CHAPTER 51

Death by Wrongful Act and Lynching

ARTICLE 1

Death by Wrongful Act

**SECTION 15‑51‑10.** Civil action for wrongful act causing death.

 Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, although the death shall have been caused under such circumstances as make the killing in law a felony. In the event of the death of the wrongdoer, such cause of action shall survive against his personal representative.

HISTORY: 1962 Code Section 10‑1951; 1952 Code Section 10‑1951; 1942 Code Section 411; 1932 Code Section 411; Civ. P. ‘22 Section 367; Civ. C. ‘12 Section 3955; Civ. C. ‘02 Section 2851; G. S. 2183; R. S. 2315; 1859 (12) 706; 1949 (46) 270.

CROSS REFERENCES

Damages including funeral expenses, see Section 15‑5‑100.

Modification of the common‑law principles of contributory negligence in cases involving accidents at railroad crossings, see Section 58‑17‑1440.

Time for commencement of an action for wrongful death, see Section 15‑3‑530.

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S.C. Jur. Children and Families Section 12, Evidence and Standard of Proof.

S.C. Jur. Damages Section 24, Wrongful Death.

S.C. Jur. Damages Section 26, Injury to Child or Spouse.

S.C. Jur. Damages Section 24.1, Survival Actions.

S.C. Jur. Medical and Health Professionals Section 48, Damages in Wrongful Death Actions.

S.C. Jur. Wrongful Death Section 2, New Cause of Action.

S.C. Jur. Wrongful Death Section 3, Accrual of Cause of Action.

S.C. Jur. Wrongful Death Section 4, Basis for Existence of Cause of Action.

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1. In general

Applied in Bogan v Southern Ry. Co., 179 SC 394, 184 SE 143 (1936). Cobb v Southern Public Utilities Co., 181 SC 310, 187 SE 363 (1936). Spurlin v Colprovia Products Co., 185 SC 449, 194 SE 332 (1937). Huggins v Broom, 189 SC 15, 199 SE 903 (1938). Hayes v Atlantic Coast Line R. Co., 196 SC 386, 13 SE2d 921 (1941). Miller v Boyle Const. Co., 198 SC 166, 17 SE2d 312 (1941). Fuller v Southern Electric Service Co., 200 SC 246, 20 SE2d 707 (1942). Daniel v Tower Trucking Co., 203 SC 119, 26 SE2d 406 (1943). Gleaton v Southern Ry. Co., 208 SC 507, 38 SE2d 710 (1946). Simon v Strock, 209 SC 134, 39 SE2d 209 (1946). Nettles v Southern Ry. Co. 211 SC 187, 44 SE2d 321 (1947). McCullem v Liberty Life Ins. Co., 217 SC 565, 61 SE2d 181 (1950). Conyers v Atlantic Coast Line R. Co., 218 SC 278, 62 SE2d 478 (1950). Jones v Atlantic‑Charlotte Air Line R. Co., 218 SC 537, 63 SE2d 476 (1951). DuRant v George A. Rheman Co., Inc., 219 SC 250, 64 SE2d 531 (1951). Dawson v South Carolina Power Co., 220 SC 26, 66 SE2d 322 (1951). Webb v Southern Ry. Co., 221 SC 450, 71 SE2d 12 (1952). Williamson v Charleston, etc., R. Co., 222 SC 455, 73 SE2d 537 (1952). Mason v Helms, 97 F Supp 312 (1951). Folk v United States 102 F Supp 736 (1952). Floe v Plowden, 192 F2d 291 (1951). Atlantic Coast Line R. Co. v Glenn, 198 F2d 232 (1952). United States v Folk, 199 F2d 889 (1952). Greene v Miller, 114 F Supp 150 (1953). Bailes v Southern Ry. Co., 231 SC 474, 99 SE2d 195 (1957). Roscoe v Grubb, 237 SC 590, 118 SE2d 337 (1961). Crocker v Weathers, 240 SC 412, 126 SE2d 335 (1962). Shearer v DeShon, 240 SC 472, 126 SE2d 514 (1962). Skipper v Hartley, 242 SC 221, 130 SE2d 486 (1963). Warren v Watkins Motor Lines, 242 SC 331, 130 SE2d 896 (1963). McDaniel v McDaniel, 243 SC 286, 133 SE2d 809 (1963). Copeland v Petroleum Transit Co., 233 F Supp 286 (ED SC 1964). Downing v Ulmer, 253 F Supp 694 (D SC 1966). Glenn v E.I. DuPont de Nemours & Co., 250 SC 323, 157 SE2d 630 (1967). Lester v McFaddon, 288 F Supp 735 (D SC 1968). Smith v Winningham, 252 SC 462, 166 SE2d 825 (1969). Griffin v Planters Chem. Corp., 302 F Supp 937 (D SC 1969). Middleton v Pearman, 305 F Supp 1203 (D SC 1969). Powell v Simons, 258 SC 242, 188 SE2d 386 (1972). Smith v Wells, 258 SC 316, 188 SE2d 470 (1972). Ard v Seaboard Coast Line R.R., 487 F2d 456 (4th Cir 1973).

Cited in Elkin v Southern Ry. Co., 156 SC 390, 153 SE 337 (1930). Bennett v Spartanburg Ry., Gas & Electric Co., 97 SC 27, 81 SE 189 (1914). Rookard v Atlanta & C. Air Line Ry. Co., 89 SC 371, 71 SE 992 (1911). Hull v Seaboard Air Line Ry., 76 SC 278, 57 SE 28 (1907). Morris v Spartanburg Ry., Gas & Electric Co., 70 SC 279, 49 SE 854 (1904). Stuckey v Atlantic Coast Line R. Co., 57 SC 395, 35 SE 550 (1900). Nohrden v Northeastern R. Co., 54 SC 492, 32 SE 524 (1899). Garrick v Florida Cent. & P. R. Co., 53 SC 448, 31 SE 334 (1898). Stabler v Southern Ry. Co., 160 SC 191, 158 SE 267 (1931). Driggers v Southern Ry. Co., 169 SC 157, 168 SE 185 (1933). Busby v Ritter Lumber Co., 172 SC 372, 174 SE 4 (1934). Jackson v Columbia, 174 SC 208, 177 SE 158 (1934). Sarratt v Holston Quarry Co., 174 SC 262, 177 SE 135 (1934). Daniel v Tower Trucking Co., 205 SC 333, 32 SE2d 5 (1944). Gregory v Powell, 206 SC 261, 33 SE2d 629 (1945). Brissie v Southern Ry. Co., 209 SC 503, 41 SE2d 97 (1947). Hennegan v Atlantic Coast Line R. Co., 211 SC 357, 45 SE2d 331 (1947). Gleaton v Southern Ry. Co., 212 SC 186, SE2d 879 (1948). Smith v Atlantic Coast Line Ro. Co., 212 SC 332, 47 SE2d 725 (1948). American Cas. Co. v Howard, 173 F2d 924 (1949). Atlantic Greyhound Corp. v Eddins, 177 F2d 954 (1949). DeLoach v Griss, 222 SC 326, 72 SE2d 647 (1952). American Casualty Co. v Howard, 187 F2d 322 (1951). Culbertson v Johnson Motor Lines, Inc., 226 SC 13, 83 SE2d 338 (1954). Williams v Ray, 232 SC 373, 102 SE2d 368 (1958). Brooks v United States, 273 F Supp 619 (DSC 1967). Williams v Atlantic Coast Line R.R., 274 F Supp 216 (D SC 1967). Britt v Seaboard Coast Line R.R., 281 F Supp 481 (D SC 1968). Bishop v Hendricks, 495 F2d 289 (4th Cir 1974).

The measure of actual damage for wrongful death is governed by the South Carolina death statute. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Recovery under the Wrongful Death Act is an exclusive remedy. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

If a probate court had acted, defendants could not question the validity of the proceedings except as to a jurisdictional defect appearing on the face thereof. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

Wrongful death acts, being of a statutory creation, should be strictly construed because they are in derogation of the common law. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

Each case must be decided upon its own circumstances. In actions brought under this section [former Code 1962 Section 10‑1951], each individual case must be decided upon its own particular circumstances. Gregg v. Coleman, 1964, 235 F.Supp. 237.

Where a wrongful death action is brought for the benefit of the widow and minor children of the deceased, in the absence of evidence to the contrary, actual pecuniary loss will be presumed as a result of the death. Ellison v. Simmons (S.C. 1961) 238 S.C. 364, 120 S.E.2d 209. Death 58(2)

Quoted in Smith v. Canal Ins. Co. (S.C. 1955) 228 S.C. 45, 88 S.E.2d 780.

The clause, “the person [or corporation] who would have been liable, if death had not ensued, shall be liable to an action for damages,” evidently would not cover an action in rem against a motor vehicle. Hunter v. Boyd (S.C. 1943) 203 S.C. 518, 28 S.E.2d 412.

Section provides only that the liability shall survive and confers the right of action on no one. Grainger v. Greenville, S. & A. R. Co. (S.C. 1915) 101 S.C. 399, 85 S.E. 968.

2. New right of action contrary to common law

The right to sue for wrongful death, given by this section [former Code 1962 Section 10‑1951], is a new cause of action, independent of any cause of action for the tort committed by the defendant which the deceased may have had during his life, or would have had, if he had survived the injury. Wellman v Bethea, 243 F 222 (1917). Osteen v Southern Ry. Carolina Division, 76 SC 368, 57 SE 196 (1907). In re Mayo’s Estate, 60 SC 401, 38 SE 634 (1901). Maxey v Sauls, 242 SC 247, 130 SE2d 570 (1963).

This section [former Code 1962 Section 10‑1951] creates a new cause of action in the administrator. Complete Auto Transit, Inc. v Bass, 229 SC 607, 93 SE2d 912 (1956). Fowler v Fowler, 242 SC 252, 130 SE2d 568 (1963).

This section [former Code 1962 Section 10‑1951] is contrary to the common law in that it allows an action to be brought by the deceased’s administrator for injuries done to the person, even after the death of such person. Pinson v Southern Ry. Carolina Division, 85 SC 355, 67 SE 464 (1910). Kitchen v Southern Ry. Co., 68 SC 554, 48 SE 4 (1904). Lilly v Charlotte, Columbia & Augusta R. Co., 32 SC 142, 10 SE 932 (1890).

An action for wrongful death was not permissible under the common law, and is purely a creature of statute. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

A right of action for wrongful death did not exist at the common law, and is a right given solely by statute. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 11

At common law there was no right of action for an injury causing death, therefore, this section [former Code 1962 Section 10‑1951] and former Code 1962 Section 10‑1952 [see now Section 15‑51‑20] grant a new right of action where none existed before. Sisk v. Pressley, 1948, 81 F.Supp. 16.

This right of action for wrongful death is purely statutory and does not exist at common law and may be brought only by the executor or administrator of such deceased person. Glenn v. E. I. DuPont De Nemours & Co. (S.C. 1970) 254 S.C. 128, 174 S.E.2d 155. Death 7; Death 31(3.1)

3. Construction with federal and other state statutes

Where the action is for the death of one volunteering to fire a locomotive who was killed in head‑on collision, causes of action under Federal Employers’ Liability Act and under this section are not inconsistent so as to require the plaintiff to elect, where question whether deceased was firing engine as defendant’s employee has to be determined by facts developed in trial. Jenkins v Southern Ry. Carolina Division, 152 SC 386, 150 SE 128 (1929). Brisenden v Chamberlain, 53 F 307 (1892).

An executor or administrator may not under former Code 1962 Sections 10‑701 and 10‑702 [see now SC RCP, Rule 18] join an action for tort against the deceased with an action for wrongful death under this section [former Code 1962 Section 10‑1951], since in the first action the damages are recovered by the administrator as part of the assets of his intestate’s estate, while in the second the administrator is merely suing as trustee for the benefit of the surviving spouse and children, in the first case recovering the damages sustained by deceased, and in the latter, those sustained by the survivors. Grainger v Greenville, S. & A. Ry. Co., 101 SC 399, 85 SE 968 (1915). Bennett v Spartanburg Ry., Gas & Electric Co., 97 SC 27, 81 SE 189 (1914).

An action under this section [former Code 1962 Section 10‑1951], giving a recovery for wrongful death for the benefit of numerated persons, does not bar a tort action by the administrator, for the benefit of the estate, for damages for decedent’s suffering. Grainger v Greenville, S. & A. Ry. Co., 101 SC 399, 85 SE 968 (1915). Bennett v Spartanburg Ry., Gas & Electric Co., 97 SC 27, 81 SE 189 (1914).

Wrongful death and survival action under South Carolina law could not be premised on mortgage servicer’s violations of Fair Debt Collection Practices Act (FDCPA) by proceeding with threats of foreclosure and sending mortgagors letters informing them that they were still in default, even though foreclosure case had been settled. Land v. Green Tree Servicing, LLC, 2015, 140 F.Supp.3d 539. Death 14(1)

South Carolina Wrongful Death Act (Sections 15‑51‑10 et seq.) governs measure of damages under Federal Tort Claims Act for wrongful death of South Carolina decedent due to negligence of agent of United States. Springer v. U.S., 1986, 641 F.Supp. 913, affirmed 819 F.2d 1139.

Since there is no federal wrongful death statute, Code 1962 Sections 10‑1951 et seq. [Code 1976 Sections 15‑51‑10 et seq.] would be applied to claims made under the Federal Tort Claims Act, 28 USCA Section 2671. Pringle v. U. S. (D.C.S.C. 1976) 419 F.Supp. 289.

Code 1962 Section 10‑1952 supplements, complements and is indelibly tied to this section [Code 1962 Section 10‑1951]. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

Civil actions under this section [Code 1962 Section 10‑1951] and Code 1962 Section 10‑209 cannot be joined in one cause of action. Deaton v. Gay Trucking Co. (D.C.S.C. 1967) 275 F.Supp. 750.

And they may not be tried together except by consent of the parties. Deaton v. Gay Trucking Co. (D.C.S.C. 1967) 275 F.Supp. 750.

Prior determination may not binding on subsequent case. For many years separate actions for wrongful death and under the survival statute have been brought, and while the factual issues were the same, yet the prior determination has not been held to be binding on the subsequent case. Deaton v. Gay Trucking Co. (D.C.S.C. 1967) 275 F.Supp. 750.

For an opinion concerning effect of citizenship of administrator upon removal to Federal court, see Sisk v. Pressley, 1948, 81 F.Supp. 16.

The kinds of injuries recoverable under the Wrongful Death Act, Section 15‑51‑10, including pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship, are not included within the term “bodily injuries,” and are therefore not recoverable under the mandatory school bus insurance provided for in Section 59‑67‑710(1)(b). Toney v. South Carolina Dept. of Educ. (S.C. 1985) 284 S.C. 401, 327 S.E.2d 322.

Nor action for wrongful death of guest passenger. In action to recover damages for the wrongful death of a guest passenger in an automobile, the right to recover is governed by Code 1962 Section 46‑801. Fuller v. Bailey (S.C. 1961) 237 S.C. 573, 118 S.E.2d 340.

Complaint may support action under this section though it is deficient under Federal act. Where an action is brought to recover for death under the Federal Employers’ Liability Act, and it is found that deceased was not an employee, the complaint may be sufficient to uphold a recovery under this section [Code 1962 Section 10‑1951]. Jenkins v. Southern Ry.‑Carolina Division (S.C. 1929) 152 S.C. 386, 150 S.E. 128, 66 A.L.R. 416.

