1984 February 16

[TRIANTAFYLLIDES, P., DEMETRIADES, SAVVIDIS, JJ.]

CHARALAMBOS KASSINOU,
Appellant-Defendant 3,

v.

1. IOANNIS EFSTATHIOU,
2. YIANOULLA THEODOSSIOU, AS ADMINISTRATORS OF THE ESTATE OF THE DECEASED THEODOSIS EFSTATHIOU,
Respondents-Plaintiffs.

3. PANAYIOTIS LOIZOU,
4. ETERIA LEOFORION LINOUS-FLASSOU-PETRAS,
Respondents-Defendants 1 & 2.

(*Civil Appeal No.* 6312).

AND

1. PANAYIOTIS LOIZOU,
2. ETERIA LEOFORION LINOUS-FLASSOU-PETRAS,
Appellants-Defendants 1 & 2,

v.

1. IOANNIS EFSTATHIOU
2. YIANOULLA THEODOSSIOU AS ADMINISTRATORS OF THE ESTATE OF THE DECEASED THEODOSIS EFSTATHIOU,
Respondents-Plaintiffs.

(*Civil Appeal No.* 6313).

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 *—Claim for loss of earnings during the "lost years" survives for the benefit of the estate—Which is entitled under section* 34(2) *of*

Cap. 189 *to recover damages in respect of loss of expectation of life and in respect of loss of earnings during the lost years*—Pickett *v.* British Rail Engineering Ltd. [1979] 1 *All E.R.* 774 *and* Gammell *v.* Wilson and Another [1980] 2 *All E.R.* 557 *adopted—Labourer aged* 43—*Leaving widow and* 4 *minor children—Multiplier and Multiplicand* 11 *years—Use of same multiplier and multiplicand both in respect of loss to the estate and to the dependants correct—Whether multiplicand during period between death and trial should have been average of the income during this period—Prospects of re-marriage of widow and income tax rightly not taken into consideration in assessing the damage since there was no evidence on these issues—Award of* £1000 *for loss of expectation of life,* £18,000 *to the estate for loss of earnings for lost years and* £18,000 *to the dependants for the dependants for their dependency sustained.*

Damages—Fatal accident—Appeal against award of—Approach of Court of Appeal.

Negligence—Road accident—Apportionment of liability—Appeal—Principles on which Court of Appeal intervenes—Collision between bus and motorcar moving in opposite directions—And whilst bus driver was in the process of turning right into a side road—Bus driver not signalling that he would turn—Traffic sign warning of existence of side road—Other driver going at a high speed—Apportionment of liability 75 *per cent on bus driver and* 25 *per cent on other driver upheld.*

Decided cases—Decisions of English Courts—Though not binding reference to such decisions useful in construing legislative provisions which are similar or identical to statutory provisions of the United kingdom.

Theodossis Efstathiou ("the deceased") met with his death as a result of collision between a car driven by appellant-defendant 3 (in appeal 6312) and a bus driven by appellant 1 (in appeal 6313) from the opposite direction. The accident occurred whilst the bus driver was in the process of turning right, from the main road into the side road. The driver of the car, who was doing a high speed applied brakes but a violent collision could not be averted. There was a traffic sign in the area warning the users of the main road of the existence of the cross-road. In an action

by the administrators of the estate of the deceased against both the drivers for damages

(a) For the benefit of the estate of the deceased under section 34 of the Administration of Estates Law, Cap. 189 and,

(b) for the benefit of his dependants under section 58 of the Civil Wrongs Law, Cap. 148, the trial Court, after rejecting the version of the bus driver that he indicated his intention to turn to the right by the lamp trafficator or that he applied his brakes, apportioned 75 per cent of the liability for the accident on the bus driver and 25 per cent on the driver of the car.

The deceased who was aged 43 at the time of his death was married with four children aged 9, 8, 6 and 3 respectively. The widow of the deceased was 35 at the time of the trial.

The trial Court assessed the quantum of damages payable to the estate of the deceased and to his dependants as follows:

"(a) To the estate of the deceased:

(i) Loss of expectation of life, £1,000.-.

(ii) Damages for loss of earnings for lost years calculated on the basis of a multiplier of 11 years, £18,000.-

thus making a total of £19,000.-

(b) To the dependants of the deceased on the basis of a multiplier of 11 years for their dependency, £18,000.-".

The amount of £18,000 which was awarded as dependency was apportioned amongst the beneficiaries as follows:-

£6,000 for the wife,

£2,750 for each of the three other children and

£3,750 for the younger child.

The trial Court concluded that the "amount of damages to which a dependant is entitled under s.58 must be reduced by the benefit which each dependant receives from the estate"; and after holding that the benefit the dependants derive from the estate goes 4/24ths to the widow and 5/24ths to each child;

that the widow is receiving £3,166 in square figures; that the dependency of the children is less than the benefit they derive from the death of their father; and that the benefit of the wife is by £2,834 less, it gave no judgment for dependency for any of the children but gave judgment for the wife for £2,834. In the result judgment was given in favour of the plaintiffs for £21,834.

Upon appeal by both drivers and cross-appeal by the plaintiffs the following issues arose for consideration:

(a) Whether the apportionment of negligence between the appellants was correct.

(b) Whether the award of damages was a proper one.

Regarding (b) above counsel for the appellants contended:

(1) That the amount awarded for loss of expectation of life of the deceased was excessive.

(2) That the award for lost of earnings for lost years was wrong in principle because no such compensation is recoverable under the Law.

(3) That the trial Court was wrong in its assessments in that it failed to take into account the contingencies relevant to life, working ability and earning capacity of the deceased in fixing the multiplier and multiplicand.

(4) That the trial Court failed to take into consideration the amount of the income tax which would have burden the income of the deceased and affect the amount of the dependency.

(5) That in assessing the damages the Court did not take into consideration the prospects of marriage of the wife of the deceased who was one of the dependants.

(6) That the apportionment of the amount awarded in favour of the dependants was not based on any evidence before the Court and that if such amount was equally apportioned between the dependants, then the whole of such amount would have been absorbed by the amount awarded in favour of the estate of the deceased.

The respondents (in Appeal 6313) cross-appealed against the award of damages as being manifestly low.

Held, (1) *with regard to the appeal:*

(1) That apportionment of liability is primarily the task of a trial Court and this Court should not interfere except in an exceptional case when there exists an error in principle or the apportionment is clearly erroneous; that the finding of the trial Court that both drivers were to blame for the accident to the extent found, is warranted by the evidence before it; that this Court is satisfied with such apportionment and the appellant has failed to prove that there was either an error in principle or that such apportionment was clearly erroneous as to justify any interference on the part of this Court; and that, accordingly, the appeal on the issue of apportionment of blame must fail.

(2) That the award of £1000 in respect of loss of expectation of life is neither excessive nor so very low and inadequate as to make this Court intervene in order to increase or reduce it; and that, therefore, the grounds of appeal and cross-appeal which are directed against such findings must fail.

(3) That though decisions of the English, Scottish and Irish Courts are not binding upon the Courts of the Republic of Cyprus, in view of the fact that our system of law is based on the English Common Law and principles of equity and most of our statutory provisions are identical or similar to statutory provisions of the United Kingdom, our Courts look for guidance to the case law of England and other common law countries; that reference to the English authorities is useful in construing our legislative provisions whose origin is to be found in the English legal system; and that, therefore, the trial Court rightly adopted the principles enunciated in the cases of *Pickett* v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774, [1980] A.C. 136 and *Gammell* v. *Wilson and Another* [1980] 2 All E.R. 557 and came to the conclusion that a claim for the "lost years" survives for the benefit of the estate and that the estate of the deceased is entitled under section 34(2)(c) of the Administration of Estates Law, Cap. 189 to recover damages—

(a) in respect of loss of expectation of life and

(b) in respect of loss of earnings during the lost years.

(4) That in the circumstances of the present case the use by the trial Court of a multiplier of 11 years for the death of the

deceased was correct (view of Lord Fraser in *Cookson* v. *Knowels* [1978] 2 All E.R. 604 at p. 614 adopted); that, further, the use by the Court of the same multiplier and multiplicand, both in respect of loss to the estate under section 34(2)(c) of the Administration of Estates Law, Cap. 189 and to the dependents under section 58 of the Civil Wrongs Law, Cap. 148 was correct; that, also, though the multiplicand for the first 3 1/2 years should have been the average of the income of the deceased between the date of death and the date of trial the trial Court was not wrong in assessing the multiplicand as it did in view of the evidence before it.

(5) That in the absence of any evidence that a person in the position of the deceased, bearing in mind his earnings and the fact that he was married and had four minor children depending on him, had a taxable income and if so the extent to which such tax might have affected the multiplicand used by the trial Court in making its assessment, the trial Court rightly ignored this factor.

(6) That Judges' assessments should not be disturbed unless an error can be shown or unless the amount is so grossly excessive or insufficient as to lead to the conclusion that an error must have taken place; that this Court is satisfied that the assessment of damages both in respect of loss of expectation of life, loss of earnings for the lost years and loss to the dependants is correct.

