

LIFE EXPECTANCY AND LOSS OF EARNING CAPACITY

In an action by the injured person, loss of future earning capacity¹ should *not* be computed on the life expectancy as affected by the injury, but on the expectancy the person could have anticipated had he not been injured.² In the bulk of cases, this point is academic. Many personal injuries, even though severe and permanent, do not appreciably affect life expectancy. But where injury does decrease the person's expectancy, the point can vitally affect damages.

To illustrate, suppose P suffers an injury to the kidney, heart or other vital organ. Prior to injury, his earning life expectancy was 20 years.³ *As a result of the injury*, his expectancy is decreased to 5 years. Loss of earning capacity should be based upon the expectancy of 20 years and not upon 5 years. Although both principles of compensatory damages and case law firmly support this right, there is much authority—almost exclusively dicta—which states or indicates that damages cannot be given for loss of earning capacity beyond the date of probable actual death.

THEORETICAL BASIS FOR RECOVERY

On tort damage principles, liability is basically imposed for all damage directly resulting from a tort regardless of foreseeability.⁴ The purpose of a damage award in a tort action for personal injury is to compensate the person. The objective of compensation is stated by the principle that the injured person should be given that amount which will put him back in the same position he was in before injury. A person is entitled to full compensation for any pecuniary loss occasioned by his injury.⁵ Loss of earning capacity is the most obvious, and usually the most substantial item of pecuniary damage—at least where there is permanent injury. This loss is determined by reference to the person's earning capacity and the duration of the impairment.

If the injury is permanent, the duration is, of course, the injured person's entire earning life expectancy. A permanent injury may result in partial or total destruction of earning capacity. The impairment may

¹ Past impairment or loss of time to trial is not considered in this article. See 15 AM. JUR. DAMAGES, §81 *et seq.*

² On mortality tables, see 50 A.L.R.2d 419 (1956).

³ Life expectancy and earning life expectancy may differ considerably. Since this article is concerned with loss of earning capacity, it should be understood that references to "life expectancy" means the period not just of life, but of ability to earn income.

⁴ Liability is assumed and only the measure of damages is involved. What is "direct" and what is "remote," foreseeability as applied to causation, and avoidability of consequences are thus not material to this article. See generally, MCCORMICK ON DAMAGES (1935).

⁵ With respect to non-pecuniary losses, such as pain and suffering, the objective is probably better described as giving reasonable compensation. See MCCORMICK ON DAMAGES, §88, p. 315-319 (1935).

progress from partial to total. The clearest, and most certain case of total impairment is an injury which decreases or shortens life expectancy. That decreasing life is an injury to the person would seem obvious. Prior to injury, the plaintiff had a certain earning capacity and as a result of his injury, it has been impaired. Had he not been injured, he could reasonably expect to earn money for the rest of his working life and his loss is a sum which will restore that pecuniary loss to him. Whether a person's earning life is sliced horizontally by a crippling injury or vertically by decreasing life itself, the effect on his economic expectation is the same. 'Either way the cheese is sliced,' the plaintiff loses a portion of his pre-existing power to earn income. Having a right to life and a right to earn money, the fact that both of those rights suffer the severest injury possible does not distinguish the situation from one in which there is a total incapacitating without interference with life expectancy.⁶

There does not seem to be any substantial basis for deducting living expenses for the period between date of probable actual death and the date of expectancy before injury. Ordinarily a court does not inquire into the purpose to which the plaintiff would have put the money had he earned it, nor the purpose to which he will put the money received in compensation for his loss. It is "none of the defendant's business."⁷ If he would have earned it, he is entitled to recover its loss.⁸ A different situation is presented in determining damages to a decedent's beneficiaries under a death act. If recovery is based upon loss to the beneficiaries, obviously they would not have received, and consequently suffer no loss of, the amount the decedent would spend on himself.⁹

⁶ The right of a living plaintiff to recover his full loss of earning capacity should not be confused with the statutory rights arising after death under survival and wrongful death acts. The survival action is a derivative of the injured person's cause of action. A recovery by a living plaintiff therefore bars the survival action. Under wrongful death statutes, the cause of action is generally considered as a new one created in the designated beneficiaries. It is apparent that if an injured person recovers, while alive, his full loss of earning capacity, a subsequent recovery of a portion of the same loss in a wrongful death action would result in double recovery on that item. The problem presented is one of the proper allocation of damages. The great majority of courts, recognizing the overlap of damages, hold that a recovery during life bars the wrongful death action. A minority, apparently overlooking the duplication that results, hold there is no bar. For a discussion of this and related problems, see Duffey, *The Maldistribution of Damages in Wrongful Death*, 19 OHIO ST. L.J. 264 (1958).

