1983 August 25

[A. LOIZOU, J.]

MAROULLA PARASKEVA CHRYSOSTOMOU AND ANOTHER,

Plaintiffs,

v.

YUGOSLAVENSKA LINIJSKE PLOVIDBA AND OTHERS,

Defendants.

(*Admiralty Action No.* 172/77).

Negligence—Master and servant—Loading of ship—Fatal injury to stevedore from fall of sling load due to breaking of defective sling—Defect of sling a patent one and could on a mere glance be noticed and discarded—Employers (Ship-owners) in breach of their duty not to subject the deceased to a risk that they could as employers reasonably foresee—Accident happening through negligence of fellow employees of deceased—Shipowners liable for the negligence of their employees—Deceased not guilty of contributory negligence.

Decided cases—Decisions of English Courts—Whether binding.

Damages—Fatal accident—Action for benefit of deceased's estate and his dependants—Section 34 *of the Administration of Estates Law, Cap.* 189 *and section* 58 *of the Civil Wrongs Law, Cap.* 148*—Factors to be taken into account in assessing damages—Multiplier—Whether damages recoverable in respect of loss of earnings in lost years—Principles laid down by House of Lords in interpreting identical statutory provisions (Law Reform (Miscellaneous Provisions) Act,* 1934*) adopted.*

Paraskevas Chrysostomou ("the deceased") met with his death on the 4th August, 1975, from injuries he received due to fall of a sling load, in the course of his employment, as a stevedore, on the ship "Primorge" at the port of Limassol. As a result the plaintiffs, as the administrators of his estate, by means of an action against the ship-owners and against the persons who allegedly provided the rope sling for the unloading operation,

claimed special and general damages under section 34 of the Administration of Estates Law, Cap. 189 for the benefit of his estate and under section 58 of the Civil Wrongs Law, Cap. 148 for the benefit of his dependants.

On the day in question the deceased was working together with two other stevedores on the side of the tunnel in the hold, whereas three other stevedores were working on the other side. They were unloading bales of paper sandwiched in wooden planks of a weight of about 200 okes each. They were spreading a sling on the floor placing, the maximum, four bales in each sling. The sling was hooked and the load was lifted by the winch of the vessel. When the sling load was lifted they were moving to the side of the tunnel. They could not see, however, what the other team of three stevedores was doing on the other side of the tunnel. After the sling was lifted and moved outwards they would move to the floor of the hold and prepare another sling for loading. Whilst in the hold and preparing at that moment a sling with his gang, the deceased was hit by one of the bales which fell because the sling that was holding them was broken. That sling load had been prepared by the gang working on the other side of the tunnel. The winch used was that of the ship. It was lifting one slingload each time and alternately from the one or the other side of the tunnel. The sling that was broken had obvious defects which were caused from extensive use and from rubbing on edges. It was unsafe to be used for lowering weights of about a ton. Amathus Navigation Co. Ltd. were the ship's agents. The unloading was done for the account of the ship's owners and the winchman on that date was in the employment of the ship owners as well as the foreman and the stevedores. They were all employed by Amathus Navigation Co. Ltd. for the account of the ship's owners.

The deceased, a displaced stevedore from Famagusta, was at the time of his death 46 years of age, and was a stevedore on list "B" at Limassol Port earning ten pounds per day. He was married with two sons and a daughter, Chrysostomos born on 9th October, 1959 a graduate of the Technical School, Christina born on 1st February, 1962 - studying in the U.S.A. on a scholarship - and Georghios born on 22nd March 1967, who was already attending the Technical School.

The widow was aged 47 at the time of the accident.

The funeral and testamentary expenses amounted to £85.- The earnings of the deceased at the time of the accident were about £10 per day for 300 days per year. Later, that is in 1977, the earnings of such a stevedore would have been £12.- per day for 300 days and for the years 1978 - 1979 the earnings would have been £14.- per day for 300 days.

Held, (I) *on the question of liability.*

(1) That an employer is under a duty to take reasonable care to provide proper appliances and maintain them in a proper condition and so to carry on his operations as not to subject those employed by him to unnecessary risks; that in this case the defect of the sling was a patent one and could on a mere glance be noticed and discarded from use; that it was such a defect that, the persons for whom defendants 1, as employers were responsible, ought to have known and were in breach of their duty not to subject the deceased to a risk that they could as employers reasonably foresee and against which they could guard by measures, the convenience and expense of which was not entirely disproportionate to the risk involved; that, therefore, defendants 1 the ship owners in whose employment the winch operators and the stevedores were at the time of the accident are liable for the negligence of their employees that resulted in the death of Paraskevas Chrysostomou, a stevedore also in their employment at the time.

Held, further, that since the condition of the sling could be ascertained on a mere cursory inspection which was not done by anybody; and since the sling which had been used was used by the other gang in no way the deceased could be found to have contributed to the accident by not having inspected same, as it would not be reasonable to expect a stevedore to inspect not only all slings used by him and his fellow stevedores working in that particular gang, but also the slings of another gang.

(2) That there was no reliable evidence upon which it could be concluded that the slings used for the unloading of the ship were supplied by defendants 2 and the action against them will be dismissed.