(7) That in the absence of any evidence to the contrary the trial Court rightly did not take into consideration the prospects of re-marriage of the widow.

(8) That it is just and equitable to award an amount of £150 for funeral expenses which the respondents were entitled to recover under section 34(2)(c) of Cap. 189, and was not included in the award, though admitted by defendants, through an obvious oversight.

Held, (II) on the cross-appeal:

That before it interferes with an award of damages this Court should be satisfied that the judge has acted on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage

suffered; that it is not the function of this Court as an appellate Court to substitute its opinion for that of the trial Court; that the trial Court has not erred in its assessment; and that, therefore, the cross-appeal must fail.

Appeals and cross-appeal dismissed

Observations with regard to the need of amending the relevant legislation.

Cases referred to:

Emmanuel and Another v. *Nicolaou and Another* (1977) 1 C.L.R. 15;

Dieti v. *Loizides* (1978) 1 C.L.R. 233;

Stavrou v. *Papadopoullos* (1969) 1 C.L.R. 172 at p. 179;

Constantinou v. *Salachouris* (969) 1 C.L.R. 416 at p. 421;

Christoloudou v. *Menicou and Others* (1966) 1 C.L.R. 17;

Zarpeteas v. *Touloupou and Others* (1975) 1 C.L.R. 454 at pp. 462-463;

British Fame (Owners) v. *McGregor (Owners)* [1943] A.C. 197 at p. 201;

Baker v. *Bolton* [1808] 1 Camp. 493; E.R. 1033;

Admiralty Com'rs v. *S.S. "America"* [1917] A.C. 38;

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

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

Oliver v. *Ashman* [1961] 3 All E.R. 323; [1962] Q.B. 210;

Pickett v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774; [1980] A.C. 136;

Skelton v. *Collins* (1966) 115 C.L.R. 94 at p. 129;

Kandala v. *British Airways Board* [1980] 1 All E.R. 341;

Furness and Another v. *B & S. Massey Ltd.* [1981] 1 All E.R. 578;

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

Papadopoullos v. *Tryfon and Another* (1968) 1 C.L.R. 80;

Kartambis and Others v. *Alfa Shoe Factory and Others* (1968) 1 C.L.R. 209;

Fabrey and Another v. *Demetriou* (1976) 1 C.L.R. 1 at p. 4;

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

Nicolaides Ltd. v. *Nicou* (1981) 1 C.L.R. 225;

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;

Chrysostomou v. *Plovidba* (1983) 1 C.L.R. 596;

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

Benson v. *Biggs* [1982] 3 C.L.R. 300;

Harris v. *Empress Motors Ltd.* (1982) 3 C.L.R. 306;

Cookson v. *Knowels* [1978] 2 All E.R. 604 at p. 614;

Graham v. *Dodds* [1983] 1 W.L.R. 808 at pp. 816, 817;

Davies v. *Powell Duffryn Associated Collieries Ltd.* [1942] 1 All E.R. 657; [1942] A.C. 601;

Buckley v. *John Allen & Ford (Oxford Ltd.)* [1967] 1 All E.R. 539.

Appeals and cross-appeal.

Appeals by defendants 1, 2 and 3 and cross-appeal by plaintiffs against the judgment of the District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.) dated the 12th August, 1981 (Consolidated Actions Nos. 4597/77, 3006/77 and 3879/77) whereby they were adjudged to pay to plaintiffs the sum of £21,834.— damages in respect of the death of Theodossis Efstathiou which occurred due to a traffic accident.

Th. Montis, for the appellant-defendant 3 in Appeal No. 6312.

L. Papaphilippou, for the appellants-defendants 1 and 2 in Appeal 6313.

A Dikigoropoullos, for respondents-plaintiffs in both appeals

Cur adv vult

TRIANTAFYLLIDES P The judgment of the Court will be delivered by Mr. Justice Savvides

SAVVIDES J The appellants have filed the present appeals against the decision of a Full District Court in three consolidated actions (Actions Nos 4597/77, 3006/77 and 3879/77) by which the appellants-defendants 1, 2 and 3 before the trial Court, were found liable for damages caused to the plaintiffs in the said actions and the liability was apportioned at 75 per cent on defendants 1 and 2 (appellants in Appeal No. 6313) and 25 per cent on defendant 3 (appellant in Appeal No. 6312) By the same decision the claim against defendant 4 was dismissed but such part of the decision has not been challenged by either party in the present appeals

Appellant in Appeal 6312 challenges only the conclusion of the trial Court as to the apportionment of negligence, whereas appellants in Appeal 6313 challenge the amount of damages awarded by the trial Court as excessive.

Respondents in Appeal 6313 cross-appealed the award of damages as being manifestly low.

When these appeals came up for hearing, counsel stated that these appeals would be heard in so far as Action 4597/77 is concerned and that the parties in the other two actions will abide by the outcome of these appeals.

The issues which pose for consideration in these appeals, are:

(a) Whether the apportionment of negligence between the appellants is correct.

(b) Whether the award of damages in Action No 4597/77 is a proper one

The plaintiffs in Action 4597/77 brought their action as administrators of the estate of the deceased Theodossis Efstathiou, who met his death whilst a passenger in motor car FQ 576

which came into collision with motor bus THC 070 in the morning of the 23rd May, 1977. Their claim was for damages.

(a) for the benefit of the estate of the deceased under section 34 of the Administration of Estates Law, Cap. 189 and

(b) for the benefit of his dependants under section 58 of the Civil Wrongs Law, Cap. 148.

The action was brought against both the drivers and owners of the two vehicles involved.

The accident occurred early in the morning of the 23rd May, 1977 between the 29th and 30th milestone of the Nicosia-Troodos road. Motor bus THC 070 owned by defendants 2 was driven by defendant 1 uphill with destination the village of Katydata, whereas motorcar No. FQ 576, owned by defendant 4 was driven by defendant 3 downhill from the opposite direction.

According to the findings of the trial Court the width of the asphalted part of the road at the scene of the accident was 18'6" and there were usuable berms almost level with the asphalt 5 ft. wide on the left towards Nicosia and 6 ft. wide on the other side. The road was straight allowing a visibility of 800 ft. between the two vehicles when approaching each other. There was a cross road formed by the main road and an asphalted side road on the left in the direction of Troodos and an earthern road on the right into which the bus driver intended to turn to proceed to his village and for such purpose he took the middle of the road and very slightly turned his bus to the right. The driver of the other car, who was doing a high speed applied brakes but a violent collision could not be averted. There was a traffic sign in the area warning the users of the main road of the existence of the cross road. As to the position of the vehicles at the time of the accident the trial Court found that:

"No-one of the two cars at the material time of the impact was keeping its extreme left side of the road. At the moment the wheels locked and the brake-marks were caused on the asphalt, the small car was more to its left and its offside wheels were only 6 ft. from its left edge of the asphalt, thus it was keeping its left side of the

road having regard to the fact that the overall width o the asphalt is 18' 6". Chief Inspector Zavros stated tha having regard to the effectiveness of the brakes of the sma car, if the brakes were locked, all wheels, the vehicle ough to turn either to the left or to the right. And indeed fro the beginning of the brake-marks upto the point of impac it moved by 3 ft. to the right. The impact happened o the right half moiety of the asphalt in the direction the bu was being driven".

The bus, according to the findings of the trial Court, was i motion at the time of the impact and the version of the bus drive that he indicated his intention to turn to the right by the lam trafficator or that he applied his brakes was rejected by the tri Court.

The bus driver was prosecuted before a criminal Court i connection with this accident for having caused death by wai of precaution and pleaded guilty to the charge.

Bearing in mind such facts the trial Court found that the drive of the motorbus, respondent 1 in Appeal 6312, was guilty o negligence. Then the Court proceeded to examine whether i the light of the facts as found by it the driver of the other ca appellant in Appeal 6312 was also to blame for the accide and concluded as follows:

"He was entitled to precedence. He was keeping his prope side of the road. There is, however, a traffic-sign warnin of the presence of the crossroad. This may be said th warns for the danger of traffic running onto the main roa from the sideroad. Certainly this is not expected from a ordinary, reasonable, prudent driver who observes tl traffic regulations, accords precedence and he does n turn before the road is clear for him to do so and aft indicating his such intention.

It is the duty of a driver to travel at a speed which i reasonable under the circumstances. The speed-limit i the maximum speed. In determining in what is reasonabl however, the nature, condition, and use of the road, th amount of traffic which is actually at the time, or whic might reasonably be expected to be on it are importar

matters to be taken into consideration. It is not, however, the duty of a driver on a highway to slow down whenever approaching a crossroad, otherwise life would become very slow.

In the circumstances of the present case, the driver of the small car could take as a reasonable prudent driver avoiding action. There was ample room on his left".

And the trial Court concluded as follows:

"In all the circumstances of this case and applying the common sense approach and bearing in mind the causative potency and blameworthiness (Miraflores), we apportion liability at 75 per cent and 25 per cent".

It is such finding that appellant in Appeal 6312 is contesting, contending that he is not to blame at all for this accident and that the blame rests entirely on respondent 1.

