said defendant was sentenced to pay the sum of P1,000 as indemnity to the plaintiff, the mother of the deceased child, and to pay the costs. From this judgment, an appeal was taken by the defendant after his motion for a new trial had been overruled, and the case is now before this court by bill of exceptions.

The statement of facts is at once admitted, and we find no reason for disturbing the findings made by the trial judge in his judgment appealed from, wherein the defendant was found liable for the accident which occurred to the said child on Solana Street on the morning of said day, and consequently, the defendant, as the one who had caused the accident, is bound to indemnify the mother of the deceased child in the amount of P1,000, which was deemed by the trial judge to be the value of the damages occasioned to the mother for the loss and death of a member of her family.

To the reasons given by the trial judge as grounds for his decision, we deem pertinent to add the following:

If it were true that the defendant, in coming from the southern part of Solana Street, had to stop his auto before crossing Real Street, because he had met vehicles which were going along the latter street or were coming from the opposite direction along Solana Street, it is to be believed that, when he again started to run his auto across said Real Street and to continue its way along Solana Street northward, he should have adjusted the speed of the auto which he was operating until he had fully crossed Real Street and had completely reached a clear way on Solana Street. But, as the child was run over by the auto precisely at the entrance of Solana Street, this accident could not have occurred, if the auto had been running at a slow speed, aside from the fact that the defendant, at the moment of crossing Real Street and entering Solana Street, in a northward direction, could have seen the child in the act of crossing the latter street from the sidewalk on the right to that on the left; and if the accident had occurred in such a way that after the automobile had run over the body of the child, and the child's body had already been stretched out on the ground, the automobile still moved along a distance of about 2 meters, this circumstance shows the fact that the automobile entered Solana Street from Real Street, at a high speed without the defendant having blown the horn. If these precautions had been taken by the defendant, the deplorable accident which caused the death of the child would not have occurred.

In view of the foregoing considerations as well as those contained in the judgment of the trial court, which, we believe to be in accordance with law and the evidence of record, we believe that the errors assigned by the appellant are thereby refuted and that therefore the judgment appealed from, should be, as it hereby is, affirmed,

with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Araullo, and Street, JJ., concur.

Malcolm, J., concurs with whom concurs Fisher, J.

CONCURRING OPINION

MALCOLM, J., concurring:

The facts are few and simple. A male child, 8 or 9 years of age, was killed through the negligence of the defendant in driving his automobile. The mother of the dead boy is a widow, a poor washerwoman. She brings action against the defendant to recover damages for her loss in the amount of P5,000. Without there having been tendered any special proof of the amount of damages suffered, the trial court found the defendant responsible and condemned him to pay to plaintiff the sum of P1,000. The decision of this Court handed down by Justice Torres, affirms the judgment of the Court of First Instance. If necessary, the decision of the Supreme Court of Louisiana in the case of *Burvant vs. Wolfe* ([1910], 126 La., 787), could be cited as corroborative authority.

The principles of law which measure the pecuniary responsibility of the defendant, not discussed in the main opinion, are more difficult. Since the time of Grotius and even before, lawyers and publicists have speculated as to whether the loss of a human life should be compensated in money, and if so, as to the amount which should be allowed.

At Common Law no civil action lies for damages caused by the death of a human being by the wrongful or negligent act of another. The maxim is *actio personalis moritur cum persona*. (*Mobile Life Ins. Co. vs. Brame* [1878], 95 U. S., 754; *Baker vs. Bolton*, 1 Campb., 493.) Two different modes of reasoning have arrived at this result. The first and older theory was the merger of the private right in the public wrong. (*The E. B. Ward, Jr.* [1883], 16 Fed., 255.) The second and younger theory was that the death of a human being cannot be complained of as a civil injury. Under the latter doctrine, it has been repeatedly held that a civil action by a parent for the death of a minor child cannot be maintained. (*Kramer vs. San Francisco Market Street R. Co.* [1864], 25 Cal., 434; *Jackson vs. Pittsburg, C. C. & St. L. R. Co.* [1894], 140 Ind., 241; *Wilson vs. Bumstead* [1881], 12 Neb., 1; *Sullivan vs. Union P. R. Co.* [1880], 2 Fed., 447; *Osborn vs. Gillett* [1873], L. R. 8 Exch., 88; *Weems vs. Mathieson*, 4 Macq. H. L. Cas. 215; *Gulf, C. & S. F. Ry. Co. vs. Beall* [1897], 91 Tex., 310. See 41 L. R. A., 807, Note.)

