[TRIANTAFYLLIDES, P., L. LOIZOU, MALACHTOS, JJ.]

CHARALAMBOS P. DROUSHIOTIS AND ANOTHER,
Appellants-Defendants,

v.

GEORGHIA XENI AND OTHERS,
Respondents-Plaintiffs.

(Civil Appeals Nos. 5487, 5488).

Negligence—Road accident—Collision at road junction—Major and minor road—No "halt" sign—Motorist emerging from minor road without keeping a proper look out—And in a manner indicating total disregard for possible presence of other road users on major road—Rightly held totally to blame for the accident—Whether driver proceeding along a major road may be found liable for negligence.

Damages—Special damages—Loss of earnings—Medical expenses—Awarded for private treatment, in the circumstances of this case, though plaintiff was entitled to free medical treatment at a Government Hospital.

Damages—General damages—Personal injuries—Hip injury and concussion—Inability to work for six weeks—After-effects—Considerable pain at first and in a painful condition for a period of time—Earning capacity slightly reduced for four months after the first six weeks—Inclination of body to right—Award of C£350—*Sustained.*

Damages—Fatal accident—Dependency—Forty-two years' old married woman mother of five children—Earning about C£130 *per month prior to becoming a refugee—She had capability and possibility of finding suitable employment in order to support her family—Award of* C£800 *and* C£75 *for two minor children, respectively, upheld.*

Damages—Fatal accident—Loss of expectation of life—Measure of damages—Matters relevant to assessment—Woman of forty-two —Award of C£750—*Sustained.*

Costs—Consolidated actions—Plaintiff in one action and third party in another—Successful—Separately represented—No possibility of conflict of interests—Deprived part of costs—Costs on appeal.

Whilst appellant 1 was driving along Nicodemos Mylonas street, Larnaca, towards its junction with Gregoris Afxentiou avenue he collided with a car which was being driven along the avenue by respondent 1. As a result of the collision the mother of respondent 1 died and respondent 1 herself was injured; damage was also caused to both vehicles.

The trial Court found that Afxentiou avenue is a major road and that Nicodemos Mylonas street is a minor road in comparison to it. It was common ground that there was no "halt" sign or other traffic sign warning a driver, who was proceeding along Nicodemos Mylonas street towards the junction, that he had to stop before going across it.

The trial Court after holding that appellant 1 was driving without keeping a proper look-out and that, also, he was driving in a manner indicating total disregard for the possible presence of other road users on Afxentiou Avenue, found that appellant 1 was wholly to blame for the accident and awarded C£67 special damages (out of which C£20 for medical expenses) and C£350 general damages to respondent 1 and C£750 to the administrators of the estate of the deceased mother of respondent 1, for loss of expectation of life; in addition it awarded C£50 for funeral expenses, C£800 and C£75, respectively, to two minor sons of the deceased, Nicos and Antonios, on the ground of dependency. Nicos was aged fourteen and he was a secondary education school pupil. Antonios was aged seventeen and was working as an apprentice plumber earning about C£5 a week.

The main issues for consideration in these appeals related to:

(a) The finding of the trial Court regarding liability for the accident;

(b) The award of special damages and particularly the award of C£20 for medical expenses;

(c) The award of general damages;

(d) The award for loss of expectation of life and

(e) The award for dependency.

There was, also, a cross-appeal by respondent 1 (plaintiff in action No. 971/74) regarding her costs as third party in action No. 1035/74); it has been argued on her behalf that she had to be represented before the trial Court by separate counsel, because

of possible conflict of interests with the other respondents, and that, therefore, it was wrong for the trial Court not to award her costs as a third party in action No. 1035/74 because she was awarded costs as a plaintiff in Action No. 971/74.

Regarding issue (a) counsel for the appellants has submitted, in the alternative, first that appellant 1 was not to blame at all for the collision, and secondly, that, if he was to blame, respondent 1 was, also, to blame and was, therefore, guilty of contributory negligence.

Regarding issue (b) above it has been argued that the amount of C£20 for medical expenses ought not to have been awarded, because respondent 1 was entitled to free medical treatment at the Larnaca Hospital. In this connection respondent 1 stated in evidence that being in pain due to her injuries she could not wait for hours in a queue at Larnaca hospital to be treated free of charge, as an out-patient and, so, she chose to be treated as a private patient.

Regarding issue (c) the factual position was to the effect, that respondent 1 sustained a hip injury and concussion and suffered considerable pain at first and her condition remained painful for a period of time; and for a period of approximately four months after the first six weeks her earning capacity was slightly reduced on account of such injuries.

Regarding issues (d) and (e) the deceased was, at the time, about forty-two years old, married, and had five children. She was well settled at Famagusta until the summer of 1974 when, due to the Turkish invasion, they became refugees and they had to move to Larnaca. Her husband was working as a lorry driver earning only about C£12 a week and so the deceased had to work, too, in order to help support their large family. The trial Court found that the deceased was, when she was residing at Famagusta, continuously employed, earning about C£130 per month and was about to be re-employed in Athens by her former employer. But irrespective of this prospect of employment the deceased was a person who had the capability, and the possibility, of finding suitable employment in order to support her family.