It has been held time and again by this Court that apportionment of liability is primarily the task of a trial Court and this Court should not interfere except in an exceptional case when there exists an error in principle or the apportionment is clearly erroneous. (see, *Demetrios Emmanuel and another* v. *Andronicos Nicolaou and another* (1977) 1 C.L.R. p. 15, *Maria Dieti* v. *Cleanthis Loizides* (1978) 1 C.L.R. 233, *Stavrou* v. *Papadopoullos* (1969) 1 C.L.R. 172 at p. 179, *Loizos Constantinou* v. *Salachouris* (1969) 1 C.L.R. 416 at p. 421, *Tessi Christodoulou* v. *Nicos Savva Menicou and others* (1966) 1 C.L.R. 17).

In the case of *Pavlos Georghiou Zarpeteas* v. *Demetrios Ioannou Touloupou and others* (1975) 1 C.L.R. 454 which was a case of a collision which occurred while two vehicles were proceeding from opposite directions and while defendant was in the process of overtaking a stationary lorry that blocked his side of the road, the trial Court found that both parties were to blame and apportioned the negligence between the parties at 80 per cent on the defendant and 20 per cent on the plaintiff who was driving on his side of the road. The apportionment was upheld on appeal and the Court has this to say at pp. 462–463:

"It has been said judicially in a number of cases that apportionment of fault is not an easy task for any judge,

but it must be said that the trial judge, who has the benefit of hearing the evidence first hand, enjoys an enormous advantage over any appellate tribunal. It has been established by a long series of decisions, culminating in that of the House of Lords in the *MacGregor*, [1943] A.C. 197, and also in a number of cases of our own Supreme Court. In the *MacGregor* case it was held that 'Where an appellate tribunal accepts the findings of fact of the Court below and its conclusion (as to blame) it should, in the absence of error in law, only revise the distribution of blame in very exceptional cases, as where, for instance, a number of different reasons have been given why one is to blame, but the Appellate Court, on examination, finds some of those reasons not to be valid, or where the judge in distributing blame is shown to have misapprehended a vital fact bearing on the matter".

In the *MacGregor* case (*British Fame* (*owner*) v. *MacGregor* (*owners*)) [1943] A.C. 197 at page 201, Lord Wright in dealing with the powers of an appellate Court to revise the apportionment, had this to say:

"Apportionment is a question of the degree of fault, depending on a trained and expert judgment considering all the circumstances, and it is different in essence from a mere finding of fact in the ordinary sense. It is a question, not of principle or of positive findings of fact or law, but of proportion, of balance and relative emphasis, and of weighing different considerations. It involves an individual choice or discretion, as to which there may well be difference of opinion by different minds. It is for that reason, I think that an appellate Court has been warned against interfering save in very exceptional circumstances, with the judge's apportionment".

In *Maria Dieti* v. *Cleanthis Loizides* (1978) 1 C.L.R. 233, where the plaintiff, a motor-cyclist, who was driving on the lefthand side of the road was injured by a motor car which turned to its right, the finding of the trial Court that the cyclist was not to blame, was reversed by the Court of Appeal which found that the cyclist was also to blame and apportioned the negligence between the parties as being 25 per cent on the plain-

:iff and 75 per cent on the defendant. It was reiterated once again in that case that—

> "We are well aware that the apportionment of liability in a case such as the present one is primarily the task of a trial Court, and this Court should not interfere except in an exceptional case when there exists an error in principle or the apportionment is clearly erroneous".

In the present case the finding of the trial Court that both drivers were to blame for the accident to the extent found, is warranted by the evidence before it. We are satisfied with such apportionment and the appellant has failed to prove that there was either an error in principle or that such apportionment was clearly erroneous as to justify any interference on the part of this Court.

In the result, the appeal on the issue of apportionment of blame fails. This being the only issue in Appeal 6312, the appeal is dismissed with costs in favour of respondents-defendants 1 and 2 against the appellant-defendant 3. We make no order as to the costs of respondents-plaintiffs as their counsel in arguing their case joined front with the appellant contesting such apportionment.

Having disposed of the subject matter of Appeal 6312, we come next to consider the issues in Appeal 6313 and the cross-appeal thereto, which touch the extent of the damages awarded.

The trial Court in its judgment after having embarked at some length in a meticulous way on the principles of assessment of damages as emanating from the English case law and decided cases of this Court on the subject, assessed the quantum of damages payable to the estate of the deceased and to his dependants as follows:

(a) To the estate of the deceased:

(i) Loss of expectation of life, £1,000.-.

(ii) Damages for loss of earnings for lost years calculated on the basis of a multiplier of 11 years, £18,000.-

thus making a total of £19,000.-.

(b) To the dependants of the deceased on the basis of a multiplier of 11 years for their dependency, £18,000.-.

And the judgment concluded as follows:

"The amount of damages to which a dependant is entitled under s. 58 must be reduced by the benefit which each dependant receives from the estate. Before doing so, we have, as the Law provides, to apportion the amount of dependency among the beneficiaries. After making such apportionment, then we have to deduct from the sum each dependent is entitled in his capacity as dependant any sum to which such dependant is entitled as heir from the amount awarded for the benefit of the estate. We apportion this amount at £6,000.- for the wife, £2,750. for son Michalakis, £2.750.- for son Christakis, £2,750. for son Panayiotis and £3,750 for daughter Dora.

The benefit they derive from the estate goes 4/24ths to the widow and 5/24ths to each child. The widow is receiving £3,166.- in square figures. The dependency of the children is less than the benefit they derive from the death of their father. The benefit of the wife is by £2,834. less. Therefore, no judgment for dependency will be given for any of the children, but judgment will be given for the wife for £2,834.-."

In the result judgment was given in favour of the plaintiffs for £21,834.-.

Defendants 1 and 2, appellants in Appeal 6213 filed their appeal contesting such award and contending that:

"(1) The assessment of damages is erroneous in law and in fact, in that:

(a) The trial Court failed to consider the dependency of each dependant separately but instead based itself on the erroneous basis that all dependants would have benefited from the earnings of the deceased for the same period of time independently of their respective ages and contingencies.

(b) The trial Court erred in the calculation of the earnings of the deceased. Also the trial Court erred in the calculation of the amount which the deceased would have paid for his dependants during the lost years.

(c) The trial Court erred in fixing the multiplier at 11 years.

(d) The trial Court erroneously failed to take into account the contingencies relating to the life, working ability, and earning capacity of the deceased in fixing the multiplier and multiplicand.

(e) The trial Court failed to take into consideration the amount of the income tax which would burden the income of the deceased and affect the amount of dependency.

(f) The trial Court failed to take into consideration the contingencies in the lives of the dependants of the deceased.

(g) The trial Court erred in law and in fact in not making a reduction and/or discount for a reasonable interest which will be earned on the amount for the lost years which is payable in advance.

(h) Further the damages awarded are manifestly excessive and/or violate all principles governing the award of compensation and/or the award of damages is in law and in fact erroneous.

2. The findings of the trial Court in respect of the earnings of the deceased and the loss of the dependants both prior and after the hearing of the action No. 4597/77 are against the weight of evidence.

3. The trial Court was erroneous to assess the loss of the estate of the deceased at £1000, a sum which is excessively high in this case. This amount is overlapping and/or constitutes an overcompensation in so much as the Court awarded to the estate a lump sum equal to the amount which the deceased would have saved for his dependants during the lost years.

4. The award of £2834 to the widow of the deceased is overlapping and/or it constitutes an overcompensation or double or extra compensation and/or unreasonable compensation.

The decision in *Gammell* v. *Wilson* [1981] 1 All E.R. 578 ought not to be followed or applied in this case".

Plaintiffs, respondents 1 and 2 in Appeal 6313 considered themselves dissatisfied by such award and filed a notice of cross-appeal alleging:

"1. That the assessment of the said deceased's personal expenses was not warranted either by the evidence adduced or the facts found by the trial Court.

2. Taking into consideration the health and age of the deceased, his mode of life, his future prospects, and the multiplier accepted by other Courts for person in similar circumstances, the Court's acceptance of 11 years as the proper multiplier was wholly erroneous and ought to be set aside".

As we have already mentioned plaintiffs' claim as administrators of the deceased was twofold. They claimed damages

(a) For the benefit of the estate of the deceased under section 34 of the Administration of Estates Law, Cap 189.

(b) For the benefit of the dependants under section 58 of the Civil Wrongs Law, Cap. 148.

The fact that the dependants of a deceased person are entitled to claim damages from a wrongdoer to the extent of their dependency under the provisions of section 58 of Cap. 148 has not been contested by the appellants. On the other hand concerning the award for the benefit of the estate of the deceased, the amount awarded for loss of expectation of life of the deceased was challenged as excessive and the award for loss of earnings for lost years was challenged as being wrong in principle on the ground that no such compensation is recoverable under the law.