Held, (II) *on the question of damages:*

(1) That though damages are normally assessed in relation to the facts existing at the time of death yet subsequent events such

as changes after death in the prevailing state of wages in the deceased's occupation have to be taken into account when they throw light on the realities of the case.

(2) That under the heading damages for the benefit of the estate of the deceased under section 34 of the Administration of Estates Law, Cap. 189, taking account of the circumstances of the case there would be accorded under this head C£1,000.

(3) That the relevant provisions of s.34 of the Administration of Estates Law, Cap. 189, are a verbatim reproduction of the provisions of s.1 of the English Law Reform (Miscellaneous Provisions) Act, 1934; that adopting the pronouncements of the House of Lords on identical statutory provisions (See *Stylianou v. Police*, 1962 C.L.R. 152 at p. 171 and *Mouzouris v. Xylophagou Plantations* (1977) 1 C.L.R. 281 at p. 300), it is accepted that in calculating damages under section 34 of the Administration of Estates Law, Cap. 189, a deceased's loss of earnings in the lost years has to be compensated with damages: that in that respect for the deceased's loss of earnings in the lost years, i.e. the period of his pre-accident life earning expectancy, the living expenses which have to be deducted from the husband's loss of earnings in the lost years, in assessing the recoverable damages under this section, have to be calculated on the same basis as is used in calculating the family's dependency under section 58 of the Civil Wrongs Law, Cap. 148. It follows, however, that only the husband's own living expenses and not the expenses of maintaining his family can be deducted from his lost earnings in the lost years in assessing the damages under section 34. (See *Benson v. Biggs Wall & Co. Ltd.* [1982] 3 All E.R. 300, a case followed in *Harris v. Empress Motors Ltd.* [1982] 3 All E.R. 306, followed *in Clay v. Pooler* [1982] 3 All E.R. 570,and *Pickett v. British Rail Engineering* Ltd. [1979] 1 All E.R. p. 775).

(4) That the award of loss of future earnings will frequently be the same as the total value of the dependency under section 58 of the Civil Wrongs Law, Cap. 148 for two reasons (a) the Courts always adopt the same multiplier as that applied to the annual dependency in section 58 of Cap. 148, and (b) the multiplicand will usually be the same because under both sections the calculation is basically net earnings less living expenses and the living expenses to be deducted are exactly the same under both

sections (see *White v. London Transport* [1982] 1 All E.R. 419 and *Clay v. Pooler* [1982] 3 All E.R. 570).

(5) That taking into consideration the average earnings of the deceased his prospects at the time of death, which were good considering his age, his health the nature of his employment and the steady increase on his emoluments, and deducting therefrom his own living expenses, and after making also in a rough way the necessary allowances for income tax deduction in his gross earnings, it is found that for the first two years after the death of the deceased his lost earnings were C£2,000.- per year; for the year 1977 C£2,500.-, for the years 1978-79 C£3,000.- and for the remaining four years, making also an allowance for his prospects at the time of his death, C£3,200.- which makes a total of C£27,800.- to which there would be added another C£1,000.- already awarded to the estate, making a total of C£28,800; that since the deceased died intestate, the widow's and the children's damages under section 34 of the Administration of Estates Law, Cap. 189, have to be determined according to the division of the estate on the intestacy; that under the intestacy the widow is entitled to the 1/6 i.e. C£4,800.- and each of the three children to C£8,000.

(6) That regarding dependency which would have normally been fixed at £27,800 as its amount would not be different than that of the damages of the amount assessed for the lost years (see *Benson v. Biggs*) (supra)) there are as dependants apart from the widow the three children of the deceased which are in law so considered to be until they reach the age of sixteen and to that extent only (see *Antoniou and Another v. Gavriel Angelides and Another* (1978) 1 C.L.R. 115); that although where a deceased dies intestate a defendant has a direct interest in the way in which the award under section 58 is distributed between each dependant because the amount of each dependency will be determined after deducting therefrom or setting off the dependant's entitlement under section 34 the amount, if any, payable by the defendant under section 58; that there is no need to assess the dependency in respect of each child. This is because any amount that can possibly be awarded to such child is certainly less than what each one will receive under section 34, therefore their amount for dependency is cancelled thereby. The same position, however, cannot exist as regards the widow whose

dependency is assessed at a thousand pounds multiplied by a multiplier of ten years which gives an amount of £10,000.- which cancels in its turn the £4,800.- received under section 34, so that double recovery, as it should in law, be avoided; and that, therefore, there will be judgment for the plaintiffs against defendants for £34,085.- with costs.

Judgment for plaintiff for £34,085 *with costs.*

Observations with regard to the need of amending the Law concernings age of dependency and the law concerning damages.