⁷ *Olivier v. Houghton County St. Ry. Co.*, 138 Mich. 242, 101 N.W. 530 (1904).

⁸ See McCORMICK ON DAMAGES, §86, p. 303-304 (1935).

⁹ Cases holding that under a survival statute the measure is the decedent's gross earnings are also authority for the non-deductibility of living expenses in an action by a living plaintiff. While subject to criticism on the adoption of such a measure in a survival case, the basis of such holdings is that the recovery is exactly the same as the recovery the decedent could have had if alive. See *Olivier v. Houghton County St. Ry. Co.* *supra* note 7; *Mickel v. New England Coal & Coke*

AUTHORITY SUPPORTING RECOVERY

Authority for recovery of loss of earning capacity based on life expectancy as it existed prior to injury¹⁰ is substantial.¹¹

In *Hallada v. Great Northern Railway*,¹² plaintiff sued under the Federal Employers' Liability Act and the Federal Safety Appliance Act.¹³ In affirming a judgment on condition of remittitur, the Minnesota Court stated:

In personal injury actions it is elementary that the injured party should be made financially *whole* by receiving the monetary equivalent of the harm sustained by him, inclusive of his medical expenses, pain and suffering, past loss of earnings, and, where a permanent injury is inflicted, his future losses due to impaired earning capacity. In arriving at plaintiff's damages for impaired earning capacity, the jury must first determine from the evidence what the plaintiff normally would have earned during the rest of his life *had he not been injured*, deduct therefrom that sum which he may reasonably be expected to earn despite his injuries, and then reduce the remainder to its present worth.

In the case of permanent injuries, it is necessary, in order to ascertain the damages for impaired earning capacity, to determine the life expectancy of the individual *at the time of the tort*.¹⁴

In *Prairie Creek Coal Min. Co. v. Kittrell*,¹⁵ the lower court's instruction specifically charged the jury to determine loss of earning capacity "according to what you find his probable expectancy if he had not received the injury complained of, if any. . . ." In affirming, the Supreme Court held:

The appellant contends that appellee should not recover for the full expectancy of his life before the injury occurred,

Co., 132 Conn. 671, 47 A.2d 187 (1946); *Pezulli v. D'Ambrosia*, 344 Pa. 643, 26 A.2d 659 (1942).

¹⁰ More accurately, life expectancy unaffected by the injuries suffered. Conceivably the plaintiff could suffer a later injury for which the defendant is not liable. However, "prior to injury" is the expression most used by the courts.

¹¹ The quantity of direct holdings is, relatively speaking, not too great. As a practical matter, most permanent injuries do not affect life expectancy substantially, if at all. If there is substantial impairment, death will frequently occur during the normal time lapse before judgment. Revived actions and survival actions cannot, in most states, be considered as authority on the rights of a living plaintiff to recover loss of earning capacity. The relationship between such actions and wrongful death actions presents peculiar problems in the allocation of damages which materially affect the damages recoverable. See *supra* note 6 and *infra* note 43.

¹² 244 Minn. 81, 69 N.W.2d 673 (1953).

¹³ 45 U.S.C.A. §51; 45 U.S.C.A. §1. The distinctions between the two causes of action go to liability and not to damage principles.

¹⁴ 69 N.W.2d at 685. Emphasis added.

¹⁵ 106 Ark. 237, 153 S.W. 89 (1912).

when the evidence shows that, by reason of the injury, he will not live more than six months. The appellee had a right of action against appellant, as soon as the injury occurred, for all damages he had sustained, caused by the negligence of appellant. The true measure for loss of earning power is the present value of these damages during the expectancy of appellee's life, had the injury not occurred. By reason of the injury, appellee was rendered a helpless and hopeless paralytic, with a total loss of earning power for the full period of his expectancy. Certainly this is one element of his damages.