It was the basic maxim under the common law that "actio personalis moritur cum persona" the effect of which subject to very limited exceptions was that no right of action existed for the negligently caused death of a human being. That doctrine, first enunciated in England in *Baker* v. *Bolton* (1808), 1 Camp. 493, 170 E.R. 1033, and eventually approved by the House of Lords in *Admiralty Com'rs* v. *S.S. "America"*, [1917] A.C. 38, was accepted and followed throughout the common

law world. But as society grew more industrialized and the number of fatal accidents increased, the harshness of the notion that the family of a person tortiously killed was entirely without remedy became repugnant. This led to reform in 1846 with the passage of Lord Campbell's Act, 1846 (U.K.), c. 93 (repealed by 1976 (U.K.), c. 30). This statute, which became the model for wrongful death statutes elsewhere, recognized the claims of the living by according a limited measure of protection to the interests of dependants in the continued life of certain close relatives. It provided designated surviving relatives with a right of action to recover the damages sustained by them as a result of the death, provided the deceased, had he lived, would have had a cause of action for the wrongfully inflicted injury.

Beyond the scope, however, of affording a protection to the dependants of the deceased, compensation for a pecuniary loss to the estate of a deceased potential plaintiff whose death was caused as a result of the wrongful act of another was not recoverable till the enactment in England of the Law Reform (Miscellaneous Provisions) Act, 1934, whereby provision was made that on the death of any person after the commencement of the Act all causes of action, with the exception of those set out in subsection (1) of section 1, subsisting against, or vested in him, should survive against, or, as the case may be, for the benefit of his estate. Under subsection (2) of section 1 the following is provided:

"(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person:

(a)

(b)

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included".

Such provision corresponds verbatim to the provision of subsection (2) of section 34 of our Administration of Estates Law, Cap. 189. Till 1978 section 1(2)(c) of the Law Reform

(Miscellaneous Provisions) Act, 1934 was construed by the English Court to exclude as an item for damages, the prospective earnings which a person might have earned in future, but which were lost as a result of death which had been caused by the act or omission of another. Such loss came to be known as loss of earnings during the "lost years" and a line of authorities had established that such loss was not recoverable. Under this section, however, an item for loss of expectation of life representing 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, had been recognised as an item in respect of which damages could be calculated and survive for the benefit of the estate of the deceased person. Such award was a conventional, speculative and arbitrary amount for such loss which was a fixed amount without proper calculation or reasoning as to its assessment. In *Benham* v. *Gambling* [1941] A.C. 175 it was stated that the conventional figure awarded for loss of expectation of life had to be increased from time to time to take account of inflation. The awards in this respect were ranging from £300 to £500 increased to £1250 (Sterling Pounds) in 1979. In *Gammell* v. *Wilson and another* [1980] 2 All E.R. 557 at p. 568, Megaw L.J. in dealing with this type of award, had this to say:

> " 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 position regarding "lost years" seemed to have been settled after the decision in *Oliver* v. *Ashman* [1961] 3 All E.R. 323, [1962] Q.B. 210. There, the Court of Appeal held that for a living plaintiff earnings lost during the "lost years" were not recoverable as an additional item of damages. The reasoning behind this decision was summarised by Willmer, L.J. at p. 338:

> "Even apart from authority, I should arrive at the same conclusion as a matter of principle. The prospective earnings which a person might have earned during a period

when ex hypothesi he will already be dead strike me as far too speculative to be capable of assessment by any court of law. Nor do I think that that would be a relevant inquiry. For what has been lost by the person assumed to be dead is the opportunity to enjoy what he would have earned, whether by spending it or saving it. Earnings themselves strike me as being of no significance without reference to the way in which they are used. To inquire what would have been the value to a person in the position of this plaintiff of any earnings which he might have made after the date when ex hypothesi he will be dead strikes me as a hopeless task. All that one can say is that he has lost the opportunity of enjoying what he would have earned during the remainder of his normal expectation of life; and this, as it seems to me, is merely one of the factors to be considered in making what I may call a *Benham* v. *Gambling* award of damages for loss of expectation of life".

to which Holroyd Pearce, L.J., had this to say at p. 332:

"Although, however, there is no distinction between damages for loss of expectation of life awarded to a living plaintiff and those awarded to the executors of a dead man, yet in the former case the plaintiff can in addition to damages for loss of expectation of life obtain substantial damages for the constant pain and disappointment of knowing that his life has been shortened".

and Pearson, L.J., at p. 341:

"In my view the conclusion, shortly stated, is that the conventional sum in the region of £200 which is to be awarded for loss of expectation of life should be regarded as covering all the elements of it—e.g., joys and sorrows, work and leisure, earning and spending or saving money, marriage and parenthood and providing for dependants—and should be regarded as excluding any additional assessment for any of those elements".

Such position remained unchanged till 1978 when the decision of the House of Lords in *Pickett* v. *British Rail Engineering Ltd.* [1979] 1 All E.R. 774, [1980] A.C. 136, triggered a new concept on the question of earnings lost during the "lost years".

The plaintiff in *Pickett's* case was a man of 51 with a wife and two children. Because he contracted mesothelioma, of the lung, as a result of the defendant's negligence, his working life was reduced from 14 years to one year. The question was whether he could claim damages in respect of what he would have earned had he not had his life expectation reduced after that year was up. In July, 1975 he brought an action against the defendant claiming damages for personal injuries. The defendant admitted liability but contested the issue of quantum of damages. At the trial, in October, 1976, the evidence was that had the plaintiff not contracted the disease he could have continued to work until he was 65 and that his expectation of life had been reduced to one year. The Judge awarded him £7,000 general damages for pain and suffering and loss of amenities and £500 for loss of expectation of life. The plaintiff appealed but died before the hearing of the appeal. His widow as administratrix of his estate, carried on the proceedings. The Court of Appeal increased the award of general damages but left undistrubed the award for loss of future earnings holding that damages in respect of loss of earnings beyond the period of likely survival were not recoverable. There was an appeal and cross-appeal to the House of Lords in which it was held (Lord Russel of Kilowen dissenting) that an injured plaintiff was entitled to recover damages for loss of earnings during the lost years but that those damages should be computed after deduction of his probable living expenses during that period. By such decision the House of Lords overrulled *Oliver* v. *Ashman* and all previous authorities on the question that damages in respect of a claim for "lost years" was not recoverable and earmarked a new era on the question of award of damages. The consideration which influenced their Lordships' mind in the *Pickett* case was that a plaintiff's ability to earn money in the future has a money value and that the law should compensate him for the loss of anything that has a money value. In that case it was 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 an as element in the assessment of damages for loss of expect-action 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 pre-accident expectancy of earning life and not merely the period of his likely survival. Those damages were to be assessed objectively, disregarding loss of financial expecations 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".

Lord Wilberforce in expressing his opinion had this to say at page 781:

"The interest which such a man has in the earning he might hope to make over a normal life, if not saleable in a market, has a value which can be assessed. A man who receives that assessed value would surely consider and be considered as compensated; a man denied it would not".

and further down at the same page—

"There will remain some difficulties. In cases, probably the normal, where a man's actual dependants coincide with those for whom he provides out of the damages he receives, whatever they obtain by inheritance will simply be set off against their own claim. If on the other hand this coincidence is lacking, there might be duplication of recovery. To that extent injustice may be caused to the wrongdoer. But if there is a choice between taking a

view of the law which mitigates a clear and recognised injustice in cases of normal occurrence, at the cost of the possibility in fewer cases of excess payments being made, or leaving the law as it is, I think that our duty is clear. We should carry the judicial process of seeking a just principle as far as we can, confident that a wise legislator will correct resultant anomalies".

And Lord Salmon (at page 782) expressed the opinion that there is no reason based either on justice or logic for supporting the view that the estate of such person is entitled to no damages in respect of the money he has been deprived from earning during the "lost years". Lord Salmon was reinforced in his opinion by the judgment of the High Court of Australia on appeal from the Supreme Court of Western Australia in the case of *Skelton* v. *Collins* (1966) 115 C.L.R. 94 and in particular the judgment of Windeyer, J., at p. 129, as follows:

"The next rule that, as I see the matter, flows from the principle of compensation is that anything having a money value which the plaintiff has lost should be made good in money. This applies to the element in damages for personal injuries which is commonly called 'loss of earnings'. The destruction or diminution of a man's capacity to earn money can be made good in money. It can be measured by having regard to the money that he might have been able to earn had the capacity not been destroyed or diminished ..... what is to be compensated for is the destruction or diminution of something having a monetary equivalent .... .. I cannot see that damages that flow from the destruction or diminution of his capacity (to earn money) are any the less when the period during which the capacity might have been exercised is curtailed because the tort cut short his expected span of life. We should not, I think, follow the English decisions in which in assessing the loss of earnings the 'lost years' are not taken into account".

In that case it was held that in assessing damages for loss of earning capacity where a plaintiff's expectation of life has been shortened as a result of his injuries, regard should be had to the probable length of his working life had he not been injured and not merely to the probable period left to him as a result of his injuries.

