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| VILMA ANGELICA | NO. 24-CA-332 |
| VERSUS | FIFTH CIRCUIT |
| STEVEN WILKERSON, ANDREA LAMPKIN AND STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY | COURT OF APPEAL<br>STATE OF LOUISIANA |

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 825-288, DIVISION "D"
HONORABLE JACQUELINE F. MALONEY, JUDGE PRESIDING

April 09, 2025

**STEPHEN J. WINDHORST**
**JUDGE**

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and John J. Molaison, Jr.

**REVERSED AND RENDERED**

**SJW**
**SMC**
**JJM**

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**WINDHORST, J.**

In this personal injury case, plaintiff/appellant, Vilma Angelica, appeals the trial court's judgment, finding defendants/appellees, Steven Wilkerson and State Farm Mutual Automobile Insurance Company, are not liable to plaintiff for damages, which occurred when Wilkerson hit plaintiff's son, Michael Angelica, with his vehicle on September 28, 2021. For the following reasons, we reverse the trial court's judgment and render judgment in favor of plaintiff/appellant.

**FACTS and PROCEDURAL HISTORY**

On September 28, 2021, at approximately 5:34 a.m., Michael Angelica was walking north across the westbound lanes of Veterans Boulevard near its intersection with North Woodlawn Avenue in Metairie, Louisiana, when he was struck by a 2021 Audi A5 operated by Wilkerson. After the accident, Michael was brought to University Medical Center ("UMC"), where he was hospitalized until his death 19 days later due to injuries caused by the accident.

On February 15, 2022, Ms. Angelica, Michael's mother, filed suit against Wilkerson, Andrea Lampkin, and State Farm Mutual Insurance Company, asserting wrongful death and survival actions.[1] Therein, Ms. Angelica alleged that Wilkerson caused the accident due to careless operation, failure to see what he should have seen, failure to keep a good and careful lookout, failure to maintain proper control of his vehicle, failure to yield the right of way, and operating the vehicle with a suspended license. Ms. Angelica asserted a wrongful death action, seeking damages for Michael's medical expenses and pain and suffering prior to his death. She also asserted a survival action, seeking damages for funeral expenses, loss of consortium, and her pain and suffering due to the loss of her son.

[1] Lampkin had rented the vehicle driven by Wilkerson and granted him permission to drive it.

This case proceeded to a bench trial on March 11, 2024. Pursuant to La. C.C. art. 1853, the parties stipulated to the following pertinent facts before trial. Michael was involved in a motor vehicle accident on September 28, 2021 with a motor vehicle operated by Wilkerson. Michael was transported and admitted to UMC on September 28, 2021 and was hospitalized there for his injuries until his death on October 16, 2021. As a result of the accident, Michael was diagnosed with, among other things, a skull fracture, subdural hematoma, multiple extremity fractures and pneumothorax. Before his death, Michael underwent a craniotomy procedure to relieve swelling in his brain.

With regard to medical and funeral expenses, the parties stipulated to the following: (1) the ambulance bill was $1,497.50; (2) medical expenses from UMC totaled $246,146.83; (3) funeral/burial expenses totaled $10,318.00. Michael's health insurer, United Healthcare - Medicare, paid UMC $41,153.14.

At trial, Wilkerson, Lampkin, Marc Ducote, the accident's investigating officer, and Ms. Angelica testified.

Wilkerson admitted that, on September 28, 2021, he was operating the 2021 Audi that struck Michael on Veterans Boulevard near the intersection with Woodlawn, close to Clearview Mall.[2] Wilkerson testified that, on the morning of the accident, he left his house in Slidell at approximately 2:30 A.M. to check on a fence job on Elysian Fields in New Orleans. After inspecting the job, Wilkerson drove west towards Metairie to find a RaceTrac gas station to buy coffee instead of driving east towards his home in Slidell. During his testimony, he confirmed there was a RaceTrac close to his home in Slidell, which was where he intended to go after getting coffee. Wilkerson nonetheless proceeded to drive in the opposite direction

[2] Wilkerson acknowledged that his driver's license had been suspended for a few months at the time of the accident, but nothing in the record indicates the reason for the suspension.

of his home into Metairie. Wilkerson acknowledged that he was not familiar with Metairie, and was not even sure if there was a RaceTrac in the Metairie area.