The Court of Appeals of Kentucky stated the matter clearly in considering an instruction and the use of mortality tables. The appellant contended that as a result of appellee's injuries he was at time of trial a badly crippled, maimed man and therefore that mortality tables based on a normal, healthy person were prejudicially misleading. In answer, the Court held:

The question of damages was not alone what plaintiff would in future be deprived of by reason of the injury, dating it from the time of the trial, but to what extent his money-earning capacity had been lessened or impaired (in addition to suffering), and the value thereof, dating the inquiry from the moment before the injury. Appellee's age and state of health then were the facts upon which his expectancy of duration of life was to be based. He was then in normal health and condition.¹⁶

In addition to the Arkansas, Kentucky and Minnesota cases, the rule has been upheld by Massachusetts, Nebraska, Pennsylvania, Texas and Washington.¹⁷

In actions under survival statutes, a number of courts have held the recovery to be exactly the same as the decedent could have received if alive. Many of these cases expressly state that the decedent, if alive, could recover for loss of earning capacity during his life expectancy as it existed prior to injury. Representative of this type of authority is the Connecticut case of *Chase v. Fitzgerald*,¹⁸ the Michigan case of *Olivier v. Houghton County St. Ry. Co.*,¹⁹ and the Pennsylvania case of *Pezzulli v. D'Ambrosia*.²⁰

¹⁶ *Louisville Belt & Iron Co. v. Hart*, 122 Ky. 731, 92 S.W. 951, 954 (1905).

¹⁷ *Fournier v. Zinn*, 275 Mass. 575, 159 N.E. 268 (1926); *Webb v. Omaha & S.L. Ry. Co.*, 101 Neb. 596, 164 N.W. 564 (1917); *Crecelius v. Gamble-Skogma*, 144 Neb. 394, 13 N.W.2d 627 (1941); *Borcharding v. Ekland*, 156 Neb. 196, 55 N.W.2d 643 (1952); *Littman v. Bell Telephone Co.*, 315 Pa. 370, 172 Atl. 687 (1934); *Missouri K. & T. Ry. Co. v. McGlamory*, 34 S.W. 359 (Tex. Civ. App. 1896), overruled on other grounds, 89 Texas 635, 35 S.W. 1058; *Galveston, H. & S. Ry. Co. v. Miller*, 191 S.W. 374 (Tex. Civ. App. 1917); *Richardson v. City of Spokane*, 67 Wash. 630, 122 Pac. 330 (1912). See also, *Nelson v. Wiepen*, 154 Neb. 458, 48 N.W.2d 387 (1951).

¹⁸ 132 Conn. 461, 45 A.2d 789 (1946).

¹⁹ *Supra* note 7.

²⁰ *Supra* note 9. See also, *Kriesak v. Crowe*, 36 F. Supp. 127 (D.C. Pa. 1941),

CONTRA AUTHORITY DISTINGUISHED

Ordinary Personal Injury Cases

There are literally hundreds of cases involving permanent personal injury in which the statement is made that life expectancy should be taken as of time of injury. There being no claim of decreased or shortened life span, this statement is accurate enough. In fact, such a statement is a convenient means of separating consideration of past losses from future losses. Taken literally, and out of context, it is inaccurate. McCormick in his book states:

Should the life expectancy of plaintiff as of the date of the injury, or as of the date of trial, be taken as the basis for assessing future damage? Since the past effects of the injury, such as expenses, loss of wages, and suffering, up to the date of trial, can best be considered separately, it would seem that the life expectancy of the plaintiff as of the time of the trial should be taken as the basis for assessing future loss and injury. If no claim is made that the injury will shorten plaintiff's life, no difficulty arises in applying this standard. If, however, the plaintiff can show a probable shortening of the life span, it seems that he should be entitled to compensation for the loss of earning power in the years which will be cut off. If so, then, in the light of such evidence as the proof by the life tables of the normal life expectancy of a man of the age of the plaintiff at the time of trial and evidence of the health, habits, etc., of the plaintiff before the injury and of his present condition at the trial, the jury should be directed to find, first, the number of years of life which the plaintiff could normally have expected to have before him at the present time if he had not been injured, and, second, his actual probability of life at the present time, in his injured condition. They should then be directed to fix the plaintiff's deprivation of future earning power on the former basis of normal expectancy and to estimate the anticipated expenses and the compensation for future pain and suffering on the latter basis of actual probable length of life.²¹

Cases Involving Future Pain and Suffering

A second source of confusion arises from cases in which loss of earning capacity has been *lumped in* with recovery for future pain and suffering. Pain, suffering and expenses should, as McCormick states

followed in *Kriesak v. Crowe*, 44 F. Supp. 636 (D.C. Pa. 1942), *aff'd* 131 F.2d 1023 (C.C.A. 3d 1942).