In the *Skelton* case, Windeyer, J., in dealing with the conventional sum awarded for loss of expectation of life, at page 130, expressed his opposition to such practice as follows:

> "Still less can I grasp the idea that a man's life is a possession of his that can be valued in money. This must be for many people repugnant to opinions, sometimes half felt sometimes deeply held, about the meaning of life and death, duty and destiny. And for others, loss attached or persuaded in their opinions, it must be unacceptable simply because more easily money are essentially incommensurable. And the idea does not become more easily acceptable when the measure of the worth of life is said to be a balance of happiness over unhappiness. In some of the judgments and articles that I have read the postulated inquiry seems to depend upon some doctrine of Epicurean hedonism, in others upon a conviction that tribulation endured does not deprive life of value. The differing views have been eloquently expressed. But for myself I doubt the relevance to the present question of any particular philosophy. For the question is not, I think, Is life a boom?--but, Are the years of life that a man expects something that belongs to him, the loss of which can be measured in money?"

and at p. 121 in the same case, Taylor, J., said:

> "For the reasons I have given I find myself forced to the conclusion that the recognition which has been accorded to the right of an injured plaintiff to recover damages for 'the loss of a measure of prospective happiness' in no way operates to displace or destroy his right to recover damages for economic loss resulting from his diminished earning capacity. Accordingly in my view damages in the present case should have been assessed under this head having regard to the plaintiff's pre-accident expectancy and not only to the expectancy of life remaining to him after the receipt of his injuries. Any assessment should, of course, take into account the vicissitudes and uncertainties of life and also the fact that if the plaintiff has survived for the full period it would have been necessary for him to maintain himself out of his earning and, no doubt, his expenditure on his own maintenance would have increased as his earnings increased".

The position in Australia concerning the recovery of damages for non-pecuniary loss, varies from State to State and in some States the legislation allows the recovery of damages for non-pecuniary loss. The following comments appear in Luntz Assessment of Damages for Personal Injury and Death 1974 where the learned author had this to say at page 256, para. 9.105:

> "It is submitted that the legislation allowing the recovery of damages for non-pecuniary loss is unjustifiable and should be amended to bring it into line with the other jurisdictions in Australia. Once the plaintiff is dead no money can compensate him for the pain and suffering he has undergone and the damages merely constitute a windfall for the beneficiaries of his estate".

The decision in the *Pickett* case was criticised, and the arguments against it and in favour of retaining the rule in *Oliver v. Ashman* were several. First, that there is the philosophical point that it is difficult to justify compensating a person for that of which he will never feel the loss. It is no answer to this to say that that loss has a money value, because this begs the question whether money can ever be of value to one who cannot spend it. Secondly, descending to concrete cases, there is the young bachelor who is negligently killed leaving neither dependants nor relatives. According to *Pickett's* case it is admitted by Lord Scarman that he, his legatees or even conceivably the crown (if his estate should go as bons vacantia) will gain an entirely undeserved windfall. The assurance that this will not happen often is hardly relevant to the point of principle. Thirdly, there is the case of the young heir who would undoubtedly have come into the family property at, say, 30. It is admitted by Lord Scarman that if he is prevented from reaching that age he will be able to claim damages for the loss of the prospect of that inheritance. Now this is an expectation which few would say should be subsidised by the motoring public and others. Lastly, where is the general point that the principle of full compensation or even of increased compensation in individual cases, is not an unmixed blessing. As Atiyah points out (see 'Accidents, Compensation and the Law', p.177) one defect of the present system of compensation for accidents is that the funds available are already unevenly spread among different classes of claimants. Now, since what goes into one victim's pockets must come out of another's, one ought to look

carefully at any proposal to increase the already generous compensation provided by tort damages (see Solicitors Journal 1979 Vol. 123).

Allowing damages for a living plaintiff for the "lost years" led the Courts in England to conclude that such damage may be awarded to a deceased person's estate in a claim under s. 1 of the Law Reform (Miscellaneous Provisions) Act 1934. Thus in *Kandalla* v. *British Airways Board* [1980] 1 All E.R. 341, it was held that the terms of s. 1(2) (c) do not prevent the estate from recovering damages for the "lost years". In that case the parents of two daughters killed in an air-crush claimed damages both under the Fatal Accidents Acts, 1846 - 1959 as dependants of the estate and under the Law Reform (Miscellaneous Provisions) Act, 1934 on behalf of the estate of the deceased. It was submitted to the Court that *Pickett's case* is an authority dealing with the claim of a living plaintiff and, therefore, the Court was free to refuse to make an award for the "lost years" in a claim brought on behalf of the estate. Griffiths Justice in construing section 1(2)(c) of the 1934 Act, had this to say at page 351:

> "I do not find this section easy to construe. If given its literal meaning it would exclude all damages recovered by the estate, for they are all a gain to the estate consequent on the death of the deceased, but, as Lord Atkin said, such a construction would be absurd. If damages for loss of expectation of life, which are an attempt to put a money value on the years of life that have been lost, are not a gain to the estate consequent on death within the meaning of the subsection (for which we have the authority of *Rose* v. *Ford*), why should the lost earnings during those same years be a gain consequent on the death?
>
> It is interesting to observe that this subsection is not referred to in any of the speeches in *Pickett* v. *British Rail Engineering Ltd.* and if the defendants' construction is correct the question of double recovery discussed in those speeches cannot arise, for the claim for the 'lost years' will be excluded from claims made on behalf of the estate. Furthermore the Law Commission recommended that the rule in *Oliver* v. *Ashman* should be reversed so that a living plaintiff could recover for the 'lost years', but recognised that this would result in the claim for the 'lost years' sur-

viving for the benefit of the estate with the result that a defendant would be paying damages twice over to the dependants under the Fatal Accidents Acts and to the beneficiary under the will. Accordingly they recommended that legislation should provide that claims for damages for the lost period should not survive to the estate: see also the passages to the like effect in the speech of Lord Scarman in *Pickett* v. *British Rail Engineering Ltd.* I am unwilling to believe that their Lordships and the Law Commissioners failed to perceive that the simple solution to the dilemma of double recovery lay in the provisions of s. 1(2)(c)."

Finally, the matter came up for consideration by the Court of Appeal in *Gammell* v. *Wilson and another* [1980] 2 All E.R. 557 where it was held (Megaw L.J. dissenting) that -

"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."

The decision of the Court of Appeal came before the House of Lords where it was heard together with an appeal in *Furness* v. *B & S Massey Ltd.* as both cases raised the same question of law. In the *Gammell* case the plaintiffs were the parents of a boy aged 15 who was killed as a result of negligent driving by the first defendant of a lorry owned by the second defendant and in the *Furness* case the plaintiffs were the parents of a young unmarried

man, aged 22, who was killed at work. The claim of the plaintiffs in both cases was for their benefit as dependants and under the Law Reform Act for the benefit of the estate of the deceased. The House of Lords dismissed the appeals of the defendants 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 resulting from a right to recover damages which vested in the deceased immediately before his death and which then passed to the beneficiaries of the 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 earnings 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." (*Gammell v. Wilson and others, Furness and another v. B. & S. Massey Ltd* [1981] 1 All E.R. 578).

The decision of the House of Lords in the *Gammell* and *Furness* cases was in its turn also criticised in the same way as *Pickett's* case on several respects and commented as having brought about unfortunate results.

The fact that the situation created as a result of the decisions in the *Pickett* and the *Gammell* cases was considered as un-

satisfactory and that it was high time that the matters should be regulated by legislation is evident by the dicta of the Judges in the *Gammell* case. Lord Diplock in his judgment at page 583 said:

"Where Parliament has intervened by passing the Fatal Accidents Acts, the law relating to damages for death recoverable by dependants is sensible and just with the possible exception of the case of widows who have remarried or become engaged to do so by the time the action is heard. I join with your Lordships in thinking that it is too late for anything short of legislation to bring the like sense and justice to the law relating to damages for death recoverable by the estate of the deceased."

Lord Russel at page 590 said:

"My Lords, I regret these decisions. I think that the law has gone astray by excessive refinement of theory. I would welcome legislation which overruled in the future the results of the decision in *Pickett*, and its extension in cases such as the present, which since *Pickett* has led to almost grotesque embodiment of estimates, or rather guesses. That might be combined with legislation which in some way prevented respondents being barred from a Fatal Accidents Act claim by the fact that the deceased pursued his claim to judgment."

Lord Scarman at p. 592 had this to say:

"This element of advantage gained by beneficiaries of the estate who are not dependants of the deceased has been described by judges, and others, as a 'windfall'. It arises because the estate's claim is additional to, and not in derogation of, the rights of the dependants. If, which many believe, it is a mischief which should be removed from our law, legislation will be needed. A model is to hand in the Damages (Scotland) Act 1976, which recognises the right of a living pursuer to damages for the lost years but refuses it to the estate of one who has died before suing his claim to judgment: see ss.2(3) and 9."

And at page 595:

"The logical, but socially unattractive, way of reforming the law would be to repeal the Fatal Accidents Act, now that the

rule actio personalis moritur cum persona has itself belatedly perished. This would leave recovery to the estate; and the dependants would look, as in a family where the bread-winner is not tortiously killed, to him (or her) for their support during life and on death. They would have the final safeguard of the Inheritance (Provision for Family and Dependants) Act 1975. But the protection of the fatal accidents legislation has been with us for so long that I doubt whether its repeal would be welcomed. If, therefore, the law is anomalous (and it certainly bears hardly on insurers and ultimately the premium-paying public), the way forward would appear to be that adopted by Parliament for Scotland. The Damages (Scotland) Act 1976 appears to work well; and the Royal Commission on Civil Lability and Compensation for Personal Injury (Cmmd 7054-I, ch 12, para 437) recommends its adoption in English law. The denial of damages to the estate, but not to a living plaintiff, is the denial of a right vested in the estate; but social and financial circumstances, as well as the legal situation, of which the Fatal Accidents Act is now an integral part, suggest that, though illogical, this is the reform which is needed."