Wilkerson testified that the location of the accident on Veterans Boulevard was a straight and level roadway with no curves or obstructions, that the weather was clear, and that traffic was minimal at the time of the accident. Wilkerson, however, claimed that the area of the accident was dark because many of the street lights were not functioning due to Hurricane Ida. He believed the headlights on his vehicle were on the "bright" setting.

Veterans Boulevard, where the accident occurred, had five lanes of which two were left turn lanes and three were westbound lanes and a functioning street light. Wilkerson testified that, as he approached the intersection, he was driving about 40 miles per hour in the middle lane of the three westbound lanes and had a green light. At the time of impact, Wilkerson admitted that he was looking to his left for traffic coming from Clearview mall (which was closed) when he felt his vehicle hit something. Wilkerson indicated he never saw Michael before the impact, and as a result, he never applied his brakes or took any evasive action. Wilkerson's passenger side struck Michael breaking the windshield and resulting in other damage to the vehicle. Wilkerson admitted that Michael had cleared nearly four of the five travel lanes at the time of the accident. Wilkerson claimed Michael was wearing dark clothes making it difficult to see him and that Michael was not in the crosswalk. When Wilkerson got out of the car after the accident to check on Michael, he did not find him in the crosswalk. Wilkerson testified he thought he had hit an animal, and that after the accident, Michael was still alive.

The trial court accepted Deputy Marc Ducote, employed by the Jefferson Parish Sheriff's Office since 2008, as an expert in the field of accident reconstruction to testify regarding his investigation of the accident. Deputy Ducote identified the crosswalk for pedestrian traffic where the accident occurred and confirmed it was

clearly marked at the time of the accident. Deputy Ducote testified that there were no pedestrian-traffic signals, *e.g.* "walk" or "do not walk," for this crosswalk. Thus, there were no crosswalk buttons at this intersection for Michael to push or lights to activate before he crossed the roadway.

As part of his investigation, Deputy Ducote contacted the Jefferson Parish Department of Engineering regarding the light cycle at the accident location. At the time the accident occurred, the light cycle defaulted to a green light and stayed green until "activated" by traffic on the Clearview Mall access road. Because Clearview Mall was closed when the accident occurred, Michael could have potentially stood at the intersection for hours until a vehicle exiting the mall triggered the light to change. Accordingly, Deputy Ducote concluded Michael's actions in crossing the roadway were reasonable because there was no way for him to activate a signal change.

During his inspection of the accident scene, Deputy Ducote did not find any skid marks from Wilkerson's vehicle. As a result, it was clear Wilkerson took no evasive action prior to the accident.

Deputy Ducote also obtained a video from a business located close to the accident. The video confirmed that Wilkerson took no evasive action before striking Michael. With the help of the video, Deputy Ducote calculated that Michael was in the crosswalk for 21 seconds from the moment he stepped off the median until Wilkerson's vehicle struck him.

Deputy Ducote also calculated that Wilkerson was traveling at between 39 and 43 miles per hour when he hit Michael. The speed limit where the accident occurred was 40 miles per hour.[3] Deputy Ducote further confirmed there were no visual obstructions leading up to this intersection at the time of the accident but

[3] Based on photographs, Deputy Ducote confirmed that the right passenger side of Wilkerson's vehicle struck Michael because all damage to the vehicle was from the right side of the hood up into the windshield.

acknowledged most of the lighting was from businesses on the side of the road and not street lights. Deputy Ducote concluded that although the lighting was dim, there was no reason for Wilkerson to not have seen Michael before the accident.

After a bench trial, the trial court found Wilkerson was not liable for any injuries or damage resulting from the accident. The trial court found Wilkerson was traveling at a reasonable speed and was not swerving, the street lights were not working but the traffic lights were working. The trial court recognized that Wilkerson testified he was looking to the left to see if any traffic was coming through the intersection. The trial court also relied on his assumption that people do not anticipate crosswalks to have pedestrian traffic at 5:00 A.M.

**LAW and ANALYSIS**

In this appeal, plaintiff asserts the trial court committed legal error in holding Wilkerson did not breach any legal duties to Michael and in finding Wilkerson's conduct was not the legal cause of the accident and resulting injuries. Plaintiff also asserts the trial court committed legal error in failing to recognize Michael had preempted the intersection at the time of the accident and in taking judicial notice of pedestrian patterns in the area of the accident. Finally, plaintiff claims the trial court erred in not awarding her special and general damages for her wrongful death and survival claims.

