1955
June 10

THE MAYOR, AND OTHERS OF NICOSIA

v.

CHRISTOS KERAVNOS

The word "building" which is being defined is obviously a concrete noun; it does not mean the operation of building such as it bears in a phrase like "the building of Rome took many years". It follows as a matter of logic and grammar that the word "construction" must also be a concrete noun and not refer to the act or method of construction. The word "construction" used here must have the same meaning as the word structure and the meaning of that word was fully discussed in the *London County Council* v. *Tann* 1954, 1 A.E.R., p. 389. However, a structure to be a "building" within the meaning of Chapter 165 must be some erection which it is the object of this Law to control. In general, a structure must be one which is used for a purpose for which a building is ordinarily used and for a purpose for which the erection of a building is usually required or at least is desirable. For example, it is common for a building to be erected in order to provide accommodation for an office or for the giving of lectures. Whether or not a show case is a building would depend on its dimensions. If a show case is so big that the space it encloses and the purpose it serves would normally be provided for by a room, then it is a building. On the other hand a show case that might be accommodated on the bench of this Court would obviously not be a building within the meaning of this Law of Chapter 165.

We consider that the case should be sent back to the learned trial Judge to determine the case afresh in the light of this opinion with liberty to either party to call fresh evidence. There will be no order as to costs.

1955
June 11

KYRIACOU CHRISTOU AND OTHERS

v.

CHRYSOULLA PANAYIOTOU AND OTHERS

[HALLINAN, C.J. and ZEKIA, J.]

(June 14, 1955)

KYRIACOU CHRISTOU of Limassol AND OTHERS,

Appellants,

v.

1. CHRYSOULLA PANAYIOTOU
2. SIMOS PANAYIOTOU
3. GEORGHIOS MENELAOU of Limassol,

Respondents.

(Civil Appeal No. 4138)

Tort — Fatal accident — Negligence — Assessment of compensation—Sections 15 and 53 of Civil Wrongs Law—Judgments—Court should give reasons for decision.

X and his son Y were killed by a motor car driven by the third defendant and owned by the other defendants. The plaintiffs were the widow of X and their nine children, five of whom and the widow were dependent on the earnings of X and Y. The plaintiffs sued for compensation for loss of expectation of life under section 15 of the Civil Wrongs Law and under section 53 of that Law for the pecuniary loss suffered by them from the death of X and Y.

The two members of the trial Court failed to agree as to whether the plaintiffs had proved negligence but gave no reasons.

Upon appeal, the Supreme Court held that (1) on the evidence the plaintiffs had established negligence and were entitled to compensation; (2) in assessing compensation under section 15 the decision in *Benham* v. *Gambling* (1941) A.C. 175 and under section 53 the decision in *Rose* v. *Ford* (1937) A.C. 826 applied.

Held also that Courts should give reasons for their decisions, especially in the event of disagreement.

Appeal by plaintiffs from the judgment of the District Court of Limassol (Action No. 466/54).

A. Anastassiades for the appellants.

M. Houry for the respondents.

Judgment was delivered by :

HALLINAN, C. J.: This case arose out of a fatal accident that occurred on the road between Limassol and Polemidhia on the night of the 28th-29th March, 1954. The 3rd defendant was the driver of the car which caused the fatal accident and the 1st and 2nd defendants are the owners of the car. The 3rd defendant was driving the car from Limassol towards Polemidhia when a car approached from the opposite direction and, immediately after the two cars passed, the 3rd defendant's car collided with a man and his son who were riding their bicycles on the same side of the road as the 3rd defendant and going in the same direction. The man and his son were killed and this action was brought by his wife and nine children claiming damages as the heirs of the estate of both the deceased persons and also as the dependants of both the deceased persons.

At the close of the plaintiff's case the defendants called no evidence and the judgment was reserved. The Court on the 26th March last announced that after careful consideration the two members who constituted the Court were unable to agree as to whether the cause of the accident was due to the negligence of the defendants or was an inevitable accident and the action was accordingly dismissed. We may say at once that in all cases it is desirable that trial courts should record their findings of fact on the evidence and give their reasons for reaching their decision. This is particularly desirable where the Court disagrees and where there is likely to be an appeal.

During the course of the hearing the plaintiffs tendered in evidence a statement taken by a policeman from the 3rd defendant shortly after the accident and it was submitted for the plaintiffs that this document was admissible as an admission against the 3rd defendant. The trial court rejected the document, in our opinion, wrongly. The question of whether or not it was a public document

does not arise nor does the question as to whether it was being put in as a prior statement made by a witness in order to contradict him. The statement is in our view admissible on the short ground that it is alleged to be an admission made by a party. The fact that the party when making it might have in view legal proceedings makes no difference. This is only a relevant consideration if a statement were being put in by the party who made it and in order to help himself.

We have given careful thought as to whether we should send this case back to the trial Court to admit this statement of the 3rd defendant which of course would only be admissible as against himself and whether we should direct the trial court to determine this matter afresh and to record their findings of fact and their reasons. We have come to the conclusion that we here are in a position in which we can satisfactorily dispose of this case without sending it back.