²¹ McCORMICK ON DAMAGES, §86, p. 303-304 (1935). To illustrate his point the author assumes a 20 year expectancy cut to 10 years by the injury. Loss of future earning power should be computed on 20 years; pain and suffering on 10 years. See also 25 C.J.S., §81, p. 303; OLECK, DAMAGES TO PERSON AND PROPERTY, §184, p. 294 (1957); 4 SUTHERLAND, DAMAGES, §1246, p. 4704 (4th Ed. 1916); RESTATEMENT, TORTS §§912(e), 924(d), (e), (f) (1939).

above, be determined by reference to the person's probable actual life.²² The duration of pain and suffering is necessarily only during actual life. Where life expectancy is involved, an instruction which fails to distinguish future pain and suffering from loss of earning capacity is patently prejudicial error. Unfortunately quite a number of cases involving such an instruction simply state that *all* "prospective" or "future" damages are to be computed on the expectancy after injury. The statements are clearly dictum. In all of the cases examined, there was no consideration of the time period for determining loss of earning capacity. Frequently, neither decreased life expectancy nor loss of earning capacity was even involved.

Illustrative of this type of authority are a number of Iowa cases.²³ In none of the cases does it appear that any claim was made for loss of earning capacity for a period of decreased life expectancy. In several, it is difficult to ascertain if the plaintiff even claimed his life was shortened. In each case, the court was clearly concerned with the propriety of an instruction as applied to damages for pain and suffering, and the statements made are extremely general. Yet various authorities, including Dean McCormick, have cited these cases as authority that loss of earning capacity is based on physical condition at time of trial.²⁴

*Cases on Decreased Life Expectancy As a
Distinct Item of Non-pecuniary Damage*

A third source of confusion arises from a failure to distinguish between a claim for pecuniary damage based on loss of earning capacity and a claim for *non-pecuniary* damage based on shortened life itself, separate and distinct from pecuniary injury.

There may be considerable virtue in the position that the right to life as such deserves protection from an invasion which destroys totally a portion of life—at least in an action by a living plaintiff. The English courts recognize such an item of non-pecuniary damage.²⁵ A number of persuasive articles support such a view.²⁶ But regardless of the merit of such a view, it clearly has nothing to do with the right to recover full

²² *Scott v. Chicago R.I. & P. Ry. Co.*, 160 Iowa 306, 141 N.W. 1065 (1913); *Webb v. Omaha & S.L. Ry. Co.*, 101 Neb. 596, 164 N.W. 564 (1917).

²³ *Canfield v. Chicago, R.I. & P. Ry. Co.*, 142 Iowa 658, 121 N.W. 186 (1906); *Hughes v. Chicago & R.I. & P. Ry. Co.*, 150 Iowa 232, 129 N.W. 956 (1911); *Scott v. Chicago & R.I. & P. Ry. Co.*, 160 Iowa 306, 141 N.W. 1065 (1913); *Borough v. Minn. & St. L. Ry. Co.*, 181 Iowa 1216, 184 N.W. 320 (1921).

²⁴ *McCORMICK ON DAMAGES*, §86, note 19 (1935). *AMERICAN JURISPRUDENCE* contains a misleading statement similar to that in *McCORMICK*. 15 *AM. JUR. DAMAGES*, §377, p. 817.

²⁵ *Flint v. Lovell*, [1935] 1 K.B. 354 (C.A.); *Rose v. Ford*, 1937 A.C. 820, 826, 3 All E. R. 359.

²⁶ *Smith, Physic Interest in One's Own Life*, 98 U. PA. L. REV. 781 (1950); *Conway, Damages for Shortened Life*, 10 *FORD. L. REV.* 219 (1941); Note, 12 *N.Y.U.L.Q.* 535 (1935); Note, 10 *U. CIN. L. REV.* 271 (1936).

compensation for the *pecuniary* loss resulting from impaired earning capacity.

