The Iowa Supreme Court has stated that a driver's license is not a right, but a privilege.[35] It has also stated that the revocation or suspension function vested in the Commissioner[36] is a proper delegation of *legislative* power.[37] These holdings would seem to indicate that the Commissioner of Public Safety of the State of Iowa acts in a legislative manner and not in a judicial manner when he suspends the license of an automobile operator under an applicable state statute. Therefore, if Iowa desires to follow the majority of those jurisdictions which have found that their Commissioners operate legislatively, the scope of review by the district court, under section 321.215 of the 1966 Iowa Code, should be limited to a determination of the legality of the suspension. In any event, before the Commissioner's actions were negated by an unlimited review, the Iowa Supreme Court should have at least investigated more fully into the character and nature of the Department's statutory function.[38]

STEVEN J. SEILER

Workmen's Compensation—Death Benefits—RECOVERY OF DEATH BENEFIT BY A CHILD ADOPTED BY ANOTHER BEFORE THE DEATH OF HIS NATURAL PARENT. —*Patton v. Shamburger* (Tex. Civ. App. 1967).

Patton and the present Mrs. Shamburger were divorced and the two minor sons of that union were adopted by Charles Shamburger, their stepfather. Subsequently Patton was killed in the course of his employment. His employer's insurer paid into court the correct amount of the death benefit and asked the court to determine who was entitled thereto. The benefits were claimed adversely by the parents of the deceased who were dependent upon him and by his two sons who had received no support from him since their adoption by Shamburger. The trial court held that the children were entitled to the benefits. On appeal to the Court of Civil Appeals of Texas, *Held*, affirmed. Deceased employee's natural children are entitled to the death benefit under the Texas Workmen's Compensation Act[1] to the exclusion of employee's surviving dependent parents although the children were adopted by another prior to the employee's death. *Patton v. Shamburger*, 413 S.W.2d 155 (Tex. Civ. App. 1967).

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35 Spurbeck v. Statton, 252 Iowa 279, 289, 106 N.W.2d 660, 666 (1960).

36 IOWA CODE § 321.210 (1966).

37 Spurbeck v. Statton, 252 Iowa 279, 289, 106 N.W.2d 660, 666 (1960).

38 Both the Oregon and the North Dakota courts, in the cases cited as authority in Needles v. Kelly, examined the function of their respective administrative agency. In Stehle v. Department of Motor Vehicles, 229 Ore. 543, 552, 368 P.2d 386, 390 (1962), the court stated that the function their department performed under the Oregon statute "might well be assigned to the judiciary rather than to an administrative department." The court in Conaway v. Thompson, 78 N.W.2d 400 (N.D. 1956), indicated that their administrative officer acts in a quasi-judicial capacity.

1 TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967).

The Texas Workmen's Compensation Act provides for the payment of death benefits if death should result from injuries sustained by the employee in the course of his employment.[2] Decedent's surviving spouse, minor children, parents and stepmother may receive the death benefit without proving actual dependency upon the deceased employee.[3] It further provides that although said benefit does not pass to the estate of the deceased, it is distributed to the beneficiaries according to the laws of descent and distribution;[4] if there is no surviving spouse, the children receive the benefit to the exclusion of the surviving parents.[5] For the purposes of inheritance under the Texas laws of descent and distribution, adopted children lose no right to inheritance from their natural father by reason of being adopted by another.[6]

The only issue presented in *Patton*[7] is whether the adopted children are deprived of their right to the benefits due upon the death of their natural father as a result of being adopted by another before his death. This issue had not previously been decided in Texas but had been decided in New York,[8] Oklahoma,[9] and Georgia.[10] New York and Oklahoma held that the child was entitled to receive death benefits, but Georgia did not permit recovery. At the time that *Shulman v. New York Bd. of Fire Underwriters*[11] was decided, the adoption law in New York[12] provided that an adopted child could inherit from his natural parents. The Texas court adopted the reasoning of the New York court that it was not the intent of the legislature to exclude the offspring of natural parents in the definition of "child" as used in the Workmen's Compensation Law.[13] The court in *Shulman*[14] stated that "[h]ad the purpose been to destroy the consanguineous connection between a father and his natural child adopted by another as the basis for an award of death benefits, the statutory definition certainly would have been so precisely written as to leave no doubt that such was its intent."[15] The Texas court concluded that it is evident the Texas Legislature intended the law of descent and distribution to provide that an adopted child should recover death benefits and inherit from his natural parent.[16]

