1968
Feb 29
Mar 26
–
YIANNIS THOMA PAPADOPOULLOS
v
YIANNOULA GREGORI TRYFONOS AND ANOTHER

[TRIANTAFYLLIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

YIANNIS THOMA PAPADOPOULLOS,

Appellant-Defendant,

v

YIANNOULA GREGORI TRYFONOS AND ANOTHER, AS ADMINISTRATORS OF THE ESTATE OF THE DECEASED GREGORIS TRYFONOS,

Respondents-Plaintiffs

(*Civil Appeal No.* 4652)

Fatal accident—Damages—Assessment—Quantum of damages—Damages for death of husband and father— Dependants—Widow—Prospects of her remarriage should be duly weighed and due allowance should be made in respect thereof—Evidedence as to such prospects—Even in the absence of any evidence in that regard, due regard must be had to such prospects of remarriage, as a relevant contingency—See, also, herebelow.

Fatal accident—Damages—Claim for damages for the benefit of the estate under section 34 of the Administration of Estates Law, Cap 189—And for the benefit of the dependants of the deceased under section 58 of the Civil Wrongs Law, Cap 148—Apportionment of damages among dependants of the deceased—Section 58(1)(b) of Cap 148 (supra)—Failure of trial Court to apportion awarded damages—Apportionment made by Court of Appeal under Order 35, rule 8 of the Civil Procedure Rules and section 25(3) of the Courts of Justice Law, 1960 (Law of the Republic No 14 of 1960) —See, also, hereabove

Damages— Assessment—Proper quantum— Uniformity in awards of damages, desirable—Approach of an Appellate Court to questions of damages awarded by trial Courts—Principles applicable—Principles upon which an Appellate Court will interfere with damages awarded by trial Courts

Practice—Appeal—Damages—Approach of an Appellate Court to questions of damages awarded by trial Courts

Civil Wrongs— Fatal accident—Negligence—Damages—See above

Practice—Appeal—Powers of the Court of Appeal under The Civil Procedure Rules, Order 35, rule 8 and section 25(3) of

the Courts of Justice Law, 1960 (Law No. 14 of 1960)—To make itself an apportionment of the damages awarded under section 58(1)(b) of Cap. 148 (supra)—Where there is sufficient material before it.

Evidence—Judicial Notice—Matters of which can be taken judicial notice by the Court.

Judicial notice—See immediately above.

This is an appeal by the defendant against the Judgment of the District Court of Nicosia awarding to the respondents-plaintiffs £3,770 damages, and costs, in respect of the death of the late Gregoris Tryfonos, which was caused in a road accident, on the 4th October, 1965, due to the negligence of the appellant-defendant. The respondents had claimed damages both under section 34 of the Administration of Estates Law, Cap. 189, for the benefit of the estate of the deceased, and under section 58 of the Civil Wrongs Law, Cap. 148, for the benefit of the dependants of the deceased (*i.e.* his widow, and his three minor children).

Counsel for the appellant limited the appeal solely to the issue of damages, arguing that, in the circumstances of this case, they were excessive. At the time of his death, the deceased was 34 years of age, earning about £500 yearly. His only dependants were his widow, a young lady aged 26 years with relatively good looks, and his three minor children born on the 5th March, 1952, on the 16th July, 1958 and on the 24th November, 1959, respectively. The said widow and children are, also, the only heirs left by the deceased.

The main contention of counsel for the appellant was that the trial Court, in assessing damages, has made no allowance for the prospects of remarriage of the widow, and that, therefore it went wrong in principle in awarding the global sum of £3,770 as damages. In this respect counsel for the appellant has pointed out that the trial Court failed to apportion the amount of damages among the said dependants of the deceased—as envisaged under section 58(1)(*b*) of the Civil Wrongs Law, Cap. 148; counsel argued that it was, therefore, impossible to say exactly what was the amount awarded as damages to the widow herself, and whether or not such amount was exceedingly

high in view of her prospects of remarriage—she being 26 years old and good-looking.

In dismissing the appeal and in apportioning itself the damages under section 58(1)(*b*) (*supra*), the Court:-

Held, (1)(*a*) The approach of this Court, on appeal, to questions of damages awarded by trial Courts has been repeatedly laid down in past jurisprudence, which may be found usefully summarized in the recent case *Shacolas* v. *Michaelides* (1967) 1 C.L.R. 290.

