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MILES v. APEX MARINE CORP.
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No damages for the loss of society or for decedent's lost future earnings are recoverable in any action for a seaman's wrongful death, whether brought under DOHSHA, the Jones Act or general maritime law.

FACTS: Ludwick Torregano was a seaman aboard the vessel M/V Archon. Clifford Melrose, a fellow shipmate stabbed Torregano several times, killing him. The vessel was in the port of Vancouver, Washington, at the time of the killing.

Mercedel Miles, (Miles) Torregano's mother and administratrix of his estate, sued Apex Marine Corp. (Apex) and others for: negligence under the Jones Act, 46 U.S.C.A. §688, for failure to prevent the assault on her son, and breach of warranty of seaworthiness under general maritime law for hiring a crew member unfit for duty. The claim sought compensation for loss of support and services and loss of society resulting from the death of her son, punitive damages, and compensation to the estate for his lost future income.

The United States District Court for the Eastern District of Louisiana granted the defendant's motion to strike the punitive damages claim and ruled that the estate could not recover lost future income. The jury was instructed that Miles could not receive any damages for loss of society if they found that she was not financially dependent on her son. The jury found that Apex was negligent, that the deceased was 7% contributorily negligent and that the ship was seaworthy.

ISSUES: Whether a nondependent parent may recover for loss of society in a general maritime wrongful death action.

Whether the general maritime law permits a survival action for a decedent's future earnings.

ANAYLSIS: In coming to it's decision, the court relied in large part on *Moragne v. State Marine Lines, Inc.*, 398 U.S. 375 (1970), and the line of cases that follow it. In *Moragne*, the Supreme Court declared that the Jones Act creates a wrongful death action in favor of the personal representative of a seaman killed in the course of employment, that the Death on the High Seas Act (DOSHA), and many similar state statutes creates a strong presumption in favor of a general maritime wrongful death action. The *Moragne* court also found that the Jones Act and DOSHA establish a policy in favor of maritime wrongful death recovery, a policy Congress could not have torseen when it

passed the Jones Act and DOSHA, because at the time of passage federal courts uniformly applied state wrongful death statutes for deaths occurring in state territorial waters.

In the present case Apex asked the Court not to extend *Moragne* to suits for the death of true seamen. Apex claimed this limitation was warranted because true seamen, unlike longshoremen, are covered under the Jones Act. The Supreme Court had addressed the preclusive effect of the Jones Act wrongful death provision in *Lindgren v. United States*, 281 U.S. 38 (1930). In that case, the Court concluded that the Jones Act pre-empted the use of state statutes, and also concluded that the Jones Act, limited as it is to recovery for negligence, would preclude a recovery for wrongful death of a seaman resulting from unseaworthiness. In *Gillespie v. United States Steel Corp.*, 379 U.S. 148 (1964), the Court reaffirmed the holding of *Lindgren*.

HOLDING: The United States Court of Appeals for the Fifth Circuit affirmed in part, reversed in part, and remanded. The court affirmed the judgment of negligence, but found the judgment of contributory negligence lacking in evidentiary support. The court decision was as follows: Miles was entitled to the full measure of damages equaling loss of support and service, and the estate was entitled to damages of \$140,000 for Torregano's pain and suffering. The district court originally awarded \$180,200. The Supreme Court felt it would have been inconsistent to sanction a more expansive remedy, in a judicially created cause of action based on liability without fault, than Congress has allowed in cases of death resulting from negligence. In addition, the *Moragne* court found that congressional and state abrogation of the maritime rule against wrongful death actions demonstrated a strong policy judgment, to which it deferred. Therefore, the Court concluded that there is no recovery for loss of society in a general maritime action for wrongful death under the Jones Act. The Court also concluded that a general maritime survival action cannot include recovery for decedent's lost future earnings.

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