By the Civil Law, particularly as existing in Spain, France, Porto Rico, and Louisiana, the true principle is somewhat beclouded. Thus, in Louisiana, a State favored by French and Spanish antecedents, the exact question of whether an action for damages caused by the homicide of a human being can be maintained, was presented by able counsel for the opinion of distinguished jurists. And it was held in a decision, later expressly affirmed, that, under the Civil Law, the action could not be maintained by the surviving wife or children. (*Hubgh vs. New Orleans & Carrollton R. R. Co.* [1851], 6 La. Ann., 495; *Hermann vs. New Orleans & Carrollton R. R. Co.* [1856], 11 La. Ann., 5; 24 Pothier Pandectes, p. 279; law 13; 7 Partida, title 15, law 3.)

The same question has arisen in Porto Rico. It has there been held that by the Civil Law in force in Porto Rico a civil action lies for negligence resulting in death. (*Borrero vs. Cia. Anonyma de la Luz Electrica de Ponce* [1903], 1 Porto Rico Fed., 144; *Diaz vs. San Juan Light & Transit Co.* [1911], 17 Porto Rico, 64.) The right to sue for death from negligence of a defendant, by persons entitled to support by the deceased has not been changed by the new Civil Code of Porto Rico. (*Torres vs. Ponce Railway & Light Co.* [1903], 1 Porto Rico Fed., 476.)

In Spain, from which both the Civil Law of Porto Rico and the Philippines were derived, it has been decided that such an action could be maintained. (Decision of the supreme court of Spain of December 14, 1894.) In France, the highest court has interpreted the Code Napoleon as sanctioning actions by those damaged by the death of another against persons by whose fault the death happened. (*Chavoix vs. Enfants Duport* [1853], 1 *Journal du Palais* 614; *Rollond's case*, 19 *Sirey*, 269.)

That even in those jurisdictions in which the Common Law has force, the observance of the principle has been resisted, is disclosed by the action of Hawaii in holding that there can be a recovery for death by wrongful act. (*The Schooner Robert Lewers Co. vs. Kekauoha* [1902], 114 *Fed.*, 849.) That the impropriety of the judgeade rule was early disclosed, is shown by the numerous statutes, beginning with Lord Campbell's Act, which were enacted to cover the deficiency by permitting of a right of action to recover damages for death caused by wrongful act. Even in Louisiana, a State partially governed by the Civil Law, because of a statute, an action will now lie for pecuniary and other damages caused by death. (*McCubbin vs. Hastings* [1875], 27 *La. Ann.*, 713.) And finally, that eminent authorities recognize liability in case of death by negligence is disclosed by the mere mention of such names as Grotius, Puffendorj, and Domat. For instance, Grotius in his *Rights of War and Peace* said:

"Exemplo haec sint. Homicida in Justus, tenetur solvere impensas, si quae factae sunt in medicos, et iis quos occisus alere ex officio solebat, puta parentibus, uxoribus liberis dare tantum, quantum ilia spes alimentorum, ratione habita setatis occissi, valebat—sicuti Hercules legitur Iphiti a se occissi leberis mulctam pependissi, quo facilius expiaretur. Michael Ephesius ad quintum Nicomachiorum Aristotilis; Alia kai o Phoneuthies elabe tropon tina—0 gare e gune e oi paides, e oi suggenies tou phoneuthentos elabe tropon tina ekeino dedotai. Sed et qui occisus est accipit aliquo modo. Quae enim uxor ejus et liberi et cognati accipiunt, ipse quodammodo accipit. Loquimur de homicida injusto, id est, qui non habuit jus id faciendi unde mors sequitur. Quare si quis jus habuit sed in caritatem peccavit ut qui fugere noluit, non tenebitur.

"Vitse autem in libero homine aestimatio non fit, secus in servo qui vendi potuit." [11 *La. Ann.*, 5.]

