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Mental Suffering

DAMAGES—MENTAL SUFFERING.—Plaintiff, who was recovering from serious illness, suffered a relapse when the defendant collection agency, knowing his condition and intending to induce payment of a debt by intimidation, sent letters threatening suit, attachment, garnishment, and the future credit standing of the plaintiff. Held: Plaintiff may recover for physical injuries resulting from mental suffering intentionally caused by the defendant. *Clark v. Associated Retail Credit Men* (C. C. A. D. C., 1939), 105 F. (2d) 62.

Recovery for mental suffering is universally permitted when an individual intentionally acts in such a way as to place another person in apprehension of bodily harm or an offensive touching.[1] Recovery is generally allowed when an individual acts, intentionally or negligently, in such a way as to cause a mental condition which influences another person to react toward his physical surroundings in such a manner as to sustain physical injury,[2] or to cause

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117 Iowa 130, 90 N. W. 592; Wakeman v. Wheeler and Wilson Mfg. Co. (1886), 101 N. Y. 205, 4 N. E. 264; United States Auto Co. v. Arkadelphia Milling Co. (1919), 140 Ark. 73, 215 S. W. 641; Long Beach Drug Co. v. United Drug Co. (Cal. 1939), 89 Pac. (2d) 386, allowed recovery when exclusive agency contract was broken. Contra: Stephany v. Hunt Bros. Co. (1923), 62 Cal. App. 638, 217 Pac. 797.

[20] Western Gravel Road Co. v. Cox (1872), 39 Ind. 260.

[21] Note (1933), 46 Harv. L. Rev. 696.

[22] Barker v. Western Union Telegraph Co. (1908), 134 Wis. 147, 114 N. W. 439; Phillips v. Pantoges Theater Co. (1931), 163 Wash. 303, 300 Pac. 1048.

[23] Chaplin v. Hicks (1911), 2 K. B. 786; Wachtel v. National Alfalfa Journal Co. (1920), 190 Iowa 1293, 176 N. W. 801; Kansas City, Mex., and Orient Railroad Co. v. Beel (Tex. Civ. App. 1917), 197 S. W. 322.

[24] As an example, the rule in New York has changed from certainty, Griffin v. Colver (1858), 16 N. Y. 489, 69 Am. Dec. 718, to reasonable certainty, Steitz v. Gifford (1939), 280 N. Y. 15, 19 N. E. (2d) 661.

[1] Note (1923), 23 A. L. R. 361, 389.

[2] Woolery v. Louisville, N. A. & C. Ry. Co. (1886), 107 Ind. 381, 8 N. E. 226; Restatement, Torts (1934), Sec. 443, 444.

injury to a third person.[3] Recovery is universally permitted for mental suffering unaccompanied by physical injury if caused by a willfully tortious act, especially where the wrong affects the liberty, character, reputation, privacy, or domestic relations of the injured party.[4] Recovery is almost universally denied for mere mental suffering, negligently caused.[5] The greatest confusion is found in the cases where an individual does an act which causes mental suffering in another resulting in physical injury solely from the mental suffering itself.[6]

If physical injury results from the same negligent or intentional act that caused the mental suffering, or if any other tort is proved, the jury may consider the mental suffering in determining the amount of damages.[7]. If the mental suffering was intentionally caused, and resulted in physical injury, although there was no physical impact or injury from without, recovery is permitted.[8] If an individual intentionally causes mental suffering, and if the act is serious enough to create the risk of physical injury, recent cases have allowed recovery, although no physical injury actually ensued.[9] If the mental suffering was caused by a negligent act toward a third person, and resulted in physical injury to the plaintiff recovery is usually denied,[10] although there are exceptions where some special relationship existed between the third person and the plaintiff, e. g., parent and child.[11] When the act was intentionally directed toward a third person and some injury to the plaintiff was likely to occur, some jurisdictions have allowed a recovery.[12] If the physical injury of the plaintiff results from mental suffering, negligently caused, but there was also some impact, or injury from without, most courts allow recovery for the physical injury caused by the mental suffering.[13] If physical injury results from mental suffering, negligently caused, but there

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[3] Note (1925), 35 A. L. R. 1447; Restatement, Torts (1934), Sec. 443, 444.

