1978 May 13

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

SOZOS ANTONIOU,

Appellant-Defendant,

v.

MAROULLA CHARI SOFIANOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 5529).

Civil Procedure—Practice—Trial—Separate trials—Different questions—Claim for personal injuries—Liability and damages—Trial of issue of damages before liability not possible under the inherent powers of the Court or under rule 2 (*g*) *of Order* 30 *of the Civil Procedure Rules.* (*Cf. the position in England under R.S.C. Order* 33 *rule* 4 (2).

The respondent-plaintiff was injured in a collision between a car driven by her husband and the appellant-defendant and as a result she sustained severe injuries. On June 5, 1970, she brought an action for negligence against the appellant and another defendant (who was not a party to this appeal) claiming damages for personal injuries. After the close of the pleadings she filed an application on October 10, 1974, seeking an order of the Court for the separate hearing of the issue of general damages on a full liability basis before the hearing of the issue of liability. The application was mainly based on Order 30 rule 2 (g)* of the Civil Procedure Rules and on the inherent powers of the Court. The facts in support of the application were: (a) That the only issues left to be determined were the question of liability and the general damages (b) that the doctors who examined the plaintiff and are likely to be called as witnesses, in order to elaborate on their medical reports, would be giving evidence only once on the issue of general damages and (c) the question of liability could not be determined because due to the turkish invasion in Cyprus defendant

* Quoted at p. 299 *post*.

2, who is a turk, could not be traced. The appellant-defendant opposed the application.

The trial Judge relying, also, on the English case of *Coenen* v. *Payne* [1974] 2 All E.R. 1109 reached the conclusion that separate trials of different questions or issues could be ordered both under the inherent powers of the Court and under the said r. 2 (g) of order 30. Hence the present appeal.

Held, (1) that the Court has no inherent power to order separate trials; and that when it relied on *Coenen* v. *Payne* (*supra*) to order separate trials under its inherent powers it misconceived the effect of this case because this case was based on R.S.C. Order 33 rule 4 (2) and not on the inherent jurisdiction of the Court.

(2) That our Order 30 rule 2 (g) does not give jurisdiction to the trial Judge to order separate trials in the present action.

Appeal allowed.

Per curiam: Even if we were prepared to take a different view, then having regard to the trend of the authorities and particularly to the recent case of *Coenen* v. *Payne* (*supra*) as well as to the facts of the present case, we could not agree to make an order for separate trials, because this is not a proper case for separate trials, as it is neither an extraordinary or exceptional case, nor did the Judge think that he had serious reasons to believe that the trial of the issues of damages would put an end to the action itself. The better course in this action might have been the trial of the issue of liability first, because it is more just and convenient and would save more time and expense.

Cases referred to:

Piercy v. *Young* [1880] 15 Ch. D. 475 at pp. 479–480;

Polskie v. *Electric Furnace Co. Ltd.* [1956] 2 All E.R. 306;

Stevens v. *William Nash Ltd.* [1966] 3 All E.R. 156 at pp. 159–160;

Hawkins v. *New Mendip Engineering Ltd.* [1966] 3 All E.R. 228 at p. 233;

Coenen v. *Payne* [1974] 2 All E.R. 1109.

Appeal.

Appeal by defendant against the ruling of the District Court

of Limassol (Pitsillides, S.D.J.) dated the 29th November, 1975, (Action No. 1552/70) whereby it was ordered that the issue of the general damages claimed by plaintiff should be tried before the issue of liability.

G. Polyviou with R. Michaelides, for the appellant.

A. Myrianthis, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

HADJIANASTASSIOU J.: The question which is raised in this appeal is whether liability should be tried before damages. On April 13, 1969, the plaintiff, Maroulla Chari Sofianou was one of the passengers travelling from Nicosia to Limassol in a car driven by her husband and at the 38th and 39th milestone along the Nicosia-Limassol main road, was involved in a serious accident when the first car collided with that of defendant Sozos Antoniou. As a result of that accident, the plaintiff sustained severe injuries, loss, damage and incapacity. She remained in the hospital for a long period and as a result of that accident she suffered with post-concussional brain syndromes and considerable personality changes which remained permanent. The plaintiff was left also with a spastic left hemiparesis which, is also permanent, as well as with scars, and with the risk of developing epilepsy which was estimated at 30%.