"The following may be for example: Any man slaying another, unjustly, is bound to discharge the expenses, if any are contracted, for physicians, and to give to those whom the slain was in duty accustomed to maintain—such as parents, wives, children—as much as that hope of maintenance—regard being had to the age of the deceased—was worth: thus, Hercules is said to have made reparation (paid a fine) to the children of Iphitus, slain by him, in order that expiation might more easily be made.

"Michael, the Ephesian, says upon the 5th of the Nicomachii of Aristotle: 'but also the person slain receives, in some sort, for what the wife or children or relations of the person slain receive is, in some sort given him.' We are speaking of an unjust manslayer: that is, one who had not the right of doing that from whence death follows.

"Wherefore, if any one may have had the right, but has sinned against charity, as when one (being assaulted) has been unwilling to flee, he shall not be bound. But of life, in case of a free man, no valuation is made, otherwise, in case of a slave who can be sold."

Both because of the civil origin of the applicable law in the Philippines, because we are not fettered by the harsh common law rule on the subject, because it is the modern and more equitable principle, and because reason and natural justice are eloquent advocates, we hold that an action for damages can be maintained in this jurisdiction for the death of a person by wrongful act. It can be admitted, since objection has not been made, that the primary right of action is in the parent.

The second phase of our enquiry, pertaining to the amount of compensation for the loss of a human life, must now be settled.

"Damage" has been defined by Escriche as "the detriment, injury, or loss which are occasioned by reason of fault of another in the property or person." (Escriche, *Diccionario Razonado de Legislacion y Jurisprudencia*, vol. 2, p. 597.) Of whatsoever nature the damage be, and from whatsoever cause it may proceed, the person who has done the injury ought to repair it by an indemnity proportionate to his fault and to the loss caused thereby. (1 Cushing, *Domat's Civil Law*, p. 741.) *Damnum* (daño or a loss) must be shown to sustain an action for damages.

Philippine law as found in the well known article 1902 of the Civil Code, derived from Partida VII, Title V, is to this effect. In order to give rise to the obligation imposed by this article of the Civil Code, the coincidence of two distinct requisites is necessary, viz: (1) That there exist an injury or damage not originating in acts or omissions of the prejudiced person himself, and its existence be duly proven by the person demanding indemnification therefore; (2) that said injury or damage be caused by the fault or negligence of a person other than the sufferer. (12 Manresa, *Comentarios al Código Civil*, p. 604.)

Those seeking to recoup damages must ordinarily establish their pecuniary loss by satisfactory proof. (Decisions of the supreme court of Spain, December 14, 1894; November 13 and 26, 1895; December 7, 1896; September 30, 1898, and December 16, 1903; *Sanz vs. Lavin* [1906], 6 Phil., 299; *To Guioc-Co vs. Del Rosario* [1907], 8 Phil., 546; *Diaz vs. San Juan Light & Transit Co.* [1911], 17 Porto Rico, 64.) The customary elements of damages must be shown. But in certain cases, the law presumes a loss because of the impossibility of exact proof and computation in respect to the amount of the loss sustained. In other words, the loss can be proved either by evidence or by presumption. For instance, where the relation of husband and wife or parent and child exist, provided the child is shown to be a minor, the law presumes a pecuniary loss to the survivor from the fact of death, and it is not necessary to submit proof as to such loss. (*Chicago vs. Scholten* [1874], 75 111., 468; *Rockford, etc. R. Co. vs. Delaney* [1876], 82 111., 198; *Chicago vs. Hesing* [1876], 83 111., 204; *Delaware, etc. R. Co. vs. Jones* [1889], 128 Pa. St., 308; *Atrops vs. Costello* [1894], 8 Wash., 149; *Mason vs. Southern R. Co.* [1900], 58 S. C., 70; *McKechney vs. Redmond*, 94 111. App., 470; *Joliet vs. Weston*, 22 111. App., 225; *Kelly vs. Twenty-third St. R. Co.*, 14 N. Y. St., 699; *Dunhene vs. Ohio L. Ins. etc. Co.*, 1 Disn., 257; *Diaz vs. San Juan Light & Transit Co.*, supra.)