***Standard of Review***

At issue here is the interpretation and application of legal statutes setting forth the duties of a driver and a pedestrian when a pedestrian is crossing a road in a crosswalk. Due to the parties' stipulation of facts and the nature of the material undisputed facts presented through evidence and testimony at trial, the trial court was not called upon to exercise its fact-finding function in this case. Instead, the trial court's resolution of this case involved applying the law to the facts to determine whether defendants were liable to plaintiff for damages caused by the accident.

Where the dispositive facts in a case are not in dispute, an appellate court reviews the case *de novo.* Nunez v. Pinnacle Homes, L.L.C., 15-87 (La. 10/14/15), 180 So.3d 285, 290; Kevin Associates, L.L.C. v. Crawford, 03-211 (La. 1/30/04), 865 So.2d 34, 43. An appellate court does not give a trial court's legal findings the same great deference given to credibility determinations. Id. When a trial court's decision is based on an erroneous interpretation or application of law, that incorrect decision is not entitled to deference. Kem Search, Inc. v. Sheffield, 434 So.2d 1067, 1071 (La. 1983); Kevin Assocs., L.L.C., 865 So.2d at 43.

Here, the facts relevant to the accident that caused Michael's death were not in dispute. Wilkerson acknowledged he struck Michael and admitted he did not see Michael because he was looking to the left at the time of the accident. Our review of the record indicates the trial court erroneously applied the relevant motorist and pedestrian statutes and erroneously made a factual assumption for which no evidence was presented. In this situation, we apply the *de novo* legal standard of review instead of the manifest error standard of review. In reviewing this case, we are called upon to interpret, and then apply, La. R.S. 32:212, 32:214, and 32:232, which set forth the duties of motorists and pedestrians using Louisiana's roadways.

Where one or more trial court legal errors interdict the fact-finding process, the manifest error standard is no longer applicable, and, if the record is otherwise complete, the appellate court should make its own independent *de novo* review of the record and determine which party should prevail by a preponderance of the evidence. Latour v. Steamboats, LLC, 23-27 (La. 10/20/23), 371 So.3d 1026, 1034; Landry v. Bellanger, 02-1443 (La. 5/20/03), 851 So.2d 943, 954; Irwin v. Brent, 23-0475 (La. App. 4 Cir. 7/19/24), — So.3d —, 2024 WL 3466371, writ granted, 24-1043 (La. 11/27/24). Furthermore, if the finder of fact does not reach an issue because of an earlier finding that disposes of the case, the appellate court, in reversing the earlier finding, must make a *de novo* determination of undecided issues

from the facts presented in the record. LeBlanc v. Stevenson, 00-157 (La. 10/17/00), 770 So.2d 766, 771-72.

***Pertinent Motor Vehicle and Traffic Law***

First, La. R.S. 32:212 addresses a pedestrian's right-of-way in a crosswalk and states as follows:

> A. When traffic-control signals are not in place or not in operation, the driver of a vehicle shall stop and yield the right-of-way, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the roadway upon which the vehicle is traveling or the roadway onto which the vehicle is turning.
>
> B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

Interpreting this provision, a pedestrian's right of way in a crosswalk has been recognized as being provided by statute. Thomas v. Lea, 418 So.2d 34, 35 (La. Ct. App. 1982). In addition, a motorist has been held to have a burden to use more than ordinary care to see what is ahead when approaching a pedestrian crosswalk. Id.

Second, La. R.S 32:214 states:

> Notwithstanding the foregoing provisions of this Part, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a highway.

Louisiana courts have interpreted La R.S. 32:214 to require the operators of motor vehicles to keep a vigilant lookout and to see all things which they would have seen by exercising reasonable care. Shroyer v. Grush, 555 So.2d 534, 540 (La. App. 4th Cir. 1989), writ denied, 559 So.2d 139 (La. 1990), and writ denied, 559 So.2d 140 (La. 1990), citing Craker v. Allstate Ins. Co., 259 La. 578, 250 So.2d 746 (1971). Because motor vehicles pose such a hazard to pedestrians, motorists owe a duty of special care to pedestrians. Est. of Hickerson v. Zimmerman, 02-1195 (La. App. 4 Cir. 7/16/03), 853 So.2d 55, 59, writ denied, 03-2354 (La. 12/12/03), 860 So.2d 1154.