While no American case has recognized shortened or decreased life as a distinct item of damage,²⁷ the cases denying such a recovery have muddled the area of loss of earning capacity. The principle case is *Richmond Gas Co. v. Baker*.²⁸ Counsel in that case specifically directed his argument to recovery for the taking of life itself. The Indiana court found that the instruction given authorized shortening of life "as an element which of itself, simply, might be taken into account" and held that no damages could be awarded "for the loss or shortening of life itself." But on the point of earning capacity, the court stated that shortened life "may be considered, in determining the extent of the injury, the consequent disability to make a living, and the bodily and mental suffering which will result."²⁹ If this statement has any bearing on the problem here, it would seem to support recovery.³⁰ Cases of the *Richmond* type therefore are not relevant to the right to recover for impaired earning capacity.³¹

MISAPPLICATION OF COMMON LAW DEATH DOCTRINES

The most prevalent misconception is the apparent belief that at common law no recovery could be had beyond the date of probable actual death. This belief is found explicitly or implicitly in many cases involving actions under survival statutes. Thus in discussions of wrongful death, it is common for writers to refer to states having "expanded" or "enlarged" survival statutes as opposed to "new cause of action" or "Lord Campbell type" statutes. If by "expanded" and "enlarged" the writer meant recognition of a right to sue in cases of instantaneous death, the description might be accurate. However the reference is often very clearly to *damages* and specifically to recovery for loss of future earnings or savings.³²

Under most survival statutes, the action is conceived as that of the decedent and the recovery as in whole or in part that recoverable by the decedent if alive. Thus to call the statute "expanded" because recovery

²⁷ See 97 A.L.R. 823. Cf. *Murphy v. New York & New Haven R.R. Co.*, 30 Conn. 184 (1867).

²⁸ 146 Ind. 600, 45 N.E. 1049 (1897).

²⁹ 45 N.E. at 1052. Shortened life, or the fear of it, may be considered in determining mental distress under the *Richmond* case. See also *Choicener v. Walters Amus. Ag., Inc.*, 269 Mass. 341, 168 N.E. 918 (1929).

³⁰ Unfortunately, the headnote in the West report is far broader than the Court's opinion. "In an action to recover for personal injuries, the fact that the plaintiff's life has been shortened thereby cannot be considered in assessing damages." 45 N.E. at 1049.

³¹ A recent case of this type is *Ham v. Maine-New Hampshire Interstate Br. Auth.*, 92 N.H. 268, 30 A.2d 1 (1943). There are a number of Indiana cases which follow *Richmond*.

³² See for example PROSSER ON TORTS, §165 (2d Ed. 1955) and particularly at p. 713.

is permitted for loss of earning capacity implicitly assumes that a *living* plaintiff could not have such a recovery.

An excellent example of misconception and misapplication of the common law death rules appears in *Krakowski v. Aurora E. & C. Ry. Co.*³³ With only slight trepidation, it can be asserted that the *Krakowski* case is the *only* American authority involving an action by a *living* plaintiff in which it has been directly held that there can be no recovery for loss of earning capacity for the portion of life destroyed by the injuries suffered. The court there stated:

. . . At common law, no action could be maintained against any person for wrongfully causing the death of another person. It is only by virtue of some statute that such an action can be maintained anywhere in this country or in England; . . . It has never been held in this country, in the absence of a statute, so far as we know, that there can be a recovery for the death of any individual, or for the loss of any portion of his life. The injured party cannot do that in an action for a personal injury to himself, because death by reason of the injuries complained of, at once puts an end to his suit, and his legal representatives cannot continue or maintain such suit after his death, unless authorized to do so by a statute.³⁴

It is, of course, perfectly true that at common law no *action* could be maintained for wrongfully causing death—in fact, the rule applied in Tort even if death occurred from other causes. The rule that death of either party terminated the cause of action goes back much further than Lord Ellenborough's unsupported and unfortunate dictum in *Baker v. Bolton*.³⁵ But research has never disclosed a common law case in which a *living* plaintiff was denied recovery for loss of his own earning capacity over his expectancy before injury. Equally erroneous is reliance upon the other common law rule which denied an action to the survivors for the injury to them resulting from the death of another.

Neither of the common law doctrines rested on any principle of *damage* law. Both dealt with actions brought, or sought to be continued *after* death. The reasons, if any, upon which they were based are unknown, or at least highly obscure, today.³⁶

³³ 167 Ill. App. 469 (1912).

