Marquette Law Review

Volume 10
Issue 2 *February 1926*

Article 5

The Futility of Requesting Inflated Damages

C. M. Davison

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

 Part of the Law Commons

Repository Citation

C. M. Davison, *The Futility of Requesting Inflated Damages*, 10 Marq. L. Rev. 78 (1926).
Available at: http://scholarship.law.marquette.edu/mulr/vol10/iss2/5

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

THE FUTILITY OF REQUESTING INFLATED DAMAGES*

JUDGE C. M. DAVISON†

THE subject assigned me,—"Policy of Courts in Small Cases Where Damages Are Inflated,"—was suggested by the fact that it is the experience of most trial courts to have brought before them for trial many cases wherein the facts are vastly exaggerated and distorted and the damages claimed are extravagantly inflated, thereby causing much miscarriage of justice.

I think that the point desired to be illustrated can best be shown by citing just three cases which have recently been tried before me.

The first case was an automobile accident. The plaintiffs were the father, the mother, and five children, all riding in the same car. The father sued for his own injuries, $25,000, and claimed an additional $10,000 for injuries to his wife. The mother sued for the injuries to herself, $25,000, and the five children sued for $10,000 each. There was a second claim in each of the children's actions, wherein gross negligence was alleged and an additional $10,000 demanded. In this one automobile accident, the complaint demanded a total of $160,000. The injuries complained of were in each case fully and elaborately set forth with great precision and exactness, untold pain and suffering were graphically depicted, and great and permanent injuries were claimed in no uncertain terms.

The trial disclosed that a doctor was called but once; that he examined them all, found a few discolorations, left them a little salve, and that his bill amounted to $2.00. Outside of some little shock, the family received no injury, and the only actual damage was the destruction of their Ford car. The verdict went for the defendant, but I am satisfied that had the complaint asked a reasonable amount and had not exaggerated the injuries, the plaintiff would have at least recovered the value of the car.

The second case I wish to cite was one in which a breach of promise was charged. The plaintiff was a lady of forty-six years and had been married before and the defendant was some sixty-eight years of age.

---

*This is a paper read by Judge Davison before the State Board of Circuit Judges on December 29, 1925. At the unanimous suggestion of the judges present, it was thought that this paper should be brought before the lawyers, to act as a prohibitive against the practices depicted therein. The REVIEW is pleased to offer it to its readers.

†Circuit Court Judge, Thirteenth Judicial Circuit, Juneau, Wisconsin.

A reading of the complaint would have led one to believe that a young, confiding, and beautiful female had been most cruelly deceived and betrayed, that one who would not assist in righting this great wrong must indeed be possessed of the heart of a monster. Here surely a court should function with determination and dispatch. According to the allegations of the complaint, the love and passion displayed by the defendant toward the plaintiff excelled in warmth those of any character created by Balzac or Ella Wheeler Wilcox. Only Miles Standish could have excelled the deportment depicted in this perfect courtship. And this very affecting complaint came to a close by demanding as damages the modest sum of $25,000.

At the trial it developed that the plaintiff was a cook in a boarding house and was as fat and ugly as Dulcinea in the story of Don Quixote, and that the defendant was an honest farmer, as little moved by the affairs of the heart as was Sancho Panza and who had lost his wife and was looking for a housekeeper. He had made a sum total of three visits to Milwaukee but each time had attempted to drive such a hard bargain concerning wages that he failed to get her even as a housekeeper.

The plaintiff twice visited the farm of the defendant. On one occasion she was made a present of six cabbages with the condition that she would gather them from the garden herself. The only display of affection that the evidence disclosed was that, on a single occasion, at a time when the plaintiff was leaving the farm, in company with her sister of course, the defendant was seen to suddenly drop the manure fork that he was using and raise his begrimed hands to his lips and in a most amorous manner hurl a kiss in the general direction of the plaintiff. It is needless to say that the verdict was returned in the defendant's favor.