(b) This Court will not interfere with an award of damages unless it is either extremely low or extremely high, or it has been based on a wrong principle of law or on erroneous assumptions of fact or on a mistaken calculation; otherwise this Court will not substitute its own appreciation of the proper quantum of damages in the place of the appreciation of a trial Court.

(2) It has been suggested by counsel for the appellant that the amount awarded in this case is by far above what has been awarded in other similar cases. We agree that uniformity of awards of damages leads to certainty in litigation and is, indeed, desirable. But we are of the view that the amount of damages awarded in the present case, when compared to awards in other similar cases, which were referred to in argument before the trial Court and before us, is definitely not on the high side, but if anything, it is rather on the low side.

(3)(*a*) Regarding the question of the prospects of remarriage of the widow, reference has been made to the recent English case of *Goodburn* v. *Thomas Cotton Ltd.* [1968] 2 W.L.R. 229. That case appears to establish, broadly speaking, that when there is before a trial Court evidence going to the issue of possible remarriage of a widow, who claims damages in relation to the death of her husband, the trial Court must duly weigh, on the basis of such evidence, the prospects of her remarriage and make due allowance in respect thereof, when awarding damages to her; furthermore, that even if no such evidence is actually before the trial Court, such Court is still bound to pay due regard to her prospects of remarriage, as a relevant contingency (see *supra* at p. 232, per Willmer L.J.; at p. 235 per Davies L.J.; at p. 236 per Edmund Davies L.J.).

(*b*) In the present case no evidence at all, relevant to the widow's prospects of remarriage, was laid before the trial Court; there was, however, argument advanced on the point by counsel of both sides.

(*c*) We, therefore, see no reason to conclude that the trial Court lost sight of the widow's prospects of remarriage. The appellant has not discharged the onus, cast on him, of satisfying us that the trial Court erred in this respect.

(4)(*a*) It is indeed unfortunate that the trial Court failed to apportion damages in accordance with section 58(1)(*b*) of the Civil Wrongs Law, Cap. 148.

(*b*) But in the particular circumstances of this case we do not think that this has resulted in a situation necessitating the setting aside, on this ground, of the award of damages under appeal; because, bearing in mind the age of the deceased (34 years old), his earning capacity as found by the trial Court (about £500 yearly), the total absence of evidence regarding prospects of remarriage of his widow (other than her young age and good looks), the practically remote possibility of remarriage, in Cyprus, of a widowed mother of three minor children—a thing of which we do take judicial notice—and the fact that out of the total amount of £3,770 awarded as damages there would, in any case, have to be apportioned in favour of the three minor children a substantial part thereof, we are of opinion that any remaining balance in favour of the widow could not, on any view, be held to be such an exceedingly high award of damages to her as to warrant interference therewith by this Court.

(*c*) We have decided, moreover, rather than send back this case to the trial Court in order to apportion, under section 58(1)(*b*) (*supra*), the amount of damages assessed by it, to proceed to make such apportionment ourselves, in view of the fact that we have before us sufficient material for the purpose; we take such course in the exercise of our powers under Order 35, rule 8, of the Civil Procedure Rules and section 25(3) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960).

(*d*) We direct, therefore, that the amount of £3,770 should be apportioned (after deduction of £20 being funeral expenses) as follows: £1,950 to the widow, and the

remainder £1,800 to the children (£700, £600 and £500, respectively)

Appeal dismissed with costs.

Cases referred to:

Shacolas v. *Michaelides* (1967) 1 C L R. 290;

Goodburn v *Thomas Cotton Ltd* [1968] 2 W.L R 229, at pp 232, 235 and 236

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Evangelides, Ag D J and Vakis D J.) given on the 30th June, 1967 (Action No 231/66) by means of which the plaintiffs were awarded £3,770 damages, in respect of the death of the late Gregoris Tryfonos, the husband of plaintiff No 1

L. Clerides for the appellant

L Demetriades for the respondents

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, J. In this case the appellant-defendant appeals against the judgment of the District Court of Nicosia, in civil action No. 231/66, delivered on the 30th June, 1967, by means of which the respondents-plaintiffs were awarded, in all, £3,770 damages, and costs, in respect of the death of the late Gregoris Tryfonos which was caused in a collision, on the 4th October, 1965, between his bicycle and a motor-car driven by the appellant

The respondents had claimed damages both under section 34 of the Administration of Estates Law, Cap 189, for the benefit of the estate of the deceased, and under section 58 of the Civil Wrongs Law, Cap 148, for the benefit of the dependants of the deceased

At the commencement of the hearing of this appeal learned counsel for the appellant, very fairly and prudently in our view, abandoned the grounds of appeal relating to the issue of liability for causing the death of the deceased—which was found by the trial Court to burden solely his client—and limited his appeal to the issue of damages, arguing that, in

the circumstances of this case, they were excessive.