Regarding the award for loss of expectation of life counsel for the appellants argued that the trial Court erred because it overlooked the fact that there existed a difference, which ought

to have been judicially noticed, between the value of the Cyprus pound and that of the pound sterling in England, and, so, when it proceeded to award C£750 it was clearly influenced wrongly by the award of £750 made in the case of *McCann* v. *Sheppard & Another*, [1973] 2 All E.R. 881.

Held, (*I*) *with regard to issue* (*a*) *above:*

In the light of the principles which guide this Court in interfering or not with the finding of a trial Court regarding liability for negligence, or apportionment of such liability (see *Skrekas* v. *Nicolaou* (1973) 1 C.L.R. 123), and on the basis of the facts of this case as found by the trial Court, and, especially, on the fact that the car, which was being driven along Afxentiou avenue, was struck quite violently at, apparently, the middle of its nearside, we do not think that we can interfere with the finding of liability, as it was made by the trial Court. (*Lang* v. *London Transport Executive and Another* [1959] 3 All E.R. 609 distinguishable on its own facts from the present case).

Held, (*II*) *with regard to issue* (*b*) *above:*

We find nothing unreasonable in respondent 1 being treated as a private patient, in the circumstances she has stated, and, therefore, we see no reason to deprive her of the C£20 special damages for medical expenses.

Held, (*III*) *with regard to issue* (*c*) *above:*

On the basis of the findings of the trial Court (vide p. 170 *post*), which are supported by the evidence before it, we cannot see anything wrong with the award to respondent 1 of general damages of C£350 and, therefore, we cannot interfere with it. (See, *Mesimeris* v. *Kakoullis* (1973) 1 C.L.R. 138 and *Iacovou* v. *HjiNicolaou* (1974) 1 C.L.R. 11).

Held, (*IV*) *with regard to issue* (*d*) *above* (*after referring extensively to the relevant case-law—vide pp.* 172–183 *post*).

We do not think that, even assuming that the trial Court did overlook the disparity between the Cyprus and the English currencies, this is a decisive consideration which should make us alter the award of C£750 made by it; we are of the opinion that such award is, in any event, in the light of present realities in Cyprus, fair and reasonable, even though it is, perhaps, somewhat on the high side.

Held, (V) with regard to issue (e):

We are of opinion that the awards for dependency were fully warranted in the circumstances of this particular case and we, therefore, are not entitled to interfere in favour of the appellants in connection with this aspect of the present case.

Held, (VI) with regard to the cross-appeal of respondent 1 concerning her costs:

It should not be lost sight of that both actions were heard together; and, moreover, we fail to see sufficient justification for thinking that there did exist in reality a possibility of conflict of interests. We are not, therefore, prepared to interfere, in relation to this matter, with the exercise of the discretion of the trial Court and we dismiss the cross-appeal.

Appeals and cross-appeals dismissed.

Per Curiam: We need hardly stress that by allowing the award of C£750 to stand we are not minded to lay down that as much as that should be awarded, for loss of expectation of life, in every occasion, irrespective of the circumstances of the particular case.

Cases referred to:

Lang v. *London Transport Executive and Another* [1959] 3 All E.R. 609;

Skrekas v. *Nicolaou* (1973) 1 C.L.R. 123;

Zarpeteas v. *Touloupou and Others* (1975) 1 C.L.R. 454;

Mesimeris v. *Kakoullis* (1973) 1 C.L.R. 138;

Iacovou v. *HjiNicolaou* (1974) 1 C.L.R. 11;

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

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

Benham v. *Gambling* [1941] 1 All E.R. 7;

H. West & Son Ltd. and Another v. *Shephard* [1963] 2 All E.R. 625;

Andrews v. *Freeborough* [1966] 2 All E.R. 721;

Yorkshire Electricity Board v. *Naylor* [1967] 2 All E.R. 1;

Cain v. *Wilcock* [1968] 3 All E.R. 817;

McCann v. *Sheppard and Another* [1973] 2 All E.R. 881.

Appeals.

Appeals by defendants against the judgment of the District Court of Larnaca (Pikis, Ag. P.D.C. and Artemis, D.J.) dated the 7th July, 1975, (Actions Nos. 971/74 and 1035/74) whereby they were ordered to pay to the plaintiff in Action No. 971/74 the sum of £417 as damages for injuries received in a road accident and to the plaintiffs in Action No. 1035/74 the sum of £1,475 as damages in respect of the death of the late Andriani Evangelou.

G. Georghiou, for the appellants.

A. Poetis, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: These two appeals have been made against the judgment given by the District Court of Larnaca in two consolidated civil actions, Nos. 971/74 and 1035/74; appeal No. 5487 relates to action No. 971/74 and appeal No. 5488 relates to action No. 1035/74. Both actions arose out of one and the same traffic collision, which occurred in the centre of Larnaca town on October 2, 1974.

Appellant 1 (who was defendant 1 at the trial) was at the material time driving a car, GL068, which belonged to appellant 2 (defendant 2 at the trial); the vicarious liability of the latter for the conduct of the former is not in dispute.

Appellant 1 was driving along Nicodemos Mylonas street towards its junction with Gregoris Afxentiou avenue; along that avenue there was being driven car BY830, the driver of which was the plaintiff in action No. 971/74; in that car there was, as a passenger, her mother, who was killed as a result of the collision; and the other action, No. 1035/74, was filed by the administrators of her estate. In the latter action the plaintiff in action No. 971/74 was joined as a third party on the initiative of the appellants, as the defendants in such action.

