[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, JJ.]

SAVVAS KARTAMBI AND OTHERS,

Appellants-Plaintiffs,

v.

ALFA SHOE FACTORY AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 4665).

Civil Wrongs—Fatal accident—Negligence—Breach of statutory duty—Contributory negligence—Death in the course of employment—Liability—Apportionment of liability—Damages—Quantum—Compensation for the benefit of the estate, inter alia, for loss of expectation of life under section 34 of the Administration of Estates Law, Cap. 189—Compensation for pecuniary loss to dependants of the deceased under sections 57(7) and 58 of the Civil Wrongs Law, Cap. 148.

Negligence—Fatal accident—Contributory negligence—See above.

Damages—General damages—Quantum—Fatal accidents—Damages for pecuniary loss to dependants—Sections 57(7) and 58 of Cap. 148 supra—Damages to the estate for loss of expectation of life under section 34 of Cap. 189, supra.

Fatal accident—See above.

Dependants—Compensation to dependants in cases of fatal accidents—Sections 57(7) and 58 of the Civil Wrongs Law, Cap. 148.

Expectation of life—Loss of—Compensation—Section 34 of the Administration of Estates Law, Cap. 189.

Appeal—Inferences from findings of fact made by trial Courts—The Appellate Court is in as good a position to draw inferences and make an assessment from such facts as the trial Court.

Inferences—To be drawn by the Court of Appeal from facts as found by trial Courts—See above under Appeal.

Cases referred to:

Kyriakou Christou and Others v. *Chrysoulla Panayiotou and Others*, 20 C.L.R. Part II p. 52;

Adem v. *Mevlid* (1963) 2 C.L.R. 3;

Droushiotis (No. 2) v. *Cyprus Asbestos Mines Ltd.* (1966) 1 C.L.R. 215 at p. 228.

The facts sufficiently appear in the judgment of the Court.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Loizou, P.D.C. & Stavrinakis D.J.) dated the 22nd September, 1967, (Action No. 1956/66) whereby the defendants were adjudged to pay to them the sum of £538.200 mils as damages for negligence which caused their son's death.

H. Kyriakides with *Z. Katsouris*, for the appellants.

Chr. Artemides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

VASSILIADES, P.: The claim in this action arises from the death of a young electrician, who died from electric shock while working for the defendants on the electric plant of their factory. The deceased's parents, as administrators of his estate and as his dependants, claim £4,000 damages against their son's employers, for negligence, in connection with the employment of the deceased which (negligence) caused, they allege, their son's death.

The defendants at the material time were running a shoe factory in Nicosia, where they employed the deceased as their electrician. They are a registered general partnership; and there is no dispute as to the extent of each defendant's responsibility for the liabilities of the firm.

The trial Court found that the death of the young man was caused partly by the negligence of his employers, and partly by his own contributory negligence; and apportioning the liability in 60% to the employers and 40% to the deceased, awarded £538.200 mils damages against the defendants and the costs of the action.

From this judgment the plaintiffs appeal both as regards

the apportionment of liability and the amount of damages awarded.

The material facts in connection with negligence, as found by the trial Court, are that "the deceased, a single man, 21 years of age, was employed by the defendants at their factory ..... as an electrician..... and the man in charge of all electrical installations and machinery". The deceased was not a qualified technician; he had been an apprentice with a licensed electrical contractor from whom the defendants took him over, at a salary of £30 per month, increased later to £35.

While engaged with the removal of the electrical installation in the course of the factory's transfer from one place to another, in August 1965, the deceased was using a pair of pliers with demaged insulation. As he was trying to cut off "the cable of the neutral", the deceased felt an electric shock but attached no importance to it; nor did he pay attention to his assistant's warning about it. And, apparently, he did not appreciate the dangers from the earthing of the "neutral" cable. Continuing to work on it, the deceased received a second and fatal shock which killed him instantly.

From the evidence before them, the trial Court found the following "outstanding features", as they put it, in the incident:-

> "A. That the Electricity Authority was not notified of the removal to disconnect completely the electric supply from its main.
>
> "B. That even if this was not done there was still scope of switching off the main switch that was installed between the electric meter and the junction box.
>
> "C. The improper earthing of the neutral of the machinery that causes a return path via the earth after the neutral was disconnected from the hanging junction box, was done definitely according to the same witness after the checking of the installation and the connection by the Electricity Authority of the said installation to the mains. This improper earthing together with other failures, as explained by the witness caused the electrocution of the deceased.
>
> "The earthing could not but have been done by the defendants or on their behalf for their own purposes.

"D. The non disconnection of the neutral of the machine in question.

"E. The use by the deceased of pliers with damaged insulation".

The trial Court, moreover, accepting the evidence of an expert witness, found that-

"The machine on which the deceased was working at the time of the accident and the other machinery in the factory were such as to require the person in charge to be one with a certificate of first grade qualifications to supervise, maintain and work such machinery under the appropriate regulations".