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2 *Id.* 8306, § 8 (1967).
3 *Id.* art. 8306, § 8a (1967).
4 *Id.*
5 TEX. PROB. CODE ANN. § 38 (1956).
6 *Id.* § 40 (1956) provides in part: "The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents."
7 Patton v. Shamburger, 413 S.W.2d 155 (Tex. Civ. App. 1967).
8 Shulman v. New York Bd. of Fire Underwriters, 15 App. Div. 2d 700, 223 N.Y.S.2d 312 (1962).
9 Stark v. Watson, 359 P.2d 191 (Okla. 1961).
10 New Amsterdam Casualty Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960), *rev'g* 101 Ga. App. 754, 115 S.E.2d 443 (1960).
11 115 App. Div. 2d 700, 223 N.Y.S.2d 312 (1962).
12 N.Y. DOM. REL. § 117 (McKinney 1961); *but see* N.Y. DOM. REL. § 117 (McKinney 1964).
13 N.Y. WORKMEN'S COMP. § 2(11) (McKinney 1965).
14 Shulman v. New York Bd. of Fire Underwriters, 15 App. Div. 2d 700, 223 N.Y.S.2d 312 (1962).
15 *Id.*
16 Patton v. Shamburger, 413 S.W.2d 155, 157 (Tex. Civ. App. 1967).

Apparently the first case to deal directly with this issue was *New Amsterdam Casualty Co. v. Freeland.*[17] Georgia statutes do not provide for distribution of the death benefit through descent and distribution statutes but provide for payments to persons conclusively presumed dependent upon a deceased employee and others in specific relationships to the deceased who can prove either complete or partial dependency at the time of the injury.[18] In the absence of dependents the employer is liable only for the reasonable medical expenses of the employee's last sickness and for burial expenses not to exceed $350.[19] Those conclusively presumed dependent are the surviving spouse, if specific statutory requirements are met, and children under eighteen years of age.[20] Though the adoption statutes do not specifically deal with the right of an adopted child to inherit from his natural parents, the statutes divest the natural parents of all legal rights and obligations between themselves and the adopted child.[21] The court in *New Amsterdam*[22] held that the workmen's compensation statute and adoption statute must be construed together. To give effect to the intention of the legislature, the courts are not controlled by the literal meaning of the statute, but the spirit or intention of the law prevails.[23] It was the intent of the legislature that the conclusive presumption of dependency would arise where one of five relationships of parent and child exists, *viz.:* (1) natural children, (2) stepchildren, (3) adopted children, (4) posthumous children, and (5) acknowledged illegitimate children.[24] If the child was adopted and wholly supported by an adoptive father before the injury or death of his natural father, the conclusive presumption of dependency would arise with respect to the adoptive father and have no application as to the natural father.[25] Otherwise, the *New Amsterdam* court concluded that unreasonable and inequitable consequences would result as benefits for the death of both the natural father and adoptive father could be recovered simultaneously. In the opinion of the court it was not the intention of the legislature to allow double recovery.[26]

Workmen's compensation benefits are designed to protect the injured worker and his family from substandard living conditions as a result of a work connected injury.[27] The payment of benefits is based largely on a social trend of providing support to prevent destitution,[28] and therefore payment to persons no longer dependent upon the deceased is inconsistent with the spirit

17 216 Ga. 491, 117 S.E.2d 538 (1960), *rev'g* 101 Ga. App. 754, 115 S.E.2d 443 (1960).
18 GA. CODE ANN. § 114-413 (1956).
19 *Id.*
20 *Id.* § 114-414.
21 *Id.* § 74-414 (1964).
22 New Amsterdam Casualty Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960), *rev'g* 101 Ga. App. 754, 115 S.E.2d 443 (1960).
23 *Id.* at 495, 117 S.E.2d at 541.
24 *Id.* at 496, 117 S.E.2d at 541.
25 *Id.*
26 *Id.*
27 Riesenfeld, *Forty Years of American Workmen's Compensation*, 35 MINN. L. REV. 525, 527 (1951).
28 Larson, *The Nature and Origins of Workmen's Compensation*, 37 CORNELL L.Q. 206, 207 (1952); *see also* F. HALL, IOWA WORKMEN'S COMPENSATION § 1 (1936).