Just one more case will further serve to illustrate the point endeavored to be made. It was a case where a policeman while riding a motorcycle collided with an automobile. The complaint was practically a true copy from an old form book and alleged with much exactness the injuries sustained by the policeman. It set out at great length several severe and permanent injuries to his back and claimed that ever since the collision, he was unable to work, and that he consequently lost his position as a policeman to his damage, $10,000.

The trial disclosed that he rode into town on his own motorcycle immediately after the accident, that he attended a dance on the same night and with confidence and eclat, executed the difficult steps of the new and modern dances. The liquor which he drank with relish and abandon left him indisposed for the next few days but he continued with his duties, nevertheless. His loss of employment came two weeks after

the accident when he voluntarily resigned and accepted a position as a railway detective at an advanced salary. On this new occupation, he was on his feet all of the time, being compelled to walk through the railroad yards for eight hours a. day. Still later, this same ex-policeman took up the business of driving race horses, receiving a very attractive salary. Day after day, he was sitting on a jolting, swirling sulky behind a rearing, plunging race horse, with his severely and permanently injured back.

The camouflage of all these extravagant claims for injuries and exorbitant demands for damages was at once apparent.

When the plaintiff verifies his complaint, he at once swears to an untruth, perhaps not intentionally but because a stereotyped form of a pleading that he does not fully understand is presented to him by his attorney, who is equally careless of its contents and true meaning. Such extravagant complaints always come to a bad end and bring embarrassment both to the client and his attorney. At the trial, the defense attorney will invariably read, upon the cross-examination of the plaintiff, the allegations of the complaint, and line by line, make him admit that he swore to it and that most of it was imaginary, exaggerated and untrue. This puts the plaintiff in a most embarrassing situation and in most cases, he suffers a long period of silence and torture, conscious that he has been caught in a most unfortunate position even though he was not at fault perhaps, and finally admits that he knows little about the complaint and volunteers that it was presented by his attorney.

The eyes of the jury and the attending public are at once focused upon the attorney who generally does the only thing that he can do in stating that he accepts full responsibility for the complaint. This does not help the situation to any great extent, however, as the jury at once concludes that the lawyer is at least careless with the truth and becomes suspicious of the plaintiff's entire case. This often results in a verdict for the defendant, even though the evidence might justify a small judgment for the plaintiff.

Another bad result of these extravagant pleadings is the unreasonable expectations that are aroused in the minds of the litigants and hence serves to encourage misstatements on the witness stand, all for the purpose of keeping pace with the distempered allegations of the complaint.

Not long ago, I had occasion to try a case at Juneau wherein the father of a large family was suing a railway company as the result of a collision suffered when his automobile was struck by a train. On the day of the trial, the whole family came to town with high expectations. They had a right to entertain these same high expectations for did not the complaint demand $25,000? There was no denying the fact, there it was in the complaint, in black and white, in print, done by typewriter,

read over and solemnly signed and sworn to before and in the presence of a most able lawyer. Surely the day of rejoicing was at hand, and in the minds of these simple deluded people, it was. During the time of trial, the mother and daughters went about town visiting all the stores, and shopping especially for silk dresses and fur coats. The elder sons inspected automobiles and the younger children devoted their attention to enormous quantities of oranges, candies, and peanuts. In reply to the several queries on the part of shopkeepers in regard to what time the purchases would be made, the answer was, "Well, not today but tomorrow. Tomorrow we be rich. Papa has a lawsuit with the railroad company."

But alas! their distorted dreams never came true. The view of the approaching train was clear and unobstructed for almost a mile down the track. The father seemed to be a man of considerable intelligence—he at least appeared to comprehend some of the complaint and its legal phraseology. He made a heroic attempt to substantiate its extravagant claims but was led into the most impossible situations on cross examination.

Here was a complaint alleging untold injuries, immense damages, arousing false hopes, and going so far as to make an ordinarily honest man willing to compromise the truth. The fact of the matter was that the only damage done was the smashing of the plaintiff's automobile. There was some evidence that the bell did not ring, that the whistle did not blow, and that the train was traveling at an unlawful rate of speed. Had the cause been modestly pleaded, the plaintiff might have recovered the value of his automobile. As it was, the jury became disgusted with the wild and extravagant claims of the complaint and brought in a verdict for the defendant.

