

1980 October 15

[HADJIANASTASSIOU, A. LOIZOU AND DEMETRIADES, JJ.]

DEMETRIOS ANASTASSIOU,

Appellant-Defendant,

v.

ELENI THEODOTOU DEMETRIOU AND ANOTHER,

Respondents-Plaintiffs.

(Civil Appeal No. 5806).

5 *Civil Wrongs—Liability for acts committed by others—Superior illegal orders—Whether a defence—Army Officer taking charge of Police Station under orders of supporters of the coup d'etat of July 15, 1974—And ordering his subordinates to shoot at persons moving in the streets in defiance of night curfew—Death occurring through shots fired by subordinates—Army Officer answerable in damages—Section 12(1)(a) of the Civil Wrongs Law, Cap. 148.*

10 *Superior orders—Whether a defence—Coup d'etat of July 15, 1974—Civil Wrong by Army Officer—Whether superior orders a defence.*

15 *Damages—Death of husband—Widow aged 27—Dependency—Principles applicable—Prospects of re-marriage—Widow securing employment after husband's death—Period of dependency—Appropriate multiplier—Section 58 of the Civil Wrongs Law, Cap. 148.*

20 The late husband of the respondent-plaintiff was shot dead in the early hours of July 17, 1974 by armed persons who were standing on the roof of the Larnaca Police Station, whilst proceeding to his work in his employers' bus. In proceedings by the widow for damages against the appellant-defendant the trial Court found that following the coup d'etat of July 15, 1974, the appellant, an officer of the Cyprus Army attached to the National Guard, was ordered by the Army Authorities of Larnaca to take charge of the Larnaca Police Station; that
25 these orders were issued by supporters of the military coup

in their effort to establish their authority in the island; that in furtherance of these orders, he took charge of the police station and assumed responsibility for its guard; that implementing the orders he had received he ordered his subordinates to shoot at anyone who moved in the street and failed to stop when warned to in defiance of the night curfew imposed by the usurpers of State power; that the men under his command were conscripts of the National Guard; and that following the orders they had received the men under the command of the appellant fired at the bus wherein the deceased travelled as a passenger, inflicting fatal wounds on him who, in consequence thereof, met with his death.

Appellant was found liable under the provisions of section 12(1) (a)* of the Civil Wrongs Law, Cap. 148 and held answerable in damages.

The widow who was an attractive young lady of 27, sought, also, compensation under the provisions of section 58 of the Civil Wrongs Law, Cap. 148. At the time of his death the deceased was earning £124.486 mls and had been alive he would be earning £182 per month at the time of the trial. The widow was supported by her husband but a fortnight after his death she was employed as a special constable, a position she still held, earning £53 per month. The trial Court awarded £750 as damages for loss of expectation of life; and after taking into consideration the possibility of marriage of the widow it fixed the multiplier at 5 and the multiplicand for the past 3 1/2 years at £30 per month and for the 18 months to come at £35.

Upon appeal by the defendant it was contended that:

- (1) The decision or verdict of the trial Judge on the issue of liability was wrong in law and in fact, and in particular that (a) the appellant gave the orders to the persons who fired the fatal shots in consequence of which Theodoros Demetriou met with his death; (b) that he gave unqualified orders to his subordinates to shoot at anyone who moved in the street and failed to stop when warned

* Section 12(1)(a) provides as follows:

"Any person who shall join or aid in, authorize, counsel, command, procure or ratify any act done or to be done by any other person shall be liable for such act".

to in defiance of the night curfew; (c) that any orders the appellant might have given were illegal and/or not within the scope of his lawful authority; (d) that superiors orders even in the case of persons serving in the military forces could not be invoked as a defence.

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- (2) The award of damages to the widow for the sum of £1515 for loss of dependency was wrong in principle as being too high a sum having regard to the age of the widow.

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Held, (1) that the orders of those who perpetrated the coup were illegal; that soldiers not only have the right but duty to disobey illegal orders of their superiors; that in the light of the evidence before the trial Court that the appellant has given unqualified orders to his subordinates to shoot at anyone who moved in the street this Court is in agreement with the findings of the trial Court; accordingly the appeal should fail.

