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3/10/68

Memorandum 68-33

Subject: Study 53 - Personal Injury Damages (Assembly Bill No. 19)

The Senate Judiciary Committee heard Senate Bill No. 19 on March 7 and declined to take action on the bill. Instead, the Committee suggested that the Commission consider the objections raised by the State Bar and the California Trial Lawyers Association.

We attach a copy of the Commission's Annual Report. The Recommendation on Personal Injury Damages is contained on pages 1389-1402. We also attach a copy of Assembly Bill No. 19.

The following is an analysis and staff recommendation concerning the objections to the bill.

State Bar Objection

The State Bar is concerned that the rule stated in Section 169.3 does not make a personal injury damage recovery community property to the extent that it reflects earnings prior to divorce or separate maintenance. At the hearing, the amendment set out in Exhibit I (pink) was offered and adopted by the Committee. Later in the hearing, some members of the Committee expressed concern that the amendment would create procedural problems in divorce and separate maintenance cases.

The substance of the State Bar amendment is logical. That portion of a personal damage recovery which is reasonably attributable to the loss of community property earnings should be subject to division, just as the actual earnings themselves would be. The amendment reflects the same policy that caused the Commission to add subdivision (b) to Section 169.3. Accordingly, the staff recommends that the bill

be amended to add the following additional subdivisions to Section 169.3:

(c) Notwithstanding subdivision (a), that portion of the money or other property described in subdivision (a) which is reasonably attributable to the loss of community property earnings of the injured spouse shall belong to the spouses in equal shares unless they otherwise agree.

(d) Unless the spouses otherwise agree as to the amounts that the spouse of the injured spouse is entitled to recover under subdivisions (b) and (c):

(1) If the money or other property described in subdivision (a) is received in satisfaction of a judgment, the court in which the judgment is rendered shall determine the amounts that the spouse of the injured person is entitled to recover under subdivisions (b) and (c).

(2) If the money or other property described in subdivision (a) is received pursuant to an agreement for the settlement or compromise of a claim for the damages for personal injuries, the court in which the divorce or separate maintenance action is pending or in which the divorce or separate maintenance was granted shall determine the amounts that the spouse of the injured person is entitled to recover under subdivisions (b) and (c).

(3) In any other case, the amount that the spouse of the injured person is entitled to recover under subdivisions (b) and (c) shall be determined in an action brought for that purpose.

(e) Notwithstanding any other provision of law, the court in which the divorce or separate maintenance action is brought may impose a lien or trust upon a future judgment or recovery for personal injuries of a spouse to secure payment of the amounts that the spouse of the injured person is entitled to recover under subdivisions (b) and (c). The remedy provided by this subdivision is not the exclusive remedy for the enforcement of the rights of a spouse under this section.

The staff recommends that the money or other property reasonably attributable to the loss of community property earnings of the injured spouse be divided equally unless the spouses otherwise agree. The State Bar draft would divide the amount equally "unless the court otherwise orders." We believe the State Bar rule would make it more likely that the parties would be unable to agree upon the amount to

which each is entitled and the rule would therefore require court determination of such amounts.

The State Bar supports the bill except for Section 169.3. With the above amendment, we believe that the State Bar would support the bill.

California Trial Lawyers Association Objection

The California Trial Lawyers Association believes that the bill is a good bill except for one provision. The Association is concerned that the rule governing the disposition of a personal injury damage recovery on divorce or separate maintenance gives the court too much discretion. The Association is concerned that notwithstanding the rule stated in subdivision (c) of Section 146 of the Civil Code (first section of bill), the court will award the major portion of the recovery to the spouse of the injured spouse. The Association suggested that the bill be amended to provide that in no event may the court award more than half of the personal injury damages recovery to the noninjured spouse. Members of the Committee expressed the view that even this rule is too favorable to the noninjured spouse in case of a divorce or separate maintenance action brought shortly after the recovery for personal injuries.

The staff recommends that the Commission accept the Association's suggested limitation and we hope that the members of the Committee can be convinced that this is a sufficient limitation on the court's discretion.

Respectfully submitted,

John H. DeMouly
Executive Secretary

March 6, 1968

Re: S. B. 19-LRC Measure

The following draft amendments are submitted by the staff of CAJ (without having been approved by CAJ or the Board):

Amend CC 169.3 (new) as follows:

Bill, p. 4, line 37; before Sec. 6, insert

(c) Notwithstanding subdivision (a), that portion of the recovery of a spouse described in subdivision (a) which is reasonably attributable to loss of community property earnings shall belong to the spouses in equal shares as tenants in common unless the court, in accord with the principles of subdivision (c) of section 146, otherwise orders or the parties with the approval of the court, have otherwise agreed.

(d) Notwithstanding any other law, the court may impose a lien or trust upon a future judgment or recovery for personal injuries of a spouse to carry out the purposes of subdivisions (a) and (b), provided, such remedy shall not be deemed the exclusive remedy for enforcement of the rights of a spouse.

New subdivision (c) is intended to state the applicable principles, in a more equitable manner than in *Washington v. Washington*, 47 Cal. 2d 249 (1956). However, the court is given authority over the cause of action (see reference to section 146).

New subdivision (d) is intended to give authority to create an interest in proceeds, despite the general rule against assignment of a cause of action for personal injuries. Also, the authority can be used, where the husband sustained the injuries, to give security for future alimony payments, if the court follows the suggestion in the *Washington* case for this disposition.

of the Board