In Scotland, a solution to the problem has been attempted by legislation (the Damages (Scotland) Act 1976) which recognises the right of a living plaintiff to damages for the "lost years" but refuses it to one who has died before suing his claim to judgment.

Recommendations for legislative change in England appear in the Report of the Law Commission on Personal Injury Litigation - Assessment of Damages (Law Com No. 56, (July 24, 1973), HC Paper 373). As a result of the decisions in the *Pickett* and in the *Gammell* cases and the debate in the House of Commons in November, 1978 of the *Pearson Report on Compensation for Personal Injury* 1978 the matter has been finally regulated in England by the enactment of the Administration of Justice Act, 1982.

In Cyprus, damages for loss to the estate and for loss to the dependants were governed by the provisions of the old Civil Wrongs Law, Cap. 9 (1949 Edition) and in particular section 15 and section 53 respectively. Section 15 was repealed and sub-

stituted by section 34 of the Administration of Estates Law (Law No. 43/54 now Cap. 189) which as already mentioned, has incorporated the provisions of the English Law Reform (Miscellaneous Provisions) Act 1934 The Courts in Cyprus, which till 1960, was a British Colony, were bound, before its Independence, to abide by the decisions of the superior Courts in England on similar issues. Thus in *Kyriacou Christou and others* v *Chrysoulla Panayiotou and others*, Vol 20 (Part Two) C.L.R (the first reported case on the matter, decided in 1955) where the plaintiff sued for compensation for loss of expectation of life under section 15 of the Civil Wrongs Law (old Chapter 9) and under section 53 of the same law for the pecuniary loss suffered by them from the death as dependants, the Supreme Court held that.

> "In assessing compensation under section 15 the decision in *Benham* v. *Gambling* [1941] A.C. 175 and under section 53 the decision in *Rose* v *Ford* [1937] A C. 826 applied "

The amount of damages awarded, in the above case, for loss of expectation of life for each one of the two deceased was £300.- Such conventional amount was increased since 1955 and the Courts have been inclined to award higher amounts following in this respect the practice of the Courts in England. Thus, in 1968 the award in this respect went up to £500. (See *Yiannis Thoma Papadopoullos* v *Yiannoula Gregori Tryfon and another* (1968) 1 C.L.R. 80 and *Savvas Kartambis and others* v *Alfa Shoe Factory and others* (1968) 1 C L.R. 209. In 1976 a similar award of £500 was approved by the Supreme Court in the case of *Rene Fabrey and another* v *Niovi Demetriou as Administratrix of the estate of the deceased Angelos Demetriou* (1976) 1 C.L.R. 1 in which Triantafyllides, P. had this to say at page 4:

> "Furthermore, the amount of £500 general damages is, in our opinion, within the normal brackets of awards made in circumstances such as those of this case and thus, we cannot treat it as being so very low and inadequate as to make us intervene in order to increase it on appeal."

In *Antoniou and another* v. *Angelides and another* (1978) 1 C.L.R. p 115, an award of £750.- for loss of expectation of life was approved by the Supreme Court on appeal. A similar

award of £750.- was also approved in *Nicolaides Ltd.* v. *Nicou* (1981) 1 C.L.R. 225.

Since the Independence of Cyprus, though the decisions of the English, Scottish and Irish Courts are not binding upon the Courts of the Republic of Cyprus, nevertheless in view of the fact that our system of law is based on the English Common Law and principles of equity and most of our statutory provisions are identical or similar to statutory provisions of the United Kingdom, our Courts look for guidance to the case law of England and other common law countries. In *Solomos Stylianou* v. *The Police*, 1962 C.L.R. 152 at p. 171, Josephides, J. had this to say in this respect:

> "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 Courts should as a matter of judicial unity follow decisions of the English Courts of Appeal on the construction of a statute, unless we are convinced that those decisions are wrong."

In the case of *Antonis Mouzouris and Another* v. *Xylophaghou Plantations Ltd.* (1977) 1 C.L.R. 287, A. Loizou, in delivering the judgment of the Supreme Court on appeal from the District Court, said at page 300 -

> "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 system."

In a very recent case, *Chrysostomou* v. *Plovidba* (1983) 1 C.L.R. 596, in which the Admiralty jurisdiction of this Court was invoked in an action by the administrators of the estate of deceased stevedore, who met his death as a result of the negligence of the defendants, and in which they claimed 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 the Court following the decision in the *Gammell* case, awarded for loss of expectation of life £1,000.- for loss of future earnings for "lost years" £27,800.- and for loss to the dependants £27,800.-. The dependants, who were at the same time the only heirs of the deceased, were the wife of the deceased and three children the one just under 16, the second 13 1/2 and the third 9 years old. The deceased was 58 years old and the Court in making its assessment accepted as a multiplier a period of ten years. In assessing the dependency, A. Loizou, J., had this to say at page 618:

> "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 recover, as it should in law, be avoided."

In explaining the reasons for following the decisions in the *Pickett* and the *Gammell* cases he said the following at page 613:

> "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 case law of England and the other Commonwealth countries for guidance and for the sake of the uniform development of the law."

And at page 614:

> "In the present case I have no difficulty in adopting re-

spectfully 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."

Bearing in mind the above exposition of the law and in the light of the authorities cited we have come to the conclusion that the trial Court rightly adopted the principles enunciated in the cases of *Pickett* and *Gammell* and came to the conclusion that the estate of the deceased is entitled under section 34(2)(c) of the Administration of Estates Law, Cap. 189 to recover damages -

(a) in respect of loss of expectation of life and

(b) in respect of loss of earnings during the lost years.

Furthermore, we find that the award of £1,000 in respect of loss of expectation of life is neither excessive, nor so very low and inadequate as to make us intervene in order to increase or reduce it. Therefore, the grounds of appeal and cross-appeal which are directed against such findings, fail.

Having dealt with the above issues, we come next to consider whether the quantum of damages awarded in this case both in respect of loss of earnings during the "lost years" and in favour of the dependants of the deceased, is reasonable.

The trial Court relying on the evidence before it, found that the earnings of the deceased from his employment at the time of his death were £1,306 yearly (£0.591 mils per hour, x 42 1/2 hours a week x 52 weeks) and on 1st January, 1981, 3 1/2 years later, £2,660.- yearly (£1.279 mils per hour x 40 hours a week x 52 weeks). The reason that the Court split up the period in respect of the lost years into two is obviously in view of the evidence of P.W.4 the Senior Water Engineer in the Water Development Department where the deceased was employed till the time of his death, who was called by the plaintiffs and gave evidence as to the emoluments of the deceased at the time of his death and as on 1.1.1981 shortly before the trial. To such figures the Court added in respect of overtime and extra work of the deceased for the first 3 1/2 years £594.- yearly, thus raising his

annual emoluments to £1,900 and for the remaining 7 1/2 years as from 1.1.1981, £240 yearly thus raising his annual emoluments to £2,900.-. In making the assessment for the lost years, the trial Court concluded as follows:

"On the totality of the evidence before us we find that the deceased's earnings at the time of his death were £1,900.- per annum and at the time of the trial they would have been £2,900.-.

He was a married man, with four children, aged 9, 8, 6, and 3 respectively. They were living in a house owned by his wife. He was keeping £10.- per month as pocket money. He was incurring £1.500 mils as transport expenses from and to his place of employment. He was in need of clothes and shoes. Having regard to his standard of living, his earnings, his occupation and his family, though there is no particular evidence before us, we assess these needs at £5.- per month at the time of his death. He had other needs, including food, which have to be satisfied. We assess all the expenses for himself at £60.- per month, i.e. £720.- per annum at the time of his death.

At the time of the trial his earnings, including overtime and extras, would have been £2,900.-. His needs, having regard to the increased earnings and the intervening inflation, which cannot be disregarded, would rise to an amount of £1,100.- per annum.

He had prospects of promotion. We shall make a small allowance of £100.- per annum for these prospects of promotion accompanied by increase of earnings. His such elevation would have entailed more personal expenses and half of these £100.- would be spent by him.

Making the necessary calculations, we assess the damages for loss of earnings for lost years at £1,180.- for the first 3 1/2 years and £1,850.- for the remaining years.

On the whole we think that in this case the proper multiplier is 11 years, making the necessary calculations at £1,180.- per annum for the first 3 1/2 years and £1,850.- per annum for the remaining 7 1/2 years, the total amount

of damages the estate is entitled to under this head is £18,000.- in square figures."

On the question of damages to the dependants of the deceased, the trial Court concluded that the figures for the earnings for the "lost years" multiplicand and multiplier were the proper amounts and years of purchase of dependency, and assessed such dependency at £18,000.-.