An action brought under this section [Code 1962 Section 10‑1951] is not a debt so as to come within the provisions of Code 1962 Section 19‑554, providing that no action for debt may be brought against an executor or administrator for 12 months after the testator’s death. Newman v. Lemmon (S.C. 1929) 149 S.C. 417, 147 S.E. 439.

Two causes of action exist upon death. When this section [Code 1962 Section 10‑1951] is construed with Code 1962 Section 10‑209, providing for survival of actions, it will be seen that two causes of action exist upon the death of an injured person, (1) a cause of action allowed by the common law for injuries suffered by the deceased person and kept alive by the survival statute for the benefit of his estate and (2) a cause of action for the death, created by this section [Code 1962 Section 10‑1951]. Claussen v. Brothers (S.C. 1928) 148 S.C. 1, 145 S.E. 539, 61 A.L.R. 826.

But if action lies under Federal act there may be no recovery under this section [Code 1962 Section 10‑1951]. ‑ This section [Code 1962 Section 10‑1951] has no application where deceased was employed by a railroad engaged in interstate commerce, and was himself so engaged at the time of his death, as the Federal Employers’ Liability Act, limiting the right of action to dependent relatives, is paramount and exclusive as to employees engaged in interstate commerce. Jones v. Charleston & W.C. Ry. Co. (S.C. 1914) 98 S.C. 197, 82 S.E. 415.

Section does not allow action under Code 1962 Section 33‑921. This section [Code 1962 Section 10‑1951] does not apply to a case under Code 1962 Section 33‑921, which gives to a person injured by a defect in a highway or bridge a right of action against the county wherein such highway or bridge is situated; in such case the right of action dies with the person, decided prior to the enactment of Code 1962 Section 33‑922, giving a right of action for death caused by defective highways, etc., against counties and cities. All v. Barnwell County (S.C. 1888) 29 S.C. 161, 7 S.E. 58.

4. Conflict of law questions

This article, in the absence of State decisions to the contrary, should be interpreted as providing for the application of the principles of maritime law in case of death upon the territorial waters of the State. Anthony v. International Paper Co. (C.A.4 (S.C.) 1961) 289 F.2d 574.

In actions for wrongful death the lex loci governs as to all matters that may be considered to be substantive and which create and affect the right to sue; but as to any matters that may be considered to be merely procedural the lex fori will govern. Anderson v. Lane, 1951, 97 F.Supp. 265. Death 8; Federal Courts 3005

In a case involving the necessary allegations for wrongful death under this section [former Code 1962 Section 10‑1951], it is not necessary to allege the local law applicable since the court takes judicial notice thereof. But when the law of another state is relied upon, then such law must be alleged and proven and, therefore, such law is an essential part of the cause of action. Sellers v. Lewis & Holmes Motor Freight Corp. (S.C. 1949) 215 S.C. 256, 54 S.E.2d 806. Death 57; Pleading 32.5(1)

5. Persons entitled to enforce cause of action—In general

Widow, individually, cannot recover the loss of services due to the death of her husband in an action under former Code 1962 Section 10‑2593 [see now Section 15‑75‑20]. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

The right of action for wrongful death is enforceable only by the administrator or executor of the estate of the deceased. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

Only the legally appointed administrator (or executor) can bring action under the wrongful death statute. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025. Death 31(3.1)

The administrator, properly appointed, will enforce any action which will discharge or carry out his trust responsibility. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

If the administrator fails, or tries to defeat the trust, the beneficiary can enforce his own cause of action acting as temporary representative of the trust. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

Husband of patient who died from clinical sepsis after being discharged from hospital failed to establish the existence of a doctor‑patient relationship between patient and urologist, as required to recover from urologist on husband’s wrongful death and survival action for medical malpractice, where urologist only spoke to emergency room physician about patient’s symptoms, never communicated with patient, never attempted to treat patient, and never looked at patient’s medical records. Fay v. Grand Strand Regional Medical Center, LLC (S.C.App. 2015) 412 S.C. 185, 771 S.E.2d 639. Health 667; Health 669

Action not maintainable against parent or his representative for negligence resulting in death of his unemancipated minor child, since had child survived he could not have maintained an action to recover for his injuries, regardless of presence of liability insurance. Maxey v. Sauls (S.C. 1963) 242 S.C. 247, 130 S.E.2d 570.

Administrator of deceased mother may maintain action against her husband for her wrongful death for benefit of their minor unemancipated children. Fowler v. Fowler (S.C. 1963) 242 S.C. 252, 130 S.E.2d 568. Marriage And Cohabitation 1084

Where settlement was made by persons not entitled to prosecute a claim under this section [former Code 1962 Section 10‑1951] for injury to them caused by the death of decedent, the order of the probate court could confer no such right on them; hence it is patent that an order of that court was invalid to confer on them power to compromise such claim, and the proper party could bring an action under the section. Ellenberg v. Arthur (S.C. 1936) 178 S.C. 490, 183 S.E. 306, 103 A.L.R. 437.

The right of action given in this section accrues to the personal representative where death is instantaneous. Reed v. Northeastern R. Co. (S.C. 1892) 37 S.C. 42, 16 S.E. 289.

6. —— Appointment, qualification and duties of personal representatives, persons entitled to enforce cause of action

A wrongful death claim made under Code 1962 Sections 10‑1951 et seq. [Code 1976 Sections 15‑51‑10 et seq.] under the Federal Tort Claims Act, 28 USCA Section 2671, may only be filed by an executor or administrator of an estate who has been appointed by the probate court prior to filing of the claim. Pringle v. U. S. (D.C.S.C. 1976) 419 F.Supp. 289.

Where the alleged administratrix had received no appointment by a proper authority in South Carolina, as administratrix of the estate of the deceased person, she was not entitled to maintain an action for wrongful death under this section. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

South Carolina has not followed the majority rule that an appointment as administrator made after the statute of limitations has run against a claim will relate back to validate actions taken on the claim within the statutory period by the person subsequently appointed administrator. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

The defendant, as a contingent debtor, has no right to question proceedings in the probate court. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

Where the alleged administratrix, after being discharged as administratrix, had done nothing to become administratrix de bonis non at the time of the institution of the suit for wrongful death, and there was no reason for her to believe that she had been appointed administratrix of the estate and there was no contention that she mistakenly believed herself to be the administratrix or that she had applied for appointment or was in the process of being appointed such at the time she instituted the action, the action was a nullity, and it could not be vitalized by substituting an administratrix de bonis non after the action was brought under the “relation back doctrine.” Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

In a wrongful death action under this section [former Code 1962 Section 10‑1951] the plaintiff was denied permission to qualify as administrator more than six years after the alleged wrongful death, and proceed under the “relation back” doctrine which sanctions a retroactive impact in order to defeat the application of a statute of limitations. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025. Death 39

The defendant cannot be heard to question the propriety of the appointment of an administrator where it has no standing to question the method of administration of the estate and its sole interest is the denial of its alleged liability for the negligent death under Lord Campbell’s Act. Breeden v. Atlantic Coast Line R Co, 1949, 86 F.Supp. 964.

Defendant had no cause of action for damage to his person or property against the plaintiffs in their capacity as representatives of the beneficiaries of the cause of action for wrongful death, and could not assert such a cause of action by way of counterclaim. Ellison v. Simmons (S.C. 1961) 238 S.C. 364, 120 S.E.2d 209. Set‑off And Counterclaim 46(2)

In bringing a wrongful death action for the benefit of the statutory beneficiaries, the administrator acts in a different capacity than when he represents the estate in general, and, for the purposes of res judicata, he is two different persons. Complete Auto Transit, Inc. v. Bass (S.C. 1956) 229 S.C. 607, 93 S.E.2d 912.

The defendant in an action for wrongful death may not assert a counterclaim for damages to his property arising out of the same accident, because the administrator is suing as a representative of the statutory beneficiaries, not as a representative of the estate. Complete Auto Transit, Inc. v. Bass (S.C. 1956) 229 S.C. 607, 93 S.E.2d 912.

7. —— Accrual of cause of action, persons entitled to enforce cause of action

If the deceased never had a cause of action, none accrues under this section. Scott v Greenville Pharmacy, 212 SC 485, 48 SE2d 324 (1948). Maxey v Sauls, 242 SC 247, 130 SE2d 570 (1963).

The action provided for in this section [former Code 1962 Section 10‑1951] does not accrue against the defendant until the death of the plaintiff’s testator. Wellman v Bethea, 243 F 222 (1917). Claussen v Brothers, 148 SC 1, 145 SE 539 (1928).

Plaintiff suing under wrongful death statute may not pursue action based on same wrong sued upon earlier by decedent prior to death, if personal injuries statute of limitations has expired, but specific wrongful death limitations period has not elapsed; wrongful death statute contains language establishing condition precedent to right to bring wrongful death claim and creates new statutory right in personal representative of decedent which can only be maintained if decedent, had he lived, could have maintained such action; if decedent never had cause of action, none accrues under wrongful death statute; anything that would have defeated decedent’s recovery had he survived accident would defeat right of recovery on behalf of his family in case of his death; wrongful death action by widow of person who died due to exposure to asbestos containing products must be dismissed, as decedent was informed in 1971 that he was suffering from asbestosis and 6 year statute of limitations under SC Code Anno. Section 15‑3‑530(5) expired prior to decedent’s death in 1984, such that widow’s action, instituted in 1986, would have been barred by statute of limitations had such action been commenced by decedent. Quattlebaum v. Carey Canada, Inc., 1988, 685 F.Supp. 939.

8. Test of existence of cause of action—In general

Under this section [former Code 1962 Section 10‑1951] the test of the right of an administrator to maintain an action is whether deceased could have maintained an action for the injury had he survived. Reed v Northeastern R. Co., 37 SC 42, 16 SE 289 (1892). Price v Richmond & Danville R. Co., 33 SC 556, 12 SE 413 (1890). Hall v Murphy, 236 SC 257, 113 SE2d 790 (1960).

The right of an administrator to sue for wrongful death in South Carolina depends upon whether the decedent could have sued for the injury had he survived. Todd v. Sandidge Const. Co. (C.A.4 (S.C.) 1964) 341 F.2d 75. Death 15

Personal representative suing under wrongful death statute may not pursue action based on same wrongs sued upon earlier by decedent, where personal injury statute of limitation has expired, but specific wrongful death limitations period has not elapsed. Quattlebaum v. Carey Canada, Inc., 1988, 685 F.Supp. 939. Death 37

Probable consequences test, where there is no contention that intervening actions of third person broke causal chain, consists simply of determining whether wrongdoer’s actions were such that they would probably cause injury to something or someone; and where there is contention that intervening agency interrupted foreseeable chain of events, there are two consequences to be tested: the injury complained of and acts of intervening agency. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394. Negligence 431

Right of action created by this section [former Code 1962 Section 10‑1951] applies to situations where if death had not ensued deceased could have maintained action to recover damages for injuries sustained. Fowler v. Fowler (S.C. 1963) 242 S.C. 252, 130 S.E.2d 568.

9. —— Death of child, test of existence of cause of action

A viable fetus, having reached that period of prenatal maturity where it is capable of independent life apart from its mother, is a person, and if such a child is injured, it may after birth maintain an action for such injuries. Fowler v Woodward, 244 SC 608, 138 SE2d 42 (1964). Todd v Sandidge Constr. Co., 341 F2d 75 (4th Cir 1964).

Once the viable foetus is accorded the status of a person in esse, logic would constitute its wrongful death a cause of action, for if death had not ensued the child would have been entitled to maintain an action and recover damages. Todd v. Sandidge Const. Co. (C.A.4 (S.C.) 1964) 341 F.2d 75.

An unborn child’s death as a result of a tortious injury to her mother gives a cause of action under this section, although the child was not born alive, if the child was viable at the time of injury. Todd v. Sandidge Const. Co. (C.A.4 (S.C.) 1964) 341 F.2d 75.

Nonviable stillborn fetus may not maintain a wrongful death action. Crosby v. Glasscock Trucking Co., Inc. (S.C. 2000) 340 S.C. 626, 532 S.E.2d 856, rehearing denied. Death 15

Once it has been established that deceased could have maintained action for damages, then statutory beneficiaries are entitled to bring action for pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of society and companionship, etc. Nance v. State Bd. of Ed. (S.C. 1981) 277 S.C. 64, 282 S.E.2d 848. Death 78

Liability of motel owner for death of mentally deficient child in pool. Lynch v. Motel Enterprises, Inc. (S.C. 1966) 248 S.C. 490, 151 S.E.2d 435.

The cause of action for injury to an unborn, viable child arises at the time of the injury, and there is no more reason why it should be cut off because of the child’s death before birth, than if it died thereafter. Fowler v. Woodward (S.C. 1964) 244 S.C. 608, 138 S.E.2d 42. Infants 1285(7)

A child who, while viable and capable of existing independently of its mother, suffers a prenatal injury through the alleged negligence of another, may after its birth maintain a cause of action against such other for damages on account of the injury sustained, and therefore, if it dies after birth from the injuries, its administrator can bring actions for its pain and agony and for the wrongful death. Hall v. Murphy (S.C. 1960) 236 S.C. 257, 113 S.E.2d 790.

An action will not lie for the wrongful death of an unborn child which occurs in the embryonic stage after 5 1/2 months of pregnancy. West v. McCoy (S.C. 1958) 233 S.C. 369, 105 S.E.2d 88. Death 13

10. —— Tort committed by government agencies, test of existence of cause of action

An administrator may not counterclaim for wrongful death in an action by a public hospital against the administrator for services rendered decedent, such hospital being a governmental agency. Mullins Hospital v Squires, 233 SC 186, 104 SE2d 161 (1948). Complete Auto Transit, Inc. v Bass, 229 SC 607, 93 SE2d 912 (1956).

Genuine issues of material fact remained as to whether police officer used excessive force in fatally shooting suspect during execution of search warrant for evidence of his participation in illegal gambling activities, thus precluding summary judgment on claims against police officer for wrongful death and survivorship action under South Carolina law. Wingate v. Byrd, 2016, 211 F.Supp.3d 816, opinion vacated in part on reconsideration 2016 WL 7012962. Arrest 68.1(4)

This section [former Code 1962 Section 10‑1951] gives an administrator no right of action, where the injury was caused by tort of a governmental agency, so that deceased could have maintained no action against it. Mullinax v. Hambright (S.C. 1920) 115 S.C. 22, 104 S.E. 309.

11. Negligence—In general

Whoever does a wrongful act is answerable for all the consequences that may ensue in the ordinary course of events, though such consequences are immediately and directly brought about by an intervening cause, if such intervening cause was set in motion by the original wrongdoer, or was in reality only a condition on or through which the negligent act operated to produce the injurious result. Greene v. Moncks Corner Motor Co. (C.A.4 (S.C.) 1972) 457 F.2d 735.

Manufacturer of motorboat held not liable on theory of proximate causation of boating accident in which steering cable parted after being temporarily spliced by marina owner; since it was not foreseeable that the steering cable would be repaired by splicing under any given set of circumstances, and the marina owner knew of dangers involved, it could not seriously be contended that marina owner’s actions were probable consequence of any wrongdoing on part of manufacturer. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394.

