

1976 December 22

[TRIANTAFYLIDIS, P., STAVRINIDES, MALACHTOS, JJ]

ANTONIOS NICOLAOU ANTONIOU AND ANOTHER,
Appellants-Defendants,

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GAVRIEL ANGELIDES AND ANOTHER,
Respondents-Plaintiffs

(Civil Appeal No 5579)

Damages—Fatal accident—Assessment—Death of wife—Widower—Prospects of remarriage—Whether greater than those of a widow—Children—Dependence—Period of dependence—Appropriate multiplier

5 *Damages—Fatal accident—Loss of expectation of life—Award of C£750*

In assessing the damages payable to the husband, under s 58 of the Civil Wrongs Law, Cap 148, for the loss that he has suffered through the death of his wife the trial Court judicially noticed the nature of the family in Cyprus and held (a) 10 That the prospects of remarriage of a widower with children are, more or less, as remote as would be the prospects of remarriage of a widow in a similar situation and (b) that children should be treated as being dependent on their parents for their support and education until they reach the age of eighteen 15 years

In taking this last view the trial Court tried to distinguish *K v. J M P Co Ltd*, [1975] 1 All E R 1030 where the age of dependence was limited, as a rule, to sixteen years for the reasons 20 stated at pp 1036–37 of the relevant report (p 170 *post*)

The trial Court assessed the loss which the husband was entitled to recover for the loss of the services of the deceased as a wife, a mother and a housekeeper as being C£660 per annum, which, multiplied by a multiplier of nine years made a total of 25 C£5,940 (after deducting the husband's share of C£125 in the

£750 damages which were awarded to the estate of the deceased for her loss of expectation of life). The said amount of £5,815 was awarded as a whole to the husband because he was responsible for the maintenance of his two minor children with his deceased wife.

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The defendants appealed:

Held, (1) the view of the trial Court regarding prospects of remarriage of a widower is not consistent with the established approach to a matter of this nature in England; and being ourselves in as good a position as the trial Court to take judicial notice of the relevant circumstances in Cyprus, we see no objective reason for adopting here a different approach from the one adopted by the English Courts which is to the effect that a widower has a greater chance of remarriage than a widow (see Kemp and Kemp on the Quantum of Damages, 4th ed. vol. 1, pp. 312 and 318).

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(2) There existed no valid ground for not following *K. v. J.M.P. Co. Ltd. (supra)* regarding the age of dependence of children. The trial Court erred in thinking that a distinguishing feature was that in the said case the dependence was examined in relation to the working life of the deceased father, whereas in the present case, it is the mother who has died and there existed no risk of unemployment in her case; as it appears from the said case (*vide p. 120 post*) other equally relevant factors, such as accident or illness, have to be taken into account in reducing the dependence to the age of sixteen years; moreover, in the present case there was evidence that the deceased mother was not only a housewife, but she was, also, earning money as a seamstress and by embroidering "Lefkara lace".

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(3) The trial Court has, therefore, erred in principle in the aforesaid two material respects (prospects of remarriage and age of dependence of children) in assessing the damages payable. In the circumstances of this case the proper multiplier is seven and a half years and not nine years as found by the trial Court.

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Appeal allowed.

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Per curiam: This appeal has not been pressed in so far as the amount of £750 for loss of expectation of life is concerned, in view of what we have already stated in *Drousiotis and Another v. Xeni & Others* (1977) 9-10 J.S.C. 1491. As we observed in

that case and we would repeat it in the present instance, there is no need to interfere with the award of C£750 for loss of expectation of life, though we do regard such an amount as being rather on the high side in the light of present realities in Cyprus.

5 Cases referred to:

Droushiotis and Another v. Xeni and Others (1977) 9-10 J.S.C. 1491 (to be reported in (1976) 1 C.L.R.);

Papadopoulos v. Tryfonos and Another (1968) 1 C.L.R. 80;

10 *Collins v. Norma Electric* (reported in Kemp & Kemp on the Quantum of Damages, 4th ed., vol. 1, p. 312);

Steer v. Basu and Another (reported in Kemp & Kemp, *supra*, p. 318);

K. v. J.M.P. Co. Ltd. [1975] 1 All E.R. 1030 at pp. 1036-37.

Appeal.

15 Appeal by defendants against the judgment of the District Court of Larnaca (Pikis, Ag. P.D.C. and Constantinides, D.J.) dated the 17th April, 1976, (Action No. 101/75), whereby they were ordered to pay £6,665.- as damages for the death of the late Theodora Angelidou, under section 34 of the Administration of Estates Law, Cap. 189 and section 58 of the Civil Wrongs Law Cap. 148.

Ph. Clerides, for the appellants.

J. Erotokritou, for the respondents.

Cur. adv. vult.

25 The judgment of the Court was delivered by:

30 TRIANTAFYLIDIS P.: This appeal has been made by the appellants, as the defendants in a civil action in which the respondents, who are the husband and the administrators of the estate of the late Theodora Angelidou of Larnaca, have claimed, as the plaintiffs, damages for her death, under section 34 of the Administration of Estates Law, Cap. 189, and section 58 of the Civil Wrongs Law, Cap. 148.

35 The trial Court awarded to the respondents a total amount of C£6,665 as damages, out of which C£100 as funeral expenses and C£750 for loss of expectation of life of the deceased.

