

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Biajo Cesarino Case (of a general nature)

1903

VOLUME X pp. 598-599



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

Commissioner would fix this award at a considerable amount. The honorable Commissioner for Venezuela, arguing that the deceased, had he been a young man, could not have earned more than 3 bolivars a day and that, being 64 years of age, his expectancy of life could not exceed six more years, would award damages for his death at not to exceed 6,510 bolivars.

The argument in favor of the sum last named is based exclusively, as appears, upon the theory that the deceased was but a laborer, and that his death only deprived his family of his value as such laborer. But the evidence tends to show that he was a shopkeeper and bought and sold coffee and other productions in considerable quantities, besides apparently cultivating a small piece of land, the extent of which is not given. We may fairly consider, therefore, that his earning power would be much more than 3 bolivars a day.

But while in establishing the extent of the loss to a wife resultant upon the death of a husband it is fair and proper to estimate his earning power, his expectation of life, and, as suggested, also to bear in mind his station in life with a view of determining the extent of comforts and amenities of which the wife has been the loser, we would, in the umpire's opinion, seriously err if we ignored the deprivation of personal companionship and cherished associations consequent upon the loss of a husband or wife unexpectedly taken away. Nor can we overlook the strain and shock incident to such violent severing of old relations. For all this no human standard of measurement exists, since affection, devotion, and companionship may not be translated into any certain or ascertainable number of bolivars or pounds sterling. Bearing in mind, however, the elements admitted by the honorable Commissioners as entering into the calculation and the additional elements adverted to, considering the distressing experiences immediately preceding this tragedy, and not ignoring the precedents of other tribunals and of international settlements for violent deaths, it seems to the umpire that an award of 50,000 bolivars would be just.

The next question of difference is as to the award for property taken. The umpire is not disposed to accept the claim for cash money said to have been taken. This, it is alleged, was sent to the decedent by a bank a short time previous to his death, and the sons, for whose benefit the umpire does not feel he can make an allowance because of their revolutionary career, were apparently interested in it. Besides, its existence is not clearly shown; and if it had been received from a bank, this fact was susceptible of definite and disinterested proof, which is lacking. In addition, the amount, considering the claimed value of the deceased's other property, is so unreasonably large that excessive exaggeration may be presumed. The umpire is further satisfied, taking the evidence as a whole, that the value of the contents of the "pulperia" has been grossly overestimated, and that if he allows 1,000 bolivars as the value of the widow's interest in all of the personal property, he will be doing full justice.

BIAJO CESARINO CASE

Governments are liable for the wanton acts of their officials¹

RALSTON, *Umpire*:

The foregoing cause was duly referred to the umpire, on difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claim arises because of the killing of Gaetano Cesarino, father of the

¹ Cf. Poggioli case, *infra*, p. 669 and notes.

claimant, in the town of Tocuyo on the 9th day of April, A.D. 1903, by a shot fired by a police official named Manuel Aguilar. The claimant asks 50,000 bolivars.

From the undisputed facts in the case, it appears that Manuel Aguilar was at the time a police official, and fired upon the deceased, a pedlar by occupation, as he was crossing a street of Tocuyo. The first proofs submitted tended to show that Aguilar was about 50 meters from the deceased at the time he shot, but subsequent more exact information places the distance at 200 meters.

At first it was proven simply that the deceased was killed by the official named, no particulars being furnished, leaving it open to be supposed that the killing might have been accidental, or brought about upon sufficient cause. The later evidence, however, demonstrated that the deceased was a peaceful, inoffensive man, who had taken no part whatever in any political questions, and was engaged in no disturbance and furnished no cause for the act against him. The assailant professes entire ignorance of the event, but a man who stood next to him, Giminez, saw him raise his gun and fire at the deceased, and suggests no provocation or excuse.

There is considerable evidence tending to show that there were street fights in Tocuyo on the morning in question between Government troops originally in possession and revolutionary troops which were entering, and the testimony of some of the witnesses would seem to indicate that the killing of Cesarino occurred about the time of an exchange of shots. Other papers submitted apparently demonstrate that there was no contest between the contending parties until about an hour after Cesarino was killed. Whatever may be the exact fact as to this point, it does appear that the deceased took no part in the contention, but was shot down in the street unarmed. Nowhere is it suggested that he suffered because believed to be taking part with the revolutionists, and one is unable to determine whether he was killed by Aguilar in a spirit of reckless bravado or in unreasoning panic. Certain it is that the killing was utterly causeless, while deliberate.

The umpire can not, under all the evidence in the case, accept the theory that the death of Cesarino was one of the incidents of war for which no responsibility exists. True it is that governments are not to be held to too close accountability for the misdirected shots of their soldiers or for every display of lack of judgment, but this is not to say that the existence of war frees them from every responsibility. Cases before the present Commissions in Caracas afford many illustrations of decisions holding the Government of Venezuela liable for the wanton or negligent acts of its agents in war and in peace, and, in the judgment of the umpire, the present claim should be added to the list of such cases.

The claimant apparently claims for himself and his mother and a minor child. In the estimation of damages, he, being a man of full age and married in Venezuela, will not be recognized. There is no proof of the marriage of his mother or the existence of a minor child, except as he has stated, and, in the opinion of the umpire, the royal Italian legation requesting it, an opportunity to furnish other and more exact proof should be afforded. No award will therefore be made pending the furnishing of fuller proof.¹

¹ Later the lacking proof was furnished and award given for 40,000 bolivars.