The plaintiff, who as we said was seriously injured, brought an action for special and general damages against both defendants on June 5, 1970. The statement of claim was filed on July 5, 1972, and the statement of defence was filed on October 9, 1972.

On June 26, 1974, when the pleadings were closed, the case came before the Full District Court of Limassol in Action 1552/70, and according to the record, it appears that the special damages were agreed by the parties to be on a full liability, the amount of £2,750.

Then, by consent, the medical reports were produced in Court. Because of the observations made by the Court that some of those reports had been prepared 4 years before that date, the Court gave directions that a new report was in those

circumstances needed to know the condition of the plaintiff in 1974. There was an agreement by the parties that the plaintiff should be examined jointly by Dr. Spanos, a neuro–surgeon, Dr. Mavrantonis, a neuro–psychiatrist and Dr. Mikellides, a neuro–psychiatrist also. It was further directed that if the plaintiff would so decide, to be examined also by a psychiatrist of her own choice. In fact, Dr. Spanos was the treating doctor of the plaintiff, Dr. Mikellides examined her on behalf of defendant 1, and Dr. Mavrantonis for defendant 2.

The case was adjourned to September 19, 1974 in order to enable counsel to discuss the issue of general damages in relation to the report of the joint examination. Then the case was adjourned again, on October 2, 1974 by consent of the parties, the medical report of Dr. Spanos, Dr. Mikellides and Dr. Mavrantonis, together with that of Dr. Sarris was produced in Court. Having done so, counsel appearing on behalf of defendant 2, a Turk, informed the Court that his client, in view of the invasion of the Turkish forces in Cyprus could not be traced, and that the issue of liability could not be tried in the absence of his client. Counsel appearing on behalf of the plaintiff invited the Court to decide the issue of the question of damages separately in the light of those difficulties. Counsel for the second defendant, having agreed to that proposal, the case had to be adjourned once again in order to enable counsel on behalf of the first defendant to obtain further instructions before deciding what to do.

The case was adjourned once again on October 5, 1974, but for reasons not appearing on record, counsel on behalf of the plaintiff filed an application on October 10, 1974, seeking an order of the Court fixing a date for the hearing and for the assessment or determination of the issue of general damages on a full liability basis and/or any other order which the Court would think fit to make under the circumstances. The application was based on the Civil Procedure Rules, 0.31, 0.30 r. (2) (g), 0.48, rules 1, 2 and 9, and on the inherent power of the Court.

The facts supporting that application were (a) that the only issues left to be determined by the trial Court were the question of liability and the general damages because, as counsel claimed, all other issues had been agreed between the parties; (b) that the doctors who examined the plaintiff and are likely to be

called as witnesses in order to elaborate on their medical reports, would be giving evidence only once on the issue of general damages; and (c) because the question of liability may be difficult to be determined because of the present prevailing circumstances regarding respondent No. 2 who is a Turk, the applicant invited the Court to make the order applied for so that unnecessary delay for determining both issues (liability and damages) would be avoided.

Finally, it was stressed that once counsel on behalf of respondent 2 consented, and because if the application was granted, no prejudice would be caused to any of the parties to the action, and that unnecessary delay for determining both issues would be avoided, it would be in the interest of justice to hear the question of damages first.

On October 15, 1974, counsel appearing on behalf of the first defendant opposed the application and the opposition was based on Order 30, rr. 1, 2 and 7, and Order 31, rr. 1 and 7 and Order 57.

The facts relied upon were (a) that the Court could not at that stage entertain the said application because it was contrary to Order 30 rule 1 (b); and that the applicant had applied under Order 31, after the closing of the pleadings to fix the case and had fixed the case for hearing. It was further stressed that that action pursuant to such an application came up for mention on a number of instances and for hearing as well, and appearances were duly made accordingly of the parties and their witnesses; and that the said application could not be entertained by the Court, as the rules or the law did not provide for the splitting up of the action by hearing the issue of general damages, and at a later unknown date to hear the issue of liability. It was further claimed that such issues were main and essential issues and that the applicant would give evidence for her claim for damages apart from the doctors, and later she would in all probability give evidence on the issue of liability. There were further allegations, but we do not think it is necessary to present all them.