The collision resulted, as already stated, in the death of the mother of the driver of car BY 830 and, also, the driver of that car was injured herself; and damage was caused to both vehicles.

The trial Court found that Afxentiou avenue is a major road and that Mylonas street is a minor road in comparison to it.

It is common ground that, at the time, there was no "halt"

sign or other traffic sign warning a driver, who was proceeding along Mylonas street towards the junction, that he had to stop before going across it.

The trial Court has held that appellant 1 was driving without keeping a proper look-out and that, also, he was driving in a manner indicating total disregard for the possible presence of other road users on Afxentiou avenue.

In arguing these appeals counsel for the appellants has submitted, in the alternative, first, that appellant 1 was not to blame at all for the collision, and, secondly, that if he was to blame, respondent 1 (the plaintiff in action No. 971/74) was, also, to blame and was, therefore, guilty of contributory negligence (and we have been referred in this respect to, *inter alia*, *Lang* v. *London Transport Executive and another*, [1959] 3 All E.R. 609).

The principles which guide this Court in interfering or not with the finding of a trial Court regarding liability for negligence, or apportionment of such liability, have been repeatedly stated and we need only refer to two relevant cases, where they have been expounded, namely *Skrekas* v. *Nicolaou*, (1973) 1 C.L.R. 123, and *Zarpeteas* v. *Touloupou and Others*, (1975) 1 C.L.R. 454.

In the light of those principles, and on the basis of the facts of the present case as found by the trial Court, and, especially, of the fact that the car, which was being driven along Afxentiou avenue, was struck quite violently at, apparently, the middle of its nearside, we do not think that we can interfere with the finding of liability, as it was made by the trial Court. It is correct that in the *Lang* case it was envisaged that it is possible, in case of a collision, for a driver proceeding along a major road to be found liable for negligence, in certain circumstances, but that case is clearly distinguishable on its own facts from the present one; we need only refer, in this connection, to the judgment of Havers J. (at p. 617) where the following are stated:-

> " I feel bound to follow the principle enunciated by Lord Dunedin* and which was referred to by Lord Du Parcq**:
>
> ' If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence;

* See *Fardon* v. *Harcourt-Rivington*, [1932] All E.R. Rep. at p. 83.

** [1949] 1 All E.R. at p. 72.

but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions.'

The question, therefore, which I have to consider in this case is: was the possibility of danger reasonably apprarent? The second defendant said he had seen the movement of cyclists in South Lane, so that he knew there were some cyclists approaching the main road from South Lane. He said, in cross-examination, that he was aware, from his experience, that sometimes persons would suddenly emerge from a side road even when it was not prudent to do so, and sometimes children in exceptional circumstances did the same thing. I think, therefore, that he was under a duty to take some precautions against that possibility. He ought, as he approached South Lane, to have looked at the traffic in South Lane to see whether the deceased was still moving at twenty miles per hour and obviously intending to cross, or whether he was slowing down and going to wait for the traffic in the major road. If he had looked in my view the possibility of danger occurring would have been reasonably apparent to him. If he had looked, he could have stopped in time to allow the deceased to cross in front of him. He did not do so, and never saw the deceased again until the two vehicles were on top of one another. In this respect I find that he failed to take reasonable care for the safety of other traffic on the road, and was therefore negligent. He made a mistake in assuming that the deceased would not do what his experience should have taught him that persons in fact sometimes do.

I have come to this conclusion very reluctantly because he was on the major road, and he was driving at a moderate speed, and especially in view of his very fine record. I find, however, that the deceased was far more to blame than the second defendant, and that his share of responsibility was far greater. I find the deceased two-thirds to blame and the second defendant one-third to blame".

The next issue that arises for determination is the amount of damages awarded in action No. 971/74 to respondent 1 to which appeal No. 5487 relates; she was awarded C£67 special damages and C£350 general damages.

It has been argued that it was wrong for the trial Court to find that respondent 1 was totally "unable to walk" for a period of six to seven weeks, because the trial Court appears to have accepted as correct the evidence of a witness called by this respondent who stated that he saw her walking with a limp about one and a half weeks after the accident. It was, also, contended that the injuries suffered by respondent 1, as they are described in a medical report signed by the doctor who treated her at Larnaca hospital, appear not to be, on the whole, of a very serious nature.

In addition, however, to the said report, the trial Court heard the evidence of the doctor who had signed it, and, bearing in mind such evidence, as accepted by the trial Court, we see no reason to disagree with the finding that respondent 1 was totally unable to work for a period of six to seven weeks; moreover, we are in agreement with counsel for respondent 1, that the word "walk" in the judgment is a misprint and that it should read, instead, "work"; thus, the whole argument of counsel for the appellants which was based on the word "walk" is deprived, indeed, of its foundation.

On the strength of the finding that respondent 1 was unable to work for a period of six to seven weeks she was awarded C£7 special damages per week for loss of earnings for six weeks only; in addition she was awarded C£5 in respect of clothing of hers which was destroyed in the collision and, also, C£20 for medical expenses; in all C£67.