Marina owner’s actions were not foreseeable by boat manufacturer where marina owner temporarily repaired steering system of customer’s motorboat by splicing steering cable, since common knowledge in trade that splicing was unsafe and poor practice made likelihood of steering cable being spliced highly remote. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394.

If acts of intervening agency are probable consequence of primary wrongdoer’s actions, primary wrongdoer is liable; however, even if intervening acts are not foreseeable, primary wrongdoer is nevertheless liable if his actions alone would have caused loss in natural course. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394. Negligence 431

It was impossible for expert witness to say with any reasonable degree of accuracy that dynamic forces attributable to alleged defects in design of motorboat, contributed to deceased’s ejection from boat upon sudden parting of steering cable to extent that ejection would not have occurred in absence of alleged defects, where expert made no attempt to ascertain nature and extent of operative dynamic forces, nor determine the contribution, if any of the individual events leading to ejection. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394.

Expert’s opinion was simply surmise, lacking in probative value and inadequate to establish alleged causal connection, where expert’s conclusion was not elicited by means of hypothetical question, nor did expert set forth underlying factual basis for conclusion. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394. Evidence 571(9)

Negligence must be proximate cause of death. The complainant in an action under this section [Code 1962 Section 10‑1951] for the suicide of her husband allegedly caused by unlawful sale of barbiturate capsules did not have cause of action as the suicide could not be said to have been proximately caused by the unlawful sale. Scott v. Greenville Pharmacy (S.C. 1948) 212 S.C. 485, 48 S.E.2d 324, 11 A.L.R.2d 745.

A taxicab owner was liable under this section [Code 1962 Section 10‑1951] for the death of a passenger when the cab driven by an employee ran off the road and overturned, as there was sufficient evidence to justify an inference that the driver’s negligence was the proximate cause of death. Squires v. Henderson (S.C. 1946) 208 S.C. 58, 36 S.E.2d 738.

12. —— Violations of statute, negligence

Causative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness and willfulness. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

13. —— Alleging negligence, negligence

Under this section [former Code 1962 Section 10‑1951] negligence must be affirmatively alleged. Reed v Northeastern R. Co., 37 SC 42, 16 SE 289 (1892). All v Barnwell County, 29 SC 161, (1888).

An allegation that certain switches were left open on a railroad track at a certain time “carelessly and negligently” was a sufficient argument of negligence. Reed v. Northeastern R. Co. (S.C. 1892) 37 S.C. 42, 16 S.E. 289.

14. —— Jury question, negligence

The question of negligence of both deceased and defendant, under this section [former Code 1962 Section 10‑1951], is entirely for the jury. Trimmier v Atlanta & C. A. L. Ry. Co., 81 SC 203, 62 SE 209 (1908). Osteen v Southern R.‑Carolina Division, 76 SC 368, 57 SE 196 (1907). Harris v Simon, 32 SC 593, 10 SE 1076 (1889).

Question of negligence is for the jury except where there is not sufficient evidence presented to raise the question of negligence. Davis v Columbia & Greenville R. Co., 21 SC 93 (1884). Hooper v Columbia & Greenville R. Co., 21 SC 541 (1884).

Issues of whether emergency room physician breached the standard of care that proximately caused patient’s death from clinical sepsis by failing to rule out infection, checking to see if patient had a fever before releasing her from hospital emergency room when diagnostic scan had confirmed patient was suffering from a moderately‑to‑severely obstructing kidney stone, or by failing to inform patient and her husband of the urgency of fever, chills, and a kidney stone, and the need to return to hospital if such symptoms arose, was for the jury in husband’s wrongful death and survival action for medical malpractice. Fay v. Grand Strand Regional Medical Center, LLC (S.C.App. 2015) 412 S.C. 185, 771 S.E.2d 639. Health 825

In wrongful death suit brought by father of deceased motorist, a jury question was presented as to whether state troopers and supervisors at the Department of Public Safety performed their respective duties during high‑speed pursuit that ended in a fatal accident, or whether there was an absence of care that was necessary under the circumstances. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Automobiles 245(19)

In action under this section [Code 1962 Section 10‑1951] for death of guest passenger in automobile which ran into bus parked on the pavement of the highway near the right edge at night without flares, the negligence of the automobile driver was not of such independence and unforeseeability as to insulate, as a matter of law, the negligence of the bus company which was reasonably inferable from the evidence. The evidence was for the jury. Ayers v. Atlantic Greyhound Corp. (S.C. 1946) 208 S.C. 267, 37 S.E.2d 737.

15. Contributory negligence—In general

Contributory negligence of deceased will preclude the beneficiary’s recovery. Reed v Northeastern R. Co., 37 SC 42, 16 SE 289 (1892). Hooper v Columbia & Greenville R. Co., 21 SC 541 (1884). Wilson v Clarendon County, 139 SC 333, 138 SE 33 (1927). Cirosky v Smathers, 128 SC 358, 122 SE 864 (1924). Seitz v Hammond, 265 F Supp 162 (D SC 1967).

Under this section [former Code 1962 Section 10‑1951] defendant has the burden to affirmatively show contributory negligence on the part of the deceased. Mann v. Bowman Transp., Inc. (C.A.4 (S.C.) 1962) 300 F.2d 505.

A defendant railroad, in an action under Lord Campbell’s Act, has the defense of contributory negligence on the part of the deceased. Shaw v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1956) 238 F.2d 525, certiorari granted in part, reversed in part 77 S.Ct. 680, 353 U.S. 920, 1 L.Ed.2d 718, rehearing denied 77 S.Ct. 859, 353 U.S. 951, 1 L.Ed.2d 859.

The contributory negligence of the sole beneficiary or of all the beneficiaries, which is a proximate contributing cause and not a remote cause, defeats an action for wrongful death. Hall v. U. S. (D.C.S.C. 1974) 381 F.Supp. 224. Death 24

The contributory negligence of the beneficiary in a wrongful death action will bar recovery at least so far as that beneficiary is concerned. Crowley v. Spivey (S.C.App. 1985) 285 S.C. 397, 329 S.E.2d 774. Death 24

Although defendant motorist was slightly exceeding speed limit at time of fatal collision, decedent’s negligence in attempting to cross highway from private drive was sole cause of accident where all testimony supported defendant’s assertions that the plaintiff pulled directly in front of the defendant; that the defendant had changed lanes 500 or 600 feet prior to the accident, which required him to look in his rear view mirror; and that he checked for merging traffic and did not observe the deceased in the road until he was 30 feet away. Blanding v. Hammell (S.C. 1976) 267 S.C. 352, 228 S.E.2d 271.

16. —— Contributory negligence of deceased child’s parents, contributory negligence

In an action for wrongful death of a child, the alleged contributory negligence of its parents, the beneficiaries of the recovery, would have been a defense if established. Butler v. Temples (S.C. 1955) 227 S.C. 496, 88 S.E.2d 586.

Where the automobile in which intestate was riding was owned by his father and driven by his mother, and at the time of the collision at a railroad crossing such automobile was apparently being used, at least partially, for a family use or purpose, if the mother was guilty of gross and willful negligence, the mother and father, for whose benefit the wrongful death action was brought, cannot recover. Mock v. Atlantic Coast Line R. Co. (S.C. 1955) 227 S.C. 245, 87 S.E.2d 830.

In action for wrongful death of child where mother is beneficiary, contributory negligence of mother is a defense to the action. James v. Atlantic Coast Line R. Co., 1962, 210 F.Supp. 76.

17. —— Jury question, contributory negligence

In an action for the death of a child, the question of its parents’ contributory negligence, which under South Carolina law would be imputed to the child, is a jury question. Atlantic Coast Line R. Co. v. Truett (C.A.4 (S.C.) 1957) 249 F.2d 215. Railroads 350(14)

Because decedent’s relative fault, if any, was not at issue in criminal prosecution for reckless homicide arising out of automobile accident, the defendant, who had pled guilty to reckless homicide, was entitled to contest the decedent’s relative fault in the subsequent wrongful death action; accordingly, the decedent’s negligence, if any, under a theory of comparative negligence was a question for the jury. Cothran v. Brown (S.C. 2004) 357 S.C. 210, 592 S.E.2d 629. Estoppel 68(2)

It would be unreasonable to hold in an action for wrongful death of a child hit by a backing automobile, that parents are guilty of negligence, as a matter of law, in permitting their child to play unattended in their own yard, certainly in the absence of unusual danger, and defendant in such case is entitled to no more than the submission of the issue of the contributory negligence of the parents to the jury. Butler v. Temples (S.C. 1955) 227 S.C. 496, 88 S.E.2d 586.

18. —— Contributory negligence on part of child, contributory negligence

Where a child seven years old is killed on a railroad track, there being no evidence as to his intelligence or capacity, the prima facie presumption is that he was incapable of personal negligence, and contributory negligence cannot be imputed to him, or to his parent or custodian, so as to prevent a recovery in an action by his administrator under this section [former Code 1962 Section 10‑1951]. Watson v Southern Ry. Co., 66 SC 47, 44 SE 375 (1903). Mason v Southern Ry. Co., 58 SC 70, 36 SE 440 (1900).

There can be no contributory negligence on the part of a child six years old under South Carolina law. Barton v. Griffith (D.C.S.C. 1966) 253 F.Supp. 774. Negligence 535(5)

If a child enters a highway so suddenly that defendant cannot stop or otherwise avoid injury to the child and has no notice of the likelihood of his presence upon the highway, then the defendant is not necessarily guilty of actionable negligence. Barton v. Griffith (D.C.S.C. 1966) 253 F.Supp. 774. Automobiles 162(1)

18.25. Wrongful life

Wrongful life and wrongful birth actions differ from a typical medical malpractice action because the negligent act or omission of the health care provider did not actually cause the impairment or defective condition; instead, the impairment or defective condition occurred and the health care provider failed to predict or diagnose it, resulting in the birth of a child with a congenital defect. Willis v. Wu (S.C. 2004) 362 S.C. 146, 607 S.E.2d 63. Health 687(2); Health 687(3)

Tort of wrongful life was not cognizable in South Carolina. Willis v. Wu (S.C. 2004) 362 S.C. 146, 607 S.E.2d 63. Health 687(3)

A “wrongful life” action is brought by or on behalf of the child himself, in which the child alleges that, because of the defendant’s negligence, his parents either decided to conceive him ignorant of the risk of an impairment or birth defect or were deprived of information during gestation that would have prompted them to terminate the pregnancy, and that, but for the defendant’s negligence, he would not have been born. Willis v. Wu (S.C. 2004) 362 S.C. 146, 607 S.E.2d 63. Health 687(3)

18.5. Loss of consortium

Under South Carolina law, decedent’s spouse could maintain both an action for loss of consortium and an action for wrongful death; claims for loss of consortium and wrongful death were separate and distinct in that potential beneficiaries of the causes of action and the purposes of those causes of action were different. White v. U.S., 2012, 907 F.Supp.2d 703. Action 38(4); Action 38(6); Death 81; Death 88

19. Release from liability

Where the deceased, during his lifetime, has debarred himself from suit by the release of the wrongdoer, his administrator, cannot maintain the action, unless he shows that the release was procured by fraud or duress. Rish v Seaboard Air Line Ry., 106 SC 143, 90 SE 704 (1916). Price v Richmond & Danville R. Co., 33 SC 556, 12 SE 413 (1890).

A conditional agreement by the intestate with his insurer to settle for $1500 his claim, under the uninsured motorist clause of his policy, for “property damage and bodily injury,” did not modify the carrier’s obligation with respect to a claim founded upon a judgment for damages for wrongful death, as to which the intestate contracted only by the insuring agreement. Wallace v. Nationwide Mut. Ins. Co. (S.C. 1971) 256 S.C. 313, 182 S.E.2d 84.

A widow’s release of defendants, if valid, will preclude an administrator’s action for husband’s death for her benefit. Aldridge v. Watts Mill (S.C. 1925) 131 S.C. 222, 127 S.E. 213. Release 38

Where a release given by a widow was attacked on grounds of fraud, evidence that at the time such release was given widow had received $1,400 as proceeds of insurance policy, carried by defendant, and was given an additional $500 in consideration of release, is admissible as showing or tending to show that release was voluntarily given. Aldridge v. Watts Mill (S.C. 1925) 131 S.C. 222, 127 S.E. 213.

An instruction that if the jury found for defendants, widow would be entitled to retain check given in consideration of alleged invalid release, but that if it found for plaintiff, she would not be entitled to retain such check, is not improperly given. Aldridge v. Watts Mill (S.C. 1925) 131 S.C. 222, 127 S.E. 213.

Unless incapacity or duress of deceased is shown. Where the defendant sets up in its answer a release, executed by plaintiff’s intestate, of all claims for damages against defendant by reason of the accident, it is competent for the plaintiff to show incapacity and duress of intestate to invalidate such release. Price v. Richmond & D.R. Co. (S.C. 1893) 38 S.C. 199, 17 S.E. 732.

20. Set off and counterclaim

In determining non‑settling pickup manufacturer’s setoff from jury verdict on claim that door‑latch system was negligently designed, for settlement of claim against at‑fault driver, 80% of proceeds of settlement was allocable to wrongful death claim, and 20% to survival action, given some evidence of conscious pain and suffering by driver after being ejected from pickup truck in collision; driver’s estate’s claim against manufacturer was limited to enhanced injuries, driver’s death, and at‑fault driver alone was liable for pain and suffering that driver endured before being ejected. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Set‑off And Counterclaim 44(1)

Wrongful death defendant was not entitled to have jury’s $1.1 million damage award set off by plaintiff’s prior settlement of claim against joint tort‑feasor under Georgia wrongful death statute for $550,000; only common element of damages between South Carolina and Georgia Wrongful Death statutes was award for economic value of deceased’s life expectancy, and defendant failed to establish that jury awarded at least $550,000 entirely from pecuniary loss suffered. Hawkins v. Pathology Associates of Greenville, P.A. (S.C.App. 1998) 330 S.C. 92, 498 S.E.2d 395, rehearing dismissed. Death 91

20.5. Insurance

Even though insurer failed to return premium on prior owner’s policy after learning that prior owner has ceased operating his business, the doctrine of equitable estoppel did not apply under South Carolina law to require that insurance carrier provide coverage in underlying wrongful death lawsuit under prior owner’s liability insurance policy to new owner of automotive transmission business, who was a third party not otherwise entitled to coverage under the terms of the policy; new owner was not a named insured under prior owner’s policy and insurance carrier had no duty to inform new owner that he lacked coverage under prior owner’s existing policy, and even though prior owner and new owner may have had an honest misunderstanding about the state of new owner’s coverage, the face of the policy made plain that prior owner’s rights could not be transferred absent written consent from insurance carrier. First Financial Ins. Co. v. Brumbaugh (C.A.4 (S.C.) 2014) 553 Fed.Appx. 282, 2014 WL 57558. Insurance 3081; Insurance 3102; Insurance 3117

21. Damages

Under the South Carolina Noneconomic Damage Awards Act, estate of kidney transplant patient bringing a survival action, and the patient’s surviving spouse, and surviving children, who were all bringing wrongful death actions, each constituted claimants limited to an amount not to exceed $350,000 each, in case against the United States, alleging the patient died of Tacrolimus toxicity and kidney failure due to the negligent, careless, and reckless filling and dispensing of the patient’s medication by employees at a naval hospital pharmacy; although claimant meant “the person suffering personal injury,” the definition of personal injury made clear that not only did the patient, or more accurately, his estate, qualify as a claimant pursuant to the survival statute, but also, the surviving spouse and children each qualified as claimants pursuant to the wrongful death statute, as they each suffered personal injury, which was defined to include mental distress or suffering, loss of wages, loss of service, loss of consortium, wrongful death, survival, and other noneconomic damages and actual economic damages. Boyle v. U.S., 2012, 948 F.Supp.2d 577. Death 96

Under South Carolina law, in a wrongful death case, the question of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death. Boyle v. U.S., 2012, 948 F.Supp.2d 577. Death 85; Death 95(1)

Under South Carolina law, in a wrongful death action, the damages recoverable by the statutory beneficiaries of the decedent include (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate’s society. Boyle v. U.S., 2012, 948 F.Supp.2d 577. Death 81

Representative of patient’s estate, who was precluded from recovering actual damages against doctor in South Carolina wrongful death and survival actions based on satisfaction of judgment in Rhode Island wrongful death and survival actions against another tort‑feasor, could not maintain action against doctor for punitive damages only. Brown v. Singleton (S.C.App. 1999) 337 S.C. 74, 522 S.E.2d 816. Death 93

Under South Carolina wrongful death statute, question of damages is not directed toward value of human life that was lost, but rather damages sustained by beneficiaries as result of death. Hawkins v. Pathology Associates of Greenville, P.A. (S.C.App. 1998) 330 S.C. 92, 498 S.E.2d 395, rehearing dismissed. Death 78

General elements of damages recoverable in wrongful death action are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of use and comfort of intestate’s society, including loss of his experience, knowledge, and judgment in managing of affairs of himself and of his beneficiaries. Hawkins v. Pathology Associates of Greenville, P.A. (S.C.App. 1998) 330 S.C. 92, 498 S.E.2d 395, rehearing dismissed. Death 81

In a wrongful death case, the question of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death. The general elements of damages recoverable are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the decedent’s society, including the loss of his or her experience, knowledge, and judgments in managing his or her affairs and the affairs of his or her beneficiaries. Self v. Goodrich (S.C.App. 1989) 300 S.C. 349, 387 S.E.2d 713.