The motorist, however, has a right to assume that the road is safe for travel and has no duty to guard against unusual or unexpected obstacles or obstructions which he not only has no reason to anticipate, but which are also difficult to discover. Shroyer, 555 So.2d at 540.

Third, La. R.S. 32:232 (1)(a) states in pertinent part as follows:

> (a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But *vehicular traffic*, including vehicles turning right or left, *shall stop and yield the right-of-way* to other vehicles and *to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited*. [Emphasis added.]

A motorist approaching an intersection is charged with the duty to watch vigilantly for pedestrians and vehicles caught between light changes and cannot depend exclusively on a favorable light. Davis v. Marshall, 467 So.2d 1211 (La. App. 2d Cir. 1985), writ denied, 472 So.2d 917 (La. 1985); Bouldin v. Williams, 472 So.2d 244 (La. App. 1st Cir. 1985). A favored vehicle is required to yield the right-of-way to other vehicles and pedestrians lawfully within the intersection when the light changes. La. R.S. 32:232(1)(a); Patterson v. Meyers, 583 So.2d 79, 82 (La. App. 4th Cir. 1991).

Motorists who approach intersections are charged with the duty to vigilantly watch for pedestrians and vehicles caught between signal light changes and are not warranted in depending exclusively upon a favorable light for the safety of their movements. Allen v. Burrow, 505 So.2d 880, 888 (La. App. 2d Cir. 1987), writ denied, 507 So.2d 229 (La. 1987). When a motorist sees, should have seen, or anticipates that a pedestrian is going to cross the path of his vehicle, the motorist must exercise reasonable care to protect the pedestrian. Nick v. King Cab Co., 02-295 (La. App. 5 Cir. 9/30/02), 829 So.2d 568, 571.

The record indicates Michael had been in the crosswalk walking across Veterans Boulevard for 21 seconds when Wilkerson struck him. Wilkerson admitted

at trial that he was looking to the left and did not see Michael in the crosswalk in front of him. Deputy Ducote opined that Michael acted properly in crossing the roadway on a red light given the length of time he would have had to wait for the light to cycle to green at that time of the morning.[4] All witnesses agreed that the roadway was straight and level with no visual obstructions blocking Wilkerson's view of the crosswalk. Deputy Ducote concluded Wilkerson could have avoided the accident had he simply observed Michael in the crosswalk.

Considering Wilkerson admitted he was not looking ahead when he struck Michael, we find the evidence clearly shows Wilkerson was not keeping a proper lookout or exercising ordinary care in approaching the crosswalk, as required by Louisiana law. La. R.S. 32:212 and 32:214. If Wilkerson had exercised reasonable diligence and maintained a proper lookout on the roadway, he would have seen Michael and been able to avoid hitting him. Considering a motorist is charged with a greater duty to watch for pedestrians and to yield the right-a-way to pedestrians in a crosswalk, we find the trial court legally erred in concluding Wilkerson was not negligent in striking Michael. We find Wilkerson breached his duty to exercise reasonable care when approaching the crosswalk and this breach caused the accident.

***Comparative Fault***

Comparative fault principles govern accidents occurring between a pedestrian and a motorist. Turner v. New Orleans Pub. Serv. Inc., 476 So.2d 800, 803 (La. 1985); Uriegas v. Gainsco, 94-1400 (La. App. 3 Cir. 9/13/95), 663 So.2d 162, 172, writ denied, 95-2485 (La. 12/15/95), 664 So.2d 458. Because the trial court did not impose any liability on Wilkerson for the accident, the trial court did not reach the issue of comparative fault. When the trier of fact does not reach an issue because an

[4] Because the accident occurred in early morning hours when Clearview Mall was closed, the light cycle defaulted to a green light for Veterans and would remain so until "activated" by detection of vehicles exiting on the Clearview Mall access road. Thus, Michael could have potentially stood at the intersection for hours until a vehicle exiting the mall triggered the light to change.

earlier finding disposes of the case, the appellate court, in reversing the earlier finding, must make a *de novo* determination of undecided issues from the facts presented in the record. LeBlanc, 770 So.2d at 771-72. We therefore analyze the comparative fault issues below.

