

1970
May 13

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

FROSO
CHRISTOU
AND ANOTHER
v.
CHARALAMBOS
PALLIKARAS

1. FROSO CHRISTOU } as administrators of the
2. DEMETRIS CHARALAMBOUS } estate of the deceased
Christos I. Kontakis,
Appellants-Plaintiffs,

v.

CHARALAMBOS PALLIKARAS,
Respondent-Defendant.

(Civil Appeal No. 4847).

Social Insurance Law 1964 (Law No. 2 of 1964) section 45 (1) as amended by Law No. 28 of 1968—Death benefit and damages—Social Insurance Fund—Obligation of the beneficiaries to pay back to the Fund out of the damages awarded in fatal accident or personal injuries cases, benefits already paid by the Fund to the beneficiaries including the family of the deceased—Deduction to be made by the Court (up to five years' benefit) and paid to the Fund—Contributory negligence of the deceased insured cannot be taken into account in quantifying said deduction and payment back to the Fund—See also infra.

Social Insurance—Amended section 45 (1) applicable not only in cases of personal injuries but, also in cases of fatal accidents—Cf. section 26 (1) of the said Law (supra).

Statutes—Construction of—Principle of non-retrospectivity—Section 10 (2) of the Interpretation Law, Cap. 1—Otherwise, where “a contrary intention appears”—Section 10 (2) of Cap. 1 (supra)—The amended section 45 (1) of the Social Insurance Law (supra) has retrospective effect in view of section 7 of the amending Law No. 28 of 1968 where such “contrary intention appears”.

Retrospective effect of statutes—See supra.

Contributory negligence—Social Insurance Fund—Deductions to be made in favour of the Fund from damages awarded to insured persons or their personal representatives—Contributory negligence of the person insured not to be taken into account in calculating said deductions—See supra.

This is an appeal by the administrators-plaintiffs from the judgment of the District Court of Nicosia directing them

to pay out of the agreed amount of damages awarded to them for the death of the deceased Christos K., the sum of £780 to the Social Insurance Fund, being benefits already paid by this Fund to the family of the said deceased under the Social Insurance Law 1964 (Law No. 2 of 1964) as amended by Law No. 28 of 1968.

The judgment appealed from is based on the amended section 45 (1) of the Law read together with section 26 (1) of the same Law. Both sections 26 (1) and 45 (1) are set out in full *post* in the judgment of HadjiAnastassiou, J. It is to be noted that by section 7 of the amending Law No. 28 of 1968 (*supra*), the provisions of the amended section 45 of the principal Law No. 2 of 1964 (*supra*) were made applicable to proceedings pending on the date of the enactment of the amending Law (*viz.* March 22, 1968) ; and, by necessary implication, as it was held by the trial Court, to proceedings instituted, like the present ones, at any time thereafter.

It was contended by counsel for the appellants-administrators that the said amended section 45 (1) does not apply to cases of fatal accidents but only to cases of "personal injuries"; and that the words "personal injuries" used in that section is not wide enough to include death resulting from such injuries. It was further argued that section 45 (1) has no retrospective effect and inasmuch as the fatal accident in question occurred before the enactment of the amending Law No. 28 of 1968 (*viz.* before March 22, 1968), the amended said section 45 (1) has no application to this case.

Dismissing the appeal and affirming the order of the trial Court, the Supreme Court :—

Held, (1). The wording of section 45 (1) of the Social Insurance Law 1964 as amended by Law No. 28 of 1968, when read in conjunction with section 26 (1) of the same Law (see the text of these sections *post* in the judgment of HadjiAnastassiou, J.) is clear and unambiguous, that it covers also cases of death in addition to cases of personal injuries. That is to say, that the deductions have to be made and paid to the Social Insurance Fund as provided in the amended section 45 (1).

(b) It is also clear that no account can be taken of any contributory negligence by the deceased insured person (*Note* : in the instant case such contributory negligence was agreed to have been 30% and apportionment made accordingly).

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(2) With regard to the submission on behalf of the appellants that the amended section 45 (1) of the Law (published in March 22, 1968) has no retrospective effect, reference should be made to section 7 of the amending Law No. 28 of 1968 which provides that the amended said section 45 (1) shall also apply to pending cases. A *fortiori* it must apply also to proceedings instituted thereafter as in the instant case where the action was instituted on June 29, 1968 i.e. three months after the enactment of the amended section 45 (1) on March 22, 1968. It is immaterial that the accident occurred on June 6, 1967. Because under section 10 (2) of the Interpretation Law, Cap. 1, where a law repeals another enactment then, "unless the contrary intention appears" the repeal shall not affect any right, privilege etc. acquired or accrued under any enactment so repealed or affect any legal proceedings or remedy in respect of such right or privilege and any such legal proceedings or remedy may be instituted or enforced as if the repealing law had not been passed. But in the present case such "contrary intention appears" because by section 7 of Law No. 28 of 1968, the amended section 45 (1) is expressly made to apply to pending cases; and a *fortiori* it applies to actions which had not been instituted on the date of its publication in the *Gazette* (viz. March 22, 1968).