and purpose of the law.[29] Dependency, in whole or in part, is essential before an award can be made to a child under the workmen's compensation act.[30] It is not a statute of descent and distribution granting benefits by way of inheritance.[31] The indication by the court in *Patton*, that there is no real distinction between the statutory devolution of property in the case of intestacy and the succession to a right conferred by workmen's compensation, is clearly in conflict with the purpose and spirit of the law.[32] Furthermore, the New York adoption statute[33] relied on by the Texas court was amended in 1963 in such a way that it would not permit recovery by the adopted children from their natural father. Unlike Texas, the New York workmen's compensation death benefit statute distributes the benefit to specific relatives of the deceased workman if they can prove dependency upon the deceased at the time of the injury and not in accordance with the laws of descent and distribution.[34]

There have been no Iowa decisions dealing specifically with death benefit recovery by children adopted by another prior to the death of the natural father. The Iowa workmen's compensation death benefit provisions are nearly identical with those of Georgia. Both include the surviving spouse and minor children as conclusively presumed dependents and permit recovery to those who can prove dependency in whole or in part upon the deceased at the time of the injury.[35] In Iowa when an employee dies leaving no dependents, the employer will pay the reasonable medical expenses and up to $500 of the burial expenses.[36] The major difference between the adoption statutes in Iowa and those of Texas and New York is that the Iowa statutes do not specifically deal with the rights of adopted children to inherit through their natural parents.[37] In the absence of statutory provisions expressly barring recovery, the courts generally hold that the right to inherit from natural parents remains.[38] The legislature should spell out in the statute the provisions that the child and parent become strangers instead of permitting the present situation to exist where it is left entirely to surmise.[39] In Iowa there would seem to be a trend toward greater separation of a natural parent and adopted child. The Iowa Legislature deleted the statute wherein a natural parent could inherit from his child adopted by another.[40] However, as in the past, the adopted

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29 2 A. LARSON, WORKMEN'S COMPENSATION LAW 131 (1961).

30 New Amsterdam Casualty Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960), *rev'g* 101 Ga. App. 754, 115 S.E.2d 443 (1960).

31 Double v. Iowa-Nebraska Coal Co., 198 Iowa 1351, 201 N.W. 97 (1924); Lunceford v. Fegles Constr. Co., 185 Minn. 31, 239 N.W. 673 (1931).

32 2 A. LARSON, WORKMEN'S COMPENSATION LAW 131 (1961).

33 N.Y. DOM. REL. § 117 (McKinney 1965).

34 N.Y. WORKMEN'S COMP. § 16 (McKinney 1965).

35 IOWA CODE § 85.42 (1966).

36 *Id.* § 85.25.

37 *Id.* § 600.6.

38 Note, *Legislation and Decisions on Inheritance Rights of Adopted Children*, 22 IOWA L. REV. 145, 149 (1936).

39 Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 282 (1955).

40 IOWA CODE § 636.43 (1962).

child inherits from and through adoptive parents[41] and recovers workmen's compensation death benefits from his adoptive parents;[42] but, it is not expressly stated whether he may inherit from his natural parents. This failure to expressly sever the relationship between an adopted child and his natural parent has resulted in an Iowa decision holding that, in the absence of an inheritance statute to the contrary, an adopted child may inherit from his natural parents.[43] More recently the Iowa Supreme Court permitted a stepchild, wholly dependent upon his stepparents, to recover the death benefit upon the death of his natural father.[44] The court noted that while this will result in double dependency in some instances, it is analogous to the situation where an adopted child is granted the right to inherit from both his natural parents and adopted parents.[45] This decision seems to be inconsistent with the purpose of workmen's compensation and confuses the right of inheritance with the support of dependents.

From the above it appears possible that an Iowa court faced with the issue presented in *Patton* would hold similarly, *i.e.* an adopted child could receive benefits upon the death of his natural father. This result, however, is not necessarily desirable nor consistent with the purpose of the Iowa Workmen's Compensation Act. The Georgia court in *New Amsterdam*[46] has faced the issue more realistically in recognizing that payment of death benefits to persons who are neither dependent nor in a family unit is not consistent with the purpose or spirit of the law of workmen's compensation.