In Watson v. State Farm Fire and Cas. Ins. Co., 469 So.2d 967, 974 (La. 1985), the court explained that a comparative fault analysis assessing the fault of the parties required consideration of various factors, including: (1) whether the conduct resulted from inadvertence or involved an awareness of the danger, (2) how great a risk was created by the conduct, (3) the significance of what was sought by the conduct, (4) the capacities of the actor, whether superior or inferior, and (5) any extenuating circumstances which might require the actor to proceed in haste, without proper thought. Gonzalez v. Wricks, 23-298 (La. App. 5 Cir. 5/8/24), 389 So.3d 218, 226.

While a pedestrian has a duty to keep a proper lookout for approaching traffic, a driver of an automobile is under a never-ceasing duty to maintain a proper lookout and see what should be seen and to exercise reasonable care under the circumstances. Gibson v. Dixie Ins. Co., 542 So.2d 635, 638 (La. App. 5 Cir. 1989). "[E]very driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary...." La. R.S. 32:214. All drivers have a never-ceasing duty to look and observe; that which they can see, they must see; failure to see what they could have seen by exercise of due diligence does not absolve them from liability. Colon v. Budget Rent–A–Car, 92-2437 (La. App. 4 Cir. 12/15/94); 648 So.2d 429, 431. In comparing fault in an automobile-pedestrian accident, the motorist has a far greater duty and responsibility to avoid the accident because the motorist is "insulated" inside his vehicle and has the greater chance of avoiding the accident than the pedestrian. Id., citing Turner v. New Orleans Public Service, Inc., 476 So.2d 800 (La. 1985).

Based on the facts of this case, we find Wilkerson bears a greater percentage of the fault for this accident than Michael. Wilkerson admitted at trial he was not looking in front of him at the crosswalk and, as a result, did not see Michael in front of him. Deputy Ducote opined that Wilkerson could have avoided the accident if he had been looking ahead and seen Michael in the crosswalk. Deputy Ducote also opined that Michael acted properly in crossing the roadway on a red light given the length of time he would have had to wait for the light to cycle to green at that time of the morning.

Wilkerson's failure to look ahead at what was in front of him demonstrates that Wilkerson was not paying proper attention as a driver. He therefore breached his duty to maintain a proper lookout. The record, however, suggests that Michael also should have seen Wilkerson's vehicle approaching. According to Deputy Ducote, Michael had been in the crosswalk for 21 seconds and had almost finished crossing when Wilkerson struck him. Therefore, we find the evidence indicates that both Wilkerson and Michael failed to see what they should have seen.

Considering these facts and that Wilkerson had the greater duty as the driver of a motor vehicle, we find Wilkerson bears 65% of the fault and Michael bears 35% of the fault.

***Damages***

"Courts of appeal may award damages when the trial court initially rejects plaintiff's demands and where the record contains sufficient proof of damages." Broussard v. Med. Protective Co., 06-331 (La. App. 3 Cir. 2/21/07), 952 So.2d 813, 818. When the initial award of damages is made at the appellate level, the award should reflect an amount, which is just compensation for the damages revealed by the record. Id.; In re Brown, 11-1824 (La. App. 4 Cir. 2/20/13), 156 So.3d 661, 665.

"Special damages" are those which must be specially pled or have a ready market value, that is, the amount of the damages supposedly can be determined with

relative certainty. Prest v. Louisiana Citizens Prop. Ins. Corp., 12-513 (La. 12/4/12), 125 So.3d 1079, 1090; Gonzalez, 389 So.3d at 229. Plaintiff's medical expenses incurred as a result of the accident are considered special damages. Wainwright v. Fontenot, 00-0492 (La. 10/17/00), 774 So.2d 70, 74; Wilson v. Canal Ins. Co., 21-676 (La. App. 5 Cir. 11/23/22), 353 So.3d 969, 977.

Prior to trial, the parties stipulated to the following facts relevant to damages in this case: (1) Michael was continuously hospitalized at UMC for the injuries he sustained in the accident from the date of the accident until his death 19 days later on October 16, 2021; (2) due to the accident, Michael was diagnosed with, among other things, a skull fracture, subdural hematoma, multiple extremity fractures, and pneumothorax; and (3) before his death, Michael underwent a craniotomy procedure to relieve swelling in his brain. With regard to damages, the parties stipulated that (1) Michael's ambulance bill amounted to $1,497.50; (2) Michael's UMC medical expenses totaled $246,146.83; and (3) Michael's funeral and burial expenses totaled $10,318.00.

