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Exemplary Damages in Actions for Assault and Battery - Baltimore Transit Company v. Faulkner

EXEMPLARY DAMAGES IN ACTIONS FOR ASSAULT AND BATTERY

Baltimore Transit Company v. Faulkner[1]

Two cases, both entitled *Baltimore Transit Company v. Faulkner*, one having been instituted by Faulkner and the other by his son, were tried together. The plaintiffs, who were driving in the father's car, had a collision with one Michlick at a busy intersection in Baltimore City. Michlick having admitted that he was at fault, Faulkner, nevertheless, insisted upon taking pictures of the automobiles. Consequently, a traffic jam resulted and several employees of the Baltimore Transit Company, whose duty it is to keep the tracks clear, attempted to remove the cars. To this, Faulkner objected; but the defendant's employees persisted in disengaging the cars. Faulkner started a fight in which his son joined. The father and son thereafter sued the Baltimore Transit Company for an assault and battery allegedly caused by defendant's employees. The lower court found that defendant's employees were guilty of an assault and battery even though Faulkner had been the initiator of the affray.[2]

Having agreed with the trial court on this phase of the case, the Court of Appeals focused its attention on a consideration of the problem of awarding exemplary damages. The lower court had instructed the jury in each case that if they found that the assault and battery committed by defendant's employees was "wanton and excessive" they could award not only actual damages but also such further punitive damages as they might think proper from the

[1] 20 A. (2d) 485 (1941).

[2] Defendant had sought to justify the assault on the ground that its employees had acted in self-defense, but as the plea did not allege that no more force than the exigency reasonably demanded was used, it was defective.

evidence. The jury had awarded punitive damages to the plaintiffs, but the Court of Appeals reversed on the grounds that there was not legally sufficient evidence to justify such an award.

The Maryland law as to the awarding of exemplary damages was laid down in *Sloan v. Edwards*.[3] In that case, plaintiff had published in a local newspaper an item which unfavorably commented on the firm of which defendant was a member. On the following day, defendant sought out plaintiff in order to demand an explanation. A fight ensued and plaintiff brought an action to recover for the alleged assault and battery. The Court said ". . . if an assault has been committed maliciously or wantonly, the jury are not restricted to compensatory damages, but may give in addition thereto such exemplary damages as the circumstances of the case may warrant." Thus, in order to recover exemplary damages, plaintiff must show that either malice or wantonness characterized defendant's act, a malicious assault being one committed intentionally and a wanton assault being one done under circumstances evincing a reckless disregard of consequences.[4]

There are only four states, namely, Nebraska, New Hampshire, Louisiana, and Indiana,[5] which have held contra, the leading American case opposing the doctrine of exemplary damages on principle being that of *Fay v. Parker*,[6] in New Hampshire. It is interesting to note in passing that this case overruled the earlier one of *Towle v. Blake*[7] which had held, along with the great weight of authority, that where there are circumstances of aggravation indicating malice, insult, oppression, or wanton or willful violence, exemplary damages might be allowed. Be that as it may, the New Hampshire Court saw fit to swing from this view, and in *Fay v. Parker*[8] the Court based is decision to repudiate the doctrine of exemplary damages on the consideration that the wrong in question was one for which the wrongdoer could be punished criminally. However, the fact that the act done by defendant is one for which he may be punished criminally is not determinative

[3] 61 Md. 89 (1883).
[4] 44 WORDS AND PHRASES (Perm. Ed.) 604.
[5] Boyer v. Barr, 8 Neb. 68 (1878); McVay v. Ellis, 148 La. 247, 86 So. 783 (1921); Fay v. Parker, 53 N. H. 342 (1874); Pixley v. Catey, 102 Ind. App. 658, 1 N. E. (2d) 658 (1936).
[6] *Supra*, n. 5.
[7] 48 N. H. 92 (1868).
[8] *Supra*, n. 5.

with most courts, and properly so. For, as is pointed out in the case of *Wagner v. Gibbs*,[9] the criminal action is a punishment for the wrong done to the public while the punitive damage is a punishment for the wrong done to the individual.

The courts which have allowed exemplary damages are not in accord, though, as to either the theory behind or the application of the doctrine. The chief divergences occur as to: (1) the purpose of the allowance of exemplary damages, (2) the amount thereof, and (3) whether actual damages have to be shown as a condition precedent to relief.

The various states have different and somewhat conflicting theories as to just why exemplary damages should be allowed. To point out one of the most typical instances, Georgia holds that exemplary damages are awarded for a two-fold reason: first, to compensate the wounded feelings of plaintiff and secondly, to deter the wrongdoer. Moreover, says the Georgia court, an instruction directing the jury to award exemplary damages if they thought the public good required their allowance or to deter others is erroneous.[10] Maine and Missouri hold to the opposite line of reasoning. Missouri bases the whole doctrine on the deterrence of others,[11] and Maine holds that the purpose of allowing exemplary damages is to punish the wrongdoer and to protect society and the social order.[12]