DON MUYSKENS

Wrongful Death—Minors—RECOVERY FOR LOSS OF MINOR'S COMPANIONSHIP AND SOCIETY ALLOWED IN WRONGFUL DEATH ACTION BY PARENTS.—*Lockhart v. Besel* (Wash. 1967).

In an action for the wrongful death of a seventeen-year-old child, instigated by his father, the trial court entered judgment for plaintiff in the amount of $4,500, which was the estimated value of the son's lost services to the father. The father appealed, claiming that the trial court erred in not granting an instruction which would permit the jury to evaluate loss of companionship in determining damages. The Washington Supreme Court, in a unanimous decision, *Held*, reversed. Due to economic conditions and changes

41 *Id.* § 633.223 (1966).
42 *Id.* § 85.42(2).
43 Wagner v. Varner, 50 Iowa 532 (1879).
44 Day v. Town Club, 241 Iowa 1264, 45 N.W.2d 222 (1950).
45 *Id.*
46 New Amsterdam Casualty Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960), *rev'g* 101 Ga. App. 754, 115 S.E.2d 443 (1960).

in our way of life, the measure of damages under the wrongful death statute should be extended to include loss of companionship of a minor child during his minority without giving any consideration for grief, mental anguish or suffering of parents by reason of such child's wrongful death.[1] *Lockhart v. Besel*, 426 P.2d 605 (Wash. 1967).

At common law there was no cause of action for the wrongful death of a human being.[2] A cause of action did exist and damages could be obtained, if the same wrongful act caused a non-fatal injury.[3] This anomaly of the common law was removed by the passage of Lord Campbell's Act[4] which provided that where a person could have maintained a cause of action for a wrongful act if death had not ensued, the cause of action could be maintained by an executor or administrator, on behalf of certain beneficiaries.[5] Lord Campbell's Act has been adopted in varying forms[6] by most jurisdictions.[7] These statutes, patterned after Lord Campbell's Act, are generally called wrongful death statutes. Such statutes create an entirely new cause of action distinct from and independent of any right of action which decedent might have had during his lifetime or would have had if he had survived the injury.[8] The inquiry is the extent of damages sustained by the beneficiaries as a consequence of the wrongful death, which normally includes such matters as loss of support and services.[9] If decedent's estate brings the action, the damages are found by computing the loss to the estate because of the premature death of decedent.[10] In addition to the wrongful death approach, many states have survival statutes which provide for the survival of any cause of action which the deceased might have maintained had he survived the injury.[11] Under these statutes, generally, the estate recovers for injury to decedent, his bodily integrity and continued existence, but not for his death.[12]

Section 611.20 of the 1966 Iowa Code, contemplates the survival of the decedent's cause of action.[13] But the Iowa court, in interpreting the statute,

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1 Lockhart v. Besel, 426 P.2d 605, 609 (Wash. 1967).
2 C. McCormick, Damages § 93 (1935).
3 *Id.*
4 9 & 10 Vict. c. 93 (1846).
5 22 Am. Jur. 2d *Death* § 2 (1965).
6 C. McCormick, Damages § 95 (1935).
Statutes may provide a cause of action for a named beneficiary. Iowa R. Civ. P. 8 allows a parent to recover damages for the wrongful death of his child. An action may be brought under the survival statute, Iowa Code § 611.20 (1966), which allows a personal representative to recover damages to the estate of one who died as a result of the wrongful act. Some states have survival acts which in theory allow recovery from time of injury until death; however, the more liberal rule permits the life expectancy to govern. The liberal view is followed in the following cases: Kling v. Torello, 87 Conn. 301, 87 A. 987 (1913); Kyes v. Valley Tel. Co., 132 Mich. 281, 93 N.W. 623 (1903); Imbriani v. Anderson, 76 N.H. 491, 84 A. 974 (1912).
7 W. Prosser, Torts § 121 (3d ed. 1964).
8 22 Am. Jur. 2d *Death* § 13 (1965).
9 F. Harper & F. James, Torts § 25.14 (1956).
10 *Id.* § 25.15.
11 *Id.* § 24.2(3).
12 *Id.*
13 "Actions survive. All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same."

