

MOSES S. WALKER, Plaintiff
v.
ROBERT KINNEY, Defendant
Civil Action No. 285
Trial Division of the High Court
Mariana Islands District
April 28, 1969

Appellate Court Opinion—5 T.T.R. 87

Action for damages for injuries resulting from an assault. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that in order to recover punitive damages the plaintiff would have to show compensatory damages and in the absence of such showing no punitive damages would be allowed and also where no compensatory damages were shown court would award plaintiff only nominal damages.

1. Civil Procedure—Demand for Trial

The effect of defendant's demand for trial was to put in issue every allegation of the plaintiff.

2. Torts—Damages—Punitive Damages

Punitive damages depend upon the existence of compensatory damages.

3. Assault—Generally

The use of insulting and abusive words will not, standing alone, justify an assault.

4. Torts—Damages—Punitive Damages

Unless it is clearly shown that the defendant acted maliciously and with the intent to injure the plaintiff, the court may not award punitive damages.

5. Torts—Damages—Punitive Damages

Punitive damages are usually an amount in excess of proven compensatory damages, and punitive damages are awarded merely as punishment to prevent the defendant and others from committing the same offense or a like offense.

6. Assault—Malice

The court would not presume the existence of malice in the face of direct testimony that immediately following incident in question the defendant expressed regret for his actions and offered to apologize to the plaintiff.

SHOECRAFT, *Chief Justice*

This action was brought by a United States citizen against another United States citizen, both of whom are residents of Saipan and both of whom are employed as teachers at Hopwood High School. The plaintiff claimed that on February 28, 1969, he was assaulted without provocation by the defendant in a room at the Hopwood High School. The plaintiff further claimed that, as a result of that assault, he was injured and that those injuries included injuries to his ear, neck, head and extremities, injuries to his central and peripheral nervous system, severe shock, and other injuries not yet diagnosed, all of which are either permanent or continuing in their nature. The plaintiff further claimed that as a result of those injuries he was forced to seek medical attention and that in the future he will be compelled to seek further medical attention. The plaintiff also claimed that his professional status has been impaired as a result of this alleged assault, and that his earning capacity and working ability are also impaired.

[1] The defendant filed a demand for trial, which in the Trust Territory practically amounts to a general denial. No affirmative defense was pleaded. Therefore, the effect of defendant's demand for trial was to put in issue every allegation of the plaintiff. In order for the plaintiff to prevail in this action, he must show that there was, in fact, an assault, and that the defendant acted wilfully and maliciously and without due regard for the rights of the plaintiff. He must also prove that he has suffered some monetary damage.

[2] The plaintiff asked for compensatory damages, as well as punitive damages. It is well settled that punitive damages depend upon the existence of compensatory damages. From the evidence we must find that the plaintiff has suffered no loss of salary as a result of this alleged assault. There is no evidence in the record of medical expenses paid or incurred by the plaintiff. There is no evidence in the record of dental expenses paid or incurred by the plaintiff. The Court will not speculate as to any further expenses that may be required. The evidence showed nothing that would indicate that the plaintiff is in danger of losing his job. Dr. Kaipat, testifying as a medical expert, could not say with any certainty that the plaintiff would have further medical problems as a result of this alleged assault. So we must find that the plaintiff has not proved compensatory or monetary damages. It just is not in the record.

[3-6] There is no question, and the evidence so shows, that the plaintiff was struck by the defendant. It appears clear that the plaintiff also suffered some injury as a result of that striking. The evidence tends to show that there might have been some provocation for this assault. However, the use of insulting and abusive words will not, standing alone, justify an assault. On the other hand, unless it is clearly shown that the defendant acted malicious-

ly and with the intent to injure the plaintiff, we may not award punitive damages. Punitive damages are usually an amount in excess of proven compensatory damages, and punitive damages are awarded merely as punishment to prevent the defendant and others from committing the same offense or a like offense. The Court will not presume the existence of malice in the face of direct testimony that immediately following the incident the defendant expressed regret for his actions and offered to apologize to the plaintiff. Because the evidence shows that the plaintiff was struck by the defendant and that he did in fact suffer some injury, this Court must find in favor of the plaintiff. The Court must decline to award any punitive damages and, since there are no monetary damages shown or proved or in evidence here, the Court will award the plaintiff nominal damages in the amount of one dollar (\$1.00). Costs of suit, ordinary costs, that is, as authorized by the Trust Territory Code, are taxed to the defendant.