It has been argued in relation to the C£20 for medical expenses that this amount ought not to have been awarded, because respondent 1, was entitled to free medical treatment at the Larnaca hospital where she was admitted as an in-patient for nine days; and after her discharge from the hospital she was treated by the same doctor who had treated her at the hospital, namely Dr. S. Loizides. This doctor was working on part time basis at the Larnaca hospital and, apparently, the respondent was treated by him as a private patient after she left the hospital and that is why she paid him C£20, which she has claimed from the appellants; she has stated in evidence that being in pain due to her injuries she could not wait for hours in a queue at Larnaca hospital to be treated free of charge, as an out-patient and, so, she chose to be treated by Dr. Loizides as a private patient. We find nothing unreasonable in her

choosing to do so and, therefore, we see no reason to deprive her of the C£20 special damages for medical expenses.

Regarding the award of general damages the trial Court found the following in its judgment, concerning the nature of the after effects of the injuries of respondent 1:-

> " We find that the plaintiff suffered, because of her injuries, considerable pain at first and that her condition remained painful for a period of time. For a period of approximately four months after the first six weeks her earning capacity was slightly reduced on account of the injuries she suffered. We find that her complaint as to an inclination of her body to the right is genuine in the sence that she is not malingering about it but fortunately this is not due to any constitutional causes but to a feeling of phobia resulting from the injuries she suffered and the pain she experienced. With time it will subside and vanish."

On the basis of the above findings of the trial Court, which are supported by the evidence before it, we cannot see anything wrong with the award to respondent 1 of general damages of C£350 and, therefore, we cannot interfere with it. Our approach to the question of interfering on appeal with awards of general damages has been explained in many cases, but we need refer to only two of them, namely *Mesimeris* v. *Kakoullis*, (1973) 1 C.L.R. 138, and *Iacovou* v. *HjiNicolaou*, (1974) 1 C.L.R. 11.

For all the foregoing reasons appeal No. 5487 is dismissed; the cross appeal, by respondent 1, in this appeal has been withdrawn and it is dismissed accordingly.

We pass on, next, to appeal No. 5488 which relates to the award of C£750 made to the administrators of the estate of the deceased mother of respondent 1, for loss of expectation of life; in addition there were awarded C£50 for funeral expenses, and C£800 and C£75, respectively, to two minor sons of the deceased on the ground of dependency.

We shall deal first with the award regarding the funeral expenses: That these expenses have been actually incurred has been established by evidence given by a daughter of the deceased, and the fact that no receipts were produced to support her evidence is, in our view, of no real significance so long as the trial Court has accepted as true her evidence; therefore, we cannot interfere with this award.

Regarding the issue of dependency, the deceased was, at the time, about forty-two years old, married, and had five children. As found by the trial Court the family was well settled at Famagusta until the summer of 1974 when, due to the Turkish invasion, they became refugees and they had to move to Larnaca. The husband of the deceased was working as a lorry driver earning only about C£12 a week and so the deceased had to work, too, in order to help support their large family. The oldest daughter, Xenia, was twenty-five years old and engaged to be married; the other daughter was Georghia, respondent 1; there were, also, three sons: Christakis aged eighteen, who was serving as a conscript in the National Guard, Antonios, aged seventeen, who was working as an apprentice plumber earning approximately C£5 a week, and Nicos, aged fourteen, who was a pupil attending a secondary education school.

The trial Court found that the deceased was, when she was residing at Famagusta, continuously employed, earning about C£130 per month, by acting as a companion to a lady there and looking after her grandchildren; actually, this lady moved with the family of the deceased to Larnaca and then she went to Athens; and it is in evidence that the deceased was about to go to Athens to be re-employed by her, and was making arrangements regarding her travel documents, at the time when she was killed in the collision. But, even irrespective of that prospect of employment, there is no doubt that the deceased was a person who had the capability, and the possibility, of finding suitable employment in order to support her family. In the light of the totality of the evidence before it the trial Court awarded C£800 to the younger son, Nicos, as the value of his dependency at the material time, and C£75 to the other minor son, Antonios, as the value of his dependency.

We are of the opinion that the above awards were fully warranted in the circumstances of this particular case and we, therefore, are not entitled to interfere in favour of the appellants in connection with this aspect of the present case.

We come, next, to the central issue in this case, which is the amount of damages awarded for loss of expectation of life of the deceased, namely C£750:

We would like to start by referring to a case decided by our own Supreme Court in 1968, that of *Kartambi and Others* v. *Alfa Shoe Factory and Others*, (1968) 1 C.L.R. 324, where, in

relation to the loss of expectation of life of a young man, twenty-one years old, there was awarded the amount of C£500 by the trial Court and this Court did not interfere on appeal with such award; Vassiliades P. said the following (at p. 328):-

" Under the head of loss for expectancy of life, going to the estate, 'bearing in mind—the trial Court say—of the circumstances surrounding the deceased and of all other relevant factors, we allow the figure of £500'.

This part of the award has not been questioned in the appeal from either side; and we do not propose disturbing it. It was, apparently, awarded following the decision in *Kyriakou Christou and Others* v,. *Chrysoulla Panayiotou and Others* (20, C.L.R. Part II, p. 52), where the Supreme Court of the Colony of Cyprus, made an award of £600 under this head of damages in respect of two victims in the same road accident, a father aged 50, factory labourer, and his son aged 13, a grocery boy, awarding £300 to each estate.

