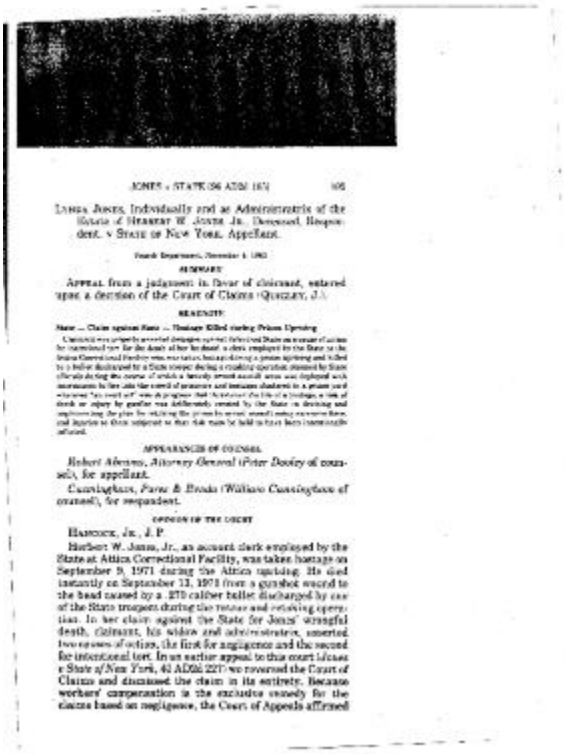
Appeal from a judgment in favor of claimant Jones, entered upon a decision of the Court of Claims.



JONES v STATE (96 AD2d 105) 105

LYNDA JONES, Individually and as Administratrix of the Estate of HERBERT W. JONES Jr., Deceased, Respondent, v STATE OF NEW YORK, Appellant.

Fourth Department, November 4, 1983

SUMMARY

APPEAL from a judgment in favor of claimant, entered upon a decision of the Court of Claims (QUIGLEY, J.).

REMANDED.

State — Claim against State — Hostage Killed during Prison Uprising

Claimant was properly awarded damages against the State on a cause of action for intentional tort for the death of her husband, a clerk employed by the State in the Attica Correctional Facility, who was taken hostage during a prison uprising and killed by a bullet discharged by a State trooper during a retaking operation ordered by State officials during the course of which a heavily armed assault force was deployed with instructions to free only the overall prisoners and hostages shackled to a prison cell whatever "at least off" was the purpose that underlay the loss of a hostage, a risk of death or injury to guards was deliberately created by the State in devising and implementing the plan for retaking the prison by armed assault, making excessive force, and injuries to those assigned to that task must be held to have been intentionally inflicted.

APPEARANCES OF COUNSEL

Robert Abrams, Attorney General (Peter Dooley of counsel), for appellant.

Cunningham, Parsons & Brooks (William Cunningham of counsel), for respondent.

OPINION OF THE COURT

HANCOCK, Jr., J. P.

Herbert W. Jones, Jr., an account clerk employed by the State at Attica Correctional Facility, was taken hostage on September 9, 1971 during the Attica uprising. He died instantly on September 13, 1971 from a gunshot wound to the head caused by a .270 caliber bullet discharged by one of the State troopers during the retaking operation. In her claim against the State for Jones' wrongful death, claimant, his widow and administratrix, asserted two causes of action, the first for negligence and the second for intentional tort. In an earlier appeal to this court (Jones v State of New York, 42 AD2d 227) we reversed the Court of Claims and dismissed the claim in its entirety. Because workers' compensation is the exclusive remedy for the claims based on negligence, the Court of Appeals affirmed

Published opinion appearing in New York Appellate Division Reports, Second Series, in the case of Lynda Jones, individually and as administratrix of the estate of Herbert W. Jones, Jr. (deceased), respondent, v. State of New York, appellant.

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