Cases referred to:

Mahattou v. Viceroy Shipping Co. Ltd. and another (1981) 1 C.L.R. 335 at pp. 341, 345;

Georghiou v. Planet Shipping Co. Ltd. (1979) 1 C.L.R. 188 at p. 199;

Harris v. Brights Contractors Ltd. [1953] 1 All E.R. 395;

Athanassiou v. Attorney-General of the Republic (1969) 1 C.L.R. 160;

Price v. Glynea and Castle Coat Co. [1915] 85 L.J.K.B. 1278 at p. 1282;

Zacharia v. Elmini Lioness Inc. (1983) 1 C.L.R. 415;

Benham v. Gambling [1941] A.C. 175;

Gammel v. Wilson and Another [1980] 2 All E.R. 557 at p. 568;

Christou and Others v. Panayiotou and Others, 20 C.L.R. Part II 52;

Pickett v. British Rail Engineering Ltd. [1979] 1 All E.R. 775 at pp. 781-782; [1980] A.C. 136 at pp. 150-151;

Gammel v. Wilson and Others, Furness and Another v. B. & S. Massey Ltd. [1981] 1 All E.R. 578;

Stylianou v. Police, 1962 C.L.R. 152 at p. 171;

Mouzouris and Another v. Xylophagou Plantations Ltd. (1977) 1 C.L.R. 287 at p. 300;

Benson v. Biggs Wall & Co. Ltd. [1982] 3 All E.R. 300;

Harris v. Empress Motors Ltd. [1982] 3 All E.R. 306;

Clay v. Pooler [1982] 3 All E.R. 570;

White v. London Transport [1982] 1 All E.R. 419;

Antoniou and Another v. Angelides and Another (1978) 1 C.L.R. 115.

Admiralty action.

Admiralty action by the administrators of the estate of Paraskevas Chrysostomou for special and general damages in respect of the death of the above deceased as a result of the negligence and/or breach of statutory duty and/or breach of contract.

An. Lemis, for the plaintiffs.

J. Agapiou, for defendants 1.

G. Cacoyiannis with *Y. Aristidou*, for defendants 2.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The plaintiffs as the administrators of the estase of Paraskevas Chrysostomou, (hereinafter to be referred to as the deceased), claim special and general damages under section 34 of the Administration of Estates Law, Cap. 189 for the benefit of the estate of the deceased and section 58 of the Civil Wrongs Law, Cap. 148, for the benefit of his dependants, "for damage and/or injuries and/or death sustained by the deceased on/or about the 4th August 1975 on the vessel 'PRIMORGE' at the Limassol port as a result of the negligence and/or breach of statutory duty and/or breach of contract on the part of defendant No. 1 and/or No. 2, their servants, or agents".

The deceased, a displaced stevedore from Famagusta, was at the time of his death 46 years of age, a stevedore on list "B" at Limassol Port and married with two sons and a daughter, Chrysostomos born on 9th October 1959 a graduate of the Technical School, Christina born on 1st February 1962 - now studying in the U.S.A. on a scholarship - and Georghios born on 22nd March 1967, who is already attending the Technical School. He was employed as a stevedore by defendants 1, who were the

owners of the said vessel earning, according to paragraph 2 of the Statement of Claim, ten pounds per day.

Defendants 2 have been sued on their behalf and on behalf of all members of the Limassol Licensed Porters Association which it is alleged at the material time were the owners and/or persons responsible for the provision of rope slings used in the unloading operations from the said vessel.

The question of the ownership and the supply of the fatal sling is denied by defendants 2 and has become as regards liability, practically the main issue of the case.

On the day in question the deceased was working with Michael Kitsios (P.W.4), and another stevedore on the one side of the tunnel in the hold, whereas three other stevedores were working on the other side. They were unloading bales of paper sandwiched in wooden planks of a weight of about 200 okes each. They were spreading a sling on the floor placing, the maximum, four bales in each sling. The sling was hooked and the load was lifted by the winch of the vessel. When the sling load was lifted they were moving to the side of the tunnel. They could not see, however, what the other team of three stevedores was doing on the other side of the tunnel.

After the sling was lifted and moved outwards they would move to the floor of the hold and prepare another sling for loading. Whilst in the hold and preparing at that moment a sling with his gang, the deceased was hit by one of the bales which fell because the sling that was holding them was broken. That sling load had been prepared by the gang working on the other side of the tunnel. The winch used was that of the ship. It was lifting one slingload each time and alternately from the one or the other side of the tunnel. Instructions were given to the two winch operators by the hatchman as to who would pull and who would release the ropes of the winches. After the accident happened Police Constable Pavlos Pantaras of Limassol C.I.D. was called to the scene and the broken rope or sling was handed over to him by the foreman Kyriakos Herodotou, (exhibit 1). That sling was examined by Andreas Kalogerou, P.W.3 a Technical Inspector attached to the Ministry of Labour in the Factory Inspectorate Department. This witness stated that in certain parts of the sling there were obvious defects which

were caused from extensive use and from rubbing on edges. In the condition that rope was it was unsafe to be used for lowering weights of about a ton.

Obviously this sling was in a bad state. Its condition could be ascertained on a mere cursory inspection which was not done by anybody, and as the sling which had been used was used by the other gang in no way the deceased could be found to have contributed to the accident by not having inspected same, as it would not be reasonable to expect a stevedore to inspect not only all slings used by him and his fellow stevedores working in that particular gang, but also the slings of another gang.

According to the evidence of Michael Kitsios (P.W.4) the deceased, himself and the other stevedores were employed and paid by Amathus Navigation Ltd. The foreman was also employed by Amathus. Defendants 1 in their answer deny that they were ever the employers of the deceased or the winch operator or that at any material time they had the management or control of the winch.

