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PUNITIVE DAMAGES—NO RECOVERY WHEN COMPENSATORY DAMAGES ARE COMPROMISED

The minor plaintiff was operating a motorcycle on a hilly road at night when the defendant's truck, which had only one operating headlight, allegedly crossed over into the plaintiff's lane of traffic at the excessive speed of ninety miles per hour and collided with the plaintiff. The operator of the truck was driving under the influence of alcohol. The minor plaintiff was seriously injured, necessitating the amputation of his left arm and left leg. The minor and his father filed a complaint against the driver and his employer seeking both compensatory and punitive damages. Thereafter, the parties agreed to a compromise and settlement of the claim for compensatory damages in the amount of $147,250. As a result, the parties filed a stipulation which recited that the defendants expressly denied liability. In reference to the claim for punitive damages the stipulation stated that:

The parties hereto and counsel recognize that there is pending an additional claim by the plaintiff . . . against defendants . . . for punitive damages arising out of the said accident and it is the intent of all parties and counsel to exclude the claims for punitive damages from the settlement.

Provided, that this stipulation shall in no way be construed to mean, that the defendants, or either of them, admit that punitive damages exist and the defendants expressly deny liability therefor.

The counts in the complaint relating to compensatory damages were thereafter dismissed. The plaintiffs were given leave to amend their remaining count for punitive damages, adding reference to the settlement of compensatory damages and pointing out that the remaining issue for determination was the defendants' responsibility for punitive damages, if any. The amendment further directed that the jury should be instructed not to return a verdict for compensatory damages even though the same would be shown by the evidence. The defendants then moved to dismiss the amended complaint which motion was granted. On appeal to the District Court of Appeal, First District, held, affirmed: The elimination of compensatory damages from a suit by compromise and settlement terminates any right to proceed further for punitive damages. Stephenson v. Collins, 210 So.2d 733 (Fla. 1st Dist. 1968).

Exemplary damages have always been recoverable at common law. One element for the action was proof of actual damage. The practice of allowing such damages had its origin in cases involving elements incapable of measurement and therefore within the discretion of the jury.1 Another theory is that the doctrine had its origin in the failure

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of courts to recognize items of recovery for which compensation should have been given.\footnote{2}

A large majority of jurisdictions recognize that a claim for punitive damages alone does not constitute a cause of action, and that there must be a showing of actual injury as a prerequisite to the recovery of exemplary damages.\footnote{3} Indeed, a number of courts have held that there must be a finding or an\textit{award} of actual damages sufficient to support a judgment before assessing punitive damages.\footnote{4} However, it should be pointed out that in many of the latter decisions there was a failure of pleading or proof or an affirmative finding of actual damages. Consequently, the same result could have been attained under the fundamental rule in which a\textit{showing} of actual damages is a prerequisite to an award of punitive damages.

Another group of courts has applied the more liberal rule that where the claim for actual damages is sufficiently pleaded and proved, the fact that the jury failed to award actual damages through inadvertence or mistake will not require that the award of exemplary damages be set aside.\footnote{5} Moreover, a strong minority of states find that nominal damages are a sufficient basis for an award of punitive damages.\footnote{6}

In addition, it is generally agreed that in an action for defamation\textit{per se}, an award of punitive damages need not be supported by an award of compensatory damages.\footnote{7}

In a majority of jurisdictions, the rule is that a showing of actual damages is sufficient. Many courts followed the lead taken by\textit{Wardman-Justice Motors, Inc. v. Petrie}.\footnote{8} The plaintiff, whose automobile had been repossessed by the defendant, had first brought an action in replevin and recovered the property and 1¢. She then brought an action for malicious and illegal taking. In resolving the problem caused by the prior action, the court reasoned that if exemplary damages, which could not be recovered in the replevin case, could not be recovered in the

\begin{itemize}
\item \textbf{2.} Stuart v. Western Union Tel. Co., 66 Tex. 580, 59 Am. R. 623, 18 S.W. 351 (1885).
\item \textbf{7.} Johnson Publishing Co. v. Davis, 124 So.2d 441 (Ala. 1960);\textit{see} Loftsgaarden v. Relling, 267 Minn. 181, 126 N.W.2d 154 (1964).
\item \textbf{8.} 59 App. D.C. 262, 39 F.2d 512 (D.C. Cir. 1930).
\end{itemize}
present action because actual damage had not been found, it would result in depriving the plaintiff of her remedy. The court then held that the proof of actual loss was sufficient to sustain a judgment for punitive damages.