The Wrongful Death Act is not limited to actions which the deceased could have maintained had he lived; once it has been established that the deceased could have maintained an action for damages, then his statutory beneficiaries are entitled to bring an action for pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of society and companionship, etc. Nance v. State Bd. of Ed. (S.C. 1981) 277 S.C. 64, 282 S.E.2d 848. Death 78

22. Review

Trial court’s mere disagreement with jury’s determination of proper amount of noneconomic damages to award for wrongful death of driver was not compelling reason for granting new trial nisi additur, increasing jury verdict from $300,000 to $900,000. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Death 98; Death 106

**SECTION 15‑51‑20.** Beneficiaries of action for wrongful death; by whom brought.

 Every such action shall be for the benefit of the wife or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none such, then for the benefit of the heirs of the person whose death shall have been so caused. Every such action shall be brought by or in the name of the executor or administrator of such person.

HISTORY: 1962 Code Section 10‑1952; 1952 Code Section 10‑1952; 1942 Code Section 412; 1932 Code Section 412; Civ. P. ‘22 Section 368; Civ. C. ‘12 Section 3956; Civ. C. ‘02 Section 2852; G. S. 2184; R. S. 2316; 1859 (12) 706; 1898 (22) 788; 1901 (23) 743; 1902 (23) 1071; 1990 Act No. 521, Section 97.

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S.C. Jur. Wrongful Death Section 2, New Cause of Action.

S.C. Jur. Wrongful Death Section 3, Accrual of Cause of Action.

S.C. Jur. Wrongful Death Section 9, Persons Entitled to Sue.

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1. In general

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Applied in Nettles v Southern Ry. Co., 211 SC 187, 44 SE2d 321 (1947). Simon v Strock, 209 SC 134, 39 SE2d 209 (1946). Daniel v Tower Trucking Co., 203 SC 119, 26 SE2d 406 (1943). Fuller v Southern Electric Service Co., 200 SC 246, 20 SE2d 707 (1942). Hayes v Atlantic Coast Line R. Co., 196 SC 386, 13 SE2d 921 (1941). Huggins v Broom, 189 SC 15, 199 SE 903 (1938). Smith v Edwards, 186 SC 186, 195 SE 236 (1938). Perrin v Rainwater, 186 SC 181, 195 SE 283 (1938). Spurlin v Colprovia Products Co., 185 SC 449, 194 SE 332 (1937). Cobb v Southern Public Utilities Co., 181 SC 310, 187 SE 363 (1936). Sellers v Lewis & Holmes Motor Freight Corporation, 215 SC 256, 54 SE2d 806 (1949). Conyers v Atlantic Coast Line R. Co., 218 SC 278, 62 SE2d 478 (1950). Jones v Atlantic‑Charlotte Air Line R. Co., 218 SC 537, 63 SE2d 476 (1951). DuRant v George A. Rheman Co., Inc., 219 SC 250, 64 SE2d 531 (1951). Webb v Southern Ry. Co., 221 SC 450, 71 SE2d 12 (1952). Williamson v Charleston, etc., R. Co., 222 SC 455, 73 SE2d 537 (1952). Floe v Plowden, 192 F2d 291 (1951). Atlantic Coast Line R. Co. v Glenn, 198 F2d 232 (1952). Butler v Temples, 227 SC 496, 88 SE2d 586 (1955). Atlantic Coast Line R. Co. v Truett, 249 F2d 215 (1957). Mann v Bowman Transp., Inc., 300 F2d 505 (4th Cir 1962). Skipper v Hartley, 242 SC 221, 130 SE2d 486 (1963). Downing v Ulmer, 253 F Supp 694 (D SC 1966). Lester v McFaddon, 288 F Supp 735 (D SC 1968). Zorn v Crawford, 252 SC 127, 165 SE2d 640 (1969). Middleton v Pearman, 305 F Supp 1203 (D SC 1969). Adams v Hunter, 343 F Supp 1284 (D SC 1972). Greene v Moncks Corner Motor Co., 457 F2d 735 (4th Cir 1972).

The contributory negligence of the sole beneficiary or of all the beneficiaries, which is a proximate contributing cause and not a remote cause, defeats an action for wrongful death. Hall v. U. S. (D.C.S.C. 1974) 381 F.Supp. 224. Death 24

Stated in Dawson v. Southern Ry. Co. (S.C. 1940) 196 S.C. 34, 11 S.E.2d 453.

In an action by administratrix of deceased wife, who was killed with her husband in the same accident, the court held that it was reasonably inferable from the evidence that there was no survivorship, and that, if such were the case, the right of action would accrue on behalf of the heirs at law of the deceased wife because, if their deaths occurred at the same moment, it could not be said that a cause of action would accrue to the deceased husband as an heir at law of his wife, and therefore, the case was brought for the benefit of the proper parties, to wit, the heirs at law and distributees of the deceased wife. Collins v. Atlantic Coast Line R. Co. (S.C. 1937) 183 S.C. 284, 190 S.E. 817.

Under this section [former Code 1962 Section 10‑1952] the administrator sues as trustee for the benefit of the surviving spouse and children. Bennett v. Spartanburg Ry., Gas & Elec. Co. (S.C. 1914) 97 S.C. 27, 81 S.E. 189.

The words “heirs” and “distributees” as used in this section [former Code 1962 Section 10‑1952] mean the same thing. Kitchen v. Southern Ry. (S.C. 1904) 68 S.C. 554, 48 S.E. 4. Death 32

2. Construction with other statutory provisions

This section [former Code 1962 Section 10‑1952] and former Code 1962 Section 10‑1954 [Section 15‑51‑40] are inseparably linked with Code 19Section Section 10‑1951 [Section 15‑51‑10], in that they provide the only persons for whose benefit the action shall be brought, the measure of damages, and how the amount shall be ascertained. Grainger v Greenville, S. & A. Ry. Co., 101 SC 399, 85 SE 968 (1915). Childs v Bolton, 69 SC 555, 48 SE 618 (1902).

This section [former Code 1962 Section 10‑1952] supplements, complements and is indelibly tied to Code 1962 Section 10‑1951 [Section 15‑51‑10]. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

An executor’s or administrator’s action for wrongful death is wholly different from that with regard to a cause of action for pain suffered by the decedent between the time of injury and the time of death. As to the latter he represents the estate, and the proceeds of a recovery for such pain and suffering come into his hands as assets of the estate, liable for the payment of debts and other claims. Bailes v. Southern Ry. Co. (S.C. 1955) 227 S.C. 176, 87 S.E.2d 481.

In order to occupy the status of a child by adoption so as to enable him to maintain an action under this section [former Code 1962 Section 10‑1952] for the wrongful death of his adoptive parent, the adoption must have been procured under the procedure prescribed by former Code 1962 Sections 10‑2581 et seq. Smith v. Atlantic Coast Line R. Co. (S.C. 1948) 212 S.C. 332, 47 S.E.2d 725.

This section [former Code 1962 Section 10‑1952] and the preceding section are remedial in their character, and should be liberally construed, to accomplish their object; the award of damages being the important matter, and the manner of distribution of secondary importance. Morris v. Spartanburg R. Gas & Elec. Co. (S.C. 1904) 70 S.C. 279, 49 S.E. 854.

3. Persons entitled to enforce cause of action—In general

This action is only enforceable by the administrator or executor of the deceased’s estate. In re Mayo’s Estate, 60 SC 401, 38 SE 634 (1901). Sisk v Pressley, 81 F Supp 16 (1948). Hooper v Columbia & G. R. Co., 21 SC 541 (1884).

The cause of action inheres in the personal representative, and the statutory beneficiaries cannot proceed in their own names. Any amount recovered, however, does not go into the decedent’s general estate but is payable, upon receipt by the personal representative, directly to the statutory beneficiaries. Lester v. McFaddon (C.A.4 (S.C.) 1969) 415 F.2d 1101. Death 31(3.1); Death 101

The right of action for wrongful death is enforceable only by the administrator or executor of the estate of the deceased. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025.

Only the legally appointed administrator (or executor) can bring action under the wrongful death statute. Kiley v. Lubelsky (D.C.S.C. 1970) 315 F.Supp. 1025. Death 31(3.1)

The cause of action is vested in the executor or administrator of the deceased person. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 31(3.1)

The six‑year statute of limitations on wrongful death actions, as established by Section 15‑3‑530(6), was not tolled by the minority of the decedent’s daughter under Section 15‑3‑40, since Section 15‑3‑40 applies to any person “entitled to bring an action,” and the daughter, during her minority, was neither the administratrix nor the executrix of her father’s estate, and was therefore not a person entitled to maintain a wrongful death action under Section 15‑51‑20. Wyatt v. Spartan Mill Co. (S.C. 1985) 287 S.C. 334, 338 S.E.2d 341.

Under this section [former Code 1962 Section 10‑1952] a father may not maintain an action in his own name against a wrongdoer for damages for the wrongful death of his child. Edgar v. Castello (S.C. 1880) 14 S.C. 20, 37 Am.Rep. 714. Death 31(7)

Where there was no valid administration at the time of the institution of suit, there was no one qualified to bring suit under this section, which requires that the action be “brought by or in the name of the executor or administrator of such person.” Simmons v. Atlantic Coast Line R. Co., 1964, 235 F.Supp. 325.

4. —— Questions regarding appointment and qualification of personal representative, persons entitled to enforce cause of action

The provision of this section [former Code 1962 Section 10‑1952] that a wrongful death action shall be brought only in the name of the administrator of the estate of the deceased, means the legally appointed administrator of the estate of the deceased person. Westbrook v. U. S. Plywood Corp., 1959, 177 F.Supp. 801. Death 31(3.1)

Where, at the time a wrongful death action was brought, the original administratrix of the deceased’s estate had resigned and been discharged and the plaintiff appointed administrator, but it affirmatively appeared from the judgment of discharge that there had been no publication of the notice required by former Code 1962 Section 15‑461 [see Section 62‑5‑419], the appointment of the plaintiff was invalid and a nullity, there being no vacancy in the office of the administrator of the estate, and he was without authority to bring the wrongful death action. Westbrook v. U. S. Plywood Corp., 1959, 177 F.Supp. 801.

Defendants cannot be heard to question the propriety of the appointment of the administrator who brings the action. They have no standing to question the method of administration of the estate and their sole interest in the cause is the denial of their alleged liability for negligent death under Lord Campbell’s Act. Mason v. Helms, 1951, 97 F.Supp. 312. Death 21; Executors And Administrators 29(2)

The citizenship and residence of the administrator governs the matter of jurisdiction of the Federal courts in actions for wrongful death. Mason v. Helms, 1951, 97 F.Supp. 312. Federal Courts 2431

The provision that a wrongful death action shall be brought only in the name of the administrator or executor of the estate of the deceased means the legally appointed administrator or executor of the estate of the deceased person. Glenn v. E. I. DuPont De Nemours & Co. (S.C. 1970) 254 S.C. 128, 174 S.E.2d 155. Death 31(3.1)

A cause of action for wrongful death is vested in an executor or administrator not as the representative of the estate of the deceased person or for the benefit of the creditors of the estate, but as the representative of the statutory beneficiaries, for whom he is, by virtue of this section [former Code 1962 Section 10‑1952], a trustee. Bailes v. Southern Ry. Co. (S.C. 1955) 227 S.C. 176, 87 S.E.2d 481.

If an executor or administrator refuse, after demand, to bring a wrongful death action in behalf of the beneficiaries thereof, or if he has an adverse interest or has conspired to defeat the trust, the beneficiary may himself bring the action against the third person, joining the executor or administrator as a defendant. Bailes v. Southern Ry. Co. (S.C. 1955) 227 S.C. 176, 87 S.E.2d 481. Death 31(1); Death 43

Action may be brought by nonresident appointed administrator in this State. Stubbs v. Ratliff (S.C. 1943) 202 S.C. 67, 24 S.E.2d 127.

An administrator can be appointed solely for the purpose of bringing an action under Lord Campbell’s Act. Southern Ry. Co. v. Moore (S.C. 1930) 158 S.C. 446, 155 S.E. 740, 73 A.L.R. 582, certiorari granted 51 S.Ct. 560, 283 U.S. 816, 75 L.Ed. 1432.

A South Carolina administrator of the estate of a nonresident should be permitted to carry on a suit for wrongful death, particularly where he is in fact merely an ancillary administrator. Southern Ry. Co. v. Moore (S.C. 1930) 158 S.C. 446, 155 S.E. 740, 73 A.L.R. 582, certiorari granted 51 S.Ct. 560, 283 U.S. 816, 75 L.Ed. 1432.

5. —— Personal representative appointed by court in foreign jurisdiction, persons entitled to enforce cause of action

An administratrix appointed by a court in a foreign jurisdiction has no legal capacity to sue in the courts of South Carolina; therefore, such administratrix has no legal capacity to bring an action under the provisions of this section [former Code 1962 Section 10‑1952] in a United States District Court in South Carolina. Coburn v Coleman, 75 F Supp 107 (1947). Southern Ry. Co. v Moore, 158 SC 446, 155 SE 740 (1930), cert granted 283 US 816, 51 S Ct 560, 15 L Ed 1432 (1930).

