

Connecticut's wrongful-death statute

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Damages Recoverable

The wrongful-death statute is, in essence, a survival statute. In Connecticut, Section 52-555 of the Connecticut General Statutes, provides in relevant part that an administrator may recover “from the party legally at fault for such injuries [resulting in death] just damages together with the cost of reasonably necessary medical, hospital and nursing services, and including funeral expenses. . . .” “Just damages” include:

- (1) damages for lost earning capacity less deductions for taxes and necessary expenses, and discounted to present value;
- (2) damages for conscious pain and suffering; and
- (3) compensation for the loss of the capacity to enjoy life's activities in a way the decedent would have had she lived.

Katsetos v. Nolan, 170 Conn. 637, 657 (1976).

Moreover, the Connecticut Supreme Court has stated that “damages for wrongful death are not restricted to those arising from the mere distraction of earning capacity. Some damages are recoverable for the death itself, even though instantaneous, without regard to earnings or earning capacity.” *Floyd v. Fruit Indus., Inc.*, 144 Conn. 659, 670 (1957).

There is no precise mathematical formula for assessing damages in death cases. *Floyd*, 144 Conn. at 676. Assessment of damages in a wrongful death action must necessarily represent a crude monetary forecast of how the decedent's life would have evolved. *Katsetos*, 170 Conn. at 657. “No one life is like any other, and the damages for the destruction of one furnish no fixed standard for others.” *Id.* at 658.

An award of damages in a wrongful death action is a matter peculiarly within the province of a trier of facts. *Tomczuk v. Alvarez*, 184 Conn. 182, 187 (1981). A court should not interfere with the jury's determination unless the verdict is plainly excessive or exorbitant. *Id.*; see also *Thomas v. Katz*, 171 Conn. 412, 416 (1976); *Lengel v. New Haven Gas Light Co.*, 142 Conn. 70 (1955); *Scivos v. Leonard*, 113 Conn. 522, 525 (1931); *Knight v. Cont'l Auto. Mfg. Co.*, 82 Conn. 291 (1909).

“[I]n ordering a remittitur, a fair appraisal of compensatory damages, and not the limit of legitimate generosity, is the rule. The court's broad power to order a remittitur should be exercised only when it is manifest that the jury have included items of damage which are contrary to law, not supported by proof, or contrary to the court's explicit and unchallenged instructions.” *Tomczuk*, 184 Conn. at 187-88 (citations and internal quotations omitted). “[T]he ultimate test which must be applied to the verdict by the trial court is whether the jury's award falls some where within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury were influenced by partiality, prejudice, mistake or corruption.” *Id.* at 187.

Alternative Measures of Damages Available

Though there does not appear to be many Connecticut cases which discuss the issue, Section 14-295 of the Connecticut General Statutes provides that double or treble damages may be recovered in a wrongful death action if it is specifically pleaded that another party has deliberately, or with reckless disregard, operated a motor vehicle in

violation of enumerated statutes, and if such violation was a substantial factor in causing the death. In addressing this issue for the first time, the Supreme Court of Connecticut stated that “the [wrongful death] cause of action . . . is a continuance of that which the decedent could have asserted had [the decedent] lived. . . .” *Gionfriddo v. Avis Rent A Car Syst., Inc.*, 192 Conn. 280, 291 (1984) (internal quotation marks omitted). The court went on to hold that the “administrator of [a decedent’s] estate . . . has equal rights to recovery, because his rights are measured, and damages as to him are “just,” when they comport with the rights of his decedent.” *Id.* at 292 (footnote omitted). Accordingly, because the decedent in the *Gionfriddo* case would have been entitled to treble damages had she been alive, the court reasoned that it would be only proper to allow her administrator to recover same. See *id.* at 291-92.

Conclusion/Comments

Section 52-555 of the Connecticut General Statutes provides a deceased individual’s representative with the right to maintain a cause of action for the wrongful death of the deceased against the tortfeasor which caused the decedent’s death. The representative may be able to recover damages for medical and funeral expenses, as well as for lost-earning capacity, pain and suffering, and compensation for the loss of the capacity to enjoy life’s activities. In certain circumstances, moreover, Section 14-295 of the Connecticut General Statutes provides a decedent’s representative with the right to also assert a claim for double or treble damages.

Connecticut wrongful death actions are the most dangerous tort in Connecticut. Verdicts are rarely less than \$1 million. For example, in *Est. of Hirsch* (settled prior to trial), a 66-year-old male warehouse employee bled to death after undergoing colon surgery performed by the defendant physician. The decedent’s estate asserted that the physician, who was a manic depressive being treated with lithium, unnecessarily removed the decedent’s bladder, prostate gland, and portions of his bowel. The case was settled between the parties for \$2 million. In another case, *Bresman v. Pachaug Marina & Campground Assoc., Inc.*, CV-99-0551308-S, a two-year-old child drowned in a pond while playing at the defendant’s marina. The defendant denied liability, but was ultimately found liable for \$2.8 million.

If a client is faced with such a claim, detailed attention must be paid to the deceased’s way of life before death, and his real relationship with his family. Essentially, the more the plaintiff’s attorney can portray the decedent as a great family person, the more the action is potentially worth.

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