1959
Nov. 3, 20

MARITSA GREGORIOU
v.
EMIR HOUSSEIN MEHMED AND ANOTHER

[BOURKE, C.J., and ZEKIA, J.]

MARITSA GREGORIOU,
Appellant (Plaintiff),
v.
EMIR HOUSSEIN MEHMED AND ANOTHER,
Respondents (Defendants).

(*Civil Appeal No.* 4292).

Practice—Pleadings—Statement of Claim—Fatal accident—Claims for the benefit (a) of the estate, (b) of persons dependent on the deceased—The Administration of Estates Law, 1954, *section* 34—*The Civil Wrongs Law, Cap.* 9, *section* 53—*Statement of Claim—No specific statement therein that action is brought for the benefit also of the dependants— Containing a single claim for relief in damages put into one single item—The Court is not precluded from awarding damages under both heads—The Civil Procedure Rules, O.* 20, *r.* 3.

The appellant sued as the administratrix of the estate of her late husband who was knocked down and killed by the motor car owned by the second respondent and driven by his servant, the first respondent. The action was founded on negligence and the trial Court found that negligence as alleged was established and that there was no contributory negligence. The plaintiff-appellant was awarded damages in the sum of £400 for the benefit of the estate under section 34 of the Administration of Estates Law, 1954. It was not in dispute that the plaintiff (appellant) was the only person dependent on the deceased who would suffer pecuniary loss by the death of her husband. The learned Judges of trial made an assessment of damages under this head (£433.333) pursuant to section 53 of the Civil Wrongs Law, Cap. 9, but they felt, however, unable to enter judgment for this further amount on the ground that it was at least doubtful whether it was claimed on the pleadings as they stood, the plaintiff (appellant) having made in her statement of claim a single claim for damages, probably intended to cover damages under both heads, but in fact put into one single item (viz: £1,500). The material parts of the pleadings are set out in the judgment of BOURKE, C.J., (*post*). A further point taken by the respondents on appeal, was that the st. of claim was defective in that no specific statement appears therein that the action was brought for the benefit also of the widow (plaintiff-appellant) as dependant of the deceased. A cross-appeal by the respondents on the question of negligence and contributory negligence was dismissed on the facts. On appeal by the plaintiff,—

Held (1) *Per Bourke, C.J.*: In the present case it is to my mind patently clear, whatever criticism may be levelled in point of drafting, that the appellant was by her statement

of claim seeking relief under the two corresponding Cyprus enactments (*Note:* referred to above), and that such was apparent to the respondents is made very evident by their pleading in defence and the course of the case at trial. By paragraph 6 of the statement of claim information was given as to the widow and children left by the deceased and further averments go to show that the widow was claiming as the only dependant suffering pecuniary loss. By paragraph 5 of the defence it was averred that the widow was the only one being supported by her deceased husband and it was found as a fact by the Court that she was the sole person dependent on the deceased at the time he met his death. Paragraphs 5 and 8 of the statement of claim also make it sufficiently manifest that the appellant was claiming for the benefit of the deceased's estate. The claim for relief might simply have been, in accordance with the sound precedents: "And the plaintiff claims damages". (See: Bullen and Leake, Precedents of Pleadings, 11th edn., Precedent No. 453 at p. 572; and the appropriate precedents in Odgers, On Pleading and Practice, 16th edn, pp. 463-4). She did claim damages and chose, as she was entitled, to limit the total amount of damages falling for assessment, if she succeeded on the merits, to £1,500. I am quite unable to accept it that by framing the claim for relief as she did, the appellant has shut herself out from recovering damages as a dependant under section 53 of the Civil Wrongs Law. I consider that judgment should have been entered for the sum assessed under that head. I could allow the appeal and give judgment in the appellant's favour for the further amount of £433.334 with the legal interest thereon at 4% until date of payment together with the costs of the appeal and on the cross-appeal.

(2) *Per Zekia, J.:* (a) The intention of the appellant, in view of paragraphs 5 to 8 of the st. of claim, was to claim damages under both heads: (a) for the estate, and (b) for *herself as dependant of the deceased.* The respondents were under no misapprehension as to that. This is clear from paragraph 5 of their defence.

