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CASE NOTES

ADMIRALTY—WIDOW ALLOWED INTEREST FROM DATE OF DEATH, UNDER DEATH ON HIGH SEAS ACT

Plaintiff's husband lost his life when defendant's airplane crashed on the high seas. The widow filed suit under the Death on the High Seas Act.¹ The trial court entered judgment for the plaintiff and allowed interest on the judgment from the date of death, which occurred four and one-half years earlier. The United States Court of Appeals of the Fifth Circuit affirmed both the judgment and the allowance of interest. *Stiles v. National Airlines, Inc.*, 268 F.2d 400 (C.A. 5th, 1959), certiorari denied 361 U.S. 885 (1959).

The rationale of the decision of the Court of Appeals was that since the purpose of the Act was to fully compensate plaintiff's pecuniary loss, compensation would not be complete if damages suffered at the time of death were paid without interest for the four and one-half intervening years.² A loss sustained would not be fully compensated by the same number of dollars paid at a substantially later date if interest were not allowed.

While no federal case arising under this statute has expressly decided whether interest may be added from the date of death, there are several cases which have considered the issue in some respect. There have been suits for personal injuries in courts of admiralty where interest from the date of injury was expressly disallowed, the rationale being that there was no debt upon which to base interest until damages were judicially determined.³ There was also a case under the Death on the High Seas Act with similar facts, in which it was expressly decided by a state court that interest from the date of death was not allowable, since the statute did not contain a provision for interest.⁴ The Second Circuit, in affirming a trial court judgment in 1949, expressly held that interest was not allowed because the statute did not provide for it, but later had to reverse this holding on the basis of another point.⁵

¹ 46 U.S.C.A. §§761-767 (Supp., 1959) (Death on the High Seas Act).

² 46 U.S.C.A. §762 (Supp., 1959). "The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons . . ."

³ *Moore-McCormack Lines, Inc. v. Amirault*, 202 F.2d 893 (C.A.1st, 1953); *The Argo*, 210 Fed. 872 (C.C.A. 9th, 1914); *Burrows v. Lowndale*, 133 Fed. 250 (C.C.A. 9th, 1904).

⁴ *Wyman v. Pan American Airways, Inc.*, 43 N.Y.S.2d 420 (1943).

⁵ *Casey v. American Export Lines, Inc.*, 173 F.2d 324 (C.A.2d, 1949), rev'd on other grounds 176 F.2d 337 (C.A. 2d, 1949), cert. den. 338 U.S. 886 (1949).

The court said in deciding the *Stiles* case that “. . . when Congress . . . created it solely as an admiralty action it intended for it to be governed by the traditional admiralty conception of interest as an element of the loss suffered by the claimant.”⁶ However, courts of admiralty have not allowed interest from the date the cause of action accrued to the date of judgment in cases of personal injury or death.⁷ They have allowed interest after the damages have been judicially determined.⁸

The *Stiles* court also said that since Congress intended fair and just compensation to be made they must have intended that interest be allowed from the date of death. However, the Act contains no mention of interest. In *Louisiana & Arkansas R. Co. v. Pratt*⁹ it was held:

[T]he silence of the federal statute upon the subject of interest may not be construed as leaving the subject unlegislated upon in the Act, but is indicative of the considered purpose that no interest should be allowed in such actions prior to verdict.¹⁰

This action was brought under the Federal Employer's Liability Act to recover for personal injuries. Like the Death on the High Seas Act there was no mention in the statute of interest. Other cases brought under the F.E.L.A. have held the same way for the same reason.¹¹

As previously noted, interest will not be allowed from the date the cause accrued in cases of personal injury or death in courts of admiralty. However, when the cause of action involved property damage, courts of admiralty have uniformly allowed interest from the date of loss unless there were peculiar facts existing, which would make it unjust to allow such interest.¹² The reason forwarded for this rule is:

The total loss of a vessel cannot be fully compensated by payment years after of no more than her value at her sinking or destruction. The owner has neither the use of the vessel nor her money equivalent during this period, and interest on her value is necessary for just compensation.¹³

⁶ *Stiles v. National Airlines, Inc.*, 258 F.2d 400, 406 (C.A. 5th, 1959).