Where plaintiff, appointed administratrix in a foreign jurisdiction, brought an action under this section [former Code 1962 Section 10‑1952], the court held that it could not be maintained unless letters testamentary were taken out in South Carolina by such administratrix, even though there was allegation that the plaintiff was the sole beneficiary. Heath v. Smyther, 1937, 19 F.Supp. 1020.

6. —— Effect of action brought by wrong party, persons entitled to enforce cause of action

A civil action under this section [former Code 1962 Section 10‑1952] may be maintained only in the name of a person in law, an entity, which the law of the forum may recognize as capable of possessing and asserting a right of action. A suit brought in a name which is not a legal entity is a nullity and the action fails. Glenn v. E. I. DuPont De Nemours & Co. (S.C. 1970) 254 S.C. 128, 174 S.E.2d 155. Parties 1

If an action for wrongful death is instituted by one other than the personal representative of a decedent, duly appointed by the probate court, it should be dismissed. The court has no authority, over objection, to convert a pending action which cannot be maintained into a new and independent action by admitting a party who is solely interested as plaintiff. However, should the personal representative be permitted to become a party to an unauthorized action for wrongful death, the action is deemed to have been commenced only from the time he became a party. Glenn v. E. I. DuPont De Nemours & Co. (S.C. 1970) 254 S.C. 128, 174 S.E.2d 155.

False allegation of appointment. One who has never had reasonable grounds for believing that he had been duly appointed as an administrator in a wrongful death action, cannot institute an action for wrongful death, or any other cause, upon a false allegation of appointment and thereafter validate that allegation by a subsequent appointment. Glenn v. E. I. DuPont De Nemours & Co. (S.C. 1970) 254 S.C. 128, 174 S.E.2d 155.

7. Accrual of cause of action

Under the South Carolina statute of limitations pertaining to wrongful death actions (former Code 1962 Section 10‑143, see now Section 15‑3‑530), the meaning of the statute is clear that the cause of action accrued at the time of plaintiff’s intestate’s death rather than at the time of the appointment of his administrator. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

The action commences to run upon the death of the person on account of whose death the action is brought. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

8. Limitation of actions

The [former] six‑year statute of limitations with respect to wrongful death actions (former Code 1962 Section 10‑143, see now Section 15‑3‑530) was created as part of the statutory creation of a new right of action for wrongful death. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

The limitation of a time within which wrongful death actions shall be brought was originally enacted with the Wrongful Death Act. It is a part of that statutory creation. The fact that the limitation section has now been moved to the chapter on limitations of actions generally makes no difference. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 38

Failure of the fiduciary, authorized by statute to bring wrongful death action, to bring the suit within the time allowed by former Code 1962 Section 10‑143 [see now Section 15‑3‑530] was fatal to the very right to pursue the matter under the State laws of the State of South Carolina, because there is no remedy available after the limitations period. The right is not extinguished but there is no way to enforce the right absent a showing of fraud. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243.

Under the South Carolina Wrongful Death Act, the action is solely vested in the executor or administrator of the deceased. Therefore, as minor beneficiaries would not be “entitled to bring an action” the tolling statute (former Code 1962 Section 10‑104, see now Section 15‑3‑40) would not apply. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 31(3.1)

Delay in procuring the appointment of a personal representative will not toll the time limit for bringing an action for wrongful death. Hemingway v. Shull (D.C.S.C. 1968) 286 F.Supp. 243. Death 39

9. Existence of beneficiaries necessary

Amounts recovered in a wrongful death action are not assets of the decedent’s estate, but belong to the statutory beneficiaries. Moss v. Shelly (S.C. 1985) 287 S.C. 310, 338 S.E.2d 327. Executors And Administrators 51

There can be no recovery under this section [former Code 1962 Section 10‑1952] unless at the time of the decedent’s death there are one or more of the designated beneficiaries in existence. If there are none, the common‑law principle governs. Unless the complaint affirmatively shows that there is such a beneficiary, it is demurrable. Smith v. Atlantic Coast Line R. Co. (S.C. 1948) 212 S.C. 332, 47 S.E.2d 725. Death 32

In order for the administrator of the deceased to have a cause of action for wrongful death, there must be one or more persons bearing the relation to the deceased named in this section [former Code 1962 Section 10‑1952]. Kitchen v. Southern Ry. (S.C. 1904) 68 S.C. 554, 48 S.E. 4.

10. Effect of death of preferred beneficiary

In an action against the estate of a husband for wrongfully causing his wife’s death, her parents are the proper beneficiaries of the action because of the death of her husband who had survived her, before the action was commenced, whereby the next more remote class of beneficiaries under the statute became entitled to the cause of action. The Supreme Court declining to consider defendant’s argument as to the imputability of the negligence of the husband to the next more remote class of statutory beneficiaries for whose benefit the action was brought as this claim was not made before, or decided by, the lower court, in Rushton v. Smith (S.C. 1958) 233 S.C. 292, 104 S.E.2d 376.

Where husband, for whose benefit action for wrongful death of his wife could have been brought, died before action was instituted, the next more remote class of beneficiaries under this section, rather than the husband’s heirs at law, became entitled to the cause of action. Argument that negligence of husband was imputable to next more remote class of beneficiaries so as to bar recovery was not considered by Supreme Court because it was not before lower court, in Rushton v. Smith (S.C. 1958) 233 S.C. 292, 104 S.E.2d 376.

An action for death by wrongful act is not abated, extinguished or ended by the death of the beneficiary or beneficiaries named in the first class under this section [former Code 1962 Section 10‑1952], where the death of the beneficiary under the first class occurs before recovery of judgment but during the pendency of the action, and where there are beneficiaries of another class in existence. Elkin v. Southern Ry. (S.C. 1930) 156 S.C. 390, 153 S.E. 337.

An action under this section [former Code 1962 Section 10‑1952] brought for the alleged benefit of the father and brothers and sisters, does not abate on the death of the father, though he was the sole beneficiary under the statute when the action was commenced; the action may be carried on for the benefit of whoever may be entitled to participate in the recovery. Morris v. Spartanburg R. Gas & Elec. Co. (S.C. 1904) 70 S.C. 279, 49 S.E. 854. Death 29

11. Evidence and pleading

Where one party is improperly included in the list of beneficiaries in the complaint, the complaint is not demurrable, it being proper to correct the error by striking out such name. McDaniel v Atlantic Coast Line R. Co., 76 SC 189, 56 SE 956 (1907). Reed v Northeastern R. Co., 37 SC 42, 16 SE 289 (1892).

Unless it is alleged in the complaint that the parties for whose benefit the action is brought bear the relationship provided for in this section [former Code 1962 Section 10‑1952], the complaint states no cause of action and is demurrable. Kitchen v Southern Ry. Co., 68 SC 554, 48 SE 4 (1904). Nohrden v Northeastern R. Co., 54 SC 492, 32 SE 524 (1899). Lilly v Charlotte, Columbia & Augusta R. Co., 32 SC 142, 10 SE 932 (1890).

In determining the damages recoverable under South Carolina’s wrongful death statute, the question is not one of the value of the human life lost, rather it is the damages sustained by the beneficiaries from the death. Code 1976, Sections 15‑51‑20. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Death 85

Recoverable elements of damages under South Carolina’s wrongful death statute include pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Death 81

Verdict of $12.5 million for compensatory damages was not the result of passion, caprice, or prejudice on the part of the jury and, therefore, did not warrant the grant of a new trial absolute under South Carolina law in wrongful death action against minivan manufacturer based on defective liftgate latch on minivan which failed, thus allowing the liftgate to open in a rollover accident in which plaintiff’s son was ejected and killed; evidence at trial of mental shock and suffering, wounded feelings, grief, sorrow and loss of society and companionship experienced by parents as result of son’s death was compelling. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Death 106

Evidence of patient’s husband’s extramarital affair was not admissible in wrongful death and survival action for medical malpractice for the purpose of determining the amount of damages husband sustained for the loss of society and companionship resulting from patient’s death, where the trial court concluded the probative value of the evidence was substantially outweighed by its prejudicial effect for both liability and damages. Fay v. Grand Strand Regional Medical Center, LLC (S.C.App. 2015) 412 S.C. 185, 771 S.E.2d 639. Death 69

The life expectancy of beneficiaries in a wrongful death action is irrelevant. Jones v. Dague (S.C. 1969) 252 S.C. 261, 166 S.E.2d 99.

It is proper for plaintiff to testify as to age and number of dependent children as this tends to show that the alleged negligence deprived him of ability to meet obligations imposed by law. Youngblood v. South Carolina & G.R. Co. (S.C. 1901) 60 S.C. 9, 38 S.E. 232, 85 Am.St.Rep. 824.

12. Procedure in actions under foreign statute

In an action brought in South Carolina for the death of a wife and mother in an automobile collision in Georgia, the Georgia statute, which requires that in such case the surviving husband and children must sue jointly, controls, and this section [former Code 1962 Section 10‑1952], vesting the right of action in the administrator, does not apply. Anderson v Lane, 97 F.Supp. 265 (1951). Bussey v Charleston, etc., Ry. Co., 73 SC 215, 53 SE 165 (1906).

Circuit Court lacks subject matter jurisdiction in wrongful death action brought by South Carolina resident as personal representative of deceased nonresident against foreign corporation, upon cause of action that did not arise or the subject matter of which was not situated, within South Carolina, since deceased could not have brought action herself, nor avoided Section 15‑5‑150 by assigning cause of action to resident. Nix v. Mercury Motor Exp., Inc. (S.C. 1978) 270 S.C. 477, 242 S.E.2d 683.

The Georgia Code, providing that the husband and children of the deceased “shall sue jointly and not separately,” and which constituted the lex loci of an alleged wrongful death, was held not to control the provisions of this section [former Code 1962 Section 10‑1952], which constituted the lex fori and which vests the right of action to an administrator. McDaniel v. McDaniel (S.C. 1963) 243 S.C. 286, 133 S.E.2d 809.

Where an action is brought in South Carolina for a death by wrongful act in North Carolina, and the only North Carolina statute which the court may consider confers the right of action on the personal representative, but does not name the beneficiaries, the court will not grant a nonsuit because of the use in the complaint of the words “for the benefit of his parents,” the reference to the supposed beneficiary being regarded as mere surplusage. Free v. Southern Ry. (S.C. 1907) 78 S.C. 57, 58 S.E. 952.

Where action is brought by a mother in South Carolina to recover for a wrongful death in Georgia, and it is shown that the Georgia statute provided that the mother should bring the action, but that the statute was primarily remedial rather than procedural, the mother will be forced to amend the complaint to show that she brings the action in the capacity of an administratrix, as required by the terms of this section [former Code 1962 Section 10‑1952]. Bussey v. Charleston & W. C. R. Co. (S.C. 1906) 73 S.C. 215, 53 S.E. 165.

13. Particular persons as beneficiaries

A wife who before her husband’s death was living in adultery with another man was not a “widow” under the South Carolina death statute, and the right of recovery for death accrued to plaintiff’s intestate’s mother. Folk v. U.S., 1952, 102 F.Supp. 736, reversed 199 F.2d 889. Death 31(6); Death 31(7)

In an action by administrator of deceased wife against her husband for her wrongful death, husband could not be a beneficiary because of his alleged wrongful acts in bringing about death of wife. Fowler v. Fowler (S.C. 1963) 242 S.C. 252, 130 S.E.2d 568.

If a cause of action for wrongful death exists and a release of mother’s interest as statutory beneficiary of it is procured by fraud, she sustains no damage thereby, for the cause of action and her beneficial interest thereunder still exist, such a release being ineffectual to bar either. Hopkins v. Fidelity Ins. Co. (S.C. 1962) 240 S.C. 230, 125 S.E.2d 468. Death 25

14. Damages

Medicaid payments to defendant physician for medical services provided to patient were a wholly independent collateral source, and thus, patient’s damages in medical malpractice action against physician were not limited by the amounts paid by Medicaid. Haselden v. Davis (S.C. 2003) 353 S.C. 481, 579 S.E.2d 293. Damages 64

Department of Public Safety was not entitled to a new trial absolute, in wrongful death action brought by father of deceased motorist against Department and motorist suspected of driving under the influence (DUI), on its contention that verdict was grossly excessive; case arose out of fatal high‑speed police pursuit, and jury apportioned 80 per cent fault to DUI suspect and 20 per cent fault to Department, resulting in verdicts against DUI suspect for $3.0 million and against Department for $750,000, which was reduced to $250,000 as required by Tort Claims Act, and verdict was not so excessive as to shock the conscience, given the nature of the loss endured by father and the necessarily nonpecuniary elements involved. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Death 99(5)

**SECTION 15‑51‑30.** Effect of illegitimacy.

 In the event of the death of an illegitimate child or the mother of an illegitimate child by the wrongful or negligent act of another, such illegitimate child or the mother or father or the heirs at law or the distributees of such illegitimate child shall have the same rights and remedies in regard to such wrongful or negligent act as though such illegitimate child had been born in lawful wedlock.

HISTORY: 1962 Code Section 10‑1953; 1952 Code Section 10‑1953; 1942 Code Section 8913; 1932 Code Section 8913; Civ. C. ‘22 Section 5334; Civ. C. ‘12 Section 3562; 1906 (25) 156; 1920 (31) 1039; 1927 (35) 242; 1934 (38) 1419; 1986 Act No. 539, Section 3(1)(D).

LIBRARY REFERENCES

Westlaw Key Number Searches: 76Hk1; 76Hk82; 117k31.

Children Out‑of‑Wedlock 1, 82.

Death 31.

C.J.S. Children Out‑of‑Wedlock Sections 2 to 11, 63 to 65.

C.J.S. Death Sections 51 to 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Wrongful Death Section 11, Effect of Illegitimacy.

Attorney General’s Opinions

An illegitimate child is excluded from sharing in the recovery under Sections 15‑51‑10 et seq. [Wrongful Death Act] for the wrongful death of his father; insofar as Sections 15‑51‑10 et seq. totally exclude an illegitimate from recovery for the wrongful death of his father, they are unconstitutional. 1980 Op Atty Gen, No 80‑99, p 151.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Greene v. Moncks Corner Motor Co. (C.A.4 (S.C.) 1972) 457 F.2d 735.

The mother of a deceased illegitimate child is the sole beneficiary in a wrongful death action. Gregg v. Coleman, 1964, 235 F.Supp. 237.

The father is not a legal beneficiary of an illegitimate child, and the surviving mother excludes brothers and sisters. Gregg v. Coleman, 1964, 235 F.Supp. 237.

**SECTION 15‑51‑40.** Damages; amount and to whom payable.

 In every such action the jury may give damages, including exemplary damages when the wrongful act, neglect, or default was the result of recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before‑mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. However, upon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent’s entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63‑5‑20 and did not otherwise provide for the needs of the decedent during his or her minority.

HISTORY: 1962 Code Section 10‑1954; 1952 Code Section 10‑1954; 1942 Code Section 412; 1932 Code Section 412; Civ. P. ‘22 Section 368; Civ. C. ‘12 Section 3956; Civ. C. ‘02 Section 2852; G. S. 2184; R. S. 2316; 1859 (12) 706; 1898 (22) 788; 1901 (23) 743; 1902 (23) 1071; 1994 Act No. 470, Section 2; 1996 Act No. 370, Section 3.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 20‑7‑40 was changed to Section 63‑5‑20 in accordance with 2008 Act No. 361 (Children’s Code).