Maryland's theory seems to have developed upon the same lines as that in the two states last named. In *Philadelphia, Wilmington and Baltimore Railroad Company v. Hoeflich*[13] a father and his two daughters were passengers on defendant railroad. No ticket was bought for the younger sister, a child of twelve years. When the conductor collected the tickets, the father was not with the daughters. The older sister said that no ticket had been purchased for the child, nor would one be. The conductor therefore put both sisters off the train. The older sister brought action against defendant railroad company. The Court held that plaintiff was not entitled to exemplary damages, which are awarded as a punishment for the evil motive or intent with which the act was done and as an example or warning to others. This reason for the rule

[9] 80 Miss. 53, 31 So. 434 (1902).
[10] Rattaree v. Chapman, 79 Ga. 574, 4 S. E. 684 (1887).
[11] Kaklegian v. Zakarian, 123 Me. 469, 123 A. 900 (1924).
[12] Custer v. Kroegar, 209 Mo. App. 450, 240 S. W. 241 (1922).
[13] 62 Md. 300 (1884).

was repeated in *Smith v. Philadelphia, Wilmington and Baltimore Railroad Company.*[14]

And it seems that this is the better justification of the rule. For while it is desirable that the individual wrongdoer should be so punished that he will not be as apt to repeat his offense and that the recipient of the wrongful acts should be compensated, yet this should not be regarded as the ultimate objective. Deterrence of the individual and vengeance do not show the complete picture; consideration of the public welfare as a whole is an essential part thereof. The treatment afforded the wrongdoer should be sufficiently severe as to deter potential wrongdoers from doing likewise. In this, the protection of the general public as a whole, lies the real value of the rule to civilized society.

As to the amount of damages to be allowed, most of the jurisdictions hold that this is within the discretion of the jury.[15] But the state of Connecticut takes the singular view that in an action for assault and battery where exemplary damages are justified in the eyes of the jury, the amount thereof must be confined to the expenses of litigation, less taxable costs.[16] This rule seems to be peculiar to Connecticut. Maryland follows the more general rule that the amount of exemplary damages is solely within the discretion of the jury which awards such sum as they think fit, keeping in mind "the malice of the defendant, the insulting character of his conduct, the rank and position in life of the several parties, and all the circumstances of the wrong."[17] This latter view is undoubtedly the sounder one. By restricting the amount of damages as it does, the Connecticut Court negatives the whole purpose of such damages. It can hardly be contended that such a stand will prove to have much of a deterrent effect on either the individual wrongdoer directly concerned or on the potential wrongdoer indirectly concerned. Nor could it be said that the victim is adequately compensated with an award limited to the expenses of litigation.

The authorities are inconsistent, also, in their consideration of the need for showing actual damage as a condition precedent to a recovery of exemplary damages. In *Flangan v. Womack,*[18] the Texas court lays down the rule that

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[14] 87 Md. 48, 38 A. 1072 (1897).
[15] 6 CORPUS JURIS SECUNDUM 904.
[16] Shupack v. Gordon, 79 Conn. 298, 64 A. 740 (1906); Malley v. Lane, 97 Conn. 133, 115 A. 674 (1921).
[17] Sloan v. Edwards, 61 Md. 89, 106 (1883).
[18] 54 Tex. 45 (1880).

exemplary damages cannot be recovered in the absence of proof of actual damages. Missouri[19] and Kansas[20] have adhered to the rule of this case. On the other hand, in *Hidden v. Baker*,[21] the Illinois court held that where the assault is willful and wanton, exemplary damages may be recovered without proof of actual damages. It is this latter rule that Maryland follows. In *Smith v. Philadelphia, Wilmington and Baltimore Railroad Company*,[22] plaintiff was a passenger on defendant railroad. He behaved in an improper manner and spoke abusively to the brakeman. When he arrived at his destination, he was dilatory in alighting and thereby delayed the train. The conductor forcibly jerked him from the platform and plaintiff sued defendant company for an assault and battery. Although the court denied plaintiff punitive damages in this intance, it recognized that it would be proper for the jury to award exemplary damages without first finding that plaintiff had suffered actual damage.

This holding is quite logical in light of the view taken by the Maryland court as to the purpose of exemplary damages. The fact that plaintiff was fortunate enough to escape actual injury in a particular case ought not to be sufficient reason for denying exemplary damages. Defendant's punishment ought to be so gauged as to deter him and others from engaging in conduct which could very easily result in plaintiff's being injured.

Thus, it is seen that the great weight of authority allows the recovery of exemplary damages in assault and battery cases upon proof of malice or wantonness on the part of the defendant; that the purpose of allowing exemplary damages is to compensate the injured party, to punish the wrongdoer, and to deter both the wrongdoers and others; that the amount of the award, as a general rule, lies entirely within the discretion of the jury; and that the rule as to the proof of actual damages varies, with Maryland holding to the view that such proof is not necessary in order to entitle plaintiff to exemplary damages.

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[19] Dickinson v. Davis, 284 S. W. 815 (Mo. App., 1926).
[20] Behmyer v. Milgram Food Stores, 151 Kan. 921, 101 P. (2d) 912 (1940).
[21] 190 Ill. App. 561, 60 N. E. 858 (1901).
[22] 87 Md. 48, 51, 38 A. 1072 (1897).