Appeal dismissed with costs.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Nicosia (Ioannides, Ag. P.D.C.) dated the 9th October 1969 (Action No. 2827/68) whereby the administrators-plaintiffs were ordered to pay the sum of £780 to the Social Insurance Fund out of the agreed amount of damages awarded to them for the death of the late Christos Kontakis.

E. Vrahimi (Mrs.), for the appellant.

S. Nicolaidis, Counsel of the Republic, for the respondent.

VASSILIADES, P. : Mr. Justice Hadjianastassiou will deliver the first judgment.

HADJIANASTASSIOU, J. : This is an appeal from the decision of the District Court of Nicosia, given on October 9,

1969, ordering the administrators-plaintiffs to pay out of the agreed amount of damages awarded to them for the death of the late Christos Kontakis, the sum of £780 to the Social Insurance Fund.

On June 6, 1967, whilst Mr. Christos Kontakis was riding his motor cycle along Nicosia-Morphou road, he was injured in a road accident, because of the negligent driving of the defendant, who was driving his motor car C. 970. On the 22nd of the same month, he died as a result of his injuries. The deceased was 28 years of age, married with two minor children, and was working as a mason for a firm of building contractors. He was an insured person, within the provisions of the Social Insurance Law, 1964, (Law 2/64), and was entitled to disability benefit known as "injury benefit" under sec. 30 of the law. After his death his widow and the two children became entitled to death benefit under sec. 34 of the law.

On June 29, 1968, the administrators of the estate of the deceased brought an action against Mr. Charalambos Pallikaras, the defendant, claiming damages for the death of the deceased because of the negligent driving of the defendant. On January 17, 1969, the action was settled between the parties for the agreed sum of damages of £3,300, plus an amount of £120 for costs. The apportionment of blame for the accident was also agreed to be 70% to the defendant, and 30% to the deceased. This settlement having been approved by the trial Court, counsel for the appellant was asked to produce the required certificate under sec. 45 of the law. As counsel objected that a deduction could be made under that section, though payments of £20 per month were made by the fund to the family of the deceased, the case was adjourned to enable the parties to argue this point.

On October 9, 1969, the Court reached the view that the sum of £780 should be deducted from the agreed amount of damages awarded to the administrators, and be paid over to the Social Insurance Fund. It is against this order that this appeal is taken by the administrators. The main argument of counsel for the appellants before this Court, as indeed before the trial Court, was that the provisions of sec. 45 (1) of the Social Insurance Law, 1964, as amended by Law 28/68, do not apply to cases of fatal accidents; and that the phrase "personal injury" used in that section (as amended) is not wide enough to include death resulting from such injuries.

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I consider it constructive to deal first with section 26 (1) of the Law 2/64, which reads :—

“ Subject to the provisions of this Law, where an employed insured person suffers personal injury caused on or after the appointed day by accident arising out of and in the course of his employment being insurable employment, then—

(a) temporary occupational disability benefit hereinafter referred to as “ injury benefit ” shall be payable to the employed person if within a period of twelve months from the date of the accident he is, as a result of the injury, incapable of work ;

(b)

(c) occupational survivor pension hereinafter referred to as ‘ death benefit ’ shall be payable to such persons as are hereinafter specified if the death of the employed person results from the injury.”

Section 45 of the same law, as amended by Law 28/68 which came into force on the 22nd March, 1968, is in these terms :—

« 45.—(1) ‘ Οσάκις ή σωματική βλάβη δι’ ήν παροχή δυνάμει του παρόντος Νόμου είναι καταβλητέα προκαλείται υπό περιστάσεις δημιουργούσας νομικήν ύποχρέωσιν εις πρόσωπον άλλο ή τόν έργοδότην ή ξετερον πρόσωπον δια τας πράξεις ή παραλείψεις του όποιου είναι υπεύθυνος ό έργοδότης του βλαβέντος προσώπου προς καταβολήν άποζημιώσεων αναφορικώς προς ταύτην, ουδέν των έν τώ παρόντι Νόμω διαλαμβανομένων παρεμποδίζει την λήψιν δικαστικών μέτρων έναντίον του έν λόγω προσώπου προς διεκδίκησιν άποζημιώσεων και την διεκδίκησιν ώσαύτως παροχής δυνάμει του παρόντος Νόμου :