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(2) (After dealing with the principles regarding the determination of the value of the dependency) that the sum awarded is not excessive and this Court will not interfere with the award.

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Appeal dismissed.

Cases referred to:

Attorney-General of the Republic v. Aresti (1975) 2 C.L.R.9;

Keighly v. Bell (decided by Willes J. in 1866);

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Thomas (decided in 1816 cited in Glanville Williams Criminal Law (The General Part) at p. 391);

Madzimbamuto v. Lardner-Burke [1968] 3 All E.R. 561;

Adams v. Adams [1970] 3 All E.R. 572;

Kartambi and Others v. Alfa Shoe Factory and Others (1968) 1 C.L.R. 324;

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Poullou v. Constantinou (1973) 1 C.L.R. 177;

Mallett v. McMonagle [1969] 2 All E.R. 178;

Taylor v. O' Connor [1970] 1 All E.R. 365;

Gavin v. Wilmot Breeden Ltd. [1973] 3 All E.R. 935;

Cookson v. Knowles [1977] 2 All E.R. 820;

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Papadopoulos v. Tryfonos and Another (1968) 1 C.L.R. 80.

Appeal.

Appeal by defendant against the judgment of the District Court of Larnaca (Pikis, P.D.C.) dated the 7th January, 1978 (Action No. 1098/75) whereby he was adjudged to pay to the estate of the deceased Theodotos Demetriou, who was shot by soldiers under the command of the defendant, the sum of £2,325.—. 5

A. Eftychiou, for the appellant.

A. Andreou, for the respondent.

Cur. adv. vult. 10

HADJIANASTASSIOU J. read the following judgment of the Court. This is an appeal by the defendant Demetrios Anastassiou of Larnaca from the judgment of the President of the District Court of Larnaca dated 7th January, 1978, in which he awarded to the estate of the deceased Theodotos Demetriou, late of Larnaca, who was shot by soldiers under the command of the defendant, the sum of £810 as damages and £1,515 for loss of dependency to his widow. 15

THE FACTS:

In the early hours of 16th July, 1974, Theodotos Demetriou was conveyed to Larnaca hospital appearing to be dead according to all outward indications. On 17th July, 1974, a post mortem examination was carried out on the body of the deceased in order to ascertain the causes of death. A medical certificate was issued by the medical officer who carried out the examination and confirmed that the death of the victim came about because of internal cerebral haemorrhage. The deceased was buried on 18th July, 1974. 20 25

In order to examine the circumstances leading to the death of the deceased and appreciate the facts surrounding his death, we think it is necessary to refer to the tragic events of 15th July, 1974. Indeed, the Supreme Court has consistently taken judicial notice of the calamitous events of July and August 1974, and the anomalous situation produced thereafter. See *Attorney-General v. Aresti*, (1975) 2 C.L.R. 9, in which I was one of the members of the Court. The notoriety of those events and their impact on the future of our country and the fate of its inhabitants is such as to justify noticing not only the happening of the event but its details as well. The extent to which notorious events 30 35

may be noticed is proportionate to their notoriety and the degree to which they have become public knowledge. We, therefore, find ourselves in agreement with the learned Judge that the events of that period were so devastating in nature as to leave
5 a lasting effect on the minds of the inhabitants of our country, whereas a mass of legislation introduced for the purpose of coping with the situation created by those events reminds us constantly of their occurrence and implications. The coup
10 d'état of 15th July, 1974, its manifestation, the details of its progress, the motives of those who organized it and perpetrated it as well as its eventual collapse are so well known as to justify the Court to notice many of its details that have become since public knowledge.