In one of the cited cases, (*City of Chicago vs. Hesing*) on an action to recover damages resulting to the parents, laboring people, by the death of their child four years old through negligence on the part of the City of Chicago, the court said:

"Only pecuniary damages can be recovered in such actions as this. Nothing can be given as solace or for bereavement suffered. Under instructions declaring the true rule for estimating the damages, the jury found for plaintiff, in the sum of \$800, but one of the errors assigned is, the amount found is excessive. As a matter of law, we cannot so declare, and as a matter of fact, how can we know the amount is in excess of the pecuniary damages sustained? When proof is made of the age and relationship of the deceased to next of kin, the jury may estimate the pecuniary damages from the facts proven, in connection with their own knowledge and experiences in relation to matters of common observation. It is not indispensable there should be proof of actual services of pecuniary value rendered to next of kin, nor that any witness should express an opinion as to the value of services that may have been or might be rendered. Where the deceased was a minor, and left a father who would have been entitled to his services had he lived, the law implies a pecuniary loss, for which compensation, under the statute, may be given."

The discretion of a jury, where there is a jury, or of the trial court, where the court possesses such faculty, in fixing the amount of damages, will not be interfered with by the appellate court unless this discretion has been palpably abused. Since in the very nature of things, the value of a human life cannot be exactly estimated in money, and since the elements which go to make up any value are personal to each case, much must depend on

the good sense and sound judgment of the jury or judge. The rule has been applied to the death of minor children where there was nothing to show passion, prejudice, or ignorance on the part of the jury. (See 13 Cyc, 375-377.)

The right of action for death and the presumption in favor of compensation being admitted, the difficulty of estimating in money the worth of a life should not keep a court from judicially compensating the injured party as nearly as may be possible for the wrong. True, man is incapable of measuring exactly in the delicate scales of justice the value of a human life. True, the feelings of a mother on seeing her little son torn and mangled—expiring—dead—could never be assuaged with money. True, all the treasure in nature's vaults could not begin to compensate a parent for the loss of a beloved child. Nevertheless, within the bounds of human powers, the negligent should make reparation for the loss.

Attempts at approximation in money for death have been made. Many American statutes have arbitrarily limited the amounts that could be recovered to five thousand dollars or ten thousand dollars. The federal Courts have intimated that these statutory limits should only be taken as a guide to the permissible amount of damages. (Cheatham vs. Red River Line [1893], 56 Fed., 248; The Oceanic [1894], 61 Fed., 338; Farmers' L. & T. Co. vs. Toledo A. A. & N. M. Ry. Co. [1895], 67 Fed., 73.) In Louisiana, \$2,500, \$3,000, \$4,000, and \$6,000 were allowed in the respective cases for the death of a child. In Porto Rico, \$1,000 and \$1,500 has been allowed for such a loss. In the Philippines, the rule has been in criminal cases to allow as a matter of course P1,000 as indemnity to the heirs of the deceased.

The foregoing is believed to be a fair statement of the pertinent general principles. Before closing, notice should be taken of the leading decisions of the supreme court of Spain and the supreme court of Porto Rico. The first is the decision of the supreme court of Spain of December 14, 1894.