It should be noted, however, that in the *Christou* case the award was made under section 15 of the Civil Wrongs Law, as it stood in the 1949-edition of the Cyprus Statutes as Cap. 9, after its amendment shortly before the *Christou* case by Law 38 of 1953. Section 15 of Cap. 9, has now been replaced by section 34 of the Administration of Estates Law, (Cap. 189). The statutory provisions applicable to the case in hand with regard to the payment of compensation to dependants, are to be found in sections 58 and 59 of the Civil Wrongs Law (now Cap. 148 in the 1959—edition of our Statute Laws); and in section 34 of the Administration of Estates Law (Cap. 189)."

In the passage we have just quoted reference is made to the earlier case of *Christou and Others* v. *Panayiotou and Others*, 20 C.L.R. Part II, 52; it is not in dispute that at all material times, both when the *Christou* and the *Kartambi* cases were decided and when the present case was determined by the trial Court, the relevant legislation in Cyprus was quite similar as that in force in England, and that the general principles governing the entitlement to, and the assessment of, damages for loss of expectation of life are, and were, the same both here and in England; actually, in the *Christou* case reference was made to the decision of the House of Lords in England in

Benham v. *Gambling*, [1941] 1 All E.R. 7, which is still a leading case there in this respect. We shall not refer in extenso to the judicial pronouncements in that case, because we shall have occasion to refer to later judgments where that case was relied on and extracts from such pronouncements were quoted.

In the *Benham* case it was held that the proper amount to be awarded for loss of expectation of life of a boy of the age of two and a half years, who was killed in an accident was £200.

In *H. West and Son, Ltd., and Another* v. *Shephard*, [1963] 2 All E.R. 625, it was held that the proper amount to be awarded for loss of expectation of life in relation to the death of a woman, aged forty-one years and the mother of three children, was £500; in that case the *Benham* case was referred to and the following were stated by Lord Pearce (at p. 644):-

> " In *Benham* v. *Gambling** this House was called on to answer a particular problem that had recently caused grave difficulty in the Courts. It had little direct connexion with the daily cases concerned with injuries that disable the living body. The problem simply stated was 'Is life a boon? And, if so, what is the money value of all that which we lose by death?' From 1934** onward every person, be it an infant in arms or an aged cripple, who was killed by negligence, had, through his personal representatives, a claim for damages for the loss of his expectation of life. These claims were supported by varying evidence designed to give speculative illumination on what might have been the future material, social and temperamental prospects of the deceased and the resulting value of life to him. As might be expected, the wide divergence of views as to the value of our leases of life, whether forfeited near their beginning or end, or in the middle, led to awards which varied very widely and unpredictably. Into this unseemly chaos *Benham* v. *Gambling** brought consistency at the inevitable expense of withdrawing the consideration of such damages, in effect, from the Judge or jury. It imposed a small conventional figure within narrow limits. This

* [1941] 1 All E.R. 7.

** See Law Reform (Miscellaneous Provisions) Act, 1934, s. 1; 9 Halsbury's Statutes (2nd Edn.) 792.

figure was a great deal lower than that at which many of us would have set the value of human living."

In *Andrews* v. *Freeborough*, [1966] 2 All E.R. 721, there were awarded £500 for loss of expectation of life of a girl eight years old, who was injured, and later died, as a result of a traffic accident.

In 1967 the question of the quantum of damages for loss of expectation of life came, once again, before the House of Lords in *Yorkshire Electricity Board* v. *Naylor*, [1967] 2 All E.R. 1; Viscount Dilhorne stated the following (at pp. 3-6):-

> "Before the enactment of the Law Reform (Miscellaneous Provisions) Act, 1934, it was recognised that an injured person was entitled, if liability was proved or admitted, to recover damages under this head. The Act of 1934 provided that causes of action vested in a person survived after his death for the benefit of his estate, so administrators of the estate can now sue for damages in respect of loss of expectation of life.
>
> After the passage of the Act of 1934 widely varying amounts were awarded for damages for loss of expectation of life until this House in *Benham* v. *Gambling** gave guidance as to the approach to be made in the assessment of damages under this head. In that case the House reduced the damages that had been awarded in respect of the loss of expectation of life of a child age 2 1/2 from £1,200 to £200. VISCOUNT SIMON, L.C., with whose opinion VISCOUNT MAUGHAM, LORD RUSSELL OF KILLOWEN, LORD WRIGHT, LORD ROCHE, LORD ROMER and LORD PORTER agreed**, said*** that in assessing damages under this head what had to be valued was not 'the prospect of length of days, but the prospect of a predominantly happy life'. He said***:
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> > 'The age of the individual may, in some cases, be a relevant factor—for example, in extreme old age the brevity of what life may be left may be relevant .....

* [1941] 1 All E.R. 7.
** [1941] 1 All E.R. at p. 14.
*** [1941] 1 All E.R. at p. 12.

> The ups and downs of life, its pains and sorrows, as well as its joys and pleasures—all that makes up 'life's fitful fever'—have to be allowed for in the estimate. In assessing damages for shortening of life, therefore, such damages should not be calculated solely, or even mainly, on the basis of the length of life that is lost..... The question thus resolves itself into that of fixing a reasonable figure to be paid by way of damages for the loss of a measure of prospective happiness.'

He went on to point out* that 'the right sum to award depends on an objective estimate to what kind of future on earth the victim might have enjoyed' and said*:

> 'The main reason, I think, why the appropriate figure of damages should be reduced in the case of a very young child is that there is necessarily so much uncertainty about the child's future that no confident estimate of prospective happiness can be made. When an individual has reached an age to have settled prospects, having passed the risks and uncertainties of childhood and having in some degree attained to an established character and to firmer hopes, his or her future becomes more definite, and the extent to which good fortune may probably attend him at any rate becomes less incalculable.