On the morning of 15th July, 1974, a date to be remembered
15 for ever, a military coup was organized with the avowed aim of overthrowing the Government of Cyprus and the explicit object of installing in its place a puppet Government subservient to the wishes of the military junta that ruled Greece at the time. The coup was organized by Greek officers of the National
20 Guard, as well as their agents and co-conspirators in Cyprus. Greek officers then serving with the National Guard for the purpose of training Cypriot guardsmen acting in abuse of their position and duties, secretly organized the coup and led the National Guard in an effort to gain political power in Cyprus
25 and run the country according to the whims of the Presidential Palace and other Government installations throughout the island and soon after the manifestation of the coup they gained control of the Cyprus Broadcasting Corporation proclaiming over the radio success of the coup and the death of the President
30 of the Republic.

By a stroke of luck, the President of the Republic, the late Archbishop Makarios, was saved from the treacherous attack directed against the Presidential Palace, and called on the Cyprus
35 people to resist the treasonous gang that was trying to establish itself in power. Later in the day a puppet Government was sworn in and began usurping Government authority. A curfew was imposed on the orders of the usurpers of power prohibiting the movement of pedestrians and vehicular traffic. In the mean-
40 time, they started a manhunt on an unprecedented scale. To complete the picture of the unsavoury events of 15th July, 1974, no army unit or any distinct section of it opposed the coup.

On the contrary, they allowed themselves to become instrumental for the furtherance of the designs of the usurpers of power. And in seeking to establish their authority the usurpers of power used all the armoury of the National Guard and were aided in their purposes by the Greek contingent stationed in Cyprus under international treaties who, like the National Guard, employed their men and weaponry to establish themselves unlawfully in power. 5

Reverting now to the deceased, it appears that he was an employee of the Electricity Authority of Cyprus and he was at his home on the night of the 15th July, 1974, where he was residing with his wife. At about midnight or shortly afterwards, he was awakened and was given orders to report to duty. Although he was reluctant at first to comply with those orders, being on leave, he eventually complied with the said orders. He dressed and entered the EAC bus assigned for the purpose of conveying him to his work as well as other employees. The driver of the bus Michalakis Xenofontos, an employee of the Electricity Authority, took the deceased from his house and an armoured soldier was occupying a seat near him. Indeed, a police land rover was assigned to escort the bus with all the other passengers to the office of the Electricity Authority. The house of the deceased was very near the police station which normally was accommodating a division of the police responsible for the policing of the rural areas of Larnaca referred to as a rural area police station. The police station was within easy view from the yard of the house of the deceased where the wife of the deceased Eleni Theodotou Demetriou stood to say good-bye to her husband following the bus as it was driven off in the section of the aforesaid police station at a distance of 50-100 yards from their house. 10 15 20 25 30

According to the driver, the bus was well lighted, both inside and outside. The streets were deserted except for the soldiers who were manning checkpoints and persons who were described as "praxikopimaties"—rebels, who no doubt were trying to intimidate the population and establish their rule. The bus came under heavy fire as it approached the police station soon after starting off. It was indeed fired by persons who were standing on the roof of the station. The driver, in spite of the fact that he was injured, managed to bring the bus to a standstill. Before leaving the bus, the driver noticed that Theodotos 35 40

Demetriou was motionless as he had been shot, and appeared to be dead. Solomonides who was one of the passengers was also injured and he made a run for his house. Indeed, the soldier who was escorting the bus was also injured. In the
5 meantime, Michalakis Xenofontos was conveyed to the Larnaca hospital where he was given medical treatment and soon afterwards he saw at the hospital the body of the deceased Theodotos Demetriou.

Both the widow of the deceased as well as the driver of the
10 bus testified that the shots had been fired exclusively from the roof of the police station. It appears further that Demetrios Anastassiou, the defendant, was a second lieutenant in the Cyprus Army having first joined the army in the year 1961 as a corporal. In July, 1974, he was attached to the National
15 Guard on assignment from the army authorities of the Republic, and had instructions from his superiors to guard the police station. At 1.00 a.m. of the 16th July, 1974, the defendant was in his office and heard the shots. He was told by the soldiers when he went up to the roof that two cars were approach-
20 ing with their lights flashing. They called them to stop and fired warning shots, but when they did not stop they shot at the vehicles. He further added that he heard voices, but he could not say if they were calls to the vehicles to stop. He made arrangements to take the injured persons to the hospital
25 and he added that he did not make any inquiries as to who fired the shots because all the guards had been firing at the same time. Questioned further, he said that he did not take down the names of the soldiers but he reported the incident orally on the telephone to his superiors.