Counsel for the applicants contested the above findings of the trial Court concerning -

(a) the calculation of the earnings of the deceased,

(b) the multiplier of 11 years,

(c) the extent of the award in favour of the defendants and loss to the estate for the loss of earnings during the "lost years",

(d) the apportionment of the damages amongst the dependants.

Counsel contended that the trial Court was wrong in its assessments, and that it failed to take into account the contingencies relevant to the life, working ability and earning capacity of the deceased in fixing multiplier and multiplicand. He also alleged that the trial Court failed to take into consideration the amount of the income tax which would have burden the income of the deceased and affect the amount of dependency. Counsel further contended that the award of £2,834.- to the widow of the deceased is overlapping and constitutes an over-compensation or extra compensation which is unreasonable. That in assessing the damages the Court did not take into consideration the prospects of remarriage of the wife of the deceased who was one of the dependants and lastly that the apportionment of the amount awarded in favour of the dependants was not based on any evidence before the Court and that if such amount was equally apportioned between the dependants, then the whole of such amount would have been absorbed by the amount awarded in favour of the estate of the deceased.

Counsel for the respondents in arguing his cross-appeal contended that the assessment of the general damages was manifestly low and not warranted either by the evidence adduced

or the facts as found by the trial Court. He submitted that in making the calculation, the proper deduction for personal expenses of the deceased, on the evidence adduced, would not have exceeded 25 per cent of his earnings and in any case could not have been 37 or 38 per cent and that the proper multiplier in the case of the deceased was 15 - 16 years and not 11 as found by the trial Court.

He further contended that the assessment of the earnings of the deceased after his death should have been £3,900.- per annum and not £2,900.-, bearing in mind that due to inflation, his income from overtime and extra work which the Court found at £594.-, yearly, as at the time of his death, would have increased to double, compared with the analogous increase of his emoluments as from the time of his death to the date of trial of the action. He further submitted that an amount of £2,500.- should have been added to the assessed loss for the lost prospect of promotion to foreman. Counsel also submitted that in respect of the first 3 1/2 years, lost earnings should have been assessed on the average of his earnings at the time of his death and the date of the trial and not on those on the date of his death.

We shall deal first with the question of the multiplier of 11 years which has been contested by both parties. In support of his argument counsel for respondents sought to rely on three recent English decisions in the cases of *Clay* v. *Pooler* [1982] 3 All E.R. 570, where the multiplier applied was 15 years, *Benson* v. *Biggs* [1982] 3 All E.R. 300, where the multiplier was again 15 years and *Harris* v. *Empress Motors Ltd* [1982] 3 All E.R. 306, where the multiplier was 16 years.

The reason that the Court in the said cases applied a multiplier of 15 - 16 years, was because the deceased in the first case was 35 years old, in the second 21 years old and in the third 29 years old. As to the position of deceased persons over the age of 40, in the case of *Cookson* v. *Knowels* [1978] 2 All E.R. 604 the House of Lords sustained the finding of the trial Court and the Court of Appeal that a multiplier of 11 years from the time of death of a deceased aged 49, was, though generous, a proper one. Lord Fraser had this to say at page 614 on this issue:

"In the present case the deceased was aged 49 at the date of his death and the trial judge and the Court of Appeal

used a multiplier of 11. That figure was not seriously criticised by counsel as having been inappropriate as at the date of death, although I think it is probably generous to the appellant. From that figure of 11, the Court of Appeal deducted 2 1/2 in respect of the 2 1/2 years from the date of death to the date of trial, and they used the resulting figure of 8 1/2 as the multiplier for the damages after the date of trial. In so doing they departed from the method that would have been appropriate in a personal injury case and counsel for the appellant criticised the departure as being unfair to the appellant. The argument was that if the deceased man had had a twin brother who had been injured at the same time as the deceased man was killed, and whose claim for damages for personal injury had come to trial on the same day as the dependant's claim under the Fatal Accidents Acts, the appropriate multiplier for his loss after the date of trial would have been higher than 8 1/2. On the assumption, which is probably correct, that that would have been so, it does not in my opinion follow that the multiplier of 8 1/2 is too low in the present claim under the Fatal Accidents Acts where different considerations apply. In a personal injury case, if the injured person has survived until that date of trial, that is a known fact and the multiplier appropriate to the length of his future working life has to be ascertained as at the date of trial. But in a fatal accident case the multiplier must be selected once and for all as at the date of death, because everything that might have happened to the deceased after that date remains uncertain. Accordingly having taken a multiplier of 11 as at the date of death, and having used 2 1/2 in respect of the period up to the trial, it is in my opinion correct to take 8 1/2 for the period after the date of trial. That is what the Court of Appeal did in this case".

We adopt the view expressed by Lord Fraser in the *Cookson* case as to the multiplier and we hold the view that in the circumstances of the present case the use by the trial Court of a multiplier of 11 years for the death of the deceased, though generous is correct. In a recent case, *Grahan* v. *Dodds* [1983] 1 W.L.R. p. 808, the House of Lords found that a multiplier of 18 years was excessive and sent the case back for retrial.

Reference was made to *Cookson's* case the reasoning of which was found as cogent and clear. Lord Bridge had this to say in his judgment at pp. 816, 817:

> "Assuming the premise that a multiplier of 18 applied in assessing the dependency of the family of a bread winner killed between the age of 20 and 30 could not be disturbed on appeal. I cannot accept the conclusion that the same considerations govern the assessment in the case of a bread winner killed at the age of 41. The fallacy of the reasoning on which Gibson L.J. proceeds is that, in the case of the older man it assumes as certain that he would have continued without interruption to make as valuable a contribution, in real terms, to the support of his family as he was making at the date of death right up to retiring age. It allows no discount for the vicissitudes of life which might have falsified that assumption. In *Phillips v. London and South Western Railway Co.* (1879) 5 C.P.D. 280, dealing with loss of future earnings in a personal injury case, Brett, L.J. said, at p. 291:
>
> > 'With regard to subsequent time, if no accident had happened, nevertheless many circumstances might have happened to prevent the plaintiff from earning his previous income; he may be disabled by illness, he is subject to the ordinary accidents and vicissitudes of life; and if all these circumstances of which no evidence can be given are looked at, it will be impossible to exactly estimate them; yet if the jury wholly pass them over they will go wrong, because these accidents and vicissitudes ought to be taken into account'.
>
> Exactly the same principle, mutatis mutandis, is applicable here".

As to the use by the Court of the same multiplier and multiplicand, both in respect of loss to the estate under section 34(2)(c) of the Administration of Estates Law, Cap. 189 and to the dependants under section 58 of the Civil Wrongs Law, Cap. 148, we find such approach as correct. In *Benson* v. *Biggs Wall & Co. Ltd.* (supra) Pain, J., in expressing his opinion on this matter, he said at page 305:

"Therefore, I hold that from the point of view of calculating living expenses, one uses the same yardstick as one does under the Fatal Accidents Act, damages that the same method should be applied as to the Law Reform Act damages and one arrives at the same overall figures".

The above dictum was followed and applied in the case of *Harris* v. *Empress Motors Ltd.* (supra) and *Clay* v. *Pooler* (supra). A similar approach has been adopted by our Court in the recent case of *Chrysostomou* v. *Plovidha* (supra).

Counsel for the respondents contended that the multiplicand for the first 3 1/2 years should have been the everage of the income between the date of the death of the deceased and the date of trial. There is authority in support of such contention of counsel for respondents in the dictum of Lord Fraser, L.J., in the *Cookson's* case (supra) at page 614:

"The loss of support between the date of death and the date of trial is the total of the amounts assumed to have been lost for each week between those dates, although as a matter of practical convenience it is usual to take the median rate of wages as the mutiplicand. In a case such as this where the deceased's age was such that he would probably have continued to work until the date of trial, the mutliplier of this part of the calculation is the number of weeks between the date of death and the date of trial. That is convenient, although it is strictly speaking too favourable to the plaintiff, because it treats the probability that, but for the fatal accident, the deceased would have continued to earn the rate for the job and to apply the same proportion of his (perhaps increased) earnings to support his dependants as if it were a certainty. I mention that in order to emphasise how uncertain is the basis on which the whole calculation proceeds. That was the method employed by the Court of Appeal, which calculated the dependency at date of death as £1,614, and at date of trial as £1,980 giving a median of £1,797 per annum as the multiplicand for the period of 2 1/2 years between the two dates".

In the present case, however, the Court was not wrong in assessing the multiplicand as it did in view of the evidence

before it. The Senior Water Engineer of the Water Department was called as a witness for the plaintiffs and gave evidence as to the emoluments of the deceased. He gave such emoluments as £0.591 mils per hour on 27.5.1977, the date of the death of the deceased, and at £1.279 mils per hour on 1.1.1981 and gave as reason for such incerase to the increased cost of living as from 1.1.1981. Though he was the competent person to give evidence as to any increase of the emoluments of the deceased between the date of his death to 1.1.1981, he was not asked and he mentioned nothing in this respect. Also, respondent 1 (plaintiff 1 in the action) gave evidence as to the working hours of the deceased. He was a clerk in the Water Development Department and was also in a position to speak about any increase in the emoluments of the deceased between his death and the 1st January, 1981, but besides mentioning the hours of employment of the deceased, he mentioned nothing about his emoluments. We, therefore, find that the Court by not using as multiplicand the mean earnings of the deceased, has not acted under a misconception or followed a wrong process.