³⁴ 167 Ill. App. at 471-472 (1912).

³⁵ 1 Camp. 493 (1808), 170 Eng. Rep. 1033. "In a civil court the death of a human being could not be complained of as an injury." The case did not deal with an action by a living plaintiff for injuries to himself. For a discussion of common law origins of the doctrine, see 25 U. DET. L.J. 72; Smith, *Physic Interest in One's Own Life*, 98 U. PA. L. REV. at 785, 786.

³⁶ It has been pointed out that the doctrines were *not* based on any concept that the value of life could not be measured in money or that the damages would be too speculative. This "reason" apparently originated with *Hyatt v. Adams*, 16 Mich. 179 (1867). See Smith, *Physic Interest in One's Own Life*, 98 U. PA. L. REV. at 782-784. So far as measuring the *pecuniary* loss from decreased life ex-

Probably the most curious authority bearing on the question is the recent English case of *Harris v. Bright's Asphalt Contractor's Ltd.*³⁷ The right of recovery in a living plaintiff appeared to have been recognized in England at least as early as 1879.³⁸ In fact, the English courts allow recovery for shortened life as a distinct item of non-pecuniary damage.³⁹ In *Roach v. Yates*,⁴⁰ the English Court of Appeal specifically dealt with the question and appeared to hold that loss of earning capacity was recoverable over life expectancy unaffected by the injuries. Yet in *Harris*, a trial court decision, Slade J. did an astonishing job of distinguishing the earlier cases and held that a living plaintiff could not recover. The case was apparently not appealed. It has been severely criticised by English writers.⁴¹

DEATH FROM OTHER CAUSES

It is, or should be, apparent that in an action under a survival statute, death from *other* causes establishes as fact the injured person's actual life span. In such a case, it is patently absurd to even refer to "prospective" damages. But just as patently, death *caused* by the injuries suffered cannot possibly establish what life span the person could have anticipated had he not been injured. Yet in some survival cases, courts have held that recovery for loss of earnings was restricted to date of death *because death established the life span*.⁴² Depending on the type of death statute in the jurisdiction, the *result* of such cases may be entirely correct,⁴³ but certainly the *reason* is absurd.

pectancy, the measure and mode of proof is exactly the same as that used in any permanent injury case.

³⁷ [1953], 1 Q.B.D. 617, 1 All E.R. 395.

³⁸ *Phillips v. London & S.W. Ry. Co.* (1879), 5 Q.B.D. 78. See also *Fair v. London & N.W. Ry. Co.* (1869), 21 L.T. 326.

³⁹ See authorities cited in note 25 *supra*.

⁴⁰ [1938], 1 K.B. 256 (C.A.), 3 All E.R. 442.

⁴¹ For a thorough analysis of English authority, and a critique of *Harris*, see KEMP & KEMP, *THE QUANTUM OF DAMAGES*, 1954 (Sweet & Maxwell Ltd., London).

⁴² *Allen v. Burdette*, 139 Ohio St. 208, 39 N.E.2d 148 (1942). See also the lower court's opinion, 66 Ohio App. 236, 32 N.E.2d 852 (1940).

⁴³ In a state, such as Ohio, where both a survival and a wrongful death action may be brought, it is apparent that a problem of double recovery arises. Duplication is avoided if the survival action is limited to date of death. In the wrongful death action, recovery can be given for the period from death to expected life before injury. For an analysis and criticism of this result, see Duffey, *The Maldistribution of Damages in Wrongful Death*, 19 OHIO ST. L.J. 264 (1958).

CONCLUSION

The constant advance of medical knowledge has and will make proof of decreased life expectancy both more possible and more common. Despite the mass of apparent authority to the contrary, the principle is clear that recovery for impaired earning capacity should be allowed on the plaintiff's life expectancy as it would have been without the injuries suffered. To measure the loss on the person's life expectancy in his injured condition would deny him full compensation for his own pecuniary loss, and be inconsistent with the fundamental objective of a damage action—placing the plaintiff back in the position he was in before injury.⁴⁴

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⁴⁴In *Rose v. Ford*, *infra* note 25, Lord Roche pinpoints the fallacy that permeates many discussions of this problem: “. . . it is theoretically wrong, in such a case, to start from death as shortening life, but right to start with the initial bodily injuries carrying with them from the outset a diminished expectation of life, which sooner or later will end with death.”

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