The application was heard before a single Judge, and on November 29, the learned Judge delivered his reserved ruling. Having dealt with a number of points raised and having quoted

authority, he reached the conclusion that the Court had power to order separate trials of different questions or issues under Order 30 r. 2 (g), because in his view, in the present case, there was a clear line of demarkation between the issues of liability and the quantum of damage. Then, in support of the view taken, the learned Judge went on to add that:

> " ..... if the issue of damages is heard first this would save time and it would be just because of the possibility that anything may happen to any of the doctors who examined the plaintiff and not be possible to give evidence if the hearing on the issue of general damages is delayed."

Having also dealt with the argument raised by counsel, *viz.*, that if the two issues were tried separately the plaintiff would give evidence twice, and that the constitution and coram of the Court which will try later the issue of liability may be different, the Court had this to say on these two arguments:-

> " I do not see how this would affect any of the defendants, since her evidence on one issue could have no bearing on the other issue. That the plaintiff would give evidence twice is a matter for her concern alone, who would be put to the inconvenience of giving evidence not only once, but twice."

With regard to the second argument, the Court rejected it because in its view the hearing and determining of one issue could not affect the hearing or the judgment of the other issue as there was a clear line of demarkation between them and that the Court which would try the issue of liability, whatever may be its constitution or coram, would be bound to give effect to the decision of the general damages because it would be " res judicata".

Finally, the learned Judge reached the conclusion that the order applied for was in the interest of justice, because the plaintiff might be prejudiced if the order was refused, whilst neither of the defendants would be prejudiced by such order.

Before dealing with the elaborate arguments of counsel, we find it convenient to add that in England an order for separate trial of separate questions or issues is considered as a departure from the beneficial object of the law, that all disputes should

be tried together, and therefore, generally speaking, such an order should only be made in exceptional circumstances or on special grounds.

This proposition finds support in *Piercy* v. *Young* [1880] 15 Ch. D. 475, where Jessel, M.R., dealing with the question of separate trial of different issues, said at pp. 479-480:-

> " The object of the Judicature Act was to try all disputes together, and it was considered a beneficial object. Separate trials of separate issues are nearly as expensive as separate actions, and ought certainly not to be encouraged, and they should only be granted on special grounds. Consider for a moment three illustrations I gave in *Emma Silver Mining Company* v. Grant(1), when I directed an issue to be tried. The first case was that of a lady who alleged that she was the legitimate child of somebody, and as such entitled to an account, but her legitimacy was denied. If the plaintiff was legitimate, her right to an account was not contested, but the cost of taking the account would have been enormous, so that if I had directed the account in the first instance and decided the legitimacy afterwards, the whole costs would have been thrown away. Therefore, it was essential to decide the question of legitimacy first. It was not a case really for directing an issue for the trial as distinguished from trying the action. If the case had come on in the regular way, the only question to be tried would have been legitimacy. It was expediting the trial on the only question that could be tried.
>
> The two next cases were very peculiar. The one was an heir-at-law case, in which the plaintiff was a pauper with a fishing action, a very special case indeed, and there was evidence—strong evidence, and it turned out to be satisfactory evidence—that the plaintiff had no claim at all. I have no such evidence here. As I said before, I cannot tell by the affidavits who is right and who is wrong. There is a statement by one side met by a contradictory statement on the other side. One cannot say in this case that there is *prima facie* evidence that the Defendant is right upon the issue, as there was in that case.

1. 11 Ch. D. 918.

The third case was still more remarkable, because it was not only a pauper plaintiff, but a pauper set up by other persons to sue on his and their behalf, and in that case no doubt it would have been an enormously expensive action to try. The simple question was whether he was a tenant of the manor or not. The defendants produced the court rolls, and shewed that his name was not entered as tenant. There was the strongest *prima facie* evidence that he was not tenant; I therefore thought it right first to put him to the proof that he was tenant, but he failed to prove it, and there was an end of the action.

Here there is a conflict of testimony, and I have no means of forming an opinion as to which is right and which is wrong. I think that the application of the rule should be limited to extra-ordinary and exceptional cases, and I think the case of *Emma Silver Mining Company* v. *Grant*(1), was an extraordinary and exceptional case. As I said at the beginning it never was intended that the conduct of the action should be taken from the plaintiff and given to the defendant under this rule, nor was it intended that in a case where the defendant deliberately made the issue one of the issues in the action instead of bringing a separate action for specific performance that he should be entitled to change his mind in the middle of the case, and to have that issue tried first."