30 It was the case for the plaintiffs that defendant No. 1 is answerable for damages to the estate and dependent of the deceased for the death of Theodotos Demetriou for the reason that he had issued orders to his subordinates at the police station to fire at anyone who moved and in that way he authorized and
35 aided the unlawful acts that caused the death of the deceased. In support of their case, they produced a statement on oath made by the defendant before the coroner who held an inquest into the causes of death of the deceased, which was admitted in evidence as a statement against interest. Defendant No. 1
40 did not dispute making the statement recorded in *exhibit 4* before the coroner, but tried in evidence to explain it away

and generally whittle down its effect and implications. In his statement to the coroner, the defendant stated that at about 7.00 p.m. of the 15th July, 1974, he was ordered by his superiors at Larnaca National Guard headquarters to assume responsibility for guarding the above mentioned police station. Following their instructions, he assumed the command of the station. Furthermore, in accordance with his instructions, he ordered the men at the station to shoot at anyone moving in the street in defiance of the night curfew and failed to stop when called to do so. He further explained that his subordinates at the station had received the same orders from others as well.

It is significant to note that in his statement before the coroner, he described his subordinates at the station as conscripts of the National Guard from which one may gather that they were wearing the uniform of National Guard conscripts, a statement he sought to qualify before the trial Court by saying that not only soldiers, but irregulars also were moving about in the station, making it very difficult for him to control them. In his evidence, the defendant added that a chaotic situation prevailed at the time, and that he assumed responsibility for guarding the police station. He further admitted that he issued orders to those he met at the station to shoot at anyone who disobeyed the night curfew, telling them that those were the orders they had and that they should act accordingly. Despite the responsibility he assumed for guarding the station and the orders he had given, he maintained that he was unaware of the presence of any persons on the roof of the station and mentioned in cross-examination for the first time that he had qualified his orders to shoot by telling his subordinates not to fire before reporting the incident to him.

FINDINGS OF FACT:

The learned trial Judge, having observed that the defendant had tried to mislead him as to the part he played on the day in question, and his readiness to implement the orders of those criminally usurping State power and the events of the night of the incident in question, had this to say:

“Having seen and heard the witnesses testify before me and bearing in mind the statement of defendant before the coroner, I make the following findings:

- (a) Defendant 1, an officer of the Cyprus army attached to the National Guard, was detailed by the army authorities of Larnaca to take charge of the aforementioned police station;
- 5 (b) the orders were issued by supporters of the military coup in their effort to establish their authority in the island;
- (c) defendant 1, in furtherance of those orders, took charge of the police station and assumed responsibility for its guard. Implementing the orders he had received he ordered his subordinates to shoot at anyone who moved in the street and failed to stop when warned to in defiance of the night curfew imposed by the usurpers of State power. The same orders had been given over the radio then in the control of the criminal gang that perpetrated the coup;
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- 15 (d) the men under his command were conscripts of the National Guard; and
- (e) following the orders they had received the men under the command of defendant 1 fired at the bus wherein the deceased travelled as a passenger, inflicting fatal wounds on Theodotos Demetriou who, in consequence thereof, met with his death".
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SUPERIOR ORDERS:

25 Then the learned Judge in posing the question whether in the light of his finding the case was proved against defendant 1 and particularly as to whether superior orders constituted a shield to civil liability, had this to say:-

30 "To my comprehension, no Cyprus decided case has answered this question. In England the subject has attracted the attention of both constitutional and criminal law writers and judging from dicta of an eminent English judge, Willes J., in *Keighly v. Bell*, decided in 1866, there appears to be no distinction with regard to the implications of superior orders as a defence between criminal and civil liability. Obviously in both cases what is relevant is whether the orders, albeit illegal, constitute lawful authority