And the trial Court add:-

"There has been undoubtedly, in our mind, on the part of the defendants a breach of statutory duty under the aforesaid regulations in as much as they failed to employ a person with the proper qualifications that the nature and the size of their installation required in law, and apparently in consequence of which the improper earthing of the machinery which was a contributing factor to the accident, was wrongly made".

As to the deceased's contributory negligence, the trial Court found that:-

"He contributed considerably to the causes of the accident by-

(a) ignoring the aforesaid breaches of his employer and in addition of using a pair of pliers with damaged insulation.

"*(b)* Not disconnecting the neutral as a maximum safety precaution and continuing to work upon it inspite of the fact that he felt an electric shock and his assistant, whom we expect to know less than him, warned him to wait until the current was cut off from the main switch".

and the trial Court conclude:-

"Weighing the pros and cons on the question of liability we arrive at the conclusion that it is safer to infer that the defendants were to blame by 60%, the rest being contributory negligence of the deceased".

As to the damages, the trial Court found that:-

> "the deceased was contributing to his father a sum of money, about £120 per year after deducting the cost of his own board and lodging. He was single and as the evidence goes he would have continued to be so for anything between three to four years and therefore the value of dependency is £120X4=£480."

Deducting £30 "for the cash value" of this amount, the trial Court find the net value of the dependency at £450. But they proceed to award this amount to the father only, as they "consider that the dependency is to the father only as the head of the family who was receiving the money and who was responsible for the maintenance of the rest".

Under the head of loss for expectancy of life, going to the estate, "bearing in mind—the trial Court say—of the circumstances surrounding the deceased and of all other relevant factors, we allow the figure of £500".

This part of the award has not been questioned in the appeal from either side; and we do not propose disturbing it. It was, apparently, awarded following the decision in *Kyriakou Christou and Others* v. *Chrysoulla Panayiotou and Others* (20, C.L.R. Part II, p. 52), where the Supreme Court of the Colony of Cyprus, made an award of £600 under this head of damages in respect of two victims in the same road accident, a father aged 50, factory labourer, and his son aged 13, a grocery boy, awarding £300 to each estate.

It should be noted, however, that in the *Christou case* the award was made under section 15 of the Civil Wrongs Law, as it stood in the 1949-edition of the Cyprus Statutes as Cap. 9, after its amendment shortly before the *Christou case* by Law 38 of 1953. Section 15 of Cap. 9, has now been replaced by section 34 of the Administration of Estates Law, (Cap. 189). The statutory provisions applicable to the case in hand with regard to the payment of compensation to dependants, are to be found in sections 58 and 59 of the Civil Wrongs Law (now Cap. 148 in the 1959-edition of our Statute Laws); and in section 34 of the Administration of Estates Law (Cap. 189).

We now come to the two principal matters raised in the appeal:- The apportionment of liability; and the amount of the award.

As to liability: The trial Court found negligence on both sides; and this cannot, we think, be questioned. What is in dispute is the contribution of each side to the negligence which caused the death of the deceased.

The trial Court found it at 60% on the part of the defendants and 40% on the part of the deceased. This is a finding depending on the facts pertaining to the question of negligence; and is made by inference and assessment from such facts, as established by the evidence. The Court of Appeal is thus in as good a position to draw inferences and make an assessment from the relevant circumstances, as the trial Court is. (*Adem* v. *Mevlid* (1963) 2 C.L.R. 3; and *Droushiotis* (No. 2) v. *Cyprus Asbestos Mines Ltd.* (1966) 1 C.L.R. 215 at p. 228). This is not a fact on which the credibility or demeanour of the witnesses can have a direct bearing; it is a conclusion reached through other established facts.

Here the trial Court found breach of statutory duty on the part of the defendants directly connected with the cause of death. Indeed, a breach of statutory duty constituting a most glaring and outstanding fact in this case. The fountain head, one might say, of all other incidental facts leading to the cause of death in this case, is undoubtedly the lack of the minimum technical qualifications required by the Regulations in the person whom the defendants appointed as their electrician, and put in charge of the electrical installation and machinery of their factory. Quite rightly, in our opinion, the trial Court took the view that-

> "the breach of the statutory duties on the part of the defendants has been of such a nature as to confer a right of action on the person damnified as a result of such breaches".

For this breach of their statutory duty the liability would seem to rest where the statute imposes the duty; and for the benefit of the persons whom the statute was intended to protect. This aspect, however was not argued in the present case, and we do not propose to discuss it further; or to decide it in this judgment. The case was argued all along on the footing that there was a breach of statutory duty which entitled the dependants of the deceased to damages against his employers.

Besides any statutory breach, however, there is the cause of action arising from negligence; the negligence on the part of both sides: The defendant-employer and the deceased-employee. In this connection the trial Court found that the defendants started the removal of their factory-

> "in disregard of the dangers to the electrical installation and the safety of the persons engaged in their removal. They also failed to obtain the expert advice of a qualified consultant, to say the least, for the purposes of the removal. On the other hand—the trial Court add—the deceased contributed to the causes of the accident, in the way stated earlier in the relevant extract from the judgment of the trial Court".