In support of their contention they invoke the evidence of Panayiotis Sheitanis, (P.W.1) and in particular the evidence of P.W.4 Kitsios whose statement that they were all employed by Amathus Navigation Company Ltd., stood unchallenged and uncontradicted, and so the whole of the case of the plaintiffs was that the deceased and his co-stevedores, including the winch operator, were not in the employment of defendants 1. All were in the employment of Amathus Navigation Company Ltd.

D.W.1, George Phinikarides, an employee of Amathus Navigation Company Ltd., stated that the slings used for the unloading are normally supplied by defendants 2, and they were so supplied on the day of the accident, and that they paid a certain fee for the use of the slings to defendants 2. The ship's slings are locked and they had to ask for them but he did not ask the ship to supply them on that occasion. He was the one to ask. In cross-examination he stated that Amathus Navigation Co. Ltd., were the ship's agents. The unloading was done for the account of the ship's owners and the winchman on that date was in the employment of the ship's owners as well as the foreman Kyriakos Herodotou who is an expert foreman. They engaged the deceased and all other stevedores including the

winchman and the foreman for the account of the ship's owners. Amathus Navigation Co. Ltd., paid the stevedores and debited their principals. This, however, statement which came in cross-examination by counsel for the plaintiffs has been claimed on behalf of defendants 1, that it is of no worth or evidential weight. That it is made by a person with no authority to make admissions binding on the vessel and that the true relationship between the shippers, carriers, stevedores, etc. could be determined only from primary evidence such as the terms upon which that cargo was to be carried and unloaded, hence it was from the relevant bill of lading that it would be showing whether or not the cargo in question was being carried, unloaded on Liner on FIOS terms and the relationship of the vessel or Amathus Navigation Company Ltd. to the plaintiff. In support of their argument I have been referred to the case of *Andreas Mahattou, v. Viceroy Shipping Co. Ltd. and another* (1981) 1 C.L.R. 335 at pp. 341 and 345. In my view, however, this case has no bearing on the present one and from its very facts it is definitely distinquishable.

The statement of this witness is clear. He is employed by Amathus Navigation Co. Ltd. as a ship's clerk and he was at the time acting as an intermediary between the master of the ship and the stevedores, his evidence has not been contradicted and moreover he is a witness called by defendants 1, whose credibility cannot but be taken to have been vouched by them once he was called on their behalf and not asked to be treated as hostile in any way.

On the evidence adduced and as accepted by me I have come to the conclusion that defendants 1 in whose employment the winch operators and the stevedores were at the time of the accident are liable for the negligence of their employees that resulted in the death of Paraskevas Chrysostomou, a stevedore also in their employment at the time.

With regard to the duty of an employer of taking reasonable care to provide proper appliances and maintain them in a proper condition and so to carry on his operations, as not to subject those employed by him to unnecessary risk, I had the opportunity to deal in the case of *Georghiou v. Planet Shipping Co. Ltd.*, (1979) 1 C.L.R. p. 188 at p. 191 where I referred to the cases of *Harris v. Brights Contractors Ltd.*, [1953] 1 All E.R. p. 395 and the case of *Athanassiou v. The Attorney-General of the Republic*

(1969) 1 C.L.R. p. 160, where the relevant principles stated in the *Harris case* (supra) were referred to with approval. I may add that in the present case the defect of the sling was a patent one and could on a mere glance be noticed and discarded from use.

It was such a defect that, the persons for whom defendants 1, as employers were responsible, ought to have known and were in breach of their duty not to subject the deceased to a risk that they could as employers reasonably foresee and against which they could guard by measures, the convenience and expense of which was not entirely disproportionate to the risk involved.

There is abundant evidence that in the condition that that sling was, it was unsafe to be used and that the foreman on seeing its condition should have discarded it and throw it off the ship, as every shipping agency, as stated by Georghios Kantounas (D.W.4) a retired Tug Master in the Government service now a splicer in the service of defendants 2, has a foreman whose duty is to check the condition of the gear and supervise the work for the protection of the life of the people and that a foreman could easily detect its condition.

Having come to this conclusion the question to be resolved is whether defendants 2 are in any way liable either jointly with defendants 1, or severally for this accident. This issue turns on whether the defective sling which was no doubt the cause of the accident was supplied by them or not. The evidence on this point comes from a number of witnesses called by the parties to these proceedings. Panayiotis Sheitanis, (P.W.1) said that the rope slings for the unloading of ships were provided at the time of the accident by defendants 2, but that it was the foreman of the stevedores that hands over the slings for the work of unloading. He was not, however, the one that supplied them; and went on to say that he did not know to whom the slings belonged and what was their origin. What he knew is that they came on a trailer which defendants 2 brought for the purpose of being used for the unloading of that ship. He was not present when the work started to see when and how the slings, in this particular case, were brought, but usually he said they are brought on a trailer and they take them from there. He did not know from which place they got their slings, but what he had seen and known is that the trailers had the identification marks

of defendants 2. In cross-examination he said that he did not know if the slings were supplied by defendants 2 on that date.

It is apparent, from this witness's testimony, that he was speaking of a general practice and not of the happenings on the concrete instance of the unloading of the ship in question.