This appeal has not been pressed in so far as the amount of C£750 is concerned, in view of what we have already stated in

Droushiotis and Another v. Xeni and Others, (1977) 9-10 J.S.C. 1491.* As we observed in that case, and we would repeat it in the present instance, there is no need to interfere with the award of C£750 for loss of expectation of life, though we do regard such an amount as being rather on the high side in the light of present realities in Cyprus. 5

As regards the remaining part of the general damages, that is C£5,815. they are damages awarded to the husband of the deceased, Gavriel Angelides, for the loss that he has suffered through the death of his wife. 10

The trial Court took the view that such amount should be awarded as a whole only to the husband because he is responsible for the maintenance of his minor children with his deceased wife, namely Theofila, who was born on March 27, 1967, and Nicolaos, who was born on October 1, 1969. 15

The trial Court observed, very rightly, that though neither the husband nor the children were entitled to recover damages by way of consolation for injured feelings due to the death of the deceased, the husband was entitled to recover damages for the loss of the services of the deceased as a wife, a mother and a housekeeper. 20

Such loss was assessed, on the basis of the evidence adduced at the trial, as being approximately C£660 per annum; this sum was multiplied by nine years and the aforesaid amount of C£5.815 was reached after deducting the husband's share in the damages which were awarded to the estate of the deceased for her loss of expectation of life. 25

We think that the trial Court has erred in principle in two material respects in assessing the damages payable to the husband: 30

It appears, first, that it took the view, after judicially noticing the social structure of Cyprus and, particularly, the nature of the family in Cyprus as a unit, that the prospects of remarriage of a widower with children are, more or less, as remote as would be the prospects of remarriage of a widow in a similar situation (see, in this respect, *Papadopoulos v. Tryfonos and* 35

* To be reported in (1976) 1 C.L.R.

Another, (1968) 1 C.L.R. 80). In our opinion such a view is not consistent with the established approach to a matter of this nature in England and, being ourselves in as good a position as the trial Court to take judicial notice of the relevant circumstances in Cyprus, we see, really, no objective reason for adopting here a different approach from the one adopted by the English courts, which is based on very sound logic indeed; it is useful to refer, in this connection, to *Collins v. Norma Electric* (see Kemp & Kemp on The Quantum of Damages, 4th ed., vol. 1, p. 312), where Paull J. stated (at p. 316):-

“ The first factor that I have to consider is what is sometimes called the remarriage factor. In a case where a wife has lost her husband the situation is somewhat different from a case where a husband has lost his wife. At least theoretically a widow has to wait and see whether anybody offers to marry her. She has to be prepared to marry somebody who makes such an offer. A husband is in the position of being able to go out and find, if he so desires and if he feels that he would like to do so, a wife. In one sense there must be plenty of women who would be prepared in exchange for a home and for marriage to come into this home and look after these children. Some women might well say No but there must be plenty who would say Yes.”

Another relevant case is that of *Steer v. Basu and Another* (see, again, Kemp & Kemp, *supra*, at p. 318), where Caulfield J. said the following (at p. 322):-

“ I think that generally speaking a widower has a greater chance of remarriage than a widow, for the simple reason that if a widower is desirous of seeking another partner to assist him in the rest of his life he can go out and search. He can put himself into circulation. He can create circumstances that will enable him to pass a diplomatic message to those of the opposite sex whom he meets that he is indeed anxious for remarriage. A widow, of course, is not in the same position, and if she is a lady, of course, she will not wish to go out and forage looking for a man.”

The other aspect, in relation to which, in our opinion, the trial Court has erred, is that it took the view, again after judicially noticing the family environment in Cyprus, that here

children should be treated as being dependent on their parents for their support and education until they reach the age of eighteen years, and it tried to distinguish, in this connection, the case of *K. v. J.M.P. Co. Ltd.*, [1975] 1 All E.R. 1030, where the age of dependence was limited, as a rule, to sixteen years for the following reasons which were stated by Cairns L.J. (at pp 1036–1037):–

“ I am not impressed by counsel for the children’s argument that the Judge should have given weight to the possibility of the children remaining wholly or partially dependent on the father after reaching 16. While there is always some chance of the children of a man in this man’s position being of such academic ability as to enable them to continue their education after 16, and there is probably a greater chance of their receiving some financial support after their education is finished, this can be set off against all the risks of accident, illness or unemployment which might have occurred to the father before the children reached that age. And while those risks would be present throughout the period of their schooldays, any prospect of support after leaving school would be deferred for a substantial number of years for each child.”

We do not think that there existed any valid ground for not following the approach adopted in the above English case, in our view the trial Court erred in thinking that a distinguishing feature was that in the said case the dependence was examined in relation to the working life of the deceased father, whereas in the present case, it is the mother who has died and there existed no risk of unemployment in her case; as it appears from the above–quoted passage, other equally relevant factors, such as accident or illness, have to be taken into account in reducing the dependence to the age of sixteen years; moreover, in the present case there was evidence that the deceased mother was not only a housewife, but she was, also, earning money as a seamstress and by embroidering “Lefkara lace”

It has been suggested by counsel for the appellants, in view of the above considerations, that the proper multiplier was six years instead of nine years; we think that, in the circumstances of this case, the truth lies, more or less, in the middle and so we have decided to multiply the annual loss of C£660 by a

multiplier of seven and a half years; this results in an amount of C£4,950 damages being payable to the husband, from which there should be deducted his share of C£125 in the damages for loss of expectation of life of the deceased, thus leaving a
5 net sum of C£4,825; if to this is added the amount of C£850 (C£100 for funeral expenses and C£750 for loss of expectation of life) we reach a total of damages of C£5,675.

This appeal is, therefore, allowed, in the sense that the judgment of the Court below is varied accordingly.

10 Bearing in mind all the circumstances of this case we have decided to award in favour of the respondents only half the costs of this appeal.

*Appeal allowed. Order
for costs as above.*