LORD SIMON added*:

> 'The truth, of course, is that in putting a money value on the prospective balance of happiness in years that the deceased might otherwise have lived, the jury or Judge of fact is attempting to equate incommensurables. Damages which would be proper for a disabling injury may well be much greater than for deprivation of life. These considerations lead me to the conclusion that, in assessing damages under this head, whether in the case of a child or an adult very moderate figures should be chosen.'

In that case** their lordships were agreed that the proper figure to award was £200 and LORD SIMON said* 'even

* [1941] 1 All E.R. at p. 13.
** [1941] 1 All E.R. 7.

this amount would be excessive if it were not that the circumstances of the infant were most favourable'.

Evidence was given before ASHWORTH, J., as to the extent of the fall in the value of the pound which had occurred since 1941. It was said that it was then worth two and one-half times what it is to-day. ASHWORTH, J., had regard to the depreciation in the value of the pound and approached the case on the footing that what was appropriate in 1941 is no longer appropriate to-day. He said:

> 'At the end of the day the Court's task is to assess what I prefer to call a reasonable sum, but what some Judges have called a moderate sum, in respect of the loss of this young man's expectation of life (and that) in terms of money the award of 1941 (in *Benham* v. *Gambling**) would not represent a fair award in terms of money if given to-day.'

In other words he was saying that what had to be regarded as, to quote LORD SIMON** 'very moderate figures' in 1941, would not be so regarded to-day.

He assessed the sum to be awarded to the respondent at £500 and expressed the view that it was, if anything, on the high side because the deceased's prospects appeared to have been favourable. To this figure he applied two cross-checks which led him to regard the award of £500 'as being, if anything, generous.'

.....

Although LORD SIMON said** that the damages should be reduced in the case of a very young child, he did not say that they should be substantially less than those awarded to an adult. His conclusion** was that both in the case of a child and of an adult a very moderate figure should be chosen.

.....

That decision had been followed for twenty-six years. This House did not say what sum should be awarded in all cases or say what was the minimum or maximum figure that should be given. It gave guidance as to the approach

* [1941] 1 All E.R. 7.
** [1941] 1 All E.R. at p. 13.

to be made when assessing damages for this loss and, while it recognised that the particular circumstances of the deceased might properly lead to a variation in the amount awarded, it held that that should be a very moderate figure. Even in these days with the drop in value of the pound I do not myself consider that £1,000 can be regarded as a very moderate sum.

.....

If ASHWORTH, J., had awarded £1,000 by way of damages, I would have said that he had not acted in accordance with the decision of this House in *Benham* v. *Gambling** and that in the light of that decision he had made an entirely erroneous estimate; and I would have thought it right to interfere with his award.

In awarding £500 I do not see that he acted on a wrong principle of law or misapprehended the facts or made a wholly erroneous estimate of the damage suffered. He had regard to the fall in the value of money and to what was said in *Benham* v. *Gambling**. If anything, he regarded his estimate as on the high side. While I doubt if anyone would think, even in these days, that a sum much in excess of £500 could be regarded as a very moderate sum, it is not for this House to lay down what sum should be awarded in all cases for this loss or what should be the minimum and the maximum award."

In the same case Lord Morris of Borth-Y-Gest stated the following (at pp. 7–9):–

> " It was urged that the Judge had failed to embark on a process of measurement of damages, but had fixed an arbitrary sum. In support of this contention reference was made to a passage in his judgment where he said:
>
> > ' It is generally accepted that there is an air of unreality about the matter, and for this reason in the absence of any statutory scale, awards are bound to be somewhat arbitrary.'
>
> The Judge was, however, doing no more than to echo what Lord Simon had said in *Benham* v. *Gambling**; that in respect of this head of damage it is impossible to make

* [1941] 1 All E.R. 7.

measurement in coin of the realm with any approach to real accuracy; and who can doubt that there is an air of unreality about the matter? The average healthy and reasonably contented man would not barter his expectation of life even for the most princely sum. The best that Courts can do in an enquiry of singular elusiveness is to follow the guidance given in *Benham* v. *Gambling**. The Judge was punctilious in doing so. He recognised and took into account the fact that since 1941 there has been a fall in the value of money. He had that consideration very fully in mind.

.....

The view was also held that the House of Lords had laid it down that in these cases damages in respect of the death of a young child should be 'substantially' less than in the case of an adult. I do not read the speech of LORD SIMON** as laying down quite so rigid a proposition. Rather was he saying that each case must be individually considered.

.....

No one, of course, could fail to appreciate the range and the variety of the uncertainties that must beset any attempted assessment of the prospects that someone will enjoy 'a positive measure of happiness'. The very young child may have, and often in times past had, serious uncertainties as to survival. Apart from that there are for those of all ages the risks of accident and ill-health. As, however, what is being examined concerns the prospects of attaining a measure of happiness then it must often be the case that in an enquiry there will be more to go on in the case of an older than in the case of a younger person.

.....

He was bound to follow what was laid down in *Benham* v. *Gambling*** with its emphatic exhortation that 'very moderate figures should be chosen'."