In accordance with these stipulations, we find just compensation for Michael's special damages to be $257,962.33, reduced by 35% due to the comparative fault assigned to Michael. We therefore award $167,675.52 for Michael's special damages.

General damages involve mental or physical pain or suffering, inconvenience, and the loss of enjoyment of life or lifestyle, which cannot be definitely measured in monetary terms. Wilson, 353 So.3d at 977; Giglio v. ANPAC Louisiana Ins. Co., 20-209 (La. App. 5 Cir. 12/23/20), 309 So.3d 416, 423. General damages are inherently speculative and cannot be fixed with mathematical certainty. Miller v. LAMMICO, 07-1352 (La. 1/16/08), 973 So.2d 693, 711. In assessing the quantum of damages for pain and suffering, courts consider the severity and duration of the individual's pain and suffering. Gonzalez v. Wricks, 23-298 (La. App. 5 Cir.

5/8/24), 389 So.3d 218, 230; Jenkins v. State ex rel. Dept. of Transp. and Dev., 06-1804 (La. App. 1 Cir. 8/19/08), 993 So.2d 749, 767, writ denied, 08-2471 (La. 12/19/08), 996 So.2d 1133.

Upon a *de novo* review of the record, an appellate court is not constrained to the lowest or highest amount reasonable for damages. Gonzalez, 389 So.3d at 230. Instead, the appellate court is authorized to award an amount which represents appropriate compensation for the damages revealed in the record. Id.; Clement v. Carbon, 13-827 (La. App. 5 Cir. 4/9/14), 153 So.3d 460, 465.

Survival damages provide compensation for the damages suffered by the victim from the time of injury to the moment of his death; they differ from wrongful death damages, which compensate beneficiaries for their own injuries suffered from the moment of the victim's death and thereafter. La. C.C. art. 2315.1; Warren v. Louisiana Medical Mut. Ins. Co., 07-0492 (La. 12/2/08), 21 So.3d 186, 188; Taylor v. Giddens, 618 So.2d 834, 840 (La. 1993). The elements of damage for the survival action are pain and suffering, loss of earnings and other damages sustained by the victim up to the moment of death. Pierre v. Lallie Kemp Charity Hosp., 515 So.2d 614, 618 (La. App. 1st Cir.), writ denied, 515 So.2d 1111 (La. 1987). In determining survival damages, the factfinder should consider the severity and duration of any pain experienced by the deceased up to the moment of death. Ponseti v. Touro Infirmary, 18-0109 (La. App. 4 Cir. 12/5/18), 259 So.3d 1097, 1102, writ denied, 19-12 (La. 2/25/19), 266 So.3d 297; Maldonado v. Kiewit Louisiana Co., 12-1868 (La. App. 1 Cir. 5/30/14), 152 So.3d 909, 936, writ denied, 14-2246 (La. 1/16/15), 157 So.3d 1129. Damages for pain and suffering in a survival action may include the decedent's pre-impact fear. Harvey v. State, DOTD, 00-1877 (La. App. 4 Cir. 9/26/01), 799 So.2d 569, 577, writ denied sub nom. Harvey v. State, DOTD, 02-0003 (La. 3/15/02), 811 So.2d 910.

Wilkerson testified at trial that, immediately after the accident, Michael was conscious and trying to get back to his feet when bystanders encouraged him to remain lying down. Wilkerson heard Michael moaning after the accident. The evidence established that Michael survived the accident for 19 days and suffered numerous injuries.

In addition, the record shows the accident caused Michael's injuries and death. Dr. Richard Pino, Michael's treating physician at UMC, testified that Michael's injuries, the treatment rendered to him, and his death were causally related to the accident. Due to the accident, Michael suffered a skull fracture, subdural hematoma, multiple extremity fractures, and pneumothorax. He also underwent a craniotomy procedure to relieve swelling in his brain before his death.

In considering an appropriate general damage award in this case, we have reviewed survival damage awards in other cases where the deceased survived the accident for a short period of time, particularly those discussed below.