These exaggerated pleadings always place the plaintiff's attorney in a most unsavory light. Counsel for the defense never fails to denounce such a complaint with vehemence and bitterness. He analyzes it line by line before the jury, it is a choice morsel for an hour's dissection. Nothing so arouses the passion and prejudice of a jury as a bitter and withering denunciation of an exaggerated complaint and nothing leaves the attorney for the plaintiff so vulnerable for attack.

In the breach of promise suit cited, the defendant's attorney devoted almost his entire argument to a most bitter criticism of the complaint. To hear him, one would think that Cicero had broken loose and that Cataline was present in the flesh. This had a most telling affect on the jury. In such a situation, what could the attorney for the plaintiff do? There stood the wild and exaggerated allegations, many of which were not even touched upon by the evidence. The closing argument of plaintiff's counsel was a lame and halting apology for the complaint.

What a mean and low estimate of the character and ability of this lawyer must the jury and attending public have formed! He was a lawyer, fairly able, and I know perfectly honest and sincere. But he was forced into a most humiliating position by his own carelessness in drawing such a complaint.

Further, where the complaint grossly misstates the injuries and inflates the damages, it misleads the trial court and causes delay, inconvenience and unnecessary expense. The court, or the clerk, must make up his day calendar several days in advance. In order that there might be no delay and that the parties will be ready, he is compelled to go over the pleadings filed in each case and to determine the time it may take to try. He finds a complaint wherein it is alleged that the injuries sustained are severe and permanent and closing with a prayer for large damages. Now supposing that the complaint has been drawn and has the indorsement of an able lawyer or firm of attorneys, he has the right to conclude that the action is of consequence and will take some considerable time to try. Much to his surprise, the allegations of the complaint peter out at the trial and instead of taking two days to try, the case is disposed of in a half of one day. The result,—the court sits with nothing to do with a jury on its hands and all the attendant expenses. Much valuable time is lost and the court finds itself in a position for criticism from the press, by the taxpayers, and particularly by the county boards. The jury itself does not relish the idea of idling away valuable time in the midst of a jury term. What is more exasperating, is the fact that the court is compelled to tell the jury that their presence will not be required for the rest of the day nor on the next day, but to come back a couple of days hence. They begin to doubt the efficiency of the court in dispatching business and wonder at the delay. It is impossible to explain that the court has been misled by an extravagant complaint. As a result, the court is put in a false light and is held accountable for the delays for which he is not at all responsible but used the utmost diligence and care to avoid.

I do not believe that these extravagant pleadings are in anywise tainted with dishonesty or actuated by any ulterior motives. They seem to be the product of carelessness on the part of the pleader, and appear to come into being through a desire to crowd the facts of all cases into a particular form from some old form book or to follow some ancient and stereotyped form that most attorneys have in their offices and which they regard as a masterpiece in their particular kind of a case. Nor do I believe that it is necessary for the courts to adopt a radical or drastic policy in dealing with this kind of complaints.

During a term of say fifty jury cases, one may expect to encounter ten or twelve of these extravagant complaints. Much as they cause

annoyance, I do believe that the greater good may be accomplished by approaching the subject in a diplomatic manner. During the term, opportunity will present itself for the court to direct attention to the evils of such a complaint. If the court will take the time and pains to impress upon the attorneys that such pleading is careless practice in the highest degree, often compromising the truthfulness of the client, placing himself in a most humiliating position and disadvantage, raising false hopes and expectations, misleading clients, arousing the passions and prejudice of juries, giving to the public a mean and distorted viewpoint of courts and its officers, the bringing in of wrong verdicts, the general miscarriage of justice, the commanding position it affords the opposing attorney, to the position of apology he must assume in defense of such a complaint, the delay it causes, the attendant expense, and finally the false position in which it forces the court and subjects it to criticism for enforced idleness, the evils will become so apparent at once that the practice will cease. Attorneys will be careful in drawing their complaints to stick to the facts that can be proven on the trial and will not exaggerate the injuries or inflate the damages in small cases.