Νοείται ότι έν περιπτώσει έπιδιόκσεως άποζημιώσεων τό Δικαστήριο έν τη άποφάσει αύτου διατάσσει την έκ του ποσού τούτου άφαίρεσιν και καταβολήν εις τό Ταμείο των κάτωθι ποσών άν ταύτα είναι μικρότερα του ποσού των έπιδικασθεισών άποζημιώσεων—

(α) έν περιπτώσει καθ’ ήν ξεπαυσεν ήδη να καταβάλληται παροχή εις τόν δικαιούχον, των δύο τρίτων του πραγματικού ποσού της παροχής ή όποια έλήφθη υπό του δικαιούχου πριν ή ούτος συμπληρώση την ήλικίαν των έξήκοντα πέντε έτών ή

(β) έν οιαδήποτε άλλη περιπτώσει, των δύο τρίτων του ποσού της παροχής τό όποιον ξετεμήςθη υπό του Πρώτου Λειτουργού Ασφαλίσεων ότι θα κατεβάλλετο εις τόν

δικαιούχον διὰ τὴν αὐτὴν βλάβην διὰ χρονικὸν διάστημα πέντε ἐτῶν ἀπὸ τῆς ἡμερομηνίας τῆς βλάβης, ἢ ἐὰν ὁ δικαιούχος συμπληροῖ τὸ ἑξηκοστὸν πέμπτον ἔτος τῆς ἡλικίας αὐτοῦ πρὸ τῆς παρόδου τῶν πέντε ἐτῶν διὰ τὸ χρονικὸν διάστημα ἀπὸ τῆς ἡμερομηνίας τῆς βλάβης ἄχρι τῆς ἡμερομηνίας τῆς συμπληρώσεως τῶν ἑξήκοντα πέντε ἐτῶν τῆς ἡλικίας αὐτοῦ, παντὸς χρονικοῦ διαστήματος μετὰ τὴν ἡμερομηνίαν τῆς τοιαύτης συμπληρώσεως μὴ λαμβανομένου ὑπ' ὄψιν :

Νοεῖται περαιτέρω ὅτι τὸ οὕτω ἀφαιρετέον ποσὸν ἐξακριβούται αὐτεπαγγέλτως ὑπὸ τοῦ Δικαστηρίου ἐπὶ τῇ βάσει πιστοποιητικοῦ ἐκδιδομένου ὑπὸ τοῦ Πρώτου Λειτουργοῦ Ἀσφαλίσεων, τὸ ὁποῖον πιστοποιητικὸν ἀποτελεῖ διὰ τοὺς σκοποὺς τοῦ παρόντος ἄρθρου μαρτυρίαν ὡς πρὸς τὰ ἐν αὐτῷ ἀναφερόμενα, ἐκτὸς ἐὰν τὸ Δικαστήριον αὐτεπαγγέλτως ἢ τῇ αἰτήσῃ διαδίκου ἤθελε ζητήσῃ ὅπως ὁ ἐκδῶσας τοῦτο κληθῇ ὡς μάρτυς.

(2)

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It would be observed that the purpose of this section was to put the injured person to his election to decide whether he would take proceedings against a stranger to recover damages or claim a benefit under the law, but in any event, he was not entitled to recover both damages and benefit. In simple language, the purpose of this section was not to give a right to an injured person to claim double compensation.

The trial Court, dealing with the construction of the phrase "personal injury" had this to say in its judgment at p. 24 :—

" Since the phrase whenever a person suffers 'personal injury' appearing in the commencing part of Section 26 (1) is the occasion which creates the right, *inter alia*, to a benefit as a result of death following a personal injury, then the words 'personal injury' appearing in Section 45 (1) must, in our opinion, be construed so as to include cases of death."

Having considered the wording of section 45 (1) of the Social Insurance Law, 1964, as amended by Law 28/68, when read in conjunction with section 26, I am of the view that it covers also cases of death in addition to cases of personal injury ; and the deductions have to be made by the trial Court and paid to the Social Insurance Fund. I would, therefore, affirm the judgment of the Court on this point and dismiss the contention of counsel for the appellant.

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As regards the second contention of counsel that the trial Court ought to have taken into account the percentage of contributory negligence of the deceased, I take the view that such argument is untenable, because no such provision can be found in our law with a view to reducing the sum of money payable to the Fund. I would, therefore, dismiss also this contention of counsel.

Finally, counsel for the appellants have contended that section 45 of the Social Insurance Law (as amended) has no retrospective effect, notwithstanding the provisions of section 7 of Law 28/68.

