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 *Oct. 21. DAME MARY L. PRATT (PLAINTIFF) } APPELLANT;
 PAR REPRISE D'INSTANCE)..... }
 AND
 EDGAR BEAMAN (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

Negligence—Accident—Damages—Loss of wages—Death of victim before trial—Taken into account in estimating damages—Arts. 1053, 1054, 1055 C.C.

In an action for damages for loss of wages resulting from an accident, events which happened between the date of the accident, such as the death of the victim. and the time of the trial must be taken into account in estimating such damages.

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Smith JJ.

The principle held by this court in *Findlay v. Howard* (58 Can. S.C.R. 516) is equally applicable whether the claim for damages is in tort, under articles 1053, 1054 and 1055 C.C., or is a claim for breach of contract.

Lemelin v. Ladrie (Q.R. 59 S.C. 456) discussed, and held to be an authority against allowing in an action commenced before the death of the victim any damages occasioned by such death.

Judgment of the Court of King's Bench (Q.R. 46 K.B. 401) affirmed.

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APPEAL from the decision of the Court of King's Bench appeal side, province of Quebec (1), reversing the judgment of the Superior Court, Weir J. (1), and reducing the amount awarded to the appellant from \$7,500 to \$2,075.

An action in damages was instituted by one Frank Pratt against the respondent to recover damages resulting from a collision between respondent's motor car and a taxicab in which Pratt was a passenger. The trial took place in March, 1927; and judgment was rendered on the 1st of April, 1927, for \$7,500, the full amount claimed and the costs. Frank Pratt died on the 23rd of May, 1927. The respondent had already appealed from the above judgment on the ground that the trial judge had refused to permit, either in cross-examination of appellant's medical witnesses or in examination-in-chief of the same witnesses who had been summoned as respondent's own witnesses, counsel for respondent to attempt to make evidence as to the probable number of years which these experts considered Pratt would live in order that the court might have before it some evidence to justify it in awarding an amount for future loss of wages and earnings commensurate with the probable expectancy of life of Pratt. The appeal was maintained and the record was sent back to the Superior Court in order to allow the respondent to make such evidence. The trial was therefore resumed before the same judge, Weir J., and judgment was rendered for the same amount, i.e., \$7,500. The respondent again appealed from this judgment. The Appellate Court reversed it and reduced the amount of damages awarded; and, amongst the *considérants* of that judgment are the following:

"Considering that the Superior Court has based its estimate of \$6,000 for loss of earnings of Pratt upon the assumption that he would live and continue to earn wages

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for sixteen and a half years from the time of the accident, ignoring as irrelevant the fact, proven by the respondent herself (now appellant), that Pratt had died before the trial of the case was completed;

“Considering that, in estimating the damages claimed by the respondent (plaintiff *par reprise d’instance* now appellant) for loss of wages which the original plaintiff, Pratt, was prevented by his injuries from earning, the court must take into consideration not only relevant facts and circumstances existing before and at the time the action was instituted but also facts affecting the amount of such wages that occurred between that time and the trial of the case;

“Considering that the death of Pratt materially affected the amount of earnings lost by him by making definite what before had been uncertain namely, the length of time during which he was totally incapacitated by reason of the accident;

“Considering that Pratt lived approximately one year and nine months after the accident and so lost wages which he otherwise would probably have earned during that period amounting to * * *.

W. K. McKeown K.C. for the appellant.

Eug. Lafleur K.C. and *W. A. Merrill K.C.* for the respondent.

At the conclusion of the argument of counsel for the appellant and without calling on counsel for the respondent, the judgment of the court was delivered orally by

ANGLIN C.J.C.—Three distinct grounds of appeal have been pressed upon us. As to the first ground taken, the decision of this Court in *Finlay v. Howard* (1), is conclusive against the appellant. The principle of that decision is equally applicable whether the claim for damages is in tort, under articles 1053, 1054, 1055 C.C., or is a claim for breach of contract.

The case of *Lemelin v. Ladrie et Poulin* (2), cited by counsel for the appellant, far from being helpful to him, is a distinct authority against allowing in this action, commenced before the death of the victim, any damages

(1) (1919) 58 Can. S.C.R. 516.

(2) (1921) Q.R. 59 S.C. 456.

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occasioned by his death. Assuming that it could be shown that the death was caused by fault of the defendant and that an action for damages occasioned thereby was brought within a year, the present plaintiff might therein have a claim under article 1056 C.C., but that would be an "independent" action and could not be added by incidental demand to the present claim. The case cited is an authority for her right to continue, by revivor, the action already brought by her deceased husband.

The second ground of appeal is that the damages allowed for pain and suffering by the trial judge, \$1,500, should not have been reduced, as they were on appeal, to \$500. While, if we were the first appellate court, we might have been disposed not to interfere with the assessment of these damages by the Superior Court, it is the well established practice of this court not to interfere with an amount allowed for damages, such as these, by the court of last resort in a province. That court is, as a general rule, in a much better position than we can be to determine a proper allowance having regard to local environment. It is, of course, impossible to say that the Court of King's Bench erred in principle in reducing these damages.

The third ground of appeal is that the courts below, in dealing with the question of interest on compensation, appear to have followed the ordinary practice of not allowing interest on unliquidated damages prior to the ascertainment of their amount. We see nothing in this case to justify any departure from that wholesome practice.

It follows that the appeal fails and must be dismissed (Mr. Lafleur, do you ask for costs under the circumstances? Mr. Lafleur: Yes, we do.) with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *W. K. McKeown.*

Solicitors for the respondent: *Duff & Merrill.*