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1. In general

Applied in Folk v United States, 102 F Supp 736 (1952). Atlantic Coast Line R. Co. v Truett, 249 F2d 215 (1957). Mann v Bowman Transp. Inc., 300 F2d 505 (1962). Lester v McFaddon, 288 F Supp 735 (D SC 1968).

This section [former Code 1962 Section 10‑1954], permitting exemplary damages in actions for negligent killing where the wrongful act was the result of recklessness, wantonness, or malice, does not deprive a carrier of its property without due process of law. Hull v Seaboard Air Line Ry., 76 SC 278, 57 SE 28 (1907). Osteen v Southern Ry. Carolina Division, 76 SC 368, 57 SE 196 (1907).

The language of this section [former Code 1962 Section 10‑1954] means that the jury may award such damages as, under the evidence, they may think proportioned to the injury. Mishoe v. Atlantic Coast Line R. Co. (S.C. 1938) 186 S.C. 402, 197 S.E. 97.

2. Construction of statutory terms

The word “injury” contained in this section [former Code 1962 Section 10‑1954] does not mean that damages are recoverable only for the deprivation of a legal right, but that all the elements of compensatory damages should be considered. Barksdale v. Seaboard Air Line Ry. (S.C. 1907) 76 S.C. 183, 56 S.E. 906.

3. Measure of recovery—In general

In determining the damages recoverable under South Carolina’s wrongful death statute, the question is not one of the value of the human life lost, rather it is the damages sustained by the beneficiaries from the death. Code 1976, Sections 15‑51‑20. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Death 85

The measure of actual damage for wrongful death is governed by the South Carolina death statute. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

In action for wrongful death, damages recoverable may include pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the deceased’s society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Death 81

Where action is brought for the benefit of brothers and sisters, the amount of recovery must necessarily be gauged by the intimacy of the relation, association, and the feelings of the beneficiaries toward the deceased, and there is no presumption of loss of companionship. Nelson v. Charleston & W. C. Ry. Co. (S.C. 1957) 231 S.C. 351, 98 S.E.2d 798.

Under this section [former Code 1962 Section 10‑1954], limiting the recovery to the “injury resulting from such death,” no recovery may be had for the negligent or wanton exposure of decedent’s dead body. Pinson v. Southern Ry., Carolina Division (S.C. 1910) 85 S.C. 355, 67 S.E. 464. Death 81

4. —— Damages sustained by beneficiaries, measure of recovery

Recoverable elements of damages under South Carolina’s wrongful death statute include pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Death 81

Damages of $145,000 assessed by federal court in wrongful death action, were based on life expectancy of decedent’s beneficiaries, both of whom were elderly and in poor health. Doyle v. U. S. (D.C.S.C. 1977) 441 F.Supp. 701.

While present South Carolina rule uses life expectancy of decedent rather than of beneficiaries to determine damages, federal court, although free to look at relevant state statute for guidance, is not bound by decisional state law and can wholly reject it. Doyle v. U. S. (D.C.S.C. 1977) 441 F.Supp. 701. Federal Courts 3103

In determining the damages recoverable under the wrongful death statute, the question is not one of the value of the human life lost, but is rather the damages sustained by the beneficiaries from the death. Smith v. Wells (S.C. 1972) 258 S.C. 316, 188 S.E.2d 470.

In determining the amount of the damages to be awarded in an action under the statute for wrongful death, the question is not one of the value of the human life, but is rather the damages sustained by the beneficiaries. Zorn v. Crawford (S.C. 1969) 252 S.C. 127, 165 S.E.2d 640. Death 95(3)

Only such damages as are sustained by the beneficiaries may be recovered. Bennett v. Spartanburg Ry., Gas & Elec. Co. (S.C. 1914) 97 S.C. 27, 81 S.E. 189.

5. —— Effect of remarriage, measure of recovery

The remarriage of the widow does not affect the damages recoverable by the beneficiaries for the wrongful death of the husband, and evidence of the fact of remarriage is inadmissible. Smith v. Wells (S.C. 1972) 258 S.C. 316, 188 S.E.2d 470.

The fact of the remarriage of the mother is not relevant for the purpose of mitigating the damages recoverable by the children. Smith v. Wells (S.C. 1972) 258 S.C. 316, 188 S.E.2d 470.

6. Elements of damages; pecuniary loss—In general

Of the elements of damages, only pecuniary loss to the beneficiaries lends itself to any rough formula of rationalized calculation. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

The general elements of actual damages recoverable are (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the victim’s society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries, in addition to the loss of his ability to earn money for the support, maintenance, care and protection for his wife and children, and for the education and training of the latter. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Widow, individually, cannot recover the loss of services due to the death of her husband in an action under Code 1962 Section 10‑2593 [see now Section 15‑75‑20]. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

The elements of damages authorized have been defined as (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate’s society. Brooks v. U. S. (D.C.S.C. 1967) 273 F.Supp. 619. Death 81

Damages recoverable for wrongful death are the damages sustained by the statutory beneficiaries resulting from the death of the decedent, including pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Death 85

General elements of damages recoverable for wrongful death are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate’s society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Burroughs v. Worsham (S.C.App. 2002) 352 S.C. 382, 574 S.E.2d 215. Death 81

Wrongful death encompasses other elements of damages besides loss of earnings, and the court has no way to determine what significance the jury ascribed to these other factors. Weaver v. Lentz (S.C.App. 2002) 348 S.C. 672, 561 S.E.2d 360. Death 81

Appropriate damages in survival actions include those for medical, surgical, and hospital bills, conscious pain, suffering, and mental distress of the deceased. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Death 82; Death 84; Death 89

In a wrongful death case, the question of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death. The general elements of damages recoverable are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the decedent’s society, including the loss of his or her experience, knowledge, and judgments in managing his or her affairs and the affairs of his or her beneficiaries. Self v. Goodrich (S.C.App. 1989) 300 S.C. 349, 387 S.E.2d 713.

The beneficiaries are entitled to recover all damages, present and prospective, which are naturally the proximate consequence of the wrongful act, including: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate’s society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Smith v. Wells (S.C. 1972) 258 S.C. 316, 188 S.E.2d 470. Death 78

In the absence of testimony as to pecuniary loss, it is not an element of damage. Zorn v. Crawford (S.C. 1969) 252 S.C. 127, 165 S.E.2d 640. Death 85

Damages in a Lord Campbell’s Act case consist mainly of mental shock and suffering, grief and sorrow, loss of companionship, deprivation of the use and comfort of the intestate’s society, together with the pecuniary loss incident thereto. Gomillion v. Forsythe (S.C. 1950) 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169. Death 85; Death 88; Death 89

The elements of damage in actions for wrongful death include: Pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the intestate’s society, the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries, in addition to the loss of his ability to earn money for the support, maintenance, care and protection of his wife and children, and for the education and training of the latter. Mishoe v. Atlantic Coast Line R. Co. (S.C. 1938) 186 S.C. 402, 197 S.E. 97. Death 64; Death 67

Absence of pecuniary loss may be commented on. While pecuniary loss is not essential to recovery under this section [Code 1962 Section 10‑1954], it is an element of damages, and where there is no proof of such loss, its absence may be commented on by the judge in his instructions to the jury. Barksdale v. Seaboard Air Line Ry. (S.C. 1907) 76 S.C. 183, 56 S.E. 906.

7. —— Necessity of suffering pecuniary loss, elements of damage; pecuniary loss

Under this section [former Code 1962 Section 10‑1954] it is not essential, even to the recovery of compensatory damages, that the person for whose benefit the action is brought, should be dependent upon the deceased for support, or that they should suffer pecuniary loss. Hull v Seaboard Air Line Ry., 76 SC 278, 57 SE 28 (1907). Barksdale v Seaboard Air Line Ry., 76 SC 183, 56 SE 906 (1907). Mason v Southern Ry. Co., 58 SC 70, 36 SE 440 (1900). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896). Petrie v Columbia & G. R. Co., 29 SC 303, 7 SE 515 (1888). Davis v Columbia & G. R. Co., 21 SC 93 (1884).

Intangible factors of damage, such as grief, etc., may be considered by the jury in its assessment of damages regardless of whether or not a statutory beneficiary was, at the time of the death, dependent upon the decedent for support. Elliott v. Black River Elec. Co‑op. (S.C. 1958) 233 S.C. 233, 104 S.E.2d 357, 74 A.L.R.2d 907.

8. —— Presumption of pecuniary loss, elements of damage; pecuniary loss

When the relation between deceased and the beneficial plaintiff is that of husband and wife or parent and minor child, in the absence of evidence to the contrary, actual pecuniary loss will be presumed from the death. Mishoe v Atlantic Coast Line R. Co., 186 SC 402, 197 SE 97 (1938), quoting Gilliam v Southern Ry. Co., 108 SC 195, 93 SE 865 (1917). Nelson v Charleston & Western Carolina Ry. Co., 231 SC 351, 98 SE2d 798 (1957).

Mock v Atlantic Coast Line Railroad Company, 227 SC 245, 87 SE2d 830, stands as unimpeached explicit declaration of law of South Carolina that pecuniary loss to father could not be presumed out of wrongful death of his child, and in absence of relevant evidence pecuniary loss could not be considered as element of damages. Patrick v. U. S. (C.A.4 (S.C.) 1963) 316 F.2d 9.

The presumption of a pecuniary loss as in the case of a widow and surviving children does not arise in a case involving the wrongful death of a minor child, therefore making proof of actual loss necessary for recovery for pecuniary loss. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648. Death 85

Pecuniary loss is not a proper element of damages to be recovered by a mother for the death of her four‑year‑old child. Gregg v. Coleman, 1964, 235 F.Supp. 237. Death 85

It cannot be assumed that parents suffer any pecuniary loss from the death of a fifteen‑year‑old daughter. Therefore, the only elements of damage which may be considered in such a case are “such mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship and deprivation of the use and comfort of intestate’s society as the beneficiaries may have sustained as the result of the death of the intestate.” Zorn v. Crawford (S.C. 1969) 252 S.C. 127, 165 S.E.2d 640. Death 88; Death 89

9. —— Determining pecuniary loss, elements of damage; pecuniary loss

Testimony of economics expert was admissible, in wrongful death action against physician, to prove loss of decedent’s future earnings, although physician asserted that decedent had no possibility of future earnings because of drug‑abuse problem; prior testimony by vocational rehabilitation expert laid foundation for economics expert, and any question as to economist’s testimony went to credibility, not admissibility. Weaver v. Lentz (S.C.App. 2002) 348 S.C. 672, 561 S.E.2d 360. Evidence 555.9

Since direct proof of the value of human life is not possible, and what is reasonable compensation therefor must be left to the sound discretion and judgment of the jury, it is not necessary to show the precise money value of the deceased, or the exact amount of damages suffered by the beneficiaries, in order to sustain a recovery of substantial damages where a foundation for the recovery of damages has been laid by the introduction of evidence tending to show the earning capacity of the deceased, or the existence of persons who were dependent upon him for support. Mishoe v. Atlantic Coast Line R. Co. (S.C. 1938) 186 S.C. 402, 197 S.E. 97.

In an action for recovery of damages under this section [former Code 1962 Section 10‑1954], the probable duration of the beneficiary’s life is not relevant to the inquiry as to damages. Trimmier v. Atlantic & C.A.L. Ry. Co. (S.C. 1908) 81 S.C. 203, 62 S.E. 209.

While pecuniary loss is not essential to recovery under this section, it is an element of damages, and where there is no proof of such loss, its absence may be commented on by the judge in his instructions to the jury. Barksdale v. Seaboard Air Line Ry. (S.C. 1907) 76 S.C. 183, 56 S.E. 906.

It is not necessary that any witness testify to the pecuniary value of decedent’s services. Petrie v. Columbia & G.R. Co. (S.C. 1888) 29 S.C. 303, 7 S.E. 515.

10. —— Mental shock and suffering, elements of damage; pecuniary loss

Damages in a Lord Campbell’s Act case consist mainly of mental shock and suffering, grief and sorrow, loss of companionship, deprivation of the use and comfort of the intestate’s society, together with the pecuniary loss incident thereto. Gomillion v. Forsythe (S.C. 1950) 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169. Death 85; Death 88; Death 89

A wife and child may recover for mental anguish and loss of companionship. Brickman v. Southern Ry. (S.C. 1906) 74 S.C. 306, 54 S.E. 553. Death 89

11. —— Grief and sorrow, elements of damage; pecuniary loss

Such intangible elements of damage as sorrow to decedent’s children and widow, and deprivation of benefit of his companionship and advice, are recoverable under this section [former Code 1962 Section 10‑1954]; the difficulties attending realistic assessment of them, especially in an inflated economy, are obvious. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777. Death 88; Death 89

Damages in a Lord Campbell’s Act case consist mainly of mental shock and suffering, grief and sorrow, loss of companionship, deprivation of the use and comfort of the intestate’s society, together with the pecuniary loss incident thereto. Gomillion v. Forsythe (S.C. 1950) 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169. Death 85; Death 88; Death 89

Where testimony was admitted showing the effect of deceased’s suffering on the beneficiaries under this section [former Code 1962 Section 10‑1954], it was rendered harmless by a positive instruction that the jury could not consider as an element of damages either the suffering of deceased or the grief of the beneficiaries, occasioned by witnessing such suffering. Stuckey v. Atlantic Coast‑Line R. Co. of South Carolina (S.C. 1901) 60 S.C. 237, 38 S.E. 416, 85 Am.St.Rep. 842.

12. —— Loss of companionship, elements of damage; pecuniary loss

This section [former Code 1962 Section 10‑1954] encompasses loss by parents of companionship and affection of a child. Todd v. Sandidge Const. Co. (C.A.4 (S.C.) 1964) 341 F.2d 75. Death 88

Damages recoverable under this section [former Code 1962 Section 10‑1954] include loss of companionship, and deprivation of the use and comfort of the intestate’s society. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

Such intangible elements of damage as sorrow to decedent’s children and widow, and deprivation of benefit of his companionship and advice, are recoverable under this section; the difficulties attending realistic assessment of them, especially in an inflated economy, are obvious. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777. Death 88; Death 89

Damages in a Lord Campbell’s Act case consist mainly of mental shock and suffering, grief and sorrow, loss of companionship, deprivation of the use and comfort of the intestate’s society, together with the pecuniary loss incident thereto. Gomillion v. Forsythe (S.C. 1950) 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169. Death 85; Death 88; Death 89

A wife and child may recover for mental anguish and loss of companionship. Brickman v. Southern Ry. (S.C. 1906) 74 S.C. 306, 54 S.E. 553. Death 89

13. —— Deprivation of use of victim’s society, elements of damage; pecuniary loss

Damages recoverable under this section [former Code 1962 Section 10‑1954] include loss of companionship, and deprivation of the use and comfort of the intestate’s society. Green v. Southern Ry. Co. (D.C.S.C. 1970) 319 F.Supp. 919.