has applied the wrongful death measure of damages by allowing the decedent's estate to recover damages to the extent the premature death diminished the estate.[14]

The wrongful death approach as it pertains to the wrongful death of a minor, generally provides for damages to the parents. The damages are computed by estimating the pecuniary value of the services the child would have provided the parents minus the probable cost of rearing the child.[15] Iowa allows a parent to recover damages for the wrongful death of a child under a Rule of Civil Procedure[16] as opposed to the statutory right in most states.[17] The cause of action created for the parents falls into two categories, with minor variations, from jurisdiction to jurisdiction. The majority view allows the parents to recover for loss of services during minority, plus possible contributions which the child may have made to them after reaching majority, less the expenses of rearing a child until he reaches his majority.[18] A minority of jurisdictions, including Iowa, does not allow damages for the value of contributions the child might have made after reaching majority.[19]

The principal case exemplifies a new development in the problem of trying to establish a satisfactory criterion for evaluating the loss to the parents which was caused by the wrongful death of a minor child. The Washington Supreme Court based its decision upon the holding in *Sweeten v. Pacific Power and Light Co.*,[20] which held that the wrongful death statute implies something more than mere nominal damages to the parents for the wrongful death of their child.[21] The court then pointed out that due to the changes in

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14 Jones, *Civil Liability for Wrongful Death in Iowa*, 11 IOWA L. REV. 28 (1925); Note, *The Measure of Damages for the Wrongful Death of the Head of the Family in Iowa*, 39 IOWA L. REV. 494 (1954).

15 C. MCCORMICK, DAMAGES § 101 (1935); 10 DRAKE L. REV. 74 (1960); Morris v. Chicago, M. & St. P. Ry., 26 F. 22 (C.C.N.D. Iowa 1885); Carnego v. Crescent Coal Co., 164 Iowa 552, 146 N.W. 653 (1894); Benton v. Chicago, R.I. & P. Ry., 55 Iowa 496, 8 N.W. 330 (1881); Hopkinson v. Knapp & Spalding Co., 92 Iowa 328, 60 N.W. 330 (1894); Walters v. Chicago, R.I. & P. Ry., 36 Iowa 458 (1873).

16 IOWA R. CIV. P. 8 provides: "Injury or death of minor. A father or if he be dead, imprisoned or has deserted the family, then the mother, may sue for the expense and actual loss of services resulting from injury to or death of a minor child."

17 F. HARPER & F. JAMES, TORTS § 25.14 (1956).

18 Insperation Consol. Copper Co. v. Bryan, 35 Ariz. 285, 276 P. 846 (1929); Dawkins v. Chavez, 132 Colo. 61, 285 P.2d 821 (1955); Williams v. Hoyt, 117 Me. 61, 102 A. 703 (1917); Gordon v. Lee, 208 Miss. 21, 43 So. 2d 665 (1949); Burus v. Ensinger, 84 Mont. 397, 276 P. 437 (1929); Sutherland v. State, 189 Misc. 953, 68 N.Y.S.2d 553 (1947); Caldwell v. Abernathy, 231 N.C. 692, 58 S.E.2d 763 (1950); Sample v. Campbell, 305 P.2d 1033 (Okla. 1957); Gill v. Laquerre, 51 R.I. 158, 152 A. 795 (1931); McCleod v. Tri-State Milling Co., 71 S.D. 326, 24 N.W.2d 485 (1946); Texas & N.O. Ry. v. Hansen, 271 S.W.2d 309 (Tex. Civ. App. 1954); Butterfield v. Community Lt. & P. Co., 115 Vt. 23, 49 A.2d 415 (1946); C. MCCORMICK, DAMAGES § 101 (1935); 10 DRAKE L. REV. 75 (1960); 18 WASH. & LEE L. REV. 277 (1961).