Eulogio Santa Maria died in Madrid in 1891, in consequence of a fall from the wall of the racket known as "Jai-Alai," which he was climbing for the purpose of placing the customary flags to announce the opening of the game. The facts were investigated through criminal proceedings which were discontinued, and then the widow of the deceased, in her own behalf and on behalf of her infant daughter, Teodora, instituted a civil action in the proper court, alleging that "the cause of the fatal accident resided in the fault and omission of the owners of the racket, because, as they knew and saw, neither the place for the raising of the flags nor the road that had to be gone over to reach it were in a condition to insure safety;" that at his death her husband had left two children, one named Anastasio, of 14 years, had by his first marriage, and another named Teodora, of 3 years had by his second marriage with the plaintiff; that the damages caused and for which the defendants should be held responsible were of a twofold character—that is, one having reference to affection and the other -to the loss of the modest pay which, capitalized at 5 per cent and added to the sum demandable for the first mentioned consideration, amounted to 21,425 pesetas. The defendants alleged that the death of the plaintiff's husband could not be ascribed to any fault, omission, or negligence on their part, etc., and prayed that the complaint be dismissed. After hearing the case the court rendered judgment condemning the defendants to pay the sum of 5,000 pesetas to the heirs of the deceased as indemnification for the latter's death. An appeal from said judgment having been taken by the plaintiff, the defendants joined in said appeal and the "Audiencia territorial" in deciding the case, adjudged the defendants to pay the plaintiff in her own right and as representative of her daughter, Teodora, 5,000 pesetas, as indemnification for the death of her husband, affirming in these terms, the judgment appealed from, and reserving to the other child of the deceased, who was not a party in this case, his right likewise to demand indemnification. The defendants then took an appeal for annulment of judgment to the supreme court, alleging that various laws had been violated and, among other particulars, that the judgment did not state the amount at which the court valued the life of Santa Maria, nor was anything allowed the plaintiffs on the score of affection or for damages, nor was the principle mentioned upon which the court had acted to fix the sum of 5,000 pesetas.

The supreme court of Spain affirmed the judgment appealed from in its opinion of December 14, 1894, the grounds whereof are the following:

"As to the ground the court had for concluding, in view of the evidence, that the death of the unfortunate Eulogio Santa Maria was due to the omission on the part of the appellants, owners, and managers of the racket (ball game) known as 'Jai-Alai' of such precautions as were called for to forestall the dangers attending the placing and removal of the streamers, which the deceased had been doing with their knowledge and consent, and for their benefit, we find that said court has correctly applied articles 1093, 1902, and 1903, and that it has not violated articles 1101, 1103, and 1104 of the Civil Code, because, according to the first-mentioned article, obligations arising from acts or omissions, in which faults or negligence, not punished by law, occur, are subject to the provisions of said articles 1902 and 1903, and, according to the latter, indemnification for the damage done lies whenever the act or omission has been the cause of the damage and all the diligence of a good father of a family has not been observed, either when the act or omission is personal with the party, or when it has reference to persons for whom he should be responsible; and because the provisions of articles 1101, 1103, and 1104 are of a general character and applicable to all kinds of obligations and do not come in conflict with the special provisions of articles 1902 and 1903;

"The indemnification corresponding to the damage caused by a guilty act or omission, not constituting a crime, should be declared, as are all indemnifications, in every suit, in accordance with the particular damage caused to the claimants, and as in the judgment this has been done with respect to Juana Alonzo Celada and her daughter, the only plaintiffs, by fixing the sum due them, said judgment does not violate article 1902 of the code, and much less does it violate article 360 of the Law of Civil Procedure;

"The amount of the indemnification adjudged is based on the evidence taken and on the facts admitted by both parties in their pleadings at the trial, wherefore there has been no violation of article 1214, through lack of proof, as alleged."

As has heretofore been intimated, the Civil Law in Porto Rico, derived from the same source as that of the Philippines, can well be looked to for persuasive authority. Thus, as disclosed by the facts in the decision coming from the pen of Justice Del Toro, one Diaz brought a suit against the San Juan Light & Transit Co. to recover the sum of \$6,000 as damages. The district court of San Juan rendered judgment declaring that the facts and the law were in favor of the plaintiff and against the defendant, and decreeing that the former should obtain from the latter the sum of \$3,000 as damages. The supreme court of Porto Rico said the issue was, that inasmuch as plaintiff has failed to produce any evidence of the amount of damage sustained, judgment should not be rendered in this form. After setting forth the decision of the supreme court of Spain of December 14, 1894, hereinbefore described, and other authorities, the court said:

"Applying the foregoing principles and those contained in section 1804 of the Revised Civil Code to the specific case under consideration, we find that in the complaint it is alleged that the complainant sustained damages which he estimates at \$6,000, and that the immediate and natural cause of said damages was the careless act of one of the employees of the defendant, who was in its service and while in the discharge of his duties.