⁷ *Geotechnical Corp. v. Pure Oil Co.*, 214 F.2d 476 (C.A.5th, 1954); *Cleveland Tankers v. Tierney*, 169 F.2d 622 (C.C.A.6th, 1948); *Cortes v. Baltimore Insular Line, Inc.*, 66 F.2d 526 (C.C.A.2d, 1933); *The Argo*, 210 Fed. 872 (C.C.A.9th, 1914); *Burrows v. Lownsdale*, 133 Fed. 250 (C.C.A.9th, 1904).

⁸ *Moore-McCormack Lines, Inc. v. Amirault*, 202 F.2d 893 (C.A.1st, 1953); *Cleveland Tankers v. Tierney*, 169 F.2d 622 (C.C.A.6th, 1948); *The Argo*, 210 Fed. 872 (C.C.A.9th, 1914); *Burrows v. Lownsdale*, 133 Fed. 250 (C.C.A.9th, 1904).

⁹ 142 F.2d 847 (C.C.A.5th, 1944).

¹⁰ *Ibid.*, at 849.

¹¹ *Murmann v. New York, N.H.&H.R. Co.*, 258 N.Y. 447, 180 N.E. 114 (1932); *Chicago M., S.P.R. Co. v. Busby*, 41 F.2d 617 (C.C.A.9th, 1930); *Norton v. Erie R. Co.*, 163 App. Div. 468, 148 N.Y.S.771 (1914).

¹² *Geotechnical Corp. v. Pure Oil Co.*, 214 F.2d 476 (C.A.5th, 1954); *The President Madison*, 91 F.2d 835 (C.C.A.9th, 1937); *The Manhattan*, 85 F.2d 427 (C.C.A.3d, 1936); *The Natchez*, 78 Fed. 183 (C.C.A.5th, 1896).

¹³ *The President Madison*, 91 F.2d 835, 845 (C.C.A.9th, 1937).

The argument most commonly used in support of allowing interest was clearly set forth in *Fell v. Union Pacific R. Co.*,¹⁴ which was a suit for property damage:

Is there any reason why a person sustaining injury and damage to his property from the negligent act of another should not receive just what he has lost as nearly as may be accomplished in a court of justice? If a person's property is destroyed or damaged, why is he not entitled to be compensated to the full extent of its value in money so that he may replace the same with other property of a like nature? If on the day of its injury or destruction he restores or replaces it with his own money, why is he not entitled to interest on that money to the date of repayment? If he had loaned the money to someone, he certainly would be entitled to interest, and, if he borrowed it from someone, he would likely have to pay interest for its use. By being awarded legal interest, therefore, he is simply placed in *statu quo*, and nothing short of this is full compensation, and that is just what the law aims to accomplish.¹⁵

It may not be complimentary to a man to compare him with a chattel, but to a widow who has lost the source of her support it is similar to a man who has lost property essential to earning his livelihood.

The argument used in denying interest is, ". . . no interest could be recoverable because defendant knew not what, if anything, he should pay. That was a rule of convenience."¹⁶

What authority there is does not appear to favor the allowance of interest, even though it seems that the equities favor the allowance of interest. However, one fact remains: The statute, under which the action was brought, makes no provision for interest, and the statute generally controls. The *Stiles* case appears to be a clearcut departure from this general principle.

¹⁴ 32 Utah 101, 88 Pac. 1003 (1907).

¹⁵ *Ibid.*, at 106, 1005.

¹⁶ *Funkhouser v. Preston Co.*, 290 U.S. 163 (1933).

CONSTITUTIONAL LAW—DISTRICT COURT MUST HAVE JURISDICTION OVER FIRST TRIAL TO CONSTITUTE JEOPARDY

The defendants were convicted and sentenced for violating Section 4705 of the 1954 Internal Revenue Code.¹ In recasting the provisions of the 1939 Internal Revenue Code, Congress inadvertently failed to provide a penalty for the violation of this section. This omission was promptly remedied by an amendment² but, prior to discovery of the error, the de-

¹ 26 U.S.C.A. §4705 (a) (Supp., 1959) provides: "It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the secretary or his delegate."

² 26 U.S.C.A. §7237 (a) (Supp., 1959).