[4] Harness v. Steele (1902), 159 Ind. 286, 64 N. E. 875 (false imprisonment).

[5] Kalen v. Terre Haute & Ind. R. Co. (1897), 18 Ind. App. 202, 47 N. E. 694; Note (1923), 23 A. L. R. 361, 365. But mental suffering is sometimes distinguished carefully from nervous shock, which has been increasingly recognized as a physiological rather than psychological injury: Cashin v. Northern Pac. Ry. Co. (1934), 96 Mont. 92, 28 P. (2d) 862.

[6] This note does not include the telegraph cases in Indiana, which deny recovery for mental suffering alone negligently caused by the failure to deliver "death notices", nor mental suffering caused by breach of contract, in which recovery is also refused (13 Ind. L. J. 583), nor the "dead body" cases, in which recovery is allowed for mental suffering caused by an invasion of the right in a dead body (Aetna Life Ins. Co. v. Burton (1938), 104 Ind. App. 576, 12 N. E. (2d) 360.

[7] Restatement, Torts (1934), Sec. 47 (b). When any right of action has accrued, mental suffering may be included: Indiana Ry. Co. v. Orr (1908), 41 Ind. App. 426, 84 N. E. 32 (unlawful ejection of a passenger).

[8] Kline v. Kline (1902), 158 Ind. 602, 64 N. E. 9; Note (1935) 98 A. L. R. 402, 404; the case noted follows this authority.

[9] LaSalle Extension U. v. Fogarty (1934), 126 Neb. 457, 253 N. W. 424 (collection letters).

[10] Cleveland, C., C. & St. L. Ry. Co. v. Stewart (1900), 24 Ind. App. 374, 56 N. E. 917; Note (1935), 98 A. L. R. 402, 405.

[11] Bowman v. Williams (1933), 164 Md. 397, 165 Atl. 182.

[12] Hill v. Kimball (1890), 76 Tex. 210, 13 S. W. 59. But see Gaskins v. Runkle (1900), 25 Ind. App. 584, 58 N. E. 740.

[13] Homans v. Boston Elevated Ry. Co. (1902), 180 Mass. 456, 62 N. E. 737; Note (1935), 98 A. L. R. 402

was no physical impact, or injury from without, the cases are sharply divided.[14]

Many courts,[15] including those of Indiana,[16] contra to the present English rule,[17] hold that there can be no recovery for physical injury resulting from mental suffering, negligently caused, unaccompanied by some physical impact.[18] Three reasons are generally given against allowing recovery: (1) Since mental suffering caused by negligence does not give a cause of action, injury resulting from the mental suffering is not actionable.[19] (2) Damages for physical injury resulting from mental suffering are too remote.[20] (3) The danger of fraudulent claims and the difficulty of assessing damages are too great.[21]

The essential thing is the existence of the link in the chain of causation, not the character of that link.[22] The fact that the causal link is mental does not disturb the orderly sequence of events, as a mental condition is not a superseding cause.[23] Whether the physical injury has followed the mental suffering naturally, and whether the mental suffering is the natural and probable result of the negligence is the question,[24] and it is a question for the jury.[25] Even those courts denying recovery for physical injury resulting from mental suffering without impact, allow it as a matter of course where there is impact,[26] no matter how slight.[27]

The danger of fraudulent claims and the difficulty of assessing damages should not preclude recovery. The subject of the damages is the physical injury, not the mental suffering, and physical injury is not easily feigned, although mental suffering may be. The jury should have no greater difficulty in assessing damages for physical injury resulting from mental suffering than for physical injury caused by an intentional blow or a negligent impact; nor is the danger of fraudulent claims any greater.

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14 Note (1935), 98 A. L. R. 402. For general discussion, see: Throckmorton, Damages for Fright (1921), 34 Harv. L. Rev. 260; Hallen, Damages for Physical Injury Resulting from Fright or Shock (1933), 19 Va. L. Rev. 253; Green, "Fright Cases" (1933) 27 Ill. L. Rev. 873.

15 Spade v. Lynn & B. R. Co. (1897), 168 Mass. 285, 47 N. E. 88; see also 34 Harv. L. Rev. 264, footnotes 25 and 28.

16 Dictum: Kalen v. Terre Haute & Ind. R. Co. (1897), 18 Ind. App. 202, 47 N. E. 694. The problem seems never to have been squarely presented to the Supreme Court.