"The evidence taken does not show that the complainant failed to earn, as a result of the injuries received, a stated sum of money, or that he had to pay the physician who attended him another stated sum, etc.; but it does show that the complainant, a man of 51 years of age, who worked as a farmer and hawked about his products, supporting himself and his family with his labor, while stepping out of one of the electric cars of the defendant, at Stop 7E of the San Juan-Rio Piedras line, fell to the ground owing to the carelessness and inattention of the motorman in starting the car before it was time; that he received a severe blow which rendered him unconscious

for some moments, fractured his lower jaw, and caused abrasions on his legs and other parts of his body; that he remained at the hospital, having his injuries nursed, for more or less one month, and that, on being examined at the trial—that is, one year and five months after his fall—he presented on the right side of his face, as a consequence of the fracture, 'a contraction which means a paralysis/ and could 'speak, but hardly masticate, and only with difficulty could open and close his mouth/ It does not appear from the evidence that the complainant has been disabled, but it does appear that at the time the evidence was taken he was suffering from nervous illness, according to the opinion of Dr. Stahl, one of the experts who testified at the trial.

"Under these circumstances the judge, in accordance with the law and jurisprudence, had to estimate for himself the damage caused and determine the amount of indemnification which the defendant should pay the complainant. And in so doing the court did not commit the errors attributed to it by the appellant.

"The question in the present case is not one of punitive or exemplary damages, but of compensation for damages sustained. In order to allow such compensation it is not necessary that the complainant should prove his loss in terms of-dollars and cents, it being sufficient, in cases of this nature to prove that the plaintiff, through the fault or negligence of the defendant and not through his own fault and negligence, had sustained a real damage, consisting of physical pains, loss of work, confinement in a hospital, mental suffering, etc.

"The indemnification in this case was fixed by the lower court at \$2,000, and although it could perhaps have been calculated at less, we do not find that it is immoderately inadequate, and this being so we should not alter it." (Diaz vs. San Juan Light & Transit Co., supra.)

In another case, that of Gonzalez vs. The San Juan Light & Transit Co. ([1911], 17 Porto Rico, 115) recovery for damages was not permitted. In the latter case, it was said:

"This is an appeal from the first section of the district court of San Juan seeking to reverse a judgment therein rendered on December 1, 1909, in favor of the defendant. This suit was initiated in the district court of San Juan through a complaint presented by Ramona Gonzalez Soto, alleging therein that the defendant company, the San Juan Light and Transit Co., had negligently caused the death of Juan Cordova Soto, son of the plaintiff, in the ward of Santurce, between stops 21 and 22, on the trolley line of defendant, about December 2, 1904, the father of the deceased not appearing also as a complainant on account of his death having occurred after that of his son but previous to the filing of the complaint.

"We have stated said first ground alleged for reversal in the form in which it has been expressed by counsel for the defendant; but possibly it might also have been set forth more clearly as follows: 'Even supposing that the plaintiff had shown that the death of her son had been caused through the negligence of the defendant company, could damages be awarded her without showing by proof their existence and the amount thereof?' "

"Our Civil Code now in force, in section 1803, reads as follows:

" 'A person who by an act or omission causes damage to another, when there is fault or negligence, shall be obliged to repair the damage so done.'

"So that the claim of the plaintiff herein is sustained by this precept of the law which establishes her right to be indemnified by the defendant for the damage caused her on account of the death of her son, if said death was brought about by any act or omission of said company, through its fault or negligence.

"This is our substantive law in the matter of damages and it is in accordance with its provisions, as interpreted by the ruling jurisprudence, that courts should decide questions submitted to them for decision, and therefore the plaintiff is entitled, in cases where there may exist fault or negligence on the part of the defendant company, to

recover from the defendant company the damages that may have been actually caused to her, whatever they may be."

* * * * *

"As may be seen, this jurisprudence (of Spain) is in accordance with the legal precept of the code that only those damages actually caused may be awarded, and, therefore, to enable the court to decide what damages have been caused, it is necessary to prove the real existence of the damages and the corresponding facts from which the court can deduce the amount thereof.