Michael Kitsiou, (P.W.4) said as we have seen, that the slings were brought from outside, they were not supplied by the ship and they were brought "from trolleys on which the other porters were working on the quay."

George Phinikarides, (D.W.1), said that the slings were supplied by defendants 2 "as normally they are so supplied" and went on to say that:- "from what I know we used to pay for the slings before the 1st December 1975. I cannot say when the practice for paying the Association for the slings started. I am not in a position to remember so as to agree or disagree with you that this practice started in December 1975". He was obviously not in a position to say for sure that on the date of the accident the slings were supplied by defendants 2. He was assuming, as they were "normally so supplied" and he could not say either way if the supply of slings on payment by defendants 2, started only in December 1975 or not.

On the part of defendants 2 we have a more positive evidence. Nicos Asimenos (D.W.6), who has been with defendants 2 for 40 years stated that in August 1975, defendants 2 were not supplying slings to the ships for their unloading. It was on the 1st December 1975 that they made an arrangement with the Shipping Association and they agreed to supply them with gear which includes slings, on payment. He explained what use they made, until then, of the slings they had. When the cargo, he said, was taken to the stores or open yards they were unloading it for inspection by the Customs. If the cargo was in quantities of uniform kind they were placing it in their own slings and storing it for easy delivery to the consignees and for the return of the slings used to the ship for further use for the discharge of other cargo. He stated that on the 1st August 1975 not one sling of their Association was used in the ship in question.

Michalakis Frangos, D.W.3, Managing Director of the Universal Agencies Ltd. importers, inter alia, of ropes, stated

that they supply defendants 2 with ropes for the last ten years. They are made to order with special, three plies green, and red, like exhibit 2. They consist of three strands and each has a ply of green and red. Their diameter is 24 mm. and their circumference 3". They supply other companies with other colours and without coloured plies. With regard to the sling, exhibit 1, he said, it did not bear the identification plies and it was not made of the kind of rope they ever supplied defendants 2.

Alecos Kyriakou, D.W.5, a member of the Committee of Management of defendants 2 since 1977, has been one of their members since 1964 and a splicer since 1965. The ropes, he said, he used for slings had the distinguishing feature of green and red, as exhibit 2, and that they never used ropes without such identification. He further stated that the sling, exhibit 1, does not belong to defendants 2, and that that type of rope belonged either to Mantovani or to Raouf.

Moreover the foreman of Amathus Navigation Co. Ltd., and of course of defendants 1, Kyriakos Herodotou, who could have given positive evidence as to who supplied them the slings, and whose duty was also to examine the slings, as to their fitness for the work for which they were intended and who should have had as part of his duty reasonable opportunity of so examining them, has not been called as a witness nor anybody in a similar position of authority that could have likewise done so. The Court, therefore, has been deprived of a piece of evidence that would have made the matters clearer and more definite.

I have been left therefore to decide the question of the liability, if any, of defendants 2 on the evidence adduced and which I have already outlined and in certain respects commented in the course of dealing with some of the witnesses who testified for the purpose and I have come to the conclusion that there is no evidence reliable and admissible upon which I could conclude that the slings used for the unloading of the ship in question on that day, including the fatal sling, were supplied by defendants 2.

The action therefore against defendants 2 should be dismissed and there remain defendants 1 as totally liable for the negligence of their employees regarding the circumstances that caused the

death of the late Paraskevas Chrysostomou inasmuch as they failed in their duty to provide a safe system of work, safe appliances and a reasonable inspection in respect of them.

Having reached this conclusion I turn now to the question of damages. It has been agreed that the funeral and testamentary expenses amounted to £85.-. The earnings of the deceased at the time of the accident were about £10 per day by 300 days per year which comes to £3,000.- gross. Later, as the uncontested evidence goes, that is in 1977, the earnings of such a stevedore were increased to £12.- per day which makes a yearly gross income of £3,600.- and for the years 1978 - 1979 the earnings were £14.- per day that is a total yearly gross income of £4,200.-.

Damages are normally assessed in relation to the facts existing at the time of the death, yet subsequent events have to be taken into account when they throw light on the realities of the case and hence I have referred to the possible earnings of the deceased from the time of the death to the date of the hearing of this case.

As aptly put in *McGregor on Damages* 14th edition p. 1285 "___ it is permissible to show changes after death in the prevailing state of wages in the deceased's occupation, so that if the change marks an increase this will increase the damages." The ascertainment of the earnings of a victim is not by itself enough. Necessary deductions have to be made which will be done in due course. At this stage it is sufficient to mention that in assessing damages a multiplier is adopted. A number of facts are relevant to the decision for the assessment of the appropriate multiplier in a particular case. One of the most important elements is usually the age and expectation of the working life of the deceased. At the same time one has to consider the expectation of the life of the dependants and in particular where a husband is killed, of his widow. See *Price v. Glynea and Castle Coal Co.*, [1915] 85 L.J.K.B. 1278 at p. 1282 where it was said:

> "___ where a claim is made under Lord Campbell's Act ___ it is not only a question of the expectation of life of the deceased man, but there is also a question of the expectation of life of the claimant ___"

These are not of course all the factors that are taken into consideration. The prospect of remarriage of the widow is also a

relevant one and I must say that considering the age of the widow in the present case being 47 at the time of the accident, are nil.