The approach of this Court, on appeal, to questions of damages awarded by trial Courts, has been repeatedly laid down in past jurisprudence, which may be found usefully summarized in *Shacolas* v. *Michaelides* (1967) 1 C.L.R. 290.

It is quite clear that this Court will not interfere with an award of damages unless it is either extremely low or extremely high, or it has been based on a wrong principle of law or on erroneous assumptions of fact or on a mistaken calculation; otherwise, this Court will not substitute its own appreciation of the proper quantum of damages in the place of the appreciation of a trial Court.

In attacking the award of damages in the present case, counsel for the appellant has submitted, *inter alia*, that the modern trend is to ensure, as far as possible, uniformity of awards of damages, in cases of similar nature, and that the amount awarded in this case is by far above what has been awarded in other similar cases.

Even if we were to treat the said trend as amounting to a principle which has to be usually followed—and we do think that uniformity of awards of damages leads to certainty in litigation and is, indeed, desirable—we are of the view that the amount of damages awarded in the present case, when compared to awards in other similar cases, which were referred to in argument before the trial Court and before us, is definitely not on the high side, but, if anything, it is rather on the low side.

The main contention of counsel for the appellant has been that the trial Court, in assessing damages, has not made any allowance for the prospects of remarriage of the widow of the deceased, and that, therefore, it went wrong in principle in awarding the global sum of £3,770 as damages.

In this connection reference has been made to the recent English case of *Goodburn* v. *Thomas Cotton Ltd.* ([1968] 2 W.L.R. p. 229). That case appears to establish, broadly speaking, that when there is before a trial Court evidence going to the issue of possible remarriage of a widow, who claims damages as a dependant in relation to the death of her husband, the trial Court must duly weigh, on the basis of such evidence, the prospects of her remarriage and make due allowance in respect thereof, when awarding damages

to her; furthermore, that even if no such evidence is actually before the trial Court, such Court is still bound to pay due regard to her prospects of remarriage, as a relevant contingency.

In his judgment in that case, (at page 232), Willmer, L.J., put the matter thus:—

> "It may, it is perfectly true, be distasteful for a judge to have to assess, and to put a money value on, a widow's prospect of re-marriage; but it seems to me that, in assessing the damages to be paid under the Fatal Accidents Acts, 1846 to 1959, it is necessary to take into account all the circumstances of the case, and there can be no doubt that one of the most important circumstances, is the likelihood or otherwise of the widow remarrying. Distasteful though it may be, the task must be faced of assessing that likelihood. I venture to think that, difficult as the problem is, it is really no different in principle from the problem facing any judge where, in a personal injuries action, he must necessarily gaze into the future and assess the probabilities as to the injured person's chances of recovery, and as to the injured person's future earning prospects.
>
> "In the present case Willis J. described the plaintiff as an attractive young woman, and since she is yet barely 26 years of age, *prima facie* it is permissible to think that her prospects of re-marriage should be rated as fairly favourable. The matter, however, does not stop there, for in this case there was quite a lot of evidence from the plaintiff directed to this very subject".

Also, Davies L.J., had this to say on the point (at p. 235):—

> "But, despite the difficulties, I think that it is a task which must be performed. It involves the consideration of many imponderable matters. It does not necessarily follow that if a widow re-marries, so far as dependency is concerned, her right to financial support from those who killed her husband necessarily comes to an end. Matters like the means of the new husband, or the potential husband, have to be considered. The question whether the marriage will last has to be considered. All the manifold chances and changes of life have to be

considered. It is indeed a task which many judges have disliked and many people have said that judges ought not to be called upon to perform. But as the law stands, that is the position."

Finally, Edmund Davies, L.J., stated (at p. 236):—

"The task is frequently perplexing, and its performance cannot be regarded as affording one of the most impressive examples of the exercise of the judicial function. Certainly it is one of the most difficult. Nevertheless, it must be attempted (and indeed performed), no matter how exiguous the evidence which forms its basis. Assumptions are to be avoided. What Phillimore J. described as 'the conventional argument that any woman with the sum (this widow) is likely to receive is likely to re-marry' is indefensibly superficial. On the other hand, it would be wrong to assume that, in the absence of positive evidence as to matrimonial prospects, the possibility of re-marriage can be ruled out".