(b) The trial Court awarded £400 damages for the benefit of the estate but felt unable to award damages to the widow personally as the sole dependant of her deceased husband. The main reason being that the appellant in her st. of claim made one single claim for damages. The legal point in issue is whether the statement of claim conforms with the Civil Procedure Rules, 0.20 r. 3. If the statement of claim complied with that rule, the plaintiff-appellant is entitled to succeed in this appeal. When damages are claimed as relief in respect of more than one cause of action, the word "damages" in the prayer need not be repeated for each claim, provided it is made clear that damages are claimed in respect of all causes. In the instant case I do not think there was room for the trial Court to doubt that the claim for

damages did refer also to the widow's claim as the dependant of the deceased.

(c) Taking the statement of claim as a whole, and bearing in mind the provisions of section 53 (1) (a) of the Civil Wrongs Law, Cap. 9 requiring the institution of the action in the name of the executors, administrators etc., etc., in claims arising from the death of a member of a family caused by the negligence of another, I am inclined to the view, certainly not without some hesitation, that the appellant's failure to state specifically that she brought the action also for her benefit, is not fatal to her claim under that head.

(d) The appeal should, therefore, be allowed (and the cross-appeal should be dismissed), and judgment be entered in the terms indicated by the Honourable Chief Justice.

Appeal allowed. Judgment entered in the appellant's favour for the further amount of £433.334 *together with the costs of the appeal and the costs of the cross-appeal.*

Cases referred to:

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

Appeal and Cross-Appeal.

Appeal by the plaintiff against the judgment of the District Court of Famagusta (Vassiliades, P.D.C., and A. Loizou, D.J.) dated the 15th May 1959 (Action No. 1524/58) whereby she was awarded damages for the benefit of the estate of her deceased husband (who died due to the negligence of the defendant No.1 being the servant of def. No. 2.) but was refused compensation under the head of pecuniary loss sustained by her as a person dependent on the deceased.

Chr. Mitsides with
N. Antoniou for the appellant.
P. N. Paschalis for the Respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgments of:

BOURKE, C.J.: The appellant sued as the administratrix of the estate of her late husband Gregoris Ioannou who was knocked down and killed by the motor car owned by the sceond respondent and driven by his servant the first respondent. The action was founded on negligence and the trial Court, the District Court at Famagusta, found that negligence as alleged was established on the evidence and that there was no contributory negligence. The appellant appeals on the question of damages and there is a cross-appeal, which it will be convenient to deal with in the first place, on the ground that there was no evidence or insufficient evidence of negligence and also that the Court erred in finding that there

was no contributory negligence. No witnesses were called for the defence though the driver was, as we have been told, available : it is a remarkable feature of the case that he did not testify as to the circumstances of the accident in view of the evidence put forward for the appellant and particularly having regard to the allegations contained in paragraph 2 of the defence. I think that there was enough evidence reasonably to permit the conclusions of fact reached by the lower Court and consider that the cross-appeal should fail and be dismissed.

The plaintiff-appellant was awarded the sum of £400 for the benefit of the estate of the deceased. It is not in dispute that she was the only person dependent on the deceased who would suffer pecuniary loss and while the learned Judges of trial made an assessment of damages under this head, viz: £433.334, they felt unable to enter judgment for this further amount on the ground that it was at least doubtful whether it was claimed as a matter of pleading, but they expressed the pious hope that a settlement might be reached between the parties on the basis of the assessment made. The appellant now submits that she is entitled to judgment for this additional sum as the dependent of the deceased.

It was of course open to the appellant to sue for relief under two heads, first, for damages payable to the estate under section 34 of the Administration of Estates Law, 1954, and, secondly, for damages as a dependant of the deceased under section 53 of the Civil Wrongs Law (Cap. 9) — *Christou & Ors.* v. *Panayiotou & Ors.* 20 C.L.R. Part II, 52. The question is whether the statement of claim, which was prepared by her advocate, is sufficient for the institution of both claims. The lower Court thought not having regard to the form of the claim for relief though, as we have been told from the Bar and as would appear from the record, the point was not taken on behalf of the respondents. The following passage is taken from the judgment:—

> " In framing our judgment, however, we are faced with a difficulty (probably a formal one, but nevertheless a difficulty) which we must consider. The claim is made by the widow in her capacity as administratrix of the estate. In this capacity the widow having filed her action within the periods prescribed by both the Civil Wrongs Law, and the Administration of Estates Law, she can make both the claim for the estate and the claim for the benefit of the dependants of the deceased. In her pleadings she raised sufficiently, in our opinion, both these matters ; and both were met by the defence. But she makes one single claim for damages, probably intended to cover damages under both heads, but in fact put into one single item. In these circumstances, we doubt whether at this stage we can give judgment for one single

item to cover the damages to the estate as well as the damages to the widow, as dependent of the deceased. We have, therefore, found ourselves constrained to confine the judgment to the amount payable to the estate.....".