Lord Gest in his judgment (at p. 10) referred with approval to the award of £500 in the *Andrews* case, *supra*; and then Lord Devlin said the following in his judgment (at pp. 10–11):–

* [1941] 1 All E.R. 7.
** [1941] 1 All E.R. at p. 8.
*** [1941] 1 All E.R. at p. 13.

" This is an exceptional principle to be applied in the law of damages, where difficulty in calculation is not ordinarily taken as a ground either for reducing or for increasing the award. On the other hand, the circumstances that were considered exceptionally favourable in 1941 (being the fact that the child lived in a country village where the risk of road dangers and disease would be less than in a crowded centre and that the father was in steady employment) would not now be considered in any way out of the ordinary. However this may be, the figure has been taken as if, subject to the change in the value of money, it had been fixed by statute in 1941; and indeed the decision in *Benham* v. *Gambling** has been described as 'judicial legislation'. The current figure, which in fact the Judge awarded in this case, is £500 and the evidence at the trial showed that this was almost exactly the equivalent of £200 in 1941.

.....

it is only in a most exceptional case that the principles laid down in *Benham* v. *Gambling** admit of any flexibility in the result. Every assessment of general damage for physical injury, whether it causes loss of life or of a limb or of a faculty, has got to start from the basis of a conventional sum. If it did not, assessments would be chaotic. Every Judge has within his knowledge, not only the figure of £500 as the conventional sum appropriate to loss of life, but a number of other conventional sums appropriate to losses of limbs and faculties. The conventional figure for loss of a limb or a faculty is only the starting point for a voyage of assessment which may, and generally does, end up at a different figure. To a great reader the loss of an eye is a serious deprivation; the value of a leg to an active sportsman is higher than it is to the average man. Then there is usually some additional financial loss, actual or potential, to be taken into account.

While the loss of a single faculty, however, may be more serious for one individual than for another, the loss of all the faculties is, generally speaking, the same for all. Thus for loss of expectation of life the conventional figure has become the norm, unless the case is definitely abnormal. What, then, apart from the special case, would justify an

* [1941] 1 All E.R. 7.

increase or reduction in the price of happiness? No one—
—least of all any lawyer—can tell. The directions laid down in *Benham* v. *Gambling** are such that, except in a strictly defined minority of special cases, the starting point for the assessment must also be the finish."

Lastly, Lord Upjohn said the following in his judgment (at pp. 13–14):–

" My lords, I think that the Judge approached this matter in an impeccable way. He said:

> 'The approach which I have endeavoured to make in this case is, first of all, to assess, in the light of knowledge of what has been assessed in other cases, what I consider to be reasonable as a sum for the loss of Paul Naylor's expectation of life, and I have then gone through a process of cross-checking that sum.'

I will refer later to the first cross-check. The second cross-chek which he applied was this:

> ' The other cross-check which I have applied is one based on awards made to my knowledge and by myself in the period of about ten years ago.'

He then referred to a reported decision of his in which he awarded £350 to a young man (apparently in 1956) and then in his cross-check he added on twenty-five per cent. in respect of the fall in the value of money. So he reached the area of £400 to £450.

The first cross-check was based on the fact that the Judge had before him the evidence of an expert in economics, statistics and mathematical economics who produced a table (the accuracy of which was not challenged), which showed that since the decision in *Benham* v. *Gambling** the value of the £1 in purchasing power had fallen by about two and one-half times. Applying that table to the figures given in *Benham* v. *Gambling** he found that, as a cross-check, the result came to £500, but he very rightly emphasised that that was merely a cross-check and it was not the basis on which he reached the figure of £500.

My lords, when assessing damages which depend in part

* [1941] 1 All E.R. 7.

on loss of future earning capacity (not relevant in this case) the depreciation of the pound and inevitable rise in wages may be very relevant. In relation to the assessment of damages for loss of expectation of life, however, I do not think that evidence as to the fall in the purchasing power of the pound has much relevance. For my part, though not questioning its technical admissibility, I deprecate the submission of such evidence in these circumstances; if tendered it is of little if any weight. It is clearly established that damages for the incommensurables with which alone your lordships are dealing, such as loss of expectation of life or (in an action by a living person) for loss of an eye or some other organ, must necessarily fall to be estimated within a bracket in justice both to the sufferer and to the tortfeasor. Over the years the conventional sum to be awarded for such head of damage rises no doubt, but by fits and by starts rather than by any estimation of the purchasing power of the pound, and in my view so it should be. This is a matter which is better and safely left to the experience and commonsense of Judges who day by day have to Judge of these matters. That was the exact approach of ASHWORTH, J., to this problem, with which I entirely agree. He fixed on £500 as a result of his great experience in these matters, and in my view his assessment cannot be said to be erroneous, still less wholly erroneous. The recent case of *Andrews* v. *Freeborough**, where the Court of Appeal refused to interfere with an award of £500 for the loss of expectation of life for a girl of eight, accords with this view.

I myself think that in assessing £1,000 by way of damages the majority of the Court of Appeal** fixed a sum which was too high and which could not properly be described as moderate."

There are two further cases to which we shall refer and which were decided after the *Yorkshire Electricity Board* case, *supra*; the first one is *Cain* v. *Wilcock*, [1968] 3 All E.R. 817, where £500 were awarded for loss of expectation of life in relation to the death of a young girl aged two and a half years.

It is significant to note the resemblance between that case and the case of *Benham*, *supra*, and to observe that the amount

* [1966] 2 All E.R. 721.