We do not think that it is possible or necessary to start putting these matters in figures for the purpose of finding the contribution of each side to the cause of death by a process of arithmetic. Taking all relevant factors into account, mainly the original placing of an unqualified person, contrary to the relevant Regulations (apparently for the reason of saving money of his salary) in charge of the electric installation on the part of the defendants; and the negligent way of making the removal of their factory; as well as the negligent manner in which the deceased acted immediately before the accident, we reach the conclusion that the liability for the death of the deceased must rest in proportion of about two to one, or, expressed more precisely in percentages, 70% on the defendants and 30% on the deceased.

Quantum of damages:

As far as the estate of the deceased is concerned, this is a cause of action which vested in him at the time of his death. It survived him by operation of section 34 of the Administration of Estates Law, (Cap.189). In this connection the provisions of sub-section 2*(a)* apply; and the rights conferred for the benefit of the estate are in addition, and not in derogation, of the rights conferred on the dependants of the deceased by the Civil Wrongs Law, as provided in sub-section (5) of section 34. The amount payable to the estate has been found by the trial Court at £500; and this has not been questioned by either side in the appeal.

We now come to the damages recoverable under the Civil Wrongs Law (Cap. 148) for the benefit of the "dependants"

of the deceased, in the sense of section 57(7); as provided in section 58. What has to be decided, is the amount to which the appellant-plaintiffs are entitled for the benefit of the surviving "dependants" under section 58(1) of the statute. Here the persons so entitled are the parents of the deceased; father and mother. He never had a wife or child; and the brothers and sisters cannot claim under this section.

The claim of the parents, however, is not strictly or necessarily a claim of dependency as the trial Court have apparently taken it to be. The word "dependency" in section 58 is used by the legislator in the sense defined in sub-section (7) of the previous section 57. The compensation to be awarded under this head of damages is "in respect of the pecuniary loss, actual or prospective, suffered by the persons" in question "by the death of the deceased", as provided in section 58(1) *(b)*.

Here we have the father and mother of a young electrician of twenty-one years of age, who was earning £35 per month at that age, and in the ordinary course of events would, most probably, have been earning more in the future. True, the deceased young man could be expected to get married and have consequential commitments to his own family of wife and children.

But, both his parents, father and mother, were partly dependent on the deceased to the extent of £120 per year, according to the finding of the trial Court. The deceased was "a healthy and hard working young man" who as things go in Cyprus and in the way of life still prevailing amongst its people, he would be a positive asset for each of his parents personally and individually, to the end of their respective lives.

The trial Court found "the net value of the dependency" at £450; and took the view that the whole should go "to the father only, as the head of the family who was receiving the money and who was responsible for the maintenance of the rest".

With all respect to the learned trial Court, we find ourselves unable to accept such a view. It seems to us inconsistent with the intention of the legislator, as expressed in the relevant statutory provisions.

The father of the deceased in this case is, according to the

evidence a professional car driver with a wife and six children, four of whom at present under eighteen years of age. His life investment, as far as the evidence goes, is mainly in his children. He has lost his eldest son in the circumstances of this case. His loss is, indeed, very great. And, so is the loss of the deceased's mother. But the law allows them to recover only their pecuniary loss. The injury to their health and happiness is not recoverable. But the pecuniary loss of each of them is recoverable, and, in the circumstances of this case, we cannot see how it can be found at a total of £450 for both.

It might, perhaps, be a case of sending the matter back to the District Court to find the loss. But, considering all matters involved, we feel inclined to the view that it will be saving time, expense and human strain, if the matter be decided here on the material before us, even if only very scanty in this connection. We would find the pecuniary loss, actual and prospective, suffered by each of the parents at £600, on the basis of full liability, minus their respective share (1/8th each) in the amount going to the estate (70 per cent of £500); that is to say, £376.250 mils each parent.

To sum up we find the damages in this case on the basis of full liability as follows:

(a) £1,200 for the dependency of the two parents equally;

and

(b) £500 in favour of the estate for loss of expectation of life. As we have held that the liability of the defendants (respondents) is 70 per cent, the above amounts have to be reduced to *(a)* £840 and *(b)* £350 respectively. A further sum of £87.500 mils has to be deducted from the sum of £840 in respect of the parents' share in the sum of £350 which is payable to the estate.

In the result there will be JUDGMENT-

(a) in favour of the two parents equally ..... £752.500 mils

(b) in respect of the estate (including the two parents)..... £350.000 mils

£1,102.500 mils

As to costs, however, we have to say with regret that not

having received the assistance from counsel for the appellants which this Court is entitled to, we would allow costs in the appeal at the minimum of the appropriate scale

Appeal allowed.
Judgment of Court below varied accordingly
Order for costs as above.