

SEPETI v. FITEK

**IKIUO SEPETI, SPECIAL ADMINISTRATOR FOR THE
ESTATE OF PIANIS SEPETI, DECEASED, Plaintiff**

v.

RINCHI FITEK, Defendant

Civil Action No. 534

Trial Division of the High Court

Truk District

March 1, 1972

Action to recover damages under the wrongful death statute, 6 T.T.C. § 201 et seq. The Trial Division of the High Court, D. Kelly Turner, Associate Jus-

tice, held that recovery should be allowed in an amount which would compensate survivors, and such an amount should include his contributions for support.

1. Torts—Wrongful Death—Damages

A wrongful death statute, in confining the damages recoverable to compensation for pecuniary loss, merely intends that no compensation be given for the loss of things without a definite pecuniary value. (6 T.T.C. § 201 et seq.)

2. Torts—Wrongful Death—Damages

The word "pecuniary" as used in death statutes has been said not to be used in a sense of the immediate loss of money or property but to look to prospective advantages of a pecuniary nature that have been cut off by the premature death of the person from whom the benefit would have come. (6 T.T.C. § 201 et seq.)

3. Courts—Judicial Notice

Court recognized, as a matter of common knowledge, that in the course of nature a child will outlive his parents and survive older brothers and sisters.

4. Torts—Wrongful Death—Damages

The life expectancy of the next of kin, if they are the only survivors, must govern the pecuniary benefits they might reasonably expect to receive from the decedent had his life not been cut short. (6 T.T.C. § 201 et seq.)

5. Torts—Wrongful Death—Damages

The introduction of annuity and mortality tables is not a prerequisite to a recovery of substantial damages for wrongful death and the court is entitled to estimate life expectancy from observation of the witnesses, the survivors, and from such other evidence as may be available. (6 T.T.C. § 201 et seq.)

6. Truk Custom—Support

Under Trukese custom, children are expected to and do in fact contribute to support of their parents and support, in some amount, will continue, in a normal relationship, as long as the parents live.

7. Torts—Wrongful Death—Damages

Whether there is an obligation under Trukese custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss under the wrongful death statute. (6 T.T.C. § 201 et seq.)

8. Torts—Wrongful Death—Damages

In arriving at a sum to compensate the next of kin for their pecuniary loss the court should consider not only life expectancies of the next of kin and customary contributions but also the state of the decedent's health.

SEPETI v. FITEK

Assessor: OLAF W., *Associate Judge of the District Court*
Interpreter: ROKURO BERDON
Reporter: NANCY K. HATTORI
Counsel for Plaintiff: FUJITA PETER
Counsel for Defendant: WANIS SIMINA

TURNER, *Associate Justice*

This action is brought pursuant to the “wrongful death” statute, 6 T.T.C. 201, et seq. Prior to this civil action, Rinchi was found guilty of second degree murder for the killing of Pianis Sepeti and was sentenced to 25 years’ imprisonment, commencing August 22, 1969. *Trust Territory v. Rinchi*, Truk Criminal Action No. 230, not reported.

Defendant did not contest civil liability under the statute, the court having taken judicial notice of the criminal case record at the request of plaintiff’s counsel. The sole issue before the court, therefore, was the amount of compensatory damages to be awarded.

In the only other wrongful death case in the Trust Territory, also from Truk District, the court described the damages to be awarded under the statute as an amount limited to:—

“ . . . damages are limited to the pecuniary benefits which the beneficiaries might reasonably be expected to have derived from the deceased had his life not been terminated” *Ychitaro v. Lotius*, 3 T.T.R. 3, 17.

The decedent was 20 years of age at his death and was not married. The beneficiaries under the statute, in the absence of surviving spouse and children, are the next of kin. They are entitled to money damages in lieu of the pecuniary benefits they would have received from Pianis had he continued living.

There is no occasion for deducting the cost of raising the decedent as was true in *Ychitaro* where the decedent was a

child. Nor are we concerned with decedent's life expectancy and his earnings during that period, which would be true if the beneficiaries under the statute were surviving spouse and children who would reasonably be expected to receive most of the life-time earnings. *Louisville v. Wright* (Ind.), 34 N.E. 314, annotated at 7 A.L.R.2d 1383.

[1,2] The textwriters in 22 Am.Jur.2d, Death, 123, define "pecuniary loss" as:—

"... a wrongful death statute, in confining the damages recoverable to compensation for pecuniary loss, merely intends that no compensation be given for the loss of things without a definite pecuniary value. The word 'pecuniary' as used in death statutes, has been said not to be used in a sense of the immediate loss of money or property but to look to prospective advantages of a pecuniary nature that have been cut off by the premature death of the person from whom the benefit would have come."