The multiplier which time and again has been said is used in order to reduce the element of uncertainty and provide an objective basis for the assessment of damages should in my view, and taking into consideration all the circumstances of the case, be ten years. This is consistent with the multiplier I used recently in the case of *Costas Zacharia v. Elmini Lioness incorporated into Piraeus Greece and others* Admiralty Action 512/77 delivered on the 14th May, 1983,* a case also of a stevedore aged 47 who had suffered personal injuries whilst engaged in the unloading of a ship.

Under the heading damages for the benefit of the estate of the deceased under section 34 of the Administration of Estates Law, Cap. 189, which is a replica of the provisions of the Law Reform (Miscellaneous Provisions) Act 1934 ss. 1(2)(c), the amount awarded for loss of expectation of life was in a way conventional and not reasonably a justifiable one, if not in a sense arbitrary. Damages under this head have always been awarded for the happiness which the deceased might expect to have enjoyed in the years of life which was cut short by the events giving rise to the cause of action.

In *Benham v. Gambling* [1941] A.C. p. 175 it was stated that the conventional figure awarded for expectation of life had to be increased from time to time to take account of inflation. In *Gammel v. Wilson & Another* [1980] 2 All E.R. 557, at p. 568 Megaw, L.J. said:

> "..... there has to be a sum assessed for loss of expectation of life, which ought to reflect inflation, although I do not think one can do it slavishly by applying a particular inflation table ..... One has to move, as it were, by steps in awards of this kind. It cannot be a continually fluctuating process; otherwise practitioners cannot assess the value of claims."

The awards of about £300 - £500, were increased to £1,250 sterling in July 1979. In the present case, taking account of the

* Now reported in (1983) 1 C.L.R. 415.

circumstances of the appellant I would award under this head C£1,000.-.

In the case of *Kyriakou Christou and others of Limassol v. Chrysoulla Panayiotou and others*, 20(II) C.L.R. 52, a fatal accident, damages were assessed under two heads. First under the then section 15 of the Civil Wrongs Law, Chapter 9, as amended by Law No. 31 of 1953, for loss of expectation of life and reliance was placed on the case of *Benham v. Gambling* [1941] A.C. p. 175 (a House of Lords case). The damages awarded then were £300.-, to be divided among the persons entitled as heirs under the Wills and Successions Law. These principles were followed and applied by the Courts in awarding damages under section 34 of the Administration of Estates Law, Cap. 189 which substituted section 15.

In *Pickett v. British Rail Engineering Ltd.*, [1979] 1 All E.R. 775, the House of Lords (Lord Russel dissenting) held:

> "Where the plaintiff's life expectancy was diminished as the result of the defendant's negligence, the plaintiff's future earnings were an asset of value of which he had been deprived and which could be assessed in money terms, and were not merely an intangible expectation or prospect to be disregarded in the assessment of damages, since what he had been deprived of was the money over and above that which he would have spent on himself and which he would have been free to dispose of as he wished, and not merely something which was of no value to him if he was not there to use it. Thus, if the plaintiff brought an action in his own lifetime, then, on the assumption that if he was successful his dependants would not in law have a cause of action under the Fatal Accidents Act 1976 after his death, and in accordance with the principle that a plaintiff was entitled to be compensated for the loss of anything having a money value, his loss of future earnings were to be assessed as a separate head of damage and not merely included as an element in the assessment of damages for loss of expectation of life. The damages awarded to a plaintiff whose life expectancy was diminished were therefore to include damages for economic loss resulting from his diminished earning capacity for the whole period of the plaintiff's preaccident expectancy of earning life and not merely the period of his

likely survival. Those damages were to be assessed objectively, disregarding loss of financial expectations which were too remote or unpredictable and speculative, and after deducting the plaintiff's own living expenses which he would have expended during the 'lost years', since they would not have formed part of his estate."

There followed the case of *Gammel v. Wilson and Another* [1980] 2 All E.R. 557, (Megaw L.J., dissenting), held:-

"Where a person died in consequence of a defendant's negligence before he himself could bring a claim for damages or prosecute it to judgment, his estate was entitled to recover damages under s.1 of the 1934 Act for his lost earnings in the lost years, for the recovery of such damages was not excluded by s. 1(2)(c) of the Act. The reference in s.1(2)(c) to damages recoverable by the estate being calculated without reference to 'any loss to (the) estate consequent on (the deceased's) death' was not intended to refer to any loss in respect of which a right to recover damages was already vested in the deceased immediately before his death, but merely to ensure that the damages recovered by the estate were not increased by the inclusion of incidental losses such as the cost of obtaining probate or liability to capital transfer tax. Since the right to recover damages for the lost earnings in the lost years vested in the son immediately before his death, the plaintiff as the administrator of his estate, was entitled to recover such damages for the benefit of the estate".