In *Polskie etc.* v. *Electric Furnace Co. Ltd.*, [1956] 2 All E.R. 306, Jenkins, L.J., having quoted RSC Order 36 r. 7, said that there was no doubt as to the jurisdiction of the Court to make such an order and that it was also clear that the question whether or not such an order should be made in any given case is a matter for the discretion of the Judge. Having said that, he continued at p. 309:-

"I think that, generally speaking, an order such as the present ought not to be made unless there is on the pleadings a clear line of demarcation between issues bearing on liability and issues bearing on quantum of damages. It is on that aspect of the matter that I feel difficulty."

As we said earlier, an order for separate trial of issues of

1. 11 Ch. D. 918.

liability and damages will only be made if there is a clear line of demarcation between these issues on the pleadings and not where they interact upon each other.

In *Stevens* v. *William Nash Ltd.*, [1966] 3 All E.R. 156, Winn, L.J., said at pp. 159–160:-

> " Before I come to that, there is another matter which arises in this case which is, in my own view, worthy of mention; it is this. At the trial—not before, under the summons for directions—the plaintiff's counsel applied to the learned Judge for separation at the trial of the issues of liability and quantum, because this man's recovery was by no means complete and because there was the uncertainty (which I have already stressed) whether he would in fact pass through his training successfully, and, even if he passed through his training successfully, would in actual fact be able to find employment satisfactory to himself as a capstan lathe setter operator. The defendants opposed that application, intimating however that they would be quite content to have the whole trial adjourned for such time as would enable this uncertainty to be resolved. This is not the occasion on which, nor indeed is this court the proper place in which, any pronouncement should be made on the general desirability of ordering separate trials of such issues. The court has reason to believe that a committee(1) is now concerned to go thoroughly into those problems and to make a report in due course to the Lord Chancellor. There are many complicated implications; but it can be said, I feel, that in this case the task of the Judge in assessing damages once and for all was one which it was very difficult indeed satisfactorily to perform, since he could not feel confident of the future of this man in the respects which I have indicated. I venture, without in any way intending to criticise the Judge, to suggest a purely personal opinion—that the better course in this particular action might have been for him to have decided to try the

1. A committee was appointed under the chairmanship of WINN, L.J., and is in course of its deliberations, whose terms of reference extend to the jurisdiction and procedure of courts in actions for personal injuries and include, in particular, the question whether the liability of the defendant and the assessment of damages should be dealt with independently. Personal injury litigation is Item VI in the first programme of the Law Commission.

issue on liability there and then, to record but not announce his decision on that issue, and to postpone to himself the assessment of damages until a time when the situation had clarified in the material respects. Had he adopted that course, of course he would have been taking the risk, and the parties would have been involved in the risk, that some untoward misfortune might have fallen on the Judge himself and he might not be available, in the future that they contemplated, to complete the trial of the whole action."

That the better course is that the issue of liability may be ordered to be tried before the issue of damages where there is an element of uncertainty about the plaintiff's future, was again before the Court of Appeal, in *Hawkins* v. *New Mendip Engineering Ltd.*, [1966] 3 All E.R. 228. Winn, L.J., dealing with the very same problem and particularly as to the risk of major epilepsy by the plaintiff, said at p. 233:-

" It seems to me that, while there are many considerations which militate against any general practice of separate determination of issues of liability and quantum, this is a clear-cut case in which there could be nothing to be said against the idea of postponing the trial on those terms. As it is, the matter is one which has to be dealt with on a footing of future uncertainty."

On the other hand, in England, recently, in spite of the fact that whilst the normal procedure should still be that liability and damages should be tried together, the Appeal Court in *Coenen* v. *Payne* [1974] 2 All E.R. 1109, decided that the Courts had power under RSC 0.33 r. 4 (2), to order separate trials of those issues in personal injury cases, and should be ready to do so wherever it was just and convenient. Lord Denning M.R., delivering the first judgment of the Court in that case, allowed the appeals against the refusal of the trial Judge to order separate trials and said at pp. 1111-1112:-

" As the Judge said, the normal method hitherto has been to try liability and quantum at the same time. It has been the practice not to make an order for separate trials save in exceptional circumstances and on special grounds. Winn L.J.'s committee said in their report[1]:

1. Report of the Committee on Personal Injuries Litigation (Cmnd 3691), p. 139, para. 494 (b).

'In practice this power has hitherto been exercised only in 'extraordinary and exceptional cases' or where 'the Judge has serious reason to believe that the trial of the issue will put an end to the action'.'