In the endorsement of claim on the writ it is stated that:—

" Plaintiff claims as administratrix of the estate of the deceased Gregoris Ioannou, late of Famagusta, £1,500 as damages, or otherwise, for the death of Gregoris Ioannou, her husband, caused through the negligent driving of, etc.".

Paragraphs 1, 5, 6, 7 and 9 of the statement of claim are as follows:-

"1. Plaintiff is the widow of the deceased Gregoris Ioannou, late of K. Varosha, and the administratrix of his property, appointed as such by virtue of an order dated 8.11.58 of the District Court of Famagusta in application No. 83/58.

5. On account of the said injuries suffered by deceased Gregoris Ioannou due to the negligent driving by defendant of car P.789 the said Gregoris was killed and thus he lost the usual hope and expectation of a happy life and his property suffered loss and damage, and plaintiff however lost her supporter and consequently all her means of livelihood.

6. The deceased Gregoris Ioannou left the following heirs :

(*a*) Plaintiff, Maritsa Gregoriou, his wife, aged 56.

(*b*) Prokopia Gregoriou, his daughter, aged 29.

(*c*) Ioannis Gregoris, his son, aged 27.

(*d*) Panayiotis Gregoris, his son, aged 24.

7. The deceased Gregoris Ioannou, was 51 years of age, and was a regular employee in the military works at Famagusta since 1950 at £5.500 per week.

He was the only supporter of the plaintiff, who has no property at all and by his death plaintiff lost the support which she had from him for her maintenance and support. The deceased left no property.

9. For the above reason plaintiff, as administratrix of the estate of the deceased Gregoris Ioannou, brought the present action against the defendants and claims:-

(*a*) £1,500 as damages, or otherwise, for the death of Gregoris Ioannou, late of Varosha, her husband, caused on or about the 11.5.58, due to the negligence of defendant 1. while he was driving car P.789

at Salamis Avenue, Famagusta belonging to the defendant 2, who employed defendant No.1, as a driver at the time of the accident.

(*b*) Legal interest and the costs of the present action.".

The statement of claim, like so many of the pleadings that, one may fairly though regretfully observe, come to the Courts, is certainly not to be commended as a model piece of drafting. Why reference is not more generally made to the well-known precedents given in the books I am at a loss to understand, and nothing in this judgment is to be taken as countenancing laxity in these matters : it behoves the Courts to raise the standard by strict application of the principles governing pleadings in an action. Having said that, I come to the question as to whether this particular statement of claim is substantially sufficient for the obtaining of relief under the two heads to which reference has been made. Certainly the respondents, as was appreciated by the Court below, do not appear to have been misled into thinking that the claim was being made solely on behalf of the estate. No objection was taken below at any stage and in particular when the appellant was examined in chief as to her state of financial dependence upon the deceased, a point upon which she was also cross-examined. Moreover, in pleading by paragraph 5 of the defence to paragraphs 5 and 6 of the statement of claim the respondents recognised that there was also a claim to meet affecting the widow as a dependant. Paragraph 5 of the defence is as follows:—

" Defendants admit that Gregoris Ioannou died as a result of the wounds he sustained during the said collision. Also defendants admit that the deceased left the heirs mentioned in para. 6 of the statement of claim but the only one supported by him was his wife Maritsa Gregoriou, aged 56. But yet she was not wholly supported by him because she was working and received extra payment ".

Again in paragraph 6 of the defence the respondents alleged :

" Referring to para. 7 of the statement of claim defendants allege that the deceased was more than 55 years of age and his weekly payment was not more than £4.000".

The relevance of that averment would go to meet claims in relation to reasonable expectation of life for the benefit of the estate and to pecuniary loss in relation to a dependant.

It is the single claim for relief in damages contained in paragraph 9 of the statement of claim that appears to have weighed with the minds of the learned Judges of trial in withholding judgment under section 53 of the Civil Wrongs Law,

and were it not for the form of that paragraph it appears from what was said in the judgment that they would have awarded the amount assessed for the purposes of that section.