As to the complaint of respondent that the finding of the trial Court as to the income of the deceased from overtime and extra work on Sundays which was added to his other earnings and on the basis of which the assessment was made for the 7 1/2 years as from the 1st January, 1981, was wrong, we find ourselves unable to agree with such contention. It was in evidence before the trial Court coming from respondent 1 and this is mentioned in the judgment of the trial Court that the deceased was working overtime due to the situation existing at the time of his death as a result of the reactivation of the Government Departments which required extra construction work. In respect of this item of damages we were unable to find that the trial Court erred in its assessment and it is not the function of this Court as an appellate Court to substitute its opinion for that of the trial Court. The general principle as to when an appellate Court will interfere was stated by Lord Wright in a well-known passage in his speech in *Davies* v. *Powell Duffryn Associated Collieries Ltd.* [1942] 1 All E.R. 657 at pp. 664, 665, [1942] A.C. 601 at 617:

> "In effect the Court, before it interferes with an award of damages, should be satisfied that the judge has acted

on a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference. The scale must go down heavily against the figure attached if the appellate Court is to interfere whether on the ground of excess or insufficiency".

As to the contention of counsel for appellants that the prospects of marriage of the wife of the deceased were not taken into consideration, the trial Court had this to say:

"There is no evidence about the prospects of remarriage of this widow. She is a woman living in a village with four minor children. It was submitted by counsel for the defendants that we should take into consideration her prospects of re-marriage

We are of the view that this widow aged 35 by now, has no prospects of re-marriage at all. We shall make no deduction for this uncertainty".

We agree with such finding of the trial Court which was open to it in the absence of any evidence to the contrary and is in line with the opinion expressed by Triantafyllides, J. (as he then was) in *Yiannis Thoma Papadopoullos* v. *Yiannoula Gregori Tryfonos and Another* (1968) 1 C.L.R. 80 at p. 88 in which he had this to say concerning the prospects of re-marriage of the widow who was 26 years old with three minor children:

"It is, indeed, unfortunate that the trial Court has failed to apportion damages in accordance with section 58(1)(b). But, in the particular circumstances of this case, we do not think that this has resulted in a situation necessitating the setting aside, on this ground, of the award of damages under appeal: because, bearing in mind the age of the deceased (34 years old) his earning capacity as found by the trial Court (about £500) the total absence of evidence regarding prospects of remarriage of his widow (other than her young age and relatively good looks), the practically remote possibility of remarriage, in Cyprus, of a widowed mother of three minor children—a thing of which we do take judicial notice—_____".

In *Buckly* v. *John Allen & Ford (Oxford) Ltd.* [1967] 1 All E.R p. 539 the Court in considering the prospects of remarriage o a widow said:

"Counsel for the defendants did not ask her any questio on this subject, an example which was naturally followe by her counsel. Having, however, abstained from askin her anything about it—and I can well understand his no doing so—counsel for the defendants now says and it i the conventional argument, that any woman with the sun she is likely to receive is likely to re-marry. He suggeste that she may not marry for perhaps seven years, but tha she is likely to do so then because the children are olde and largely off her hands. He says that she is an attractiv woman. In this stage of affairs I am wondering what i the evidence on which I must act. Am I to ask her t put on a bathing dress; because the witness box is calculate to disguise the figure? Equally, I know nothing of he temperament, I know nothing of her attitude to marriage She may have some very good reason, perhaps a religiou reason, for saying that she never will re-marry. She ha had no chance to express her views. Has her marriag been an entirely happy experience? I do not know. O the other hand she may already be engaged to be married On what do I assess the chances and fix the sum to b deducted from her compensation? After all, whateve men may like to think, women do not always want to re marry. There are quite a lot of rich widows who prefe to remain single, and I confess that I am not sorry to avoi this problem. Is a judge fitted to assess the chance o chances or wishes of a lady about whom he knows so littl and whom he has only encountered for twenty minute when she was in the witness box, expecially when no-on has broached the topic with her? Judges should, I thin act on evidence rather than guesswork. It seems to m that this particular exercise is not only unattractive but als is not one for which judges are equipped. Am I to labe the plaintiff to her face as attractive or unattractive? I I have the temerity to apply the label, am I likely to be right' Supposing I say she is unattractive, it may well be tha she has a friend who disagrees and has looked below th surface and found a charming character. The fact is tha

this exercise is a mistake. If there are statistics as to the likelihood of a widow remarrying based on her age and the amount of her compensation, just as there are statistics on the expectancy of life, they might provide a yardstick for deduction in the absence of evidence of some special factor in the individual case. In the absence of some such yardstick I question whether, having decided what she has lost by the death of the deceased, any judge is qualified to assess whether or when she is likely to re-marry".

We find the contention of counsel for the appellants that the trial Court erred in not making any deduction for income tax as untenable. In the absence of any evidence that a person in the position of the deceased, bearing in mind his earnings and the fact that he was married and had four minor children depending on him, had a taxable income and if so the extent to which such tax might have affected the multiplicand used by the trial Court in making its assessment, we find that the trial Court rightly ignored this factor.

As to the contention that the apportionment made by the Court among the dependants was wrong, we find that though there are cases in which a higher proportion was awarded to the widow of a deceased compared to that awarded to the children, the amount awarded in favour of the widow in the present case though on the low side is not so manifestly low as to induce us to interfere with it.

We are satisfied in the present case that the assessment of damages both in respect of loss of expectation of life, loss of earnings for the lost years and loss to the dependants, is correct. The trial Court gave this matter most careful attention and we are unable to find any error in principle in any way in the judgment, and we adopt what was said by Lord Wilberforce in the *Pickett's* case (supra) at p. 782 that:

> "It is important that judges' assessments should not be disturbed unless such error can be shown, or unless the amount is so grossly excessive or insufficient as to lead to the conclusion that such error must have taken place".

Before, however, concluding, we wish to add that having gone through the record of the case of the trial Court there is a statement by both counsel that funeral expenses had been agreed

at £150.–. The respondents were entitled to recover this amount under section 34(2)(c) of Cap. 189. From what appears in their addresses, counsel failed to draw the attention of the Court to this fact and the trial Court by oversight failed to award such amount to the estate of the deceased. In view of the fact that this amount was admitted and it was only the result of an obvious oversight that it has not been included in the award, we find it just and equitable to award such amount. In the result, subject to the addition of this amount to the damages awarded, the appeal and cross-appeal fail and are hereby dismissed with no order for costs.

In the light of the apportionment by the trial Court, the damages awarded are to be distributed as follows:

(a) £150.– special damages for funeral expenses to the estate of the deceased.

(b) £19,000 damages to the estate of the deceased to be distributed as follows:

4/24 to the widow and 5/24 to each of the infant children. This amount being higher than what each child is entitled as dependant the award for dependency of the children is being absorbed by it.

(c) An additional amount of £2.834 to the widow for dependency, being the balance of the award in her favour as dependant after deducting her share from the sum she is entitled from the estate as one of the heirs of the deceased.

As to the results that inevitably may flow by the way we have construed section 34(2)(c) of the Administration of Estates Law, Cap. 189 by deciding that a claim for the "lost years" survives for the benefit of the estate, we share the comments of Griffiths, J., in the *Kandalla* case (supra) at p. 349 as follows:

> "I have no enthusiasm for these results that seem to flow inevitably from deciding that a claim for the 'lost years' survives for the benefit of the estate. It does the deceased no good for, unlike the living plaintiff who recovers for the "lost years", the deceased can derive no comfort from the thought that he can make proper provision for his dependants or any other objects of his bounty. In

fact in most cases it will merely provide a windfall for the dependants, who will, as I have illustrated, recover not only fair compensation for their pecuniary loss as they have hitherto done under the Fatal Accidents Acts but an additional sum over and above such loss. The damages will, of course, almost always be paid by insurance companies, but the ability to pay such damages will have to be passed on to the general public through increased premiums; so it is the public who will be paying these extra damages which appear to me to breach the underlying basis on which damages are assessed, namely that there should be fair compensation for the loss sustained".

Bearing that in mind as well as the remarks of Lords Diplock, Scarman and Russel in the *Gammell* case about the need for regulating this matter by legislation, to which reference has already been made, we consider that such unsatisfactory situation can only be cured by legislation. As Lord Wilberforce said in the *Pickett* case at p. 781 the duty of the Court is "to carry the judicial process of seeking a just principle as far as we can, confident that a wise legislator will correct resultant anomalies". The relevant provisions of the Damages (Scotland) Act, 1956 and the Administration of Justice Act, 1982 of the U.K. may be looked upon when the opportunity for amending our legislation may arise.

In concluding we wish to express a word of appreciation for the able way learned counsel on all sides have advanced their elaborate arguments in these appeals.

Appeals and cross-appeals dismissed with no order as to costs.