Winn L.J.'s committee did not like that practice. They thought[1] 'a more robust and less restrictive approach' should be approved. They recommended[2] that a new rule should be made to alter it. In addition to the committee's recommendation, Winn L.J. in two cases indicated that separate trials might well have been ordered with advantage. Those were *Hawkins* v. *New Mendip Engineering Ltd.*[3] and *Stevens* v. *William Nash Ltd.*[4]. I think the time has come to adopt a new approach. There is no need to order a new rule. The practice can be altered without it. The courts already have power to do it. RSC Ord. 33, r. 4 (2) says:-

'In any (action begun by writ) different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others'.

In future the courts should be more ready to grant separate trials than they used to do. The normal practice should still be that liability and damages should be tried together. But the courts should be ready to order separate trials wherever it is just and convenient to do so.

In this case there is this strong point to be made in favour of separate trials. It is the time and expense which will be involved in trying the issue of damages. It will take four or five days to try; witnesses will have to come from Germany and surgeons and experts from London. All will be unnecessary if Dr. Coenen should fail. As against that, counsel for Dr. Coenen stressed the point of credibility. It was mentioned by Winn L.J.'s committee.[5]

1. *Ibid.*, pp. 139, 140. para. 494 (b).
2. *Ibid.*, p. 143, recommendation (2).
3. [1966] 3 All E.R. 228 at 232, 233.
4. [1966] 3 All E.R. 156 at 160.
5. Page 137, para. 490 (a).

A man's credibility on one issue may be affected by his credibility on the other. For instance, if he puts a claim for inflated damages which the Judge disbelieves, it may affect his credibility on liability. Vice versa, if he is moderate and restrained on damages, the Judge may be impressed by it in deciding on liability. In the present case counsel for Dr. Coenen said the Judge would have a better opportunity of assessing the credibility of Dr. Coenen if he was two days in the witness box rather than two hours. I doubt it. I should think a Judge could assess his credibility pretty well in two hours anyway.

At any rate, this seems to me to be a case where the new practice should prevail. It is a proper case for separate trials, the issue of liability being decided first and then afterwards damages."

Stamp, L.J., delivering the second judgment, allowed also the appeal and said regarding RSC Ord. 33 r. 4 at pp. 1112–1113:–

"In the Report of the Committee on Personal Injuries Litigation[1], presided over by Winn L.J., it was remarked in relation to this rule:

> 'In practice this power has hitherto been exercised only in 'extraordinary and exceptional cases' or where 'the Judge has serious reason to believe that the trial of the issue will put an end to the action'.

And for this proposition two judgments or two remarks by Jessel M.R. in *Piercey* v. *Young*[2] and *Emma Silver Mining Co.* v. *Grant*[3] were cited. The committee went on to suggest[4]:–

> 'that a more robust and less restrictive approach to the rule would be likely to solve most of the present problems'

to which the report was directed; and it was indicated[5] that if necessary the decisions—and I think the committee

1. Report of the Committee on Personal Injuries Litigation (Cmnd 3691) p. 139, para. 494 (b).
2. [1880] 15 Ch. D. 475 at 480.
3. [1879] 11 Ch. D. 918 at 927
4. Pages 139, 140, para. 494 (b).
5. Page 140, para. 494 (c).