The Louisiana Second Circuit affirmed a $250,000 award to an individual who survived briefly but died at the scene of the accident. Smith v. Louisiana Farm Bureau Cas. Ins. Co., 45,013 (La. App. 2 Cir. 4/23/10), 35 So.3d 463, 473, writ denied, 10-1205 (La. 9/17/10), 45 So.3d 1052. According to the autopsy report in that case, the deceased sustained multiple injuries predominantly involving the chest and abdomen, including partial amputation of the left lower leg, multiple bilateral rib fractures with lacerations of both lungs and the pericardial sac, extensive lacerations of his liver and spleen, and multifocal areas of subarachnoid hemorrhage involving the brain. Id.

The Louisiana Second Circuit also affirmed a $250,000 survival damage award to a woman who died after receiving undiluted potassium intravenously through a port on her arm. Farmer v. Willis Knighton Med. Ctr., 47,530 (La. App. 2 Cir. 11/14/12), 109 So.3d 15, 27-28, amended on reh'g (Jan. 10, 2013), writ denied,

2012-2698 (La. 2/8/13), 108 So.3d 89, and writ denied, 13-346 (La. 4/1/13), 110 So.3d 586. The patient suffered intense burning and pain in her arm, had an erratic heartbeat and convulsions, and was frothing at the mouth. Id. The patient's daughter testified that her mother was looking at her with a pleading look on her face as if she was begging for help. The patient slowly lost consciousness, suffered a complete cardiac failure within minutes of receiving the undiluted potassium, and underwent resuscitative efforts for 30 minutes to no avail. Id. at 20. The court stated that while the $250,000 survival damage award was toward the top of the range in this type of case, it could not say the award was an abuse of the jury's great discretion. Id. at 28.

The Louisiana First Circuit affirmed a survival damage award of $50,000 for a deceased who died due to injuries in a motor vehicle accident at the scene of the accident. Barthel v. State, Dep't of Transp. & Dev., 04-1619 (La. App. 1 Cir. 6/10/05), 917 So.2d 15, 21. The appellate court relied on law that fear of impact is an element of pre-death pain and suffering. Id. Damages for pain and suffering may be awarded where there is the smallest amount of evidence of pain on the part of the deceased by his actions or otherwise. Anthony v. Hospital Service District No. 1, 477 So.2d 1180, 1185 (La. App. 1st Cir. 1985), writ denied, 480 So.2d 743 (La. 1986).

In Raymond v. Government Employees Ins. Co., 09-1327 (La. App. 3d Cir. 6/2/10), 40 So.3d 1179, 1192, writ denied, 10-1569 (La. 10/8/10), 46 So.3d 1268, the appellate court affirmed an award of $50,000 for survival damages where the decedent died due to a car crash. The court noted that the decedent was aware that the collision was about to occur and he obviously feared the collision. At the scene, the decedent grunted and raised his head two or three times, and his eyes were halfway open. He was transported to the hospital and was observed to have suffered severe chest and abdomen trauma, multiple left rib fractures and pulmonary contusions.

In Long v. State, Through the Dept. of Trans. and Dev., 37,442 (La. App. 2d Cir. 11/24/03), 862 So.2d 149, reversed on other grounds, 04-0485 (La. 6/29/05), 916 So.2d 87, the driver of a vehicle that collided with a train was killed. A witness testified that after the collision, the decedent was alive, but had difficulty breathing and made gurgling sounds when trying to speak. The witness also testified that the decedent's body was "mangled" with apparent severe fractures of her arms and legs. He estimated that the decedent lived for approximately twenty to thirty minutes after impact. Id. at 156-57. The court affirmed an award of $250,000 in survival damages based on the testimony and the photographs depicting the extensive damage caused to the decedent's vehicle, evidence supporting that the decedent was conscious for a period of time following the collision, and evidence that she experienced pain and suffered prior to losing consciousness. Id. at 157.

In Maldonado v. Kiewit Louisiana Co., 12-1868 (La. App. 1 Cir. 5/30/14), 152 So.3d 909, 937, writ denied, 14-2246 (La. 1/16/15), 157 So.3d 1129, the appellate court reduced a survival damage award of $1 million to $300,000. The testimony revealed that Martinez fell from a height of over 60 feet when the rebar cage collapsed. He was found lying face down and was breathing when the first person arrived to assist him. He died at the scene shortly thereafter.