Montana first applied the rule in *Fauver v. Wilkoske* and more recently in *Brown v. Grenz* in which the courts held that where actual damages appear from the evidence, an award of punitive damages will stand, even though the verdict does not show a finding of actual damages.

Lower courts in New York and California have also applied the liberal rule. Moreover, there is dictum in the decision of the United States Supreme Court in *Linn v. United Plant Guard Workers* which indicated that the Court would find a showing of actual damages sufficient in a defamation action.

Florida courts evidenced an early liberal trend beyond the majority view. In *Scalise v. National Utilities Service, Inc.*, the United States Court of Appeals, Fifth Circuit, explained:

In Florida, as in the federal courts, the giving of punitive damages is not dependent on, nor must it bear any relation to, the allowance of actual damages. It is sufficient that there has been a deliberately wrongful act for which the plaintiff has a right of action and that the circumstances are such as to authorize the exaction of smart money.

The court also declared that the reckless disregard of another’s rights was an actionable wrong for which a suit for punitive damages could be maintained.

Two years later, the Supreme Court of Florida in *McLain v. Pensacola Coach Corp.* observed with apparent approval:

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9. 123 Mont. 228, 211 P.2d 420 (1949), which held that where actual damages are shown, the insufficiency of evidence to show its money extent does not preclude the recovery of exemplary damages, especially because of the jury’s failure, due to inadequate instructions, to assess the amount of actual damages.

10. 127 Mont. 49, 257 P.2d 246 (1953) (action for assault upon tenant and for unlawful eviction from the leased premises).


12. Topanga Corp. v. Gentile, 249 Cal. App. 2d 681, 58 Cal. Rptr. 713 (2d Dist. 1967), which decided that the plaintiff was not precluded from recovering exemplary damages on the ground that it was not given a grant of monetary damages of certain amount. There is simply a requirement that a tortious act be proven if punitive damages are to be assessed, based on the principle that the defendant must have committed a tortious act before exemplary damages can be assessed.


14. 120 F.2d 938 (5th Cir. 1941).

15. Id. at 941.

16. 152 Fla. 876, 878, 13 So.2d 221, 222 (1943). In a suit to recover damages for assault and battery, the trial judge withdrew the claim for exemplary damages from the jury. The jury found for the defendant holding that the plaintiff had not made out a case for compensatory damages. On appeal the court held that the jury verdict was justified. In passing on the defendant’s claim concerning exemplary damages, the court observed the rule that exemplary damages will not be allowed if the allegations as to actual damages are too uncertain and inadequate to admit of proof.
In 4 Am. Jur. 219, it is said: 'The general rule that exemplary or punitive damages are not recoverable in an action of tort unless actual damages are shown finds application . . . . [T]he weight of authority seems to uphold the general rule that exemplary or punitive damages are not recoverable in an action unless actual damages are shown . . . .'

A later Florida appellate court case, LeJuene Road Hospital, Inc. v. Watson, left the distinction between the use of "shown" and "awarded" in doubt. A mother was awarded punitive damages at trial as a result of her son being refused the hospital's services in an emergency. Her son was awarded compensatory damages. On appeal, the District Court of Appeal, Third District affirmed the award of compensatory damages to the son. However, the court decided that the mother could not recover punitive damages in the absence of an "award" of compensatory damages to her.