17 Coyle v. Watson (1915), A. C. 1.

18 The reluctance to forsake impact as a requirement for recovery may be explained on the ground that it minimizes the risk that the claim is fraudulent: Chiuchiolo v. New England Wholesale Tailors (1930), 84 N. H. 329, 150 Atl. 540.

19 Mitchell v. Rochester R. Co. (1896), 151 N. Y. 107, 45 N. E. 354.

20 Ewing v. Pittsburgh R. Co. (1892), 147 Pa. St. 40, 23 Atl. 340.

21 Ward v. West Jersey R. Co. (1900), 65 N. J. L. 383, 47 Atl. 561.

22 Throckmorton, Damages for Fright (1921), 34 Harv. L. Rev. 260.

23 Purcell v. St. Paul Ry. Co. (1892), 48 Minn. 134, 50 N. W. 1034; Restatement, Torts (1934), Sec. 436, 442.

24 Rasmussen v. Benson (1938), 135 Neb. 232, 280 N. W. 890.

25 Harper, Law of Torts (1933), Sec. 77.

26 Supra, note 13.

27 Porter v. Delaware R. Co. (1906), 73 N. J. L. 405, 63 Atl. 860 (dust in eyes); Comstock v. Wilson (1931), 257 N. Y. 231, 177 N. E. 431 (scraped fender).

Yet it would be as unreasonable to say recovery should be allowed for all injuries resulting from mental suffering as to say that no recovery should be allowed. Mental suffering cases should be treated as are cases involving physical injuries received through impact or impact plus mental suffering. Where mental suffering is foreseeable, the probability that it will produce physical injury is one of the hazards which makes the conduct unreasonable, and the subsequent damage[28] is a necessary legal consequence.[29] Even if the precise type of harm was not foreseeable, recovery need not be precluded, where the actor's negligent conduct was a substantial factor in bringing about the harm.[30] The high degree of flexibility of the negligence formula does not assure a uniformity of outcome, but only of process, which is all intelligent government should be expected to afford. Ultimate judgment must depend upon the intelligence of the tribunal rather than upon doctrinal machinery.

W. D. B., Jr.

SALES—WARRANTY OF FOOD—LIABILITY OF THE MANUFACTURER TO THE CONSUMER.—Plaintiffs, husband and wife, seek to recover damages for the wife's illness which resulted from eating a cheese sandwich containing maggots, which had been prepared and wrapped in a sealed package by the defendant and sold through a retailer to the husband. Both allege negligence and breach of implied warranty. Plaintiffs appeal from a directed verdict for defendant. Held, reversed. The implied warranty extended to both husband and wife. *Klein v. Duchess Sandwich Co., Ltd.* (Cal. 1939), 93 P. (2d) 799.

The court takes the position that, "In adopting the Uniform Sales Act,[1] it was the clear intent of the legislature that with respect to foodstuffs, the implied warranty provision therein contained should inure to the benefit of any ultimate purchaser or consumer of food; and that it was not intended that a strict 'privity of contract' would be essential for the bringing of an action by such ultimate consumer for an asserted breach of implied warranty."

The basis of recovery in this situation may be in tort and the principal case is in accord with the general rule which permits recovery by the consumer against the manufacturer for the negligent preparation or manufacture of food irrespective of any contractual relations between the parties.[2]

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[28] Damage is, of course, the gist of the action. Pollock, The Law of Torts (12th ed. 1923), 185.

[29] Harper, Law of Torts (1933), Sec. 118.

[30] Restatement, Torts (1934), Sec. 435: "If the actor's conduct is a substantial factor in bringing about harm to another, the fact that the actor neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred does not prevent him from being liable."

[1] Uniform Sales Act, Sec. 15 (1), "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose." Cal. Civil Code, Sec. 1735.

[2] MacPherson v. Buick Motor Co. (1916), 217 N. Y. 382, 111 N. E. 1050, noted 29 Harv. L. Rev. 866. This case is considered to have established that privity of contract is not required for recovery based on negligence in the manufacturer-consumer cases. Boyd v. Coca Cola Bottling Works (1914), 132 Tenn. 23, 177 S. W. 80 (cigar butt in coca cola); 105 A. L. R. 1502;