In the present case no evidence at all, relevant to the widow's prospects of remarriage, was placed before the trial Court; there was, however, argument advanced on the point by both counsel.

The trial Court has stated in its judgment:—

"We have considered all the relevant facts with regard to the claim under section 58 of the Civil Wrongs Law, Cap. 148 and the submissions made by counsel on both sides"....

We, therefore, see no reason to conclude that the trial Court lost sight of the widow's prospects of remarriage; the appellant has not discharged the onus, cast on him, of satisfying us that the trial Court erred in this respect.

In raising the issue regarding the prospects of remarriage of the widow, counsel for the appellant has pointed out that the trial Court failed to apportion the amount of damages among the dependants of the deceased—his widow and three minor children, Christos born on the 5th March, 1957, Maro born on the 16th July, 1958 and Andreas born on the 24th November, 1959—as envisaged under section 58(1) *(b)* of Cap. 148; counsel argued that it was, therefore, impossible to say exactly what was the amount awarded as damages to

the widow herself, and whether or not such amount was exceedingly high in view of her prospects of remarriage—she being 26 years old and good-looking.

It is, indeed, unfortunate that the trial Court has failed to apportion damages in accordance with section 58(1)*(b)*. But, in the particular circumstances of this case, we do not think that this has resulted in a situation necessitating the setting aside, on this ground, of the award of damages under appeal; because, bearing in mind the age of the deceased (34 years old), his earning capacity as found by the trial Court (about £500 yearly), the total absence of evidence regarding prospects of remarriage of his widow (other than her young age and relatively good looks), the practically remote possibility of remarriage, in Cyprus, of a widowed mother of three minor children—a thing of which we do take judicial notice—and the fact that out of the total amount of £3,770 awarded as damages there would, in any case, have to be apportioned in favour of the three minor children a substantial part thereof, we are of the opinion that any remaining balance in favour of the widow could not, on any view, be held to be such an exceedingly high award of damages to her as to warrant interference therewith by this Court.

We have decided, moreover, rather than send this case back to the trial Court, in order to apportion, under section 58(1)*(b)* of Cap. 148, the amount of damages assessed by it, to proceed to make such apportionment ourselves, in view of the fact that we have before us sufficient material for the purpose; we take such a course in the exercise of our powers under Order 35 rule 8 of the Civil Procedure Rules and section 25(3) of the Courts of Justice Law 1960 (Law 14/60). We direct, therefore, that the amount of £3,770 should be apportioned (after deduction of £20 funeral expenses) as follows: £1,950 to the widow, and the remainder, £1,800, to the children (£700 to Andreas, £600 to Maro and £500 to Christos).

In concluding this judgment we must state that we have found some difficulty with the last two paragraphs of the judgment under appeal, which read as follows:

> "We have considered all the relevant facts with regard to the claim under Section 58 of the Civil Wrongs Law, Cap. 148, and the submissions made by counsel on both sides and referred ourselves to the authorities cited for

our guidance for the purpose of assessing damages under the second claim. In all the circumstances and having in mind that the damages agreed for the benefit of the estate will have to be deducted from the amount we shall award, we assess damages in respect of the second claim at £3,750 (three thousand seven hundred and fifty pounds).

"We further award the sum of £20 (twenty pounds) by way of special damages for funeral expenses. All the heirs are also dependants. Their share from the £500 must be deducted from the amount of £3,750 and we consequently give one judgment for the plaintiffs for £3,770 (three thousand seven hundred and seventy pounds) in all".

The damages for the benefit of the estate, which are referred to in the above-quoted two paragraphs, were agreed to between the parties at £500.

We have had to consider whether what the Court meant was that the said amount of £500 had to be deducted from the amount of £3,750, so that the amount actually awarded was only £3,250, plus £20 funeral expenses; as a matter of fact the wording used might at first sight lead to this view.

But such a view could not bear, at all, closer examination, because it is clear from the judgment that *the damages awarded under section 58 of Cap. 148* were £3,750, and from this amount there could not be deducted, in any event, the amount of £500 due to the estate; simply it could not be added thereto. So what the trial Court must be taken to have meant is that they treated the amount of £500 as covered already by the award of £3,750, in view of the fact that the dependants and the heirs to the estate of the deceased were the same persons, and, thus, they were not going to add the amount of £500 to the amount awarded under section 58 of Cap. 148.

For all the foregoing reasons we find that this appeal fails and it is dismissed, accordingly, with costs.

Appeal dismissed with costs.