was referring to the two decisions to which I have just referred—which had been regarded as inhibiting wider use of the rule, should be reversed so far as personal injury litigation was concerned; and it recommended[1] a new rule in terms set out in the appendix[2] to the report. The recommendation was not adopted by the Rules Committee, perhaps because it was thought that in the generality of personal injuries cases the objections to separate trials out-weighed the advantages; or perhaps because it was thought, as I think to be the case, that RSC Ord. 33 r. 4 was wide enough in its terms to enable the Court to separate the trial as to liability from a subsequent enquiry as to damages in a case where such a course was desirable in the interests of justice. I would not for a moment question the undesirability of ordering separate trials of separate issues of fact where both issues of fact have to be determined in favour of the plaintiff before the liability of the defendant can be ascertained. But I cannot accept that the remarks of Jessel M.R. were directed in the least degree to cases where what was sought to be dealt with as two separate issues were liability and the ascertainment of quantum of damages. What he was speaking of, I think, was a process by which one issue of facts is to be tried in advance of another issue of fact both of which have to be determined in favour of the plaintiff before he can get judgment for damages at all. The sort of case with which he was dealing was a case such as where someone claimed to be a next-of-kin and claimed accounts and enquiries on this basis; and he took the view that in only very exceptional circumstances should you first of all have a trial as to whether the plaintiff was the next-of-kin; and, having determined that question, then have a separate trial of the question whether the plaintiff was entitled to the accounts and enquiries which he sought. I do not think that the question of separating the question of liability and the question of damages was within the mind of Jessel M.R. when he made those remarks. What he was speaking of was quite a different kind of process. It is the commonest thing in the world in the Division with the practice of

1. Page 143, recommendation (2).
2. Page 229, appendix 21.

which I am most familiar for the question of liability to be determined before the quantum of damages: it is a regular practice to determine liability and then have an enquiry as to damages. RSC Ord. 37, r. 1, accepts this practice as being a completely normal one. In my judgment therefore the court ought not to be inhibited by the remarks referred to in the report of the committee from ordering what was called—I think perhaps somewhat unfortunately—a split trial in a case where this is in the interests of justice.

I have found some difficulty in coming to a conclusion whether on the facts of this particular case it would be right to order a separation of the two questions. But on the whole and with some hesitation, I agree that separate issues ought to be ordered for the reasons given by Lord Denning M.R. ....."

Stephenson, L.J., having agreed with all that Lord Denning M.R. and Stamp L.J. have said, also allowed the appeal and said:-

" In most personal injury cases the issues of liability and damages, though clearly separate, are rightly tried together. That is so, even where the issue of damages, perhaps because of complicated medical evidence, takes longer to try than the issue of liability. The reason is, I think, that it is usually most convenient for the parties to have all the issues between them decided together and that it helps the Judge to assess the credibility of the plaintiff if he can hear what the plaintiff has to say not only about his accident but also about his injuries and his financial loss. I would not disturb that general practice. But the plaintiff has, in my judgment, no right to choose the normal method of trying liability and quantum at the same time, as the Judge appears to have thought, and cannot claim any such right by agreeing to pay for the extra expense of his choice. The Court has inherent jurisdiction to make any use of the relevant provisions in the Rules of the Supreme Court which are now RSC Ord. 33, rr. 2, 3, 4 and RSC Ord. 37, rr. 1 and 4. If the Court thinks it just and convenient to order separate trials of separate issues or to give judgment for damages to be assessed by another Court, the Court can and should do so without treating ancient decisions as

limiting its powers. In a personal injuries case the Courts will not depart from the normal practice except for good reason; but though I appreciate the plaintiff's desire to be heard on liability and damages by the same Judge, I think that in this special case the issue of damages is likely to take so much time and expense to try that it could more conveniently, and without injustice, be tried after liability has been decided, it may be in such a way as to make a trial on the issue of damages unnecessary."

In the case in hand, the trial Judge, in ordering separate trials on the issue of damages first, relied on the Civil Procedure Rules Order 30 r. 2(g) which says that:-

" On the hearing of the summons for directions the court or Judge may in its or his discretion -

(g) make such other order with respect to the proceedings to be taken in the action, and as to the costs thereof, as may seem necessary or desirable with a view to saving time and expense."

In dealing with this order, the learned Judge said that although the application was based on that order under which the Court was empowered to make any order when dealing with the summons for directions with respect to future proceedings to be taken in the action, nevertheless, the application is in substance and form an application by summons based mainly on the inherent powers of the Court. And the reference in that application of that order merely affords an indication of the wide powers of the Court to make orders; and that no doubt the making of an order for separate trials of several issues in an action is also included in the powers of the Court.

With respect, we are unable to follow the reasoning of the learned Judge, because although he had reached the view that the said application was based on the inherent powers of the Court, later on, he takes a different line and he says:-

" What is just stated about the wide powers of the Court to order separate trials of issues under Order 30 rule 2 (g) is sufficient to dispose of the argument of defendant 1, under contention (c) above, that there is no rule or law providing for the hearing of several issues separately.....