"Of course, the plaintiff makes a claim only for herself for pecuniary loss sustained by her on account of the death of her son, and the boy himself does not make any claim because he did not live to do so; hence the mother would never have been entitled to any other damages than those arising out of the loss of the services of her son, and never to those damages which he himself might have been entitled to claim had he not died, or arising from the injuries that he himself might have suffered on account of the accident. The damages which would give the plaintiff in this case a right to recovery against the defendant are only the loss of support, or contributions thereto, which the son was accustomed to make to his mother from his earnings and of which she may have been deprived by his death. But does the evidence introduced by the plaintiff support her claim to recover such damages? We are of the opinion that it does not, because she has not proven that her son was really earning the amount alleged in the complaint, nor any other sum whatever, nor how much money he was earning by his work either in Arecibo or in San Juan during the days immediately preceding his death or at any time. And we are of the opinion that this is a necessary requisite, because, as the Civil Code declares that recovery may be had for the damage caused, the damages accruing to the plaintiff must be shown so that the trial judge may have data on which to base his decision.

"In this action no evidence whatever has been produced in this respect. The only fact proven in regard to this point is that Juan Cordova Soto was killed by a collision with the trolley car; that he was earning something when he was previously in Arecibo. It is not shown what occupation he had, nor how much money he earned while he was there nor while he was in San Juan, nor is it shown that his mother derived any benefit from his wages; and from this evidence the court cannot consider as proven the amount of the damages, nor even their existence. It has not been shown that the death of her son caused any material or pecuniary damages to his mother, the plaintiff herein, nor the amount thereof.

"Therefore, an essential requisite for a judgment against the defendant company is lacking, and even supposing that she had an action for damages through negligence of the company in the death of the boy, we could not find a judgment against the defendant company, for lack of evidence in regard to the existence of the pecuniary damages sustained and facts from which to infer the amount thereof. Therefore, the defendant's motion for a judgment in its favor on this first ground was properly sustained."

As will be readily perceived, having dug out the applicable authorities, and having set them before us, our task still is far from complete. On the one hand, the obvious conclusion would be that, inasmuch as plaintiff has failed to prove her pecuniary loss, she cannot recover, or, for the same reason, to return the case to the lower court for further evidence. This is the obvious way. To one trained in the Common Law, and inculcated with all the doctrines of the American law of damages, it is the logical way. Is it the just and natural way?

The first reply would be that the civil law authorities are, like the common law cases, against recovery without proof of loss. If necessary, however, the three decisions just described, could be differentiated from the present facts. The decision of the supreme court of Spain, it is to be remembered, involved an action for the death of a man of mature years. The first decision of the supreme court of Porto Rico recognizes the principle of

presumptive recovery. The second decision of the supreme court of Porto Rico concerned an action for the death of a son of . sufficient age to have an earning capacity. None of these is our case. Here present is the case of a young child, whose death is caused by wrongful act, leaving a poor mother to be the loser.

To answer in a different way, let us make a comparison. The facts before us, and the facts before the supreme court of Illinois in analogous cases, are substantially identical. We have proof of the age of the deceased, proof of the name of the next of kin, and proof that the mother is a laboring woman. Under both the Common Law and the Civil Law, plaintiff's damage, broadly speaking, is for the loss of the services of the deceased, or for support by the deceased. Plaintiff having shown that the deceased was her son and that he was 8 or 9 years of age at the time of death, it was neither necessary nor possible to prove loss of services or support, or to prove special damage as if the object of the loss had been a horse or other animal. No doubt the damage could be greatly enhanced by showing the personal characteristics of the deceased. Outside of this, however, the pecuniary loss may be estimated from the facts at hand with reference to the general knowledge which all possess.

To force the plaintiff to prove her loss exactly would be to ask the impossible—would be in effect to return to the old common law rule which prohibits a recovery. Physical and gross criteria, as the hewing of wood and carrying of water, are indeed no standards at all. Even if the case was to be reopened, the plaintiff could with extreme difficulty present any better evidence than that now before us. As we have the basis of satisfactory facts from which to infer the amount of damage, as the law presumes a pecuniary loss because of the death, and as the trial judge has made an intelligent computation, we should rest here, with knowledge that, within the ken of human wisdom, justice has been done.

On a careful consideration of the entire field of the law on the subject of damages, we come to the conclusion that the amount, in the nature of an indemnity allowed by the trial court, is neither excessive nor immoderately inadequate, and should stand.

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