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for the recipient to engage in an unlawful act. The subject of superior orders as a defence was discussed in a number of criminal cases referred to and explained in Russell on Crime, 11th edition, part I at p. 93 et seq., and in still greater detail by Glanville Williams Criminal Law (The General Part) at p. 389 et seq. Dicey, the famous English constitutional writer, in his work 'Law of the Constitution, 9th edition' at pp. 193 and 194 makes what is regarded as a classical statement of the law on the subject:

'It is a well-known principle of the Constitutional Law that official position and superior orders (whether of the Crown or of a private master) are not in themselves a justification for committing an act that would otherwise be a legal wrong'.

It is worthy of note that no distinction whatever is drawn between criminal and civil liability, the author evidently taking the view that no such differentiation is warranted either on principle or on authority".

In the 19th century Judges and authors alike vacillated in their views as to the implications of superior orders as a defence and the circumstances under which superior orders could constitute a defence assuming they could be invoked to an extent as a shield for unlawful acts. Willes J., in *Keighly v. Bell*, decided in 1866, inclined to the view that the orders of a superior might confer a defence to the wrongdoer provided they were not "necessarily or manifestly illegal". On the other hand, in *Thomas*, decided in 1816, cited in *Glanville Williams Criminal Law (The General Part)* at p. 391, a naval sentinel was convicted of murder for causing the death of a person, a passenger in a boat at which he fired pursuant to the orders of a superior after they failed to heed repeated warnings to keep off.

The *British Manual of Military Law* published in 1912 recognized superior orders as conferring a defence. But the revised edition of the manual published in 1944, under the impact of professor Lauterpacht, denied the validity of the rule no doubt because of its implications in the world of today. And no effort has been made since to resurrect, if it ever existed, superior orders as a defence for either a crime or a civil wrong.

The Nuremberg Charter, adopted in 1945, excluded superior

- orders as a defence, recognizing them only as a factor that might justifiably be taken into consideration in mitigation. (See Article 8). This Charter was intended to codify a global understanding of the law in accordance with world-wide conceptions of humanity and its needs. The particular provision referring to superior orders was intended to prevent Nazi misanthropists from invoking superior orders in an effort to evade their responsibility for the grave crimes they committed against humanity.
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- 10 Summarizing, it appears that under the common law there persisted in the 19th century a doubt whether superior orders conferred a defence. The better accepted view appears to have been all along that superior orders could not justify an illegal act. Those who accorded any validity to superior orders
- 15 as a defence limited its application to orders that appeared to be reasonable and were not manifestly illegal. In the 20th century the view prevailed that superior orders could under no circumstances constitute a defence and this has now hardened into a positive rule of law.
- 20 There is no doubt that the rejection of superior orders as a defence is a hedge against arbitrary authority, safeguarding an unqualified spirit of respect for the laws. In the last analysis it is expected of men to reject illegal superior orders and guard the state of legality that should obtain in every civilized society;
- 25 for, if illegal superior orders are obeyed, they open the way to lawlessness. It is, after all, not only difficult but impossible to reconcile any doctrine recognizing superior orders as a defence and the fundamental principle of supremacy of the law, a prerequisite for sustaining the rule of law.
- 30 An additional reason that may have militated for the rejection of superior orders as a defence, in the case of soldiers, may be found in the need to protect the public from a possible abuse of authority by the military, leaving the public defenceless before the lethal weapons with which they are equipped for the
- 35 defence of their country. Indeed, the coup d'état carried out in Cyprus on 15th July, 1974, illustrates very forcibly the reasons that must have led wise jurists to reject superior orders as a defence. If the officers and men of the Cyprus National Guard did in their majority, refuse the orders of the criminal gang
- 40 of officers who organized the coup, the coup would collapse

ab initio and the country would be saved the ruin and destruction that the coup d'etat piled on our country.