19 Morris v. Chicago, M. St. P. Ry., 26 F. 22 (C.C.N.D. Iowa 1885); Boyle v. Bornholtz, 224 Iowa 90, 275 N.W. 479 (1937); Carnego v. Crescent Coal Co., 164 Iowa 552, 146 N.W. 653 (1894); Benton v. Chicago, R.I. & P. Ry., 55 Iowa 496, 8 N.W. 330 (1881); Hopkinson v. Knapp & Spalding Co., 92 Iowa 328, 60 N.W. 330 (1894); Walters v. Chicago, R.I. & P. Ry., 36 Iowa 458 (1873); Siebeking v. Ford, 148 N.E.2d 194 (Ind. 1958); McFetridge v. Kurn, 125 S.W.2d 912 (Mo. App. 1939); Lane v. Hatfield, 173 Ore. 79, 143 P.2d 230 (1943); Frantz v. Gower, 119 Pa. Super. 156, 180 A. 716 (1935); IOWA R. CIV. P. 8.

20 88 Wash. 679, 153 P. 1054 (1915).

21 *Id.* at 683, 153 P. at 1055. "In the nature of the case direct evidence of specific pecuniary loss would be impracticable, not to say impossible. To hold that without such

economic conditions and our way of life, the proposition that the loss of services of a minor child has a pecuniary value, over and above his cost of support and maintenance, is a pure fiction and "an affront to reason and logic."[22] McCormick, in his work on damages,[23] cites a 1930 survey which estimated the cost of raising a child to the age of eighteen to be $7,425.[24] In 1949, the estimated cost of raising a child to the age of eighteen was $16,337 for a family with a yearly income of between $5,000 and $10,000; and in 1959, the equivalent of the amount was estimated to be $34,483.[25] These figures, adjusted to consider today's inflation, lend support to the proposition that today's child is an economic liability rather than an asset.[26] In *Wycko v. Gnodtke*,[27] the Michigan court relegated the "loss of services minus expenses" doctrine to the following era: "[A]mple work could be found for the agile bodies and nimble fingers of small children. . . . [E]mployment of children of tender years was the accepted practice and their pecuniary contributions to the family [were] both substantial and provable."[28]

The "loss of services minus expenses" measure of damages has been criticized because in many instances it has been ignored by the jury, and substantial verdicts have been sustained.[29] "[I]t is very evident that the jury [has] taken the bull by the horns, and in reality have compensated for prohibited sentimental aspects of the family relation, with the court benevolently winking at a flagrant violation of the rule it has laid down."[30] This tendency was noted by the Washington court in the principal case when the court cited *Skeels v. Davidson*,[31] where damages of $1,000, exclusive of funeral expenses, were awarded to the parents for the wrongful death of a six-year-old retarded child, even though it was shown that the parents had incurred substantial expenses for his care and maintenance. The Washington court concluded that the *Skeels* case established the right of a parent to recover damages for the wrongful death "of a child who would always have been a hopeless and expensive burden"[32] and this recovery "could be justified only on the basis of loss of companionship . . . ."[33]

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direct evidence no recovery beyond nominal damages could be had, would render nugatory the statute permitting a recovery for wrongful death . . . as applied to the loss of a child of tender years."

22 Lockhart v. Besel, 426 P.2d 605, 609 (Wash. 1967).

23 C. McCormick, Damages § 101 (1935).

24 *Id.*

25 W. Prosser, Torts § 121 (3d ed. 1964).

26 *Id.* "[A]s any parent is well aware, any realistic view of the prospects must mean that the cost of rearing the child will far exceed any conceivable pecuniary benefits that might ever be optimistically expected of him; and damages honestly calculated on this basis could never be anything but a minus quantity." (Footnote omitted.)

27 361 Mich. 331, 105 N.W.2d 118 (1960).

28 *Id.* at 335-36, 105 N.W.2d at 120-21.

29 Menneti v. Evans Const. Co., 259 F.2d 367 (3d Cir. 1958) ($45,385 for 7 yr. old); National Homeopathic Hospital v. Hord, 204 F.2d 397 (D.C. Cir. 1953) ($17,000 for infant); Daggett v. Atchison, T. & S.F. Ry. Co., 48 Cal. 2d 655, 313 P.2d 557 (1957) ($50,000 for two children aged 3 yrs. and 10 months); Reed v. Eubanks, 232 Miss. 27, 98 So. 2d 132 (1957) ($40,000 for 8 yr. old).

30 W. Prosser, Torts § 121 (3d ed. 1964) (footnote omitted).

31 18 Wash. 2d 358, 139 P.2d 301 (1943).

32 Lockhart v. Besel, 426 P.2d 605, 608 (Wash. 1967).

33 *Id.*