In view of the clear and unambiguous language of the amended section 45, which is expressly applicable to pending cases or applications for the grants of benefits or for the grant of compensation, then certainly it applies to this case, although it had not been instituted on the date of its enactment.

For the reasons I have endeavoured to explain, I would dismiss this appeal.

VASSILIADES, P. : The facts in this case are clearly stated in the judgment of the trial Court. The deceased was injured in a road collision which occurred on June 6, 1967. He died as a result of his injuries about two weeks later, on the 22nd of June. At the material time he was a mason in the employment of contractors ; and as an employee he was entitled to certain benefits under the Social Insurance Law (2 of 1964). Upon his death, his widow and two minor children became entitled to the benefits payable to them under the statute, from the Social Insurance Fund. In fact they have been receiving such benefits ever since.

For the injuries received at the collision and the death which ensued from those injuries, the administrators of the estate of the deceased sued the driver of the vehicle involved in the collision, for negligence. The result of those proceedings was a judgment in favour of the estate of the deceased and his dependants (the widow and two minor children) for £3,300 which were duly apportioned by the trial Court according to law. The amount of the compensation was found on the basis of an admission made at the trial regarding liability for the collision. The effect of the admission was that the deceased was guilty of contributory negligence to the extent of 30% in the negligence which caused the accident ; and the amount of compensation was found upon that basis.

At the conclusion of the trial and for the purposes of the judgment, the Court called for the statutory certificate under section 45 of the Social Insurance Law, regarding the amount payable to the Social Insurance Fund out of the compensation awarded to the dependants of the deceased as contribution to the Fund. The trial Court after hearing both sides on the point, decided that the dependants were entitled to the amount of the compensation awarded under the judgment, in addition to the benefits payable to them out of the Fund but they were liable to pay a contribution of £780 to the Fund out of the amount of the compensation awarded under the judgment.

Against this decision of the trial Court the appellants took the present appeal, mainly based on the contention that the relative provisions of the Social Insurance Law were applicable in cases of personal injuries ; and were not applicable in cases where death ensued from such injuries. It was further contended on behalf of the appellants that the dependants are not liable to make any payment to the Social Insurance Fund from the amount of the compensation awarded ; and that in any case, they were liable to pay the amount of £780 as decided by the trial Court, such amount should be reduced by 30% that is, by the extent of the contributory negligence of the deceased to the cause of the accident.

After hearing counsel on both sides in this case, I agree that the appeal fails for the reasons given in the judgment of the trial Court and expounded further in the judgment just delivered by Mr. Justice Hadjianastassiou, I think that the matter was rightly decided by the District Court ; and the appeal should be dismissed.

JOSEPHIDES, J. : I also agree and I would like to add a few words.

The wording of section 45 (1) of the Social Insurance Law, No. 2 of 1964, as amended by Law 28 of 1968, when read in conjunction with section 26, is clear and unambiguous, that it covers also cases of death, in addition to cases of personal injuries. That is to say, that the deductions have to be made and paid to the Social Insurance Fund as provided in the amended section 45 (1). It is also clear that no account can be taken of any contributory negligence by the deceased insured person.

In the present case the beneficiaries will have received in a period of five years the sum of £1,170 as death benefit and out of that they will be required to pay the sum of £780.

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With regard to the question whether the amended section 45 of the Social Insurance Law (which was published in the *Gazette* of the 22nd March, 1968), has retrospective effect, reference should be made to section 7 of Law 28 of 1968 which provides that the amended section 45 shall also apply to pending cases. The relevant dates in the present case are the following :

The accident occurred on the 6th June, 1967, the person injured died on the 22nd June, 1967. Letters of Administration were taken out on the 26th October, 1967, the amended section 45 (1) was published in the *Gazette* in Law 28 of 1968 on the 22nd March, 1968, and the present action was instituted some three months later on the 29th June, 1968.

The provision with regard to the effect of the repeal of a law is to be found in section 10, sub-section (2), of the Interpretation Law, Cap. 1, which provides that where a law repeals any other enactment, then, "unless the contrary intention appears", the repeal shall not affect any right, privilege etc., acquired or accrued under any enactment so repealed, or affect any legal proceedings or remedy in respect of any such right or privilege, and any such legal proceedings or remedy may be instituted or enforced as if the repealing law had not been passed.

The question which arises is whether "the contrary intention appears". To my mind the contrary intention clearly appears because the amended section 45 is expressly made to apply to pending cases and, *a fortiori*, it applies to actions which had not been instituted on the date of its publication in the *Gazette*. For these reasons I agree that the appeal should be dismissed.

VASSILIADES, P. : In the result the appeal is dismissed with costs.

Appeal dismissed with costs.