In *Madzimbamuto v. Lardner-Burke*, [1968] 3 All E.R. 561, the Privy Council decided that the assumption of power by usurpers of authority cannot possibly cloth with legitimacy their actions, under any pretext or circumstances, and the illegality of their actions remains unaffected by considerations of recognition by foreign Governments. (See also *Adams v. Adams* [1970] 3 All E.R. 572. The Coup d'Etat Law of 1975 declared all acts of the puppet Government set up after the coup d'etat as being devoid of any legal effect.

In supporting the judgment of the trial Judge, we agree that no reasonable human being could, for a moment, doubt the illegality of the orders of those who perpetrated the coup nor fail to discern their purpose which was to strike the law at its source and displace the elected Government of the country. Let it sink in the conscious of every soldier that not only has he a right but a duty to disobey illegal orders of his superiors. This is the only approach that reconciles the existence of a standing army with the need to preserve a democratic regime. Finally, the Judge found the defendant liable under the provisions of section 12(1)(a) of the Civil Wrongs and held him answerable in damages.

According to the provisions of section 12(1)(a) of the Civil Wrongs Law Cap. 148, "Any person who shall join or aid in, authorize, counsel, command, procure or ratify any act done or to be done by any other person shall be liable for such act". With that in mind we are of the view that the purpose of this section shows clearly the aim of the legislature and makes it clear that its purpose was to render liable in tort persons who contribute in one or more ways indicated therein to the production of the tortious act.

APPEAL :

On appeal, counsel for the appellant-defendant argued that the decision or verdict of the trial Judge on the issue of liability was wrong in law and in fact, and in particular that (a) the appellant gave the orders to the persons who fired the fatal shots in consequence of which Theodotos Demetriou met with his death; (b) that he gave unqualified orders to his subordi-

5 nates to shoot at anyone who moved in the street and failed to stop when warned to in defiance of the night curfew; (c) that any orders the appellant might have given were illegal and/or within the scope of his lawful authority; (d) that superiors orders even in the case of persons serving in the military forces could not be invoked as a defence.

10 We have considered carefully the argument of counsel for the appellant, and in the light of the voluminous evidence appearing before the trial Judge that the appellant has given unqualified orders to his subordinates to shoot at anyone who moved in the street, we find ourselves in agreement with the findings of the learned trial Judge. Indeed, we would go further and state that the evidence he gave before the coroner supports further the finding of the learned Judge because he conceded that he had directions to shoot any person who moved in the street and when called to stop did not do so. He further admitted that the soldiers have been given those orders by others as well as by him. For these reasons, we would dismiss this ground of law.

20 As to damages for loss of expectation of life, the learned trial Judge, having quoted a number of cases regarding this matter, reached the conclusion that a standard award should be made under this head and accepted that the amount of £750 is the correct amount of damages and that the estate of the deceased is entitled to that amount plus £60 agreed funeral and testamentary expenses. Indeed, counsel appearing for the first appellant did not challenge this figure.

DEPENDENCY:

30 It appears that the widow of the deceased, an attractive young lady of 27, seeks compensation under the provisions of section 58 of the Civil Wrongs Law, for the loss she suffered because of the death of her husband; that is to say, loss of the right to support. It is common ground that at the time of his death the deceased was earning £124.486 mils and that had he been alive he would be earning today £182 per month. The wife was supported by her husband and the couple resided in a house belonging to the parents of the widow, paying no rent. A fortnight after the death of her husband the widow was employed as a special constable, a position she still holds, earning £53 per month.

The general principles regarding the determination of the value of the dependency have been expounded both by the Courts in England as well as by our own Courts in Cyprus. (See *Savvas Kartambi and Others v. Alfa Shoe Factory and Others*, (1968) 1 C.L.R. 324—*Poullou v. Constantinou* (1973) 1 C.L.R. 177— 5
Mallett v. McMonagle [1969] 2 All E.R. 178—*Taylor v. O'Connor* [1970] 1 All E.R. 365 (H.L.)—*Gavin v. Wilmot Breeden Ltd.*, [1973] 3 All E.R. 935 (C.A.).)