The same court recently regressed from the absolute requirement of an "award" in Miami National Bank v. Sobel. In that case the complaint was filed by a guarantor against a lender for the return of borrowed stock, damages for loss of the use of the stock, damages equal to the value of real estate which had been foreclosed, and punitive damages. The court decided that since the complaint furnished no ground or basis for recovery of compensatory damages, punitive damages would not be recoverable, making no mention of the word "award."

In the instant case, the court used McLain v. Pensacola Coach Corp. as its authority and equated the use of the word "shown" to an "award" or "verdict." The court explained that cases where a separate proceeding for punitive damages was allowed were justified because a previous award of compensatory damages had been made at the trial level. The court attempted to explain its decision by stating:

None of the Florida cases to which counsel has called our attention permit a "showing" of compensatory damages which have been the subject of compromise and settlement to serve as the basis for later trial of a claim for punitive damages alone. It is our understanding that punitive damages are not independent of compensatory damages and without a judicial award or judgment as to the latter, the former may not be found.

The court rejected the plaintiffs' argument that a cause of action

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17. 171 So.2d 202 (Fla. 3d Dist. 1965).
18. 198 So.2d 841 (Fla. 3d Dist. 1967).
19. McLain v. Pensacola Coach Corp., 152 Fla. 876, 13 So.2d 221 (1943); see note 16 supra.
20. Doral Country Club, Inc. v. Lindgren Plumbing Co., 175 So.2d 570 (Fla. 3d Dist. 1965) (case remanded after compensatory damages awarded to plaintiff to have jury decide the question of punitive damages); Sideris v. Warrington Motor Co., 181 So.2d 650 (Fla. 1st Dist. 1966) (the issue of punitive damages against one defendant was left for future trial at the plaintiff's option).
was not split by finding that compensatory and punitive damages are interdependent and inseparable. The right to recover for punitive damages no longer existed after compromise and settlement.\textsuperscript{22} The court likewise refused to accept the plaintiffs' estoppel argument by noting that a plea was made in their brief for a more modern rule. The court interpreted this as an admission that the plaintiffs knew the rule in Florida was otherwise.

The dissenting judge desired to follow more literally the rule approved in \textit{McLain v. Pensacola Coach Corp.}\textsuperscript{23} that a "showing" of actual damages is sufficient to sustain an award of punitive damages:

More correctly stated the rule is, the complainant must establish his cause of action as a prerequisite to such award. In negligence cases proof of a personal injury or loss of property (compensatory damages) is an element of the cause of action, and all elements of the cause of action must be proved to sustain an award of exemplary or punitive damages. 22 Am. Jur. 2d, Damages § 241.\textsuperscript{24}

The judge stated that the general rule in Florida requires that actual damages be "shown" or "proved," not specifically requiring an actual award by the jury of compensatory damages as a prerequisite to an award for punitive damages.

The writer agrees with the dissent and disagrees with the result obtained by the majority and the manner in which the principles were applied. By the use of semantics, the court took a step backward by discouraging settlement and encouraging costly litigation of issues upon which the parties may not be in disagreement. The outcome of this decision does not serve the public interest, justice or the reputation of the legal profession. "A rule . . . should not be declared rigid, inflexible and inexorable when such declaration would in many, many instances, for the sake only of convenience to a putative wrongdoer, defeat the ends of justice."\textsuperscript{25}

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\textsuperscript{22} Rosenthal v. Scott, 150 So.2d 433 (Fla. 1963) (automobilist's subrogated insurer's property damage suit, settled in court, and automobilist's instant personal injury suit against same defendant did not result in prohibited splitting of causes); Gaynon v. Statum, 151 Fla. 793, 10 So.2d 432 (1942) (a husband could bring two actions arising out of an automobile accident causing injuries to himself and his wife, one for his wife's injuries and one for his own direct damages).

\textsuperscript{23} See note 16 supra.

\textsuperscript{24} Stephenson v. Collins, 210 So.2d 733, 737 (Fla. 1st Dist. 1968).

\textsuperscript{25} Rosenthal v. Scott, 150 So.2d 433, 439 (Fla. 1963).