** [1966] 3 All E.R. 327.

of the conventional award for loss of expectation of life had risen over the years, in view of the realities of life, from £200 to £500, in relation to the loss of expectation of life of a girl aged two and a half years; in his judgment, on appeal, Willmer L.J. said the following (at pp. 817–818):–

> " I do not propose to review in detail the authorities relating to the assessment of damages in this class of case. The question of claims of this character has twice been before the House of Lords, first in *Benham* v. *Gambling**, and more recently in *Yorkshire Electricity Board* v. *Naylor***. In those two cases their lordships debated at considerable length the considerations which should be borne in mind in making awards in relation to a claim for damages for loss of expectation of life. We have had our attention called to what was said by their lordships in those two cases, and it appears that both of them were brought to the attention of the learned assistant district registrar, and were considered by him. What it has been sought to say in order to get this appeal on to its feet is that the assistant district registrar was guilty of an error of principle in this case because he omitted to make allowances for the tender years of this child and, it is said, arrived at what has been described as the conventional award appropriate to an ordinary adult person.
>
> .....
>
> I can see no warrant for thinking that he did fail to consider the effect of the tender years of this child. He in fact arrived at an award which, having regard to the fall in the value of money, is substantially in line with what the House of Lords thought was appropriate for a small child thirty years ago. It is true that in both the cases to which I have referred it was said by some of their lordships that, in case of the extremities of old age or childhood, it may be appropriate to award less than would be appropriate in the case of the ordinary adult. But, as I have said, it does remain the fact that the award made here is substantially in line with what the members of the House of Lords themselves said was appropriate in *Benham* v. *Gambling** The fact is

* [1941] 1 All E.R. 7.
** [1967] 2 All E.R. 1.

that, as was pointed out by their lordships in both the cases referred to, we are here in a realm where mathematical calculations do not come into it at all. On any view, that which is to be awarded for loss of expectation of life can be only an artificial figure, and really in the end the only guidance that one derives from the cases cited is that that artificial figure should be a moderate one. In my judgment, in these days £500 cannot be regarded as other than a moderate award."

The other case to which we would like to refer is *McCann* v. *Sheppard and Another*, [1973] 2 All E.R. 881, where an award of £750 for loss of expectation of life was made by the Court of Appeal directly, because the plaintiff had died pending the proceedings. This is a case which has been relied on in the present instance by the trial Court.

Lord Denning MR, in awarding (at p. 886) £750 for loss of expectation of life referred to *Yorkshire Electricity Board, supra*, and James L.J. said (at p. 890) that on the facts of the particular case the award for loss of expectation of life should not have been more than a "nominal" figure and that, therefore, it called for an award of a "conventional" figure of £750.

It appears, thus, that in the interval between the decision in the *Yorkshire* case and that in the *McCann* case, the conventional award for loss of expectation of life was regarded as having risen from £500 to £750, in view, again, of the realities of life.

It was stressed in the *Benham* case, *supra*, that each case depends on its own merits and that it was not the intention in the *Benham* case to fix either a maximum or a minimum award; we are, therefore, taking the view that the award of £750 in the *McCann* case was also not intended to be taken as laying down a rigid standard.

It has been argued before us by counsel for the appellants that the trial Court erred because it overlooked the fact that there existed a difference, which ought to have been judicially noticed, between the value of the Cyprus pound and that of the pound sterling in England, and, so, when it proceeded to award C£750 for loss of expectation of life in the present case it was clearly influenced wrongly by the award of £750 made in the *McCann* case, *supra*.

We do not think that, even assuming that the trial Court did

overlook the disparity between the Cyprus and the English currencies, this is a decisive consideration which should make us alter the award of C£750 made by it; we are of the opinion that such award is, in any event, in the light of present realities in Cyprus, fair and reasonable, even though it is, perhaps, somewhat on the high side; and we need hardly stress that by allowing it to stand we are not minded to lay down that as much as that should be awarded, for loss of expectation of life, on every occasion, irrespective of the circumstances of the particular case.

For all the above reasons appeal No. 5488 has to be dismissed as well.

In this appeal there is a cross-appeal regarding the costs of the third party, in action No. 1035/74, that is of respondent 1, who is the plaintiff in the other of the two consolidated actions, No. 971/74; counsel for the respondents has argued that respondent 1 had to be represented before the trial Court by separate counsel, because of possible conflict of interests with the other respondents, and that, therefore, it was wrong for the trial Court not to award her costs as a third party in action No. 1035/74 because she was awarded costs as a plaintiff in action No. 971/74. It should not be lost sight of, however, that both actions were heard together; and, moreover, we fail to see sufficient justification for thinking that there did exist in reality a possibility of conflict of interests. We are not therefore, prepared to interfere, in relation to this matter, with the exercise of the discretion of the trial Court and we dismiss the cross-appeal.

Regarding the costs of the proceedings before us, bearing in mind all relevant considerations, including the dismissal of the cross-appeal, as well as the fact that this is a case where the issue of the quantum of damages for loss of expectation of life was properly pursued further on appeal in a bona fide effort to seek to have it determined otherwise than as by the trial Court, we have decided to award against the appellants only two thirds of the costs of the proceedings on appeal.

Appeal No. 5487 *and Cross-appeal dismissed; Appeal No.* 5488 *and Cross-appeal dismissed. Order for costs as above.*