[3] The next of kin in this case are the decedent's father, mother, three sisters and two brothers. They were older than decedent so their loss must be measured by decedent's contributions and services to them during their lifetimes. The life expectancy of decedent is not to be considered in measuring damages because since he was younger than the beneficiaries the court recognizes as a matter of common knowledge that in the course of nature, a child will outlive his parents and survive older brothers and sisters.

[4] Accordingly, the life expectancy of the next of kin must govern the pecuniary benefits they might reasonably expect to receive from the decedent had his life not been cut short and they, in turn, had lived the normal span of years for adult Trukese living on islands in the Truk lagoon.

There are, of course, no mortality tables nor life expectancy statistics for Trukese or any other Micronesian group. The absence of this information does not, however, prevent a determination based on life expectancy derived from experience and available medical information.

[5] It is said in 22 Am.Jur.2d, Death, 247, that the introduction of annuity and mortality tables is "not a prerequisite to a recovery of substantial damages for wrongful death." The court is entitled to estimate life expectancy from observation of the witnesses (here the mother testified) and from such other evidence as may be available.

The opinion of a stateside physician and of a Trukese medical officer were solicited by plaintiff. Both agreed there were no statistics available, but the doctor gave as his "guess", based on his medical experience in Truk and the United States that the life expectancy of decedent's mother was eleven years. This was based on her reported age of 56 at the time of Pianis' death.

The sisters, who were ages 40, 38 and 17 at Pianis' death, were estimated as having a life expectancy of 30, 33 and 60 years respectively, while the brothers, whose ages were 30 and 25, were estimated at 40 and 50 years. From the evidence and under Trukese custom, the most important life span to be considered was that of the mother.

Pianis gave his mother varying amounts ranging from \$5.00 to \$20.00 twice a month during a time when he was employed and earning from \$50.00 to as high as \$130 a month. He also contributed from receipts of copra sales. His mother did not keep all the money she received from him but shared it with her husband and daughters.

[6, 7] Under Trukese custom, children are expected to and do in fact contribute to support of their parents. If they are not married and are employed they give larger amounts than when they have a family of their own, but the support in some amount will continue, in a normal relationship, as long as the parents live. Whether there is an obligation under the custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss.

This rule is similar to that prevailing in the United States. In *McKay v. New England Dredging*, 43 A. 29, annotated at 7 A.L.R.2d 1382, the court said:—

“It is not essential to the right of the beneficiaries to recover damages for such death, that they should have had any legal claim against or upon the decedent. Whenever there exists a reasonable probability of pecuniary benefit to one from the continuing life of another, however arising, the untimely extinction of that life is a pecuniary injury.”

In *Moore v. Palen*, 36 N.W.3d 540, 7 A.L.R.2d 1374, the court said:—

“Probable contributions are a substantial element in computing damages to parents for loss of children.”

In the present case, we have specific contributions to the next of kin, together with an estimate of their life expectancy. These elements permit the calculation of substantial damages for the pecuniary loss.

[8] In arriving at a sum to compensate the next of kin for their financial (pecuniary) loss, the court considered not only the life expectancies and the contributions made but also noted the probability of Pianis marrying. This, however, would not eliminate parental support under the custom, nor would it relieve the wrongdoer under the wrongful death statute. The court also was required to consider the state of Pianis' health, and, as was said in *McKay v. New England Dredging*, supra, the “personal responsibilities” of the decedent and the “vicissitudes of life.”

There is another element for consideration in arriving at a fair and reasonable amount of damages in this case. In the United States, jury verdicts for wrongful death run into many thousands of dollars. They usually exceed the Trust Territory statutory maximum allowable of \$10,000.00. In contrast to these awards is the only other wrongful death decision of 1965, *Ychitaro v. Lotius*, supra,

in which the parents of a school child were awarded \$350.00.

Also it is noted that in earlier times, land rather than money, was exchanged as compensation under Trukese custom. Truk, as well as the rest of Micronesia, is now in a money economy and the traditional transfer of land as compensation is inappropriate. Nor do we believe the 1965 money award of \$350.00 is justified under today's economic conditions. Giving consideration to all elements of a fair award, including today's economic conditions, it is,

Ordered, adjudged, and decreed:—

1. That plaintiff, as the special administrator of the estate of Pianis and representative of his next of kin, shall have and recover from the defendant, Rinchi, the sum of three thousand five hundred dollars (\$3,500.00).

2. That said judgment as and when received by plaintiff shall not be disbursed by plaintiff except upon approval and order of the court.