Based on the facts of this case and the awards discussed above, we find an award of $300,000 is just compensation for Michael's damages for the survival action. Accordingly, we award Ms. Angelica $195,000, which is $300,000 reduced by the 35% comparative fault assigned to Michael.

A wrongful death action compensates a victim's beneficiaries for their own injuries which they suffer from the moment of the victim's death and thereafter. La. C.C. art. 2315.2; Warren, 21 So.3d at 188. This court has recognized that no equation exists to fix, in monetary terms, a parent's damages for the death of a beloved child. Turner v. Parish of Jefferson Through Dept. of Recreation, 98-336

(La. App. 5 Cir. 10/14/98), 721 So.2d 64, 78; Mendoza v. Mashburn, 99-499 (La. App. 5 Cir. 11/10/99), 747 So.2d 1159, 1171-72, writ not considered, 00-40 (La. 2/18/00), 754 So.2d 957, and writ not considered, 00-43 (La. 2/18/00), 754 So.2d 957, and writ denied, 00-37 (La. 2/18/00), 754 So.2d 976. The profound loss of a child cannot translate into fiscal terms. Id.

Our review of prior judgments discloses that wrongful death awards for the loss of a child range from $150,000, Cradeur v. State Through Dept. of Transp. and Development, 607 So.2d 1050 (La. App. 3d Cir. 1992), to $350,000, Cambre v. National R.R. Passenger Corp., 99-256 (La. App. 5th Cir. 2/1/00), 762 So.2d 636; Mendoza, *supra*; Owens v. Concordia Elec. Co-op, Inc., 95-1255 (La. App. 3d Cir. 6/25/97) 699 So.2d 434.

The Cambre case involved the loss of a 31-year-old son who was in constant communication with his parents and maintained a close relationship with them. 762 So.2d at 638. The son did not have any dependents and did not financially contribute to his parents' support. Id. Both parents testified as to the depth of their continuing sorrow for the loss of their son. Id. This court reduced the jury's award of $1 million to each parent to $350,000 to each parent. Id.

The Owens case involved divorced parents' loss of their 16-year-old son, both of whom had a close relationship with him. 699 So.2d at 447. The evidence showed the son was an exemplary young man, the extent of affection between the parents and the son, and the psychological impact the loss had on them. Id. The appellate court reduced the jury's award of $1 million to each parent to $350,000 to each parent. Id.

In the Mendoza case, parents lost their adult son who lived with them in a multi-vehicle accident. 747 So.2d at 1163. Evidence established both parents had a close relationship with their son, and the family attended grief therapy for 15 months after losing him. Id. at 1171. The deceased's mother became so upset after his death

she required hospitalization, and visited the cemetery every day. Id. This court reduced the jury's award of $1 million to each parent to $350,000 each. Id. at 1172.

In the Cradeur case, this court upheld an award of $150,000 to each parent for the loss of a 20-year-old daughter who lived with her parents at the time of her death and worked for the same company as her mother. 607 So.2d at 1055.

Considering the facts of this case and jurisprudence, we find $350,000 an appropriate amount to award Ms. Angelica for the wrongful death of her son, Michael, which is subject to reduction by 35% due to the comparative fault assigned to Michael. We therefore award Ms. Angelica $227,500 relative to her wrongful death claim.

**DECREE**

For the reasons discussed, based on our *de novo* review of this appeal record, we reverse the trial court's judgment, finding the trial court committed legal error in dismissing plaintiff's claims, and we render judgment in favor of Vilma Angelica, individually and on behalf of Michael Angelica, and against Steven Wilkerson and State Farm Mutual Automobile Insurance Company. We find defendant, Steven Wilkerson was 65% at fault in causing the accident at issue herein, Michael was 35% at fault, and that the accident was a cause-in-fact of Michael's injuries and death. Further, we award Ms. Angelica $195,000.00 for the survival action. As to her wrongful death action, we award Ms. Angelica $167,675.52 in special damages and $227,500.00 in general damages. We award all amounts with interest.

**REVERSED AND RENDERED**

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## NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 9, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

# 24-CA-332

**E-NOTIFIED**
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JACQUELINE F. MALONEY (DISTRICT JUDGE)
HONORABLE JOHN E. LEBLANC (DISTRICT JUDGE)
JAMES C. RATHER, JR. (APPELLANT)
DORIS A. L. ROYCE (APPELLEE)
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