The chief witness is the English serviceman Raymond Henry Thompson. His evidence was taken "*de bene esse*" because he was leaving the country and the record of his evidence was put in at the trial court who did not examine this witness and who had no opportunity of judging his demeanour. The other most material evidence is the evidence of the expert witness Chief Inspector Saadetian again whose demeanour cannot have a bearing on the case. The defendants have called no evidence and there is little room for difference of opinion as to the material facts deposed by the witness. The question is whether these facts amount to negligence or whether they establish a defence of inevitable accident. Thompson deposed that the 3rd defendant's car at the time of the accident was going at 50 miles an hour and the lights were dipped. The approaching car had its lights dipped at first but when the car was within 20 yards from the approaching car it switched on its full lights and this dazzled the 3rd defendant. Thompson said that the occupants of the 1st defendant's car were blinded and he gave as an opinion that the accident could not have been avoided. We are quite unable to accept that opinion. The Chief Inspector Saadetian said, and we accept his evidence, that the range of vision of a car with its lights dipped is about 20 yards but in the circumstances of this case it would have been less because when a car is approaching at night, even if its lights are dipped, there is a blackness behind the approaching car which would have reduced the vision of the 3rd defendant. If a person proceeds at night with his lights dipped at 50 miles an hour making allowance for the thinking time before he applies his brakes or swerves, an accident is almost certain because he will have gone the 20 yards of his vision before he can do anything effective to avoid the accident.

In our view, the driving of the third defendant on that night raised a *prima facie* case of negligence and the

defendants have led no evidence to disturb the burden of proof which was thrown upon them.

For these reasons we consider that the order of the trial court dismissing this claim should be set aside and judgment entered for the plaintiffs.

N.B.—Counsel for the appellants and respondents were heard before the amount of damages was awarded by the Court:

Damages in this case fall to be assessed in respect of the death of the two persons Christos Themistocleous, who was the husband of the 1st appellant and the father of the nine other appellants, and Andreas Christou, who was the son of the 1st appellant and the brother of the other appellants. These damages must be assessed under two heads: First, damages payable to the estate and, therefore, to the appellants as the heirs of the estate under section 15 of the Civil Wrongs Law (Chapter 9) as amended by Law No. 38 of 1953 and, secondly, damages payable to the appellants as dependants of both the deceased under section 53 of Chapter 9.

Damages to be essessed under section 15 (Chapter 9) are for the loss of expectation of life. The principles on which these damages should be assessed were considered in the House of Lords in the case of *Benham* v. *Gambling*, 1941 Appeal Cases, p. 175. The effect of this decision is summarized in the following passage from Charlesworth Law of Negligence, 2nd Edition, pages 579-580:

> "In assessing damages under this head, it must be borne in mind that 'damages which would be proper for a disabling injury may well be much greater than for deprivation of life'. The sum arrived at must be 'by way of damages for the loss of a measure of prospective happiness', with the knowledge that the damages will not be received by the person who suffered the damage. The damages 'should not be calculated solely, or even mainly, on the basis of the length of life that is lost'. In the case of a very young child, damages should be less than in the case of an adult with settled prospects, because of the uncertainty of the child's future. Acting on these principles, the House of Lords awarded £200 for damages for loss of expectation of life in the case of a child of two and a half, and said that even this would be excessive were it not that the infant's circumstances were most favourable. The effect of this decision has been that damages in most favourable cases are only about £400 or £500."

Applying this principle to the facts and circumstances of the present case we award the sum of £300 in respect of the loss of expectation of life in the case of Christos Themistocleous and the like sum for the similar loss to

his son Andreas Christou. The total amount of £600 awarded under this head must, under the Wills and Succession Law sec. 44 (Chapter 220), be divided equally among the appellants so that each is entitled to receive £60.

It was decided in the case of *Rose* v. *Ford*, 1937 Appeal Cases 826, that where damages are awarded to dependants as provided in section 53 of our Civil Wrongs Law, and at the same time these dependants received a benefit from the deceased's estate derived from damages payable to the estate for loss of expectation of life, the amount of damages paid under section 53 must be reduced by this benefit which each dependant receives from the estate. Subject to this rule in *Rose* v. *Ford*, we would award the sum of £1,680 damages to the dependants in respect of the death of Christos Themistocleous, a man of 50, employed as a labourer in the Limassol Button Factory and also a casual fiddler, and the sum of £420 in respect of Andreas Christou, a boy of 13 employed as a grocer's employee. It is admitted that four of the appellants, children of the deceased Christos Themistocleous, are not dependants and are not entitled to any share in the damage awarded under section 53; these are Nicos Christou, Elli, Neapoli and Sinodhia. The total of these sums £2,100 must be reduced by the sum of £60 payable to each dependant from the damages awarded under section 15. Since there are six dependants the total amount of £2,100 must therefore be reduced by £360 so that the damages awarded under section 53 are £1,740.

The sum of £2,100 will be apportioned as follows: Half of the amount (less £60 payable under section 15) will go to the 1st appellant as wife and mother of the deceased; and the other half (less £300 payable under section 15 to the 5 dependant children) to be equally divided among such children.

The appellants are entitled to their costs both here and below.