Damages in a Lord Campbell’s Act case consist mainly of mental shock and suffering, grief and sorrow, loss of companionship, deprivation of the use and comfort of the intestate’s society, together with the pecuniary loss incident thereto. Gomillion v. Forsythe (S.C. 1950) 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169. Death 85; Death 88; Death 89

14. —— Funeral expenses, elements of damage; pecuniary loss

Funeral expenses are compensable in an action under this section [former Code 1962 Section 10‑1954]. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Where funeral expenses are paid by the beneficiary they are a proper element of damages. Ordinarily funeral expenses are not involved in a Lord Campbell’s Act case, being usually payable out of the estate of the decedent. Gomillion v. Forsythe (S.C. 1950) 218 S.C. 211, 62 S.E.2d 297, 53 A.L.R.2d 169. Death 85

Funeral expenses can be recovered in this State in an action under this statute. Tollerson v. Atlantic Coast Line R. Co. (S.C. 1938) 188 S.C. 67, 198 S.E. 164.

Where it appears that the plaintiff has paid the funeral expenses of the deceased, it is proper for the jury to consider them as an element of damages. Petrie v. Columbia & G.R. Co. (S.C. 1888) 29 S.C. 303, 7 S.E. 515.

15. —— Future damages, elements of damage; pecuniary loss

Only such future or prospective damages may be recovered as the evidence renders it reasonably certain will of necessity result from the alleged injury. Smith v. Wells (S.C. 1972) 258 S.C. 316, 188 S.E.2d 470.

16. —— Punitive damages, elements of damage; pecuniary loss

Punitive damages of $250 million awarded against multibillion dollar corporation which manufactured minivan with defective liftgate latch, which failed, thereby allowing the liftgate to open in a rollover accident and cause passenger to be ejected and killed were well justified under South Carolina law and not the result of passion or prejudice; manufacturer designed the liftgate latch by recklessly resurrecting an outmoded, unsafe design that long before had been discarded as completely inadequate for use in passenger vehicles; failed to test the latch before placing a defective product in the stream of commerce, though fully cognizant of the grave risk and fact of serious injuries and deaths; consciously refused to remedy the defect; attempted in various ways to conceal its wrongdoing, and continued to sell the “safety” of its minivans, reaping billions of dollars in profits along the way. Jimenez v. Chrysler Corp., 1999, 74 F.Supp.2d 548, reversed in part, vacated in part 269 F.3d 439. Damages 94.10(2)

Where a defendant is found to be guilty of recklessness, that is, the reckless disregard of the safety of others, then a jury, or court, has the duty to impose punitive damages as well as actual damages. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Punitive damages are allowed to vindicate a private wrong, to punish the wrongdoer, and to set an example for other persons. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

The amount of punitive damages is determined by the character of the tort committed, the punishment which should be applied and ability to pay. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Wealth of a defendant is relevant but not necessarily a controlling factor in assessing punitive damages. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

“Recklessness” means the doing of a negligent act knowingly, and a person is “reckless or willful and wanton” when he consciously fails to exercise due care. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Willfulness has been defined as a conscious failure to use due care. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

The test by which a tort is characterized as “reckless, willful or wanton” is where it has been committed in a manner and under the circumstances that a person with ordinary reasonable prudence would have been conscious of it as an invasion of another’s rights. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Violations of a statute in South Carolina constitute negligence, and are evidence of recklessness. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Causative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness and willfulness. Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

Record supported jury’s award of $3.5 million in punitive damages in wrongful death and survival action against physician, arising from death of 19‑month‑old patient; evidence showed that physician failed to monitor child’s blood sodium level after placing him on dilute IV fluid, that she did not order apnea bradycardia (AB) monitor or follow‑up sodium tests which, according to expert testimony, would have saved child’s life, and that she did not arrange for immediate CAT scan when informed of child’s altered mental status, all of which suggested that physician had disinterested attitude in midst of what should have been growing concern for her patient. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Health 831

To sustain a verdict for punitive damages, there must be an award of actual damages. McGee v. Bruce Hosp. System (S.C.App. 1999) 336 S.C. 410, 520 S.E.2d 623, rehearing denied, certiorari granted, reversed 344 S.C. 466, 545 S.E.2d 286. Damages 87(2)

Where, in an action under this section [Code 1962 Section 10‑1954], there is no evidence of willfulness or wantonness, it is reversible error to refuse a request by defendant to charge that punitive damages could not be recovered. Trimmier v. Atlantic & C.A.L. Ry. Co. (S.C. 1908) 81 S.C. 203, 62 S.E. 209. Damages 215(2)

This section [former Code 1962 Section 10‑1954] authorizes exemplary damages where the negligence was the result of willfulness or malice. Osteen v. Southern Ry., Carolina Division (S.C. 1907) 76 S.C. 368, 57 S.E. 196. Death 93

The right to punitive damages under this section [former Code 1962 Section 10‑1954] is a legal right, following directly on the jury’s finding of recklessness, willfulness, or malice, as a matter of law. Brickman v. Southern Ry. (S.C. 1906) 74 S.C. 306, 54 S.E. 553.

Where, in an action to recover for death under this section [former Code 1962 Section 10‑1954], the action is for punitive as well as compensatory damages, evidence descriptive of the mangled condition of the body is relevant. Brickman v. Southern Ry. (S.C. 1906) 74 S.C. 306, 54 S.E. 553. Death 63

And so also are allegations as to what occurred before accident. Where a passenger was killed in a railroad coach, allegations as to what occurred within ten days before the accident will not be stricken out as irrelevant, since they tend to show gross negligence. Stuckey v. Atlantic Coast‑Line R. Co. of South Carolina (S.C. 1901) 60 S.C. 237, 38 S.E. 416, 85 Am.St.Rep. 842.

17. —— Jury’s discretion, elements of damage; pecuniary loss

The factors to consider in reviewing the jury’s award of punitive damages are: (1) defendant’s degree of culpability; (2) duration of the conduct; (3) defendant’s awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant’s ability to pay; and, (8) other factors deemed appropriate. Scott v. Porter (S.C.App. 2000) 340 S.C. 158, 530 S.E.2d 389, rehearing denied. Damages 94.1

The propriety of the exercise by the Supreme Court of its power to set aside a verdict on the ground that it is so shockingly excessive as to manifestly show that the jury was actuated by passion, prejudice or other considerations not founded on the evidence is inherently difficult where there is no tangible factor of damage, such as earning capacity, and the standard of recovery must be measured only by such imponderables as mental anguish, grief and loss of companionship. The valuation to be placed upon these elements is wisely left to the discretion of the jury. But it does not follow that the amount which may be awarded is wholly without any limitation. The determination is not left to the whim or caprice of the jury. There must be some semblance of a basis for justifying the verdict. Zorn v. Crawford (S.C. 1969) 252 S.C. 127, 165 S.E.2d 640.

This section [former Code 1962 Section 10‑1954] confers the right to punitive damages, and only leaves to the discretion of the jury the amount of such damages. Such discretion, however, is absolute, and will not be reviewed as to amount by the Supreme Court. Brickman v. Southern Ry. (S.C. 1906) 74 S.C. 306, 54 S.E. 553.

18. Excessive or inadequate verdicts—In general

This section [former Code 1962 Section 10‑1954], providing that the jury shall assess damages proportionate to the injury, does not place such actions on a different basis from other actions in tort, and a trial judge has authority to grant a new trial where the verdict is excessive. Stuckey v Atlantic Coast Line R. Co., 57 SC 395, 35 SE 550 (1900). Elliott v Black River Electric Cooperative, 233 SC 233, 104 SE2d 357 (1958).

Supreme Court has no power to reduce excessive verdicts. Elliott v. Black River Elec. Co‑op. (S.C. 1958) 233 S.C. 233, 104 S.E.2d 357, 74 A.L.R.2d 907.

Now trials are permissible if it is apparent that injustice has been done. Hall v. Northwestern R. Co. of South Carolina (S.C. 1908) 81 S.C. 522, 62 S.E. 848.

New trials are permissible where verdict gives inadequate damages. Bodie v. Charleston & W. C. R. Co. (S.C. 1903) 66 S.C. 302, 44 S.E. 943.

19. —— Particular verdicts, excessive or inadequate verdicts

Verdict not excessive. See Dawson v South Carolina Power Co., 220 SC 26, 66 SE2d 322 (1951). Mock v Atlantic Coast Line R. Co., 227 SC 245, 87 SE2d 830 (1955).

In an action for wrongful death, where plaintiff’s intestate, at the time of the fatal collision, was in good health, a devoted husband and father, a good provider who was earning annually between $6500 and $7500, and, at the time of his death, was fifty‑three years of age with a life expectancy of 21.25 years, plaintiff was entitled to the sum of $40,000 actual damages. Downing v. Ulmer (D.C.S.C. 1966) 253 F.Supp. 694.

Grant of additur of $600,000 was not an abuse of discretion in wrongful death action in which jury awarded $300,000 to estate of driver who was killed in motor vehicle accident involving a negligently designed door‑latch system, even though a portion of the jury award was for noneconomic damages; driver’s family suffered more than $228,000 in economic damages as result of driver’s death, trial judge provided thorough recitation of evidence demonstrating both pecuniary loss and noneconomic compensable elements of loss recoverable in a wrongful death action, and there was no categorical rule prohibiting nisi additur where jury verdict included some measure of noneconomic damages. Riley v. Ford Motor Co. (S.C. 2015) 414 S.C. 185, 777 S.E.2d 824. Death 106

Department of Public Safety was not entitled to a new trial absolute, in wrongful death action brought by father of deceased motorist against Department and motorist suspected of driving under the influence (DUI), on its contention that verdict was grossly excessive; case arose out of fatal high‑speed police pursuit, and jury apportioned 80 per cent fault to DUI suspect and 20 per cent fault to Department, resulting in verdicts against DUI suspect for $3.0 million and against Department for $750,000, which was reduced to $250,000 as required by Tort Claims Act, and verdict was not so excessive as to shock the conscience, given the nature of the loss endured by father and the necessarily nonpecuniary elements involved. Clark v. South Carolina Dept. of Public Safety (S.C.App. 2002) 353 S.C. 291, 578 S.E.2d 16, rehearing denied, affirmed 362 S.C. 377, 608 S.E.2d 573. Death 99(5)

Damages award in wrongful death action against physician was properly reduced by the amount of decedent’s contributory fault, although widow plaintiff asserted that award of punitive damages established that physician acted recklessly, thereby barring application of comparative negligence; under comparative negligence scheme, physician’s recklessness was not a bar to apportionment of fault. Weaver v. Lentz (S.C.App. 2002) 348 S.C. 672, 561 S.E.2d 360. Death 23

Verdict in wrongful death action, awarding widow $792,577 against physician who overprescribed prescription drugs to widow’s deceased husband, who was physician’s patient, was not excessive; this amount was supported by economics expert testifying on loss of future earnings. Weaver v. Lentz (S.C.App. 2002) 348 S.C. 672, 561 S.E.2d 360. Death 99(4)

In action for the death of a fifty‑eight‑year‑old woman brought by her brothers, who were very close to her and often exchanged visits with her, a verdict for $35,000 actual damages reduced by trial judge to $29,000 was excessive. Nelson v. Charleston & W. C. Ry. Co. (S.C. 1957) 231 S.C. 351, 98 S.E.2d 798. Death 99(5)

20. Apportionment and disposition of recovery; effect of statute of distribution

In South Carolina an action for wrongful death may be maintained only by an executor or administrator of the decedent’s estate. The cause of action inheres in the person representative, and the statutory beneficiaries cannot proceed in their own names. Any amount recovered, however, does not go into the decedent’s general estate but is payable, upon receipt by the personal representative, directly to the statutory beneficiaries. Lester v. McFaddon (C.A.4 (S.C.) 1969) 415 F.2d 1101. Death 31(3.1); Death 101

Section 15‑51‑40 requires the distribution of the proceeds of a wrongful death action based strictly on the share each statutory beneficiary would take as an heir in intestacy, regardless of the proportion of damages suffered by each. Ballard v. Ballard (S.C. 1994) 314 S.C. 40, 443 S.E.2d 802. Death 101

Where an administratrix brings an action for the benefit of herself and her minor son, she brings the action, in her official capacity, and collects the money by virtue of her office, with the resulting duty of disbursing it officially; hence, the surety on her bond is liable for her misapplication of such funds. Boyd v. Richie (S.C. 1930) 159 S.C. 55, 155 S.E. 844.

The funds recovered under this section [former Code 1962 Section 10‑1954] and the preceding sections must be distributed according to the provisions of such sections and not in accordance with the terms of the statute of distribution. Childs v. Bolton (S.C. 1904) 69 S.C. 555, 48 S.E. 618.

Under the provision of this section [former Code 1962 Section 10‑1954] that the amount shall be divided between the parties entitled in such shares as they would have been entitled to had the deceased died intestate and the amount had been personal assets of his estate, it is proper to look to the statute of distribution for the purpose of determining alone the proportions in which the funds should be distributed. Childs v. Bolton (S.C. 1904) 69 S.C. 555, 48 S.E. 618. Death 101

Where there are no assets left by deceased, a right of action existing under this section [former Code 1962 Section 10‑1954] is sufficient to authorize the grant of letters of administration. In re Mayo’s Estate (S.C. 1901) 60 S.C. 401, 38 S.E. 634.

21. —— Recovery as absolute property of beneficiaries, apportionment and disposition of recovery; effect of statute of distribution

Money collected by an administrator or executor under this section [former Code 1962 Section 10‑1954] does not become a part of the assets of the deceased person’s estate, in the sense that it becomes liable for his debts and passes under the statute of distribution. Boyd v Richie, 159 SC 55, 155 SE 844 (1930). Rookard v Atlanta & C. Air Line Ry. Co., 89 SC 371, 71 SE 992 (1911).

The amount recovered in actions under this section [former Code 1962 Section 10‑1954] and the preceding sections belongs absolutely to the persons named in such sections for whose benefit the actions are brought. Rookard v. Atlanta & C. Air Line Ry. Co. (S.C. 1911) 89 S.C. 371, 71 S.E. 992.

The court rejected a contention that the action allowed by this section [former Code 1962 Section 10‑1954] is a property right and an asset of the estate, and that the denial of the right to recover damages in this action is, in effect, a taking of property without just compensation, in violation of the Federal and State constitutions, in the case of Mullinax v. Hambright (S.C. 1920) 115 S.C. 22, 104 S.E. 309.

**SECTION 15‑51‑41.** Court approval required for settlement of wrongful death or survival action.

 Any settlement of a wrongful death or survival action must be approved by either a probate court, circuit court, or United States District Court, as provided in Section 15‑51‑42.

HISTORY: 1992 Act No. 475, Section 1.

CROSS REFERENCES

Probate Court’s jurisdiction over matters involving wrongful death actions as extending only to approval of settlements as provided in this section, see Section 62‑1‑302.

LIBRARY REFERENCES

Westlaw Key Number Search: 89k53.1.

Compromise and Settlement 53.1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 12, Death Settlements.

S.C. Jur. Wrongful Death Section 19, Requirement of Court Approval.

Forms

South Carolina Litigation Forms and Analysis Section 3:26 , Wrongful Death.

South Carolina Litigation Forms and Analysis Section 3:47 , Survivorship.