Indeed, the task of the Court lay primarily in making a forecast of future losses and a quantification in a realistic manner of the present value of future losses. A recent decision of the English Court of Appeal suggests an approach that reduces, 10
to an extent, the uncertainties inherent in the process laying down that losses suffered because of the loss of support up to the date of trial may be recovered as special damages. (See 15
Cookson v. Knowles, [1977] 2 All E.R. 820). Of course, the prediction for the life expectation of the deceased must be made as at the date of his death.

In the case of *Taylor v. O'Connor* (*supra*), Lord Pearson observed that annuity tables are not an infallible guide to the 20
choice of the multiplier which should, in each case, be fixed, as he observed, in the light of the particular facts of the case subject to two scaling down factors: (a) the present value of future earnings and (b) future uncertainties. The choice 25
of the multiplier should not be based on any hard and fast rules and the subject should be approached from a broad angle guided by common sense. (See *Gavin v. Wilmot* (*supra*)).

With these authorities in mind, and in the light of the evidence, the trial Judge reached the conclusion that the value of the dependency of the widow at the time of the death of her husband 30
was £50 per month. Having considered the authorities and the principles on this point, we would support the judgment of the trial Court.

Then the trial Judge, in dealing with the prospect of remarriage of the widow, which is a consideration relevant to the choice 35
of the multiplier, he adopted and followed the case of *Yiannis Thoma Papadopoulos v. Yiannoula Gregori Tryfonos and Another*, (1968) 1 C.L.R. 80. Indeed, the Supreme Court acknowledged that the prospect of re-marriage of a widow is a legitimate consideration for the lowering of the multiplier. Indeed, 40

in the event of re-marriage, the loss of the right of support by the deceased is replaced by the newly acquired right of support by the second husband.

5 In the case before us the palpable fact is that the widow has remained unmarried for the past 3 1/2 years. The trial Judge, having considered her age and appearance, and having assumed that there was every possibility that she would marry again in the near future, decided that in the present case the multiplier should be fixed at 5.

10 Then, having raised the question what to do regarding the earnings of the widow from the employment she obtained after the death of her husband, had this to say at p. 43:-

15 "In the last analysis the Court must endeavour to make a realistic estimate of the loss resulting from the death of the husband and must not leave out of account any fact relevant to the determination of the issue. It is correct that the wife has no obligation to go out and work in order to mitigate her damage from the loss of the right of support. It is also true that the earning capacity of a widow is an asset in reserve that has all along been at the disposal of the widow and therefore it would be totally wrong to make a simple arithmetical calculation in order to give our answer. In my judgment the correct approach where the widow obtains employment for the first time after the death of her husband is to deduct from her loss such part of her earnings as may be attributed to the greater amenity that the widow had to earn this money consequent on the death of her husband. It is not an easy question to answer and as everything else in the area in the matter is fraught with an element of speculation".

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Finally, the learned Judge concluded as follows:-

35 "Guided by the aforementioned considerations and bearing in mind what the earnings of the husband would be for the coming eighteen months had he been alive, I decide to fix the multiplicand for the past 3 1/2 years at £30 per month and for the 18 months to come at £35 per month. Out of this, we must deduct the sum of £374 that will come to the wife from the estate.

In the result, there will be judgment for the plaintiffs against defendant 1 as follows:-

- (a) £810 for the estate.
- (b) £1,515 for the widow, for loss of dependency.

Defendant 1 is adjudged to pay costs on the scale of claims between £2,000 and £5,000. The action against defendant 2 is dismissed with no order as to costs".

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Finally counsel for the appellant argued at length that the award of damages to the widow for the sum of £1,515 for loss of dependency was wrong in principle as being too high a sum having regard to the age of the widow.

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We have indeed considered very carefully the argument of counsel, but in the light of the authorities quoted earlier with which we find ourselves in agreement, we think that in the present case that sum of £1,515 is not excessive and we think that we should not interfere with that award.

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For the reasons we have given at length, we would dismiss the appeal with costs both in the Court below and costs in this Court in favour of the appellant.

Appeal dismissed with costs.

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