On appeal the House of Lords, reported as *Gammel v. Wilson and Others, Furness and Another v. B. & S. Massey Ltd.*, [1981] 1 All E.R. at p. 578, after reviewing the previous Case Law and considering the provisions of section 1(2)(c) of the 1934 Act dismissed the appeal on the following grounds:

"(1) On the true construction of s.1(2)(c) of the 1934 Act the restriction on an estate recovering or being deprived of a 'loss or gain to (the) estate' consequent on a person's death applied only to a loss or gain directly consequent on the death and not to a loss or gain resulting from a right to recover damages which vested in the deceased immediately before his death and which then passed to the beneficiaries

of his estate, whether they were his dependants or not. That construction, coupled with the principle that a cause of action for loss of earnings in the lost years vested in the deceased before he died (and in the case of instantaneous death vested in him immediately before he died) meant that the estate was not precluded by s.1(2)(c) from recovering damages for the deceased's loss of eanings during the lost years in a claim under the 1934 Act. Accordingly, even though it produced a result which was neither sensible nor just, the House was constrained to hold that the plaintiffs were entitled to the damages awarded for the lost years despite the fact that those damages far exceeded the amount to which they were entitled under the 1976 Act as dependants.

(2) On the principle that damages for loss of earnings in the lost years should be fair compensation for the loss suffered by the deceased in his lifetime, there was no room for conventional award. Accordingly, the Court was required to make the best estimate it could on the evidence available, which was that the trial judge in each case had done. The awards would therefore not be disturbed."

The relevant provisions of s. 34 of the Administration of Estates Law, Cap. 189, are a verbatim reproduction of the provisions of s.1 of the English Law Reform (Miscellaneous Provisions) Act, 1934.

Our system of law is based on the English system not only on the common law and principles of equity but also on the statute law, some of which are identically reproduced, others are similar and based on the same philosophy. For the sake of uniformity and even since Independence, we have always looked to the caselaw of England and the other Commonwealth countries for guidance and for the sake of the uniform development of the law.

As stated in the case of *Solomos Stylianou v. The Police,* 1962 C.L.R., p.152, at p.171, by Josephides, J.:

"Undoubtedly decisions of the English, Scottish and Irish Courts are not binding upon the Courts of the Republic of Cyprus, though entitled to the highest respect. I am of the view that, as a general rule, our Court should as a matter of

judicial comity follow decisions of the English Courts of Appeal on the construction of a statute, unless we are convinced that those decisions are wrong."

Likewise in the case of *Antonis Mouzouris & Another v. Xylophaghou Plantations Ltd.* (1977) 1 C.L.R., 287, at p. 300, in delivering the judgment of the Court I had this to say:-

"Ground 6 was that the trial Court wrongly assumed that the English cases decided after independence cannot affect the common law applicable in this country and/or amend express statutory or other provisions of Cyprus law. The short answer to this ground, which, rightly, was not pressed, is that the trial Court never assumed that the decisions of the English Courts are binding on our courts. However, they are of great persuasive authority as illustrating the common law, which in theory is not changed by particular decisions. The trial Court simply made a comparative analysis of the situation in England, in view of the fact that the English Rules of Court were the Rules on which our rules were modelled though with occasional changes and various modifications. Therefore reference to the English authorities is useful in construing our legislative provisions whose origin is to be found in the English legal syssem."

In the present case I have no difficulty in adopting respectfully the pronouncements of the House of Lords on identical statutory provisions and accept that in calculating damages under section 34 of the Administration of Estates Law, Cap. 189, a deceased's loss of earnings in the lost years has to be compensated with damages. In that respect for the deceased's loss of earnings in the lost years, i.e. the period of his pre-accident life earning expectancy, the living expenses which have to be deducted from the husband's loss of earnings in the lost years, in assessing the recoverable damages under this section, have to be calculated on the same basis as is used in calculating the family's dependency under section 58 of the Civil Wrongs Law, Cap. 148. It follows, however, that only the husband's own living expenses and not the expenses of maintaining his family can be deducted from his lost earnings in the lost years in assessing the damages under section 34. (See *Benson v. Biggs Wall & Co. Ltd.* [1982] 3 All E.R., 300 a case followed in *Harris v. Empress Motors Ltd.* [1982] 3 All E.R. 306, followed in *Clay v. Pooler* [1982] 3 All E.R. 570).

In the *Gammel* case (House of Lords, supra), Lord Scarman at pp. 593-594 summed up the position with regard to the assessment of damages. I do not intend to reproduce here his whole speech on this issue, but I shall confine myself to the following passage which reads:

> "The problem in these cases, which has troubled the judges since the decision in *Pickett's* case, has been the calculation of the annual loss before applying the multiplier (i.e. the estimated number of lost working years accepted as reasonable in the case). My Lords, the principle has been settled by the speeches in this House of *Pickett's* case. The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at time of death would suggest he was reasonably likely to achieve. Subtle mathematical calculations, based as they must be on events or contingencies of a life which he will not live, are out of place; the judge must make the best estimate based on the known facts and his prospects at time of death. The principle was stated by Lord Wilberforce in *Pickett's* case [1979] 1 All E.R. 774 at 781-782, [1980] A.C. 136 at 150-151:
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> > 'The judgments, further, bring out an important ingredient, which I would accept, namely that the amount to be recovered in respect of earnings in the 'lost' years should be after deduction of an estimated sum to represent the victim's probable living expenses during those years. I think that this is right because the basis, in principle, for recovery lies in the interest which he has in making provision for dependants and others, and this he would do out of his surplus. There is the additional merit of bringing awards under this head into line with what could be recovered under the Fatal Accidents Acts'".