Notes of Decisions

In general 1

1. In general

Redaction of trial transcript to remove reference to settlement amount in wrongful death and survival action against automobile manufacturer was not warranted, despite fact that parties had entered into confidentiality agreement regarding the amount, where public’s interest in access to judicial records indicating settlement outweighed manufacturer’s interest in retaining confidentiality of the settlement, redaction would violate local rule providing that no settlement agreement filed with court could be sealed, and since court was required, under South Carolina law, to undertake an independent review of settlements in wrongful death and survival actions to determine whether the settlement was fair and reasonable, the terms of the settlement became part of the judicial record as a matter of necessity. Martin v. American Honda Motor Co., Inc., 2013, 940 F.Supp.2d 277. Records 32

**SECTION 15‑51‑42.** Approval of settlements of wrongful death or survival actions.

 (A) Only a duly appointed personal representative, as defined in Section 62‑1‑201(30), shall have the authority to settle wrongful death or survival actions.

 (B) If no action is pending, the personal representative shall petition either the probate or the circuit court of this State seeking approval of a proposed settlement. The petition must be verified by the personal representative and shall set forth, in terms satisfactory to the court in which the petition is filed, the basic facts surrounding the death of the decedent, the pertinent facts surrounding the liability of the alleged wrongdoer, the amount of insurance available to pay for damages, the terms of the proposed settlement, the statutory beneficiaries of the wrongful death or survival action, the heirs at law or appropriate devisees of the estate, the appropriate creditors, the amount of their claims, and, if the personal representative has retained legal counsel, the terms and provisions of the agreement with respect to attorney’s fees and costs.

 It is not necessary that a personal representative be represented by legal counsel for the court to consider the petition and approve the settlement. If the personal representative is represented by legal counsel, the counsel shall sign a certificate attesting to the fact that he is of the opinion that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and, in a survival action, the estate of the decedent.

 The court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement. If the settlement is approved by the court, the personal representative has the power to conclude the settlement, including the execution of those documents as the settlement terms contemplate.

 (C) If a wrongful death or survival action has been filed in state court and:

 (1) the settlement agreement between the parties is reached before the matters reach trial, the personal representative shall petition the court in which the wrongful death or survival action has been filed and follow the procedure for settlement as provided in (B) above;

 (2) the settlement agreement is reached during the trial, or after trial but before notice of appeal is filed, of either the wrongful death or survival action, then no petition is necessary, and the court shall conduct a hearing, at which the parties may present to the court the pertinent facts and information, including that information required in subsection (B) above, which the court may require in order to consider whether to approve or disapprove the settlement. If the court finds the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and, in a survival action, the estate of the decedent, then the court shall issue its order approving the settlement;

 (3) the settlement agreement is reached after notice of appeal is filed, the personal representative shall petition the appellate court before which the matter is pending to remand the case to the circuit court for consideration of the settlement agreement in accordance with the procedure outlined in (2) above.

 (D) For any actions pending in the federal courts, the same procedure may be followed, but the federal court, at its discretion, may issue an order transferring the case to state court for consideration of the proposed settlement.

 (E) Once a settlement agreement has been approved by an appropriate court, the person paying the settlement proceeds and all those on whose behalf the payment is made and any other persons who could be responsible because of the actions on whose behalf the settlement proceeds are being paid, are relieved and discharged from further liability and shall have no obligation or legal duty to see to the appropriate or proper distribution of the settlement proceeds among either the wrongful‑death beneficiaries or those entitled to the proceeds of the settlement of the survival action. Once payment has been made to the personal representative, the obligations of the person making the payment and those on whose behalf the payment is being made, and all those who could be responsible for the actions of these persons, are fully and completely released and finally and forever discharged from any further responsibility in connection with the action or actions.

 (F) Any person bringing a wrongful death or survival action in a court other than the probate court must notify the probate court of this action within ten days after the filing of the action. The provisions of this subsection apply to wrongful death or survival actions filed after the effective date of this section.

 (G) When the administration of an estate is final except for the administration of survival action proceeds because of the pendency of a survival action brought on behalf of the estate, the probate court may issue, upon petition by the personal representative, a special order providing that no accountings are required until the survival action is settled or verdict rendered in a trial. The attorney for the personal representative must notify the probate court immediately upon completion of the survival action and furnish the court with a copy of the order approving settlement or a copy of the judgment, whichever is appropriate.

HISTORY: 1992 Act No. 475, Section 1; 1999 Act No. 55, Section 21; 2002 Act No. 362, Section 2.

CROSS REFERENCES

Probate Court’s jurisdiction over matters involving wrongful death actions as extending only to approval of settlements as provided in this section, see Section 62‑1‑302.

Requirement that any settlement of a wrongful death or survival action be approved by a court as provided in this section, see Section 15‑51‑41.

LIBRARY REFERENCES

Westlaw Key Number Searches: 89k4.5; 89k51 to 89k72.

Compromise and Settlement 4.5, 51 to 72.

C.J.S. Compromise and Settlement Sections 8, 22 to 28, 40 to 41.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 12, Death Settlements.

S.C. Jur. Wrongful Death Section 18, Individuals Authorized to Settle.

S.C. Jur. Wrongful Death Section 20, Procedure for Obtaining Court Approval.

Forms

South Carolina Litigation Forms and Analysis Section 33:31 , Petition for Approval of Compromise Settlement.

South Carolina Litigation Forms and Analysis Section 33:32 , Order Approving Settlement and Distribution of Proceeds.

NOTES OF DECISIONS

In general 1

1. In general

Probate court did not have subject matter jurisdiction to award attorney fees earned by dismissed attorney for estate in connection with wrongful death claim absent petition to approve settlement offer; filing of petition for approval of settlement offer gives probate court subject matter jurisdiction and attorney fee arrangement may be reviewed only in connection with evaluation of proposed settlement offer. Ex parte McLeod (S.C.App. 1996) 323 S.C. 461, 476 S.E.2d 167. Death 109

Probate court has jurisdiction to approve or disapprove terms of attorney fee arrangement in wrongful death action by estate only in connection with its evaluation of proposed settlement offer which is before court. Ex parte McLeod (S.C.App. 1996) 323 S.C. 461, 476 S.E.2d 167. Death 109

**SECTION 15‑51‑50.** Liability for costs.

 The executor or administrator, plaintiff in the action, shall be liable to costs in case there be a verdict for the defendant or nonsuit or discontinuance, out of the goods, chattels and lands of the testator or intestate, if any.

HISTORY: 1962 Code Section 10‑1955; 1952 Code Section 10‑1955; 1942 Code Section 413; 1932 Code Section 413; Civ. P. ‘22 Section 369; Civ. C. ‘12 Section 3957; Civ. C. ‘02 Section 2853; 1903 (24) 96.

CROSS REFERENCES

General statute providing for costs against fiduciaries, see Section 15‑37‑180.

LIBRARY REFERENCES

Westlaw Key Number Search: 117k109.

Death 109.

C.J.S. Death Section 156.

NOTES OF DECISIONS

In general 1

1. In general

Under this section [former Code 1962 Section 10‑1955] and former Code 1962 Section 10‑1620 [see now Section 15‑37‑180], a judgment for the defendant for the costs of an appeal, decedent leaving no estate, may be deducted from the amount recovered by the plaintiff administrator at a subsequent trial of the same cause. Rookard v. Atlanta & C. Air Line Ry. Co. (S.C. 1911) 89 S.C. 371, 71 S.E. 992.

Administrator not personally liable unless guilty of bad faith in action before the court. Clark v. Wright (S.C. 1887) 26 S.C. 196, 1 S.E. 814.

**SECTION 15‑51‑60.** Effect of action prior to death.

 The provisions of this article shall not apply to any case in which the person injured has, for such injury, brought action, which has proceeded to trial and final judgment before his or her death.

HISTORY: 1962 Code Section 10‑1956; 1952 Code Section 10‑1956; 1942 Code Section 414; 1932 Code Section 414; Civ. P. ‘22 Section 370; Civ. C. ‘12 Section 3958; Civ. C. ‘02 Section 2854; G. S. 2186; R. S. 2318; 1859 (12) 706.

LIBRARY REFERENCES

Westlaw Key Number Search: 117k20.

Death 20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Wrongful Death Section 5, Separate, Independent Cause of Action.

Treatises and Practice Aids

70 Causes of Action 2d 193, Cause of Action for Loss of Sibling Consortium.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Jenkins v Southern Ry.‑Carolina Division, 152 SC 386, 150 SE 128 (1929). Rish v Seaboard Air Line Ry., 106 SC 143, 90 SE 704 (1916). Jones v Charleston & W. C. R. Co., 98 SC 197, 82 SE 415 (1914). Stuckey v Atlantic Coast Line R. Co., 57 SC 395, 35 SE 550 (1900). In re Mayo’s Estate (S.C. 1901) 60 S.C. 401, 38 S.E. 634.

This section [former Code 1962 Section 10‑1956], in excluding a right of action in the administrator where deceased, in his lifetime, has recovered a final judgment for his injury, does not imply that the administrator may maintain an action in every other case, but is only intended to prevent a double remedy in any case. Price v. Richmond & D. R. Co. (S.C. 1890) 33 S.C. 556, 12 S.E. 413, 26 Am.St.Rep. 700.

ARTICLE 3

Liability of County for Lynching

**SECTION 15‑51‑210.** When county is liable for damages for lynching.

 In all cases of lynching when death ensues the county in which such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars, to be recovered by action instituted in any court of competent jurisdiction by the legal representatives of the person lynched, and they are hereby authorized to institute such action for the recovery of such exemplary damages. A county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover in any court of competent jurisdiction the amount of such judgment from the parties engaged in such lynching and is hereby authorized to institute such action.

HISTORY: 1962 Code Section 10‑1961; 1952 Code Section 10‑1961; 1942 Code Section 3041; 1932 Code Section 3041; Civ. C. ‘22 Section 5601; Civ. C. ‘12 Section 3947; Civ. C. ‘02 Section 2844; 1896 (22) 214.

CROSS REFERENCES

Crime of lynching, see Section 16‑3‑210.

LIBRARY REFERENCES

Westlaw Key Number Search: 104k148.

Counties 148.

C.J.S. Counties Section 183.

NOTES OF DECISIONS

In general 1

Application 4

Definition of terms 2

Jurisdiction 3

1. In general

Stated in Green v. West (S.C. 1931) 161 S.C. 161, 159 S.E. 23.

This section [former Code 1962 Section 10‑1961] should be liberally interpreted to the end that the remedy prescribed should not be denied in any case coming substantially within its spirit. Kirkland v. Allendale County (S.C. 1924) 128 S.C. 541, 123 S.E. 648. Counties 148

Action under this section is for money only and is triable by jury. Best v. Barnwell County (S.C. 1920) 114 S.C. 123, 103 S.E. 479.

2. Definition of terms

It has been said that the word “lynching” has “no technical legal meaning,” but is merely a descriptive phrase which “is universally understood to signify the illegal infliction of punishment by a combination of persons for an alleged crime.” Kirkland v Allendale County, 128 SC 541, 123 SE 648 (1924). Green v Greenville County, 176 SC 433, 180 SE 471 (1935).

In an action for exemplary damages under this section [former Code 1962 Section 10‑1961] the plaintiff, in order to establish a cause of action, must prove that plaintiff’s intestate was killed after being charged with or suspected of having committed some crime and that such death was inflicted by a mob because of such crime or suspicion of crime. In other words, the burden is upon plaintiff to prove by the preponderance of the evidence that plaintiff’s intestate was “lynched” as herein defined. Green v. Greenville County (S.C. 1935) 176 S.C. 433, 180 S.E. 471. Counties 148

The word “ensue” in its primary signification means “to come after,” to follow in the order of happening or in the course of time, without any necessary causal connection between what went before and what follows. While the term as here employed may not soundly be construed to have been used in a sense that does not involve causal connection, the breadth of the term used, considered in connection with the primary object of the provision as a whole, would seem clearly to indicate that the causal connection contemplated was not necessarily that involved in the ordinary action to recover damages for a tort. Kirkland v. Allendale County (S.C. 1924) 128 S.C. 541, 123 S.E. 648.

The use of the words “in any court of competent jurisdiction” shows conclusively that the action hereunder is to be brought in a court of law, and that the damages are to be assessed by a jury. Best v. Barnwell County (S.C. 1920) 114 S.C. 123, 103 S.E. 479.

3. Jurisdiction

Under this section [former Code 1962 Section 10‑1961], jurisdiction is with the court of common pleas, and not with the county board, and hence is not barred by rejection by such board. The court of common pleas is the only court having jurisdiction, for the reason that the amount of recovery is unlimited. Best v. Barnwell County (S.C. 1920) 114 S.C. 123, 103 S.E. 479.

The county board of commissioners does not possess the constituent elements of a court in the sense mentioned in this section [former Code 1962 Section 10‑1961]. It has no machinery for trial of cases before a jury, which is essential. A plaintiff cannot therefore waive such jurisdictional defects by first taking his case before the county board. Best v. Barnwell County (S.C. 1920) 114 S.C. 123, 103 S.E. 479.

Where, between the accrual of an action under this section [former Code 1962 Section 10‑1961] and the trial of the claim for damages, a new county is formed from portions of the county in which the lynching occurred, and the act creating such new county provides for the transfer to the courts of the new county of pending civil actions in the old county, such action for damages for the lynching need not be transferred to the new county, since it cannot be contended that the defendant resided in any particular portion of the county. Best v. Barnwell County (S.C. 1920) 114 S.C. 123, 103 S.E. 479.

4. Application

Under this section [former Code 1962 Section 10‑1961] the county is liable whether party lynched was prisoner or not. Brown v Orangeburg County, 55 SC 45, 32 SE 764 (1899). Green v Greenville County, 176 SC 433, 180 SE 471 (1935).

This section [former Code 1962 Section 10‑1961] does not allow action against county for mob violence where death did not ensue. Brazzill v. Lancaster County (S.C. 1925) 132 S.C. 347, 128 S.E. 728.

This section [former Code 1962 Section 10‑1961] contemplates acts of a mob leading to death within its provisions. Kirkland v. Allendale County (S.C. 1924) 128 S.C. 541, 123 S.E. 648.

Where, under this section [former Code 1962 Section 10‑1961], acts of the lynchers contribute to or hasten death, the county is liable for such death. Kirkland v. Allendale County (S.C. 1924) 128 S.C. 541, 123 S.E. 648.

And this is true, even though he was dead before his body was hanged or burned. Kirkland v. Allendale County (S.C. 1924) 128 S.C. 541, 123 S.E. 648.

Taking prisoner from sheriff and leaving him seriously wounded in automobile without medical care is “lynching.”—Where a prisoner is taken from a sheriff, and while seriously wounded and bleeding is carried a considerable distance in an automobile and is left lying therein more dead than alive, without medical attention, there is a “lynching” within the meaning of this section [Code 1962 Section 10‑1961]. Kirkland v. Allendale County (S.C. 1924) 128 S.C. 541, 123 S.E. 648.

Taking deceased from one county jail and killing him in another county. The taking of the deceased out of Pickens County jail and his killing by a mob in Greenville County constituted sufficient facts to bring action against Greenville County under this section [Code 1962 Section 10‑1961]. Burke v. State, 1949, 205 Ga. 520, 54 S.E.2d 348, certiorari denied 70 S.Ct. 422, 338 U.S. 941, 94 L.Ed. 580.