

reexamination of the Court's notorious decision some twenty-six years ago, which permitted political donation by a for-profit corporation. Because whether to donate money to political organizations should be a matter that is decided independently by its members as citizens, as the Court noted, reexamination of the Court's candid approval of freedom of political activity by a company in that decision will be sooner or later unavoidable. In this sense, future development of this issue will be noteworthy.

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## **2. Law of Property and Obligations**

**The victim's subsequent death brought about by other causes and awards for the loss of future earnings derived from subsequent complications.**

Decision by the First Petty Bench of the Supreme Court on April 25, 1996. Case No. (ō) 527 of 1993. 50 *Minshū* 1221.

[Reference: Civil Code, Articles 416 and 709.]

### ***[Facts]***

On January 10, 1988, a motor truck driven by Y2, owned by Y1, and a car in which the victim (Z) was a passenger, collided. As a result, Z suffered serious injuries. Z had medical treatment but his injuries became chronic, i.e. his mental ability decreased, his peroneal nerve remained paralyzed, his eyes developed multiple vision, etc. At the time of the accident, Z was a carpenter, but afterwards he could not work. He went to the beach near his home and dug clams for the rehabilitation. On July 4, 1989, Z died of a heart attack while he was digging clams. X and others, Z's relatives, brought an action for compensation against Y1 and Y2, claiming that they had inherited

Z's damages, including Z's loss of future earnings. In X's view, the award of the loss of future earnings should be based on Z's life expectancy, the average length of life (a calculation premised on the expectancy that Z would work until the age of 67). Y1 and Y2 objected that Z's loss of future earnings was limited to the time up to Z's actual death (Z died at the age of 44).

The Court of first instance (Tokyo District Court) upheld X's claim, holding that: 1) the victim's death occurred before trial and the fact of death could be considered in awarding loss of future earnings; 2) Z's death was an unexpected death and therefore could not be regarded as a natural death, so that the award should be based on the average length of life. However, the Court of second instance (Tokyo High Court) dismissed X's claim. It held that Z's accidental subsequent death determined the real term of life. Since then there was no latitude to consider the loss of future earnings, when awarding the loss of future earnings, the fact of subsequent death of the victim should be considered. X and others appealed.

### *[Opinion of the Court]*

The decision was reversed and remanded.

In awarding a traffic accident victim's loss of future earnings when there is partial loss of ability to work due to subsequent complications, the fact of a victim's death should not be taken into account with respect to the question of duration of future ability to work, when the victim subsequently died due to other causes, unless such special circumstances which were the proximate cause of death had already existed and death in the near future was objectively foreseeable. Because the injuries causing partial loss of the ability to work had already arisen at the time of the traffic accident, the intent to award monetary damages could not be altered by subsequent affairs. The award of future earnings should be calculated on the basis of individual factors at the time of the accident, such as the victim's age, occupation, and health condition, and possible future work life derived from the average number of working years and average life expectancy. Therefore, the victim's death after the traffic accident should not be considered in calculating the duration of future abili-

ty to work unless the special circumstances indicated above existed. In addition, it contradicts the notion of fairness that the traffic accident victim's subsequent unexpected death from other causes leads to the complete or partial exemption of the person who was responsible for the damages on the one hand, and failure to indemnify the victim or his/her ancestor for resultant damages.

In the present case, Z lost part of his ability to work due to this traffic accident and suffered damage therefrom, and there existed none of the special circumstances mentioned above, so that the loss of future earnings should be calculated on the basis of the whole term up to the age of 67, an average possible working life.

### **[Comment]**

In the case of personal injuries, there exists a serious problem when awarding damages. In particular, the loss of future earnings has a number of imponderables in its calculation, so that adequate, approximate compensation for future pecuniary loss becomes very difficult. In the present case, the victim died after the traffic accident due to another cause. The court faced a difficult situation, where it had to eventually express its viewpoint concerning the treatment of the victim's subsequent death. The Supreme Court held that "in awarding the traffic accident victim's loss of future earnings in the case of partial loss of ability to work due to subsequent complications, the fact of a victim's death should not be taken into account when calculating possible working life." This is a new perspective on this issue.

Tort law seeks to put the victim in the position he was in before the tort. Where the damage consists of personal injury, actual return to the *status quo ante* is impossible, and lawyers then talk not of restitution but of compensation for harm which by its nature can never be accurately assessed. In such cases, the basic principle is that of adequate compensation, in which lawyers try to achieve the recovery of a victim's position in the monetary sense as much as possible. However, in awarding the loss of future earnings, there exists a number of imponderables which interfere with precise calculation.

In the present case, the victim was seriously injured and had sub-

sequent complications. After that, his death before the trial was completed from a cause which was unrelated to the tort. Consequently, there arose a serious issue of whether or not the fact of death should be taken into account in the calculation of future pecuniary loss. One view, which has been adopted in common law, argues that it should be taken into account, for the actual amount of future earnings is determined as of the date when the victim died. This view is based on an idea that the award of future loss remains a hypothetical amount, and that the actual amount overrides the hypothetical one if in fact the loss has been determined. Therefore, the victim's life expectancy should no longer be relevant. On the other hand, there exists the opposite view that it should not be taken into account. This view claims that the damages of a victim embody the actual monetary value of the victim's loss, which is determined when the tort occurred so that a subsequent event is in no way relevant. This view corresponds to the basic principle of tort, i.e. precise return to the *status quo ante*. In the present case, the Supreme Court took the latter view.

In personal injury cases, the award of damages remains hypothetical so that in the end it leads only to approximate compensation for future pecuniary loss. If the victim dies after the award, it could lead not just to full compensation, but to over-compensation. However, it is unjust if the wrongdoer is excused from providing compensation due to the victim's death from another cause, if, notwithstanding the victim's subsequent death, the wrongdoer has caused injury to the victim which he should compensate. In Japanese practice, the legal action for recovery filed by the victim is not barred but succeeded to by his successors if he died. Therefore, the injustice becomes more evident. The court seeks to ensure full compensation. For this purpose, the fact of the victim's subsequent death should not be taken into account.

Soon after this decision, another bench of the Supreme Court rendered a verdict in a similar case (decided on May 31, 1996), and supported the argument. It dealt with a traffic accident victim who died due to another traffic accident. The Court held: When the victim of a traffic accident dies due to another, subsequent traffic acci-

dent, the fact of death should not be taken into account in calculating the duration of working possible life when awarding the loss of future earnings which arose from subsequent complications of the first accident. This applies whenever the death has occurred from any cause, regardless of whether there exists a third party who should give compensation for the tort, or if there exists causation of the death due to the first traffic accident. When the victim dies from the second traffic accident, although the death was due to a third party's tort, the amount of damages which the first defendant has a duty to pay assumes that the victim's working ability has been lowered by subsequent complications from the first accident, and the recovery for total damages from both accidents is sufficient only if the fact of death is not been addressed in awarding the loss of future earnings.

It may be said that the position of the Supreme Court has been established.

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### **3. Law of Civil Procedure and Bankruptcy**

#### **1. A case in which the decision of the first appellate court was dismissed because of neglect to exercise the judge's power to clarify.**

Decision by the First Petty Bench of the Supreme Court on February 22, 1996. Case No. (o) 2229 of 1995. A *jōkoku* appeal requesting retrial of a default judgment. 903 *Hanrei Taimuzu* 108: 1559 *Hanrei Jihō* 46.

[Reference: Code of Civil Procedure Articles 127, 301, 325, and 327.]

#### **[Facts]**

X (Plaintiff, *kōso* appellant, *jōkoku* respondent) and Y (defen-