So we have under section 34, of the Administration of Estates Law, Cap. 189, (1) funeral expenses agreed at £85.-, (2) loss of expectation of life, in this case fixed at £1,000.-, (3) loss of future earnings to be quantified in accordance with the *Pickett's case* (supra), making a deduction for the deceased's living expenses over the lost years. The award of loss of future earnings will

frequently be the same as the total value of the dependency under section 58 of the Civil Wrongs Law, Cap. 148 for two reasons (a) the Courts always adopt the same multiplier as that applied to the annual dependency in section 58 of Cap. 148, and (b) the multiplicand will usually be the same because under both sections the calculation is basically net earnings less living expenses and it has been affirmed in a number of cases that the living expenses to be deducted are exactly the same under both sections *White v. London Transport* [1982] 1 All E.R. 419 and *Clay v. Pooler* [1982] 3 All E.R. 570.

However, the multiplicand may in certain circumstances be greater under either section but I need not go into that aspect of the Law as it does not arise on the facts of this case.

On the basis of these well settled principles I shall proceed now to assess the damages recoverable under section 34 of Cap. 189. I must say that there is no concrete evidence as to the mode of life of the deceased nor that of his family. They were displaced persons from Famagusta, they had re-established themselves in Limassol after the occupation by the Turks of their home in Famagusta and they had C£930.- savings. They live in an abandoned Turkish home which they furnished themselves. Since the death of her husband, the wife has started working at Mavropoullos Fruit Packing Store. The three issues of the marriage were Chrysostomos, just under 16 years of age at the time of the death of his father, Christina 13 1/2 and Georghios just over 9 years of age.

I have already dealt with the average earnings of the deceased and taking into consideration these known facts and his prospects at the time of death, which were good considering his age, his health, the nature of his employment and the steady increase in his emoluments, and deducting therefrom his own living expenses for which there is, however, little evidence, I shall proceed to assess the damages recoverable under both heads after making also in a rough way the necessary allowances for income tax deduction on his aforesaid gross earnings. It is unfortunate that the litigants have not found a way to assist me, as they ought to, by clearer and better evidence and so the burden has been left on me, in addition to my other functions as a Judge which I had to perform in this case, to act in a way also as a tax-assessor.

On the evidence before me, I find that for the first two years after the death of the deceased his lost earnings were C£2,000.- per year; for the year 1977 C£2,500.-, for the years 1978-79 C£3,000.- and for the remaining four years, making also an allowance for his prospects at the time of his death, C£3,200.- which makes a total of C£27,800.- to which we have to add another C£1,000.- already awarded to the estate, which I calculate to a total of C£28,800.-.

Since the deceased died intestate, the widow's and the children's damages under section 34 of the Administration of Estates Law, Cap. 189, have to be determined according to the division of the estate on the intestacy. Under the intestacy the widow is entitled to the 1/6, i.e. C£4,800.- and each of the three children to C£8,000.

I turn now to the dependency which I would have normally fixed at £27,800.- as its amount would not be different than that of the damages of the amount assessed for the lost years. (*See Benson* v. *Biggs* (supra).) As we have seen, however, we have as dependants apart from the widow the three children of the deceased which are in law so considered to be until they reach the age of sixteen and to that extent only; the authority for this proposition is the case of *Antonios Nicolaou Antoniou and Another* v. *Gavriel Angelides and Another* (1978) 1 C.L.R. 115 where English authorities on the subject were adopted.

As much as this is unrealistic, bearing in mind the ways of life of Cyprus with so evident the urge for secondary and higher education as well as the dependency of girls on the family for support of their marriage, which realities cannot be ignored, yet, a solution of this problem is a matter of legislative action rather than by changes through judicial interpretation. Whilst on this point of the desirability of the legislative measures to be taken I would like to draw the attention of the appropriate authorities of the Republic that similar action is called for for regulating the Law on the question of damages as it has developed through the new judicial approach. I hope that when they find it opportune to consider the necessary legislation, the Administration of Justice Act, 1982, of the United Kingdom will be looked at as it did come into existence for the purpose of remedying inter alia the situation brought about by the

judicial pronouncements earlier referred to at some length in this judgment.

Although where a deceased dies intestate a defendant has a direct interest in the way in which the award under section 58 is distributed between each dependant because the amount of each dependency will determine after deducting therefrom or setting off the dependant's entitlement under section 34 the amount, if any, payable by the defendant under section 58.

I need not, however, proceed to assess the dependency in respect of each child. This is because any amount that can possibly be awarded to such child is certainly less than what each one will receive under section 34, therefore their amount for dependency is cancelled thereby. The same position, however, cannot exist as regards the widow whose dependency I assess at a thousand pounds multiplied by a multiplier of ten years which gives an amount of £10,000.- which cancels in its turn the £4,800.- received under section 34, so that double recovery, as it should in law, be avoided.

For all the above reasons therefore, there will be judgment for the plaintiffs against defendants 1 for £34,085.- with costs. The claim against defendants 2 is dismissed with costs.

Judgment against defendants 1 *for* £34,085.-. *Claim against defendants* 2 *dismissed. Order for costs as above.*