At this stage of appeal the respondents evince a new attitude in regard to the adequacy of the appellant's pleading. Their learned advocate refers to section 53 (1) (c) of the Civil Wrongs Law and in particular to the last paragraph of the precedent commencing at page 330 of the 10th edition of Bullen and Leake on Precedents of Pleadings in which the claim for relief is given under the two separate heads relating to the Fatal Accidents Acts and the Law Reform (Miscellaneous) Provisions Act, 1934. But I would invite attention to precedent No. 453 at page 572 of the 11th edition of Bullen and Leake, which is more in line with the circumstances of the instant case and in which there is no specific reference to the titles of the statutes; moreover, the claim for relief in the final paragraph is not in terms divided up under separate statutory heads but is simply a claim for damages. Again in the appropriate precedent given in Odgers on Pleading and Practice, 16th edition at pp. 463-4, while there is a reference to the two statutes the claim for relief is simply - " And the plaintiff claims damages".

In the present case it is to my mind patently clear, whatever criticism may be levelled in point of drafting, that the appellant was by her statement of claim seeking relief under the two corresponding Cyprus enactments referred to above, and that such was apparent to the respondents is made very evident by their pleading in defence and the course of the case at trial. By paragraph 6 of the statement of claim information was given as to the widow and children left by the deceased and further averments go to show that the widow was claiming as the only dependant suffering pecuniary loss. By paragraph 5 of the defence it was averred that the widow was the only one being supported by her deceased husband and it was found as a fact by the Court that she was the sole person dependent on the deceased at the time he met his death. Paragraphs 5 and 8 of the statement of claim also make it sufficiently manifest that the appellant was claiming for the benefit of the deceased's estate. The claim for relief might simply have been, in accordance with the sound precedents to which I have made reference — "And the plaintiff claims damages." She did claim damages and chose, as she was entitled, to limit the total amount of damages falling for assessment, if she succeeded on the merits, to £1,500. I am quite unable to accept it that by framing the claim for relief as she did, the appellant has shut herself out from recovering damages as a dependant under section 53 of the Civil Wrongs Law. I consider that judgment should have been entered for the sum assessed under that head. I would allow the appeal and give judgment in the appellant's favour for the further amount of £433.334 with the legal interest thereon

at 4% until date of payment together with the costs of the appeal and on the cross-appeal.

ZEKIA, J. : The appellant, the widow of the deceased Gregoris Ioannou, brought the present action in her capacity as the administratrix of the estate of the said Gregoris claiming £1,500 damages from the respondents. It was alleged that respondent 1, driver, in the employment of respondent 2, by negligent driving caused the death of the said Gregoris.

The intention of the appellant in view of paragraphs 5, 6, 7 and 8 of the statement of claim was to claim damages under two headings: (a) for the estate and (b) for herself as dependent. The respondents were not under any misapprehension as to such an intention. This is clear from paragraph 5 of the statement of defence.

The trial Court awarded £400 damages for the benefit of the estate, but felt unable to give damages to the widow personally as the sole dependent of her deceased husband. The main reason being that the appellant made only one single claim for damages. The legal point in issue is whether the plaintiff in framing the statement of claim conformed with rule 3 of Order 20 of the Civil Procedure Rules. If she, the plaintiff, substantially complied with that rule she is entitled to succeed in this appeal. It was argued that the statement of claim was in two respects defective:—

1. There were not two separate claims for damages.

2. It was not expressly stated in the statement of claim that the action was brought for the benefit also of the widow personally as the dependant of the deceased.

As to point 1. When damages are claimed as relief for more than one cause of action the word "damages" need not be repeated for each claim, provided it is made clear that damages are claimed in respect of all causes. In the instant case, with respect, I do not think there was room for the trial Court to doubt that the claim for damages as relief did not refer also to the widow's similar claim as the dependant of the deceased.

As to point 2. The defect in the pleadings, namely, the omission from the statement of claim of an express statement that the action was brought, not only for the benefit of the estate but also for the benefit of the widow as a dependent of the deceased ; taking the statement of claim as a whole, and bearing in mind the provisions of section 53 (1) (a) of the Civil Wrongs Law requiring the institution of the action in the name of executor, administrator, etc., in claims arising from the death of a member of a family caused by the negligence of another, I am inclined to the view, certainly not without

some hesitation, that the appellant's failure to state specifically that she brought the action also for the benefit of herself is not fatal to her claim.

As to the cross-appeal that there was no evidence to support negligent driving on the part of the respondent 1, I wish to say only that I find myself in full agreement with what has been stated in the judgment of the Chief Justice.

I agree, therefore, that the appeal should be allowed and the cross-appeal dismissed, and judgment be entered in the terms indicated by the Honourable the Chief Justice.

Appeal allowed with costs. Judgment to be entered as aforesaid. Cross-Appeal dismissed with costs.