Apart from the power of the Court to order separate trials on several issues (under Order 30 rule 2 (g) such power exists even under the common Law of England".

There cannot be any doubt that the learned Judge in reaching this conclusion relied on the authority which has been quoted earlier in this judgment *i.e. Coenen* v. *Payne* (*supra*), but we are of the view that he has misconceived the effect of this case. As we said earlier, the Court of Appeal said that although it should be the normal practice for issues of liability and damages to be tried together, the Court had power under R.S.C. Order 33 Rule 4 (2) to order separate trials on those issues in personal injury cases and should be ready to do so wherever it was just and convenient. But with respect nothing was said in the three judgments delivered that the trial Court had inherent power to order separate trials, and the decision was based on R.S.C. O. 33 r. 4 (2) and not on the inherent jurisdiction of the Court. Furthermore, it appears that the learned Judge, to say the least, was again labouring under this misapprehension to order separate trials, even after he quoted a passage from Halsbury's Laws of England, Vol. 30 (3rd edn.,) where at p. 376, footnote (g) reads as follows:-

" (g) R.S.C. Ord. 36, r. 1 (2). It has been held under old rules that an application to have one issue tried before another would only be granted on very special grounds (*Piercy* v. *Young* [1880], 15 Ch. D. 475; *Bottomley* v. *Hurst and Blackett Ltd. and Houston* [1928], 44 T.L.R. 451, C.A.); *but that an order might properly be made* if the decision of the issue would probably end the action (*Emma Silver Mining Co.* v. *Grant* [1879] 11 Ch. D. 918); or save time and expense *e.g.* where liability is decided before detailed questions of damages (*Smith* v. *Hargrove* [1885] 16 Q.B.D. 183; *Simson and Mason, Ltd.* v. *New Brunswick Trading Co.* [1888], 5 T.L.R. 148)."

With this in mind, we do not think that there is justification in pursuing further this matter that either this Court or indeed the courts in England were relying on the inherent jurisdiction in ordering separate trials, but only on the rules of the Supreme Court. In fact, we would even go further and state that the three judgments of the Court of Appeal in the *Coenen* case

(*supra*) commented that it has been the practice not to make an order for separate trials save in exceptional circumstances and on special grounds only and where the Judge has serious reason to believe that the trial of the issue would put an end to the action or save time and expense, nevertheless, it is equally true that observations were made that the time had come to adopt a new approach, and that there was no need to order a new rule because as Lord Denning M.R. said the practice can be altered without it. Furthermore, it was accepted that the Courts already had power to do it under R.S.C. 33 r. 4 (2).

We turn now to consider whether the learned Judge was justified in taking the view that he had jurisdiction under Order 30 r. 2 (g) to order separate trials in the present action. Having compared the wording of that Order with R.S.C. O. 36 r. 1 (2), and also Order 33 r. 4 (2), we observe that the courts in England had power to order different questions or issues to be tried at different places or by different modes of trial, and one or more questions or issues may be ordered to be tried before the others. But having considered the able submissions of counsel, and directing ourselves with those weighty judicial pronouncements, we have reached the view that our O. 30 r. 2 (g) does not give such jurisdiction to the learned trial Judge.

Even if we were prepared to take a different view, then again having regard to the trend of the authorities and particularly to the recent case of *Coenen* v. *Payne* (*supra*), as well as the facts of the present case, we would not agree to make an order for separate trials, because this is not a proper case for separate trials, as it is neither an extraordinary or exceptional case, nor did the Judge think that he had serious reasons to believe that the trial of the issues of damages would put an end to the action itself.

Furthermore, on the contrary, it would appear from the pleadings, that even if the Court had jurisdiction, then the issue of liability ought to have been tried first, because if the action of the plaintiff would fail, in view of the fact that the defendants threw the blame on the husband of the plaintiff for the accident, the issue of damages might not be necessary to be tried as the plaintiff's recovery was by no means complete, and because there was the uncertainty to be resolved on the question whether epilepsy would improve or become worse. We further venture

to add, without in any way intending to criticize the Judge, that the better course in this particular action might have been for him to have decided to try the issue of liability first, because it is more just and convenient, and would save more time and expense. We would allow the appeal accordingly, with costs in favour of the appellants.

Appeal allowed with costs.