

1988 October 17

(A LOIZOU P SAVVIDES PIKIS JJ)

SOFOCLIS NEOPHYTOU SOFOCLI AS ADMINISTRATOR OF THE  
ESTATE OF NEOPHYTOS SOFOCLI KARAYIANNIDES, DECEASED

*Appellant-Plaintiff,*

v

NICOS G LEONIDOU,

*Respondent Defendant*

*(Civil Appeal No 7080)*

---

*Civil procedure — The Civil Procedure Rules, 0 25, Rules (5) and (6) —  
Ambit of Court's power thereunder — The slip rule — Does not  
authorise variation of compromise*

5 *Civil procedure — Errors or omissions — The inherent power of the  
Court to correct — Ambit of*

10 *Judgments and Orders — Consent order — It is of two kinds, i.e. one  
recording the agreement and one founded on the agreement — In  
the former case, there is no power to vary it, except on the like  
grounds as a contract may be varied — In the latter case it is  
amenable to variation as it reflects the exercise of judicial power*

15 *Appellant's father died as a result of a road accident. Appellant  
brought an action claiming, inter alia, damages for loss suffered by  
the estate. This claim was fashioned on the way section 34 of the  
Administration of Estates Law, Cap 189, was understood prior to  
Gammell v Nilson and Another [1980] 2 All E R 57*

On 23 5 84, after the close of the pleadings, the parties agreed,  
that on a total liability basis, the plaintiff would be entitled to recover  
under s 34 £750 -

20 *The agreement was recorded in the minutes of the Court.  
Following such recording, the appellant filed an application to  
amend resting on 0 25 of the Civil Procedure Rules with a twofold  
objective (a) To modify the terms of the said agreement and (b) to  
amend the statement of claim by adding a claim on behalf of the  
estate of the deceased for loss of future earnings*

The trial Court dismissed the application on the ground that what was sought to be amended was neither an error nor omission in the declaration of the agreement, or an error in the order of a court amenable to correction or rectification under r 5 and r 6 of Ord 25

Hence this appeal 5

Held, dismissing the appeal (1) The powers of the Court under r 6 of Ord 25 are confined to the correction of clerical mistakes and errors arising from accidental slips or omissions. The inherent power of the Court to correct errors or omissions is again limited to errors owing to failure to give expression in the order or judgment to the manifest intention of the Court. There is no authority under the slip rule to vary the terms of a compromise 10

(2) The Court has no power to vary the terms of the agreement of the parties as distinct from making orders in aid of its enforcement

(3) A consent order is of two kinds 15

(i) One recording an agreement of the parties, and (ii) one founded on an agreement of the parties

In the latter case the order reflects the exercise of judicial power and as such it is amenable to variation. In the former case there is no power to vary the agreement of the parties except on like grounds as a contract may be varied 20

*Appeal dismissed with costs*

*Cases referred to*

- Gammell v Wilson and Another* [1980] 2 All E R 557,  
*Kassinou v Efstathiou* (1984) 1 C L R 77, 25  
*HjiHanni v Yousellis* (1963) 2 C L R 407  
*Katanna Shipping v Ship «Poly»* (1978) 1 C L R 486,  
*Re Inchape Craigmyle v Inchape* [1942] 2 All E R 157,  
*Bremer Vulkan Schiffbau Und Maschinenfabrik v South India Shipping Corpn* [1981] 1 All E R 289, 30  
*Corby D C v Holst and Co Ltd* [1985] 1 All E R 321,  
*Anders Reden v Lovisa Stevedorng Co.* [1985] 2 All E R 669;  
*R v Cnpps* [1983] 3 All E R 72,  
*De Lasala v De Lasala* [1979] 2 All E R 1146,

*Thwaite v. Thwaite* [1981] 2 All E R. 789;

*Siebe Gorman and Co. Ltd. v. Pneupac Ltd.* [1982] 1 All E.R. 377;

*Chandless-Chandless v. Nicholson* [1942] 2 All E.R. 315;

5 *Huddersfield Banking Co. Ltd. v. Henry Lister and Son Ltd.* [1895] 2 Ch.  
273;

*Chanel Ltd. v. F.W. Woolworth and Co. Ltd.* [1981] 1 All E.R. 745.

### Appeal.

10 Appeal by plaintiff against the order of the District Court of Paphos (Anastassiou, S.D.J.) dated the 18th November, 1985 (Action No. 776/82) refusing an application for the correction of an agreement between the parties respecting the sum payable, in the event of respondent being held liable, for loss of expectation of life as well as refusing to allow the amendment of the statement of claim.

15 *Chr. M. Georghiades*, for the appellant.

*A. P. Anastassiades*, for the respondent.

*Cur. adv. vult.*

A. LOIZOU P.: The judgment of the Court will be delivered by Pikiis, J.

20 PIKIS J.: This appeal is directed against an order of the District Court of Paphos refusing an application for the correction of an agreement between the parties respecting the sum payable, in the event of respondent being held liable for loss of expectation of life, as well as the refusal of the Court to allow the amendment of the  
25 statement of claim in a way intended to by-pass the aforesaid agreement of the parties. The facts of the case, unusual as they are, have to be recounted in order for the issues posing for resolution to be properly understood and determined.

30 The appellant is the son of Neophytou Sofocli Karayiannides who died as a result of injuries suffered in a road accident. He instituted an action as personal representative of the deceased for loss suffered by the estate arising from the death of his father and, for loss occasioned to him as a dependent of the deceased. His  
35 action was fashioned, as can be gathered from the statement of claim, on the understanding of s.34 of the Administration of Estates Law - Cap. 189, prevalent before *Gammell v. Wilson and*

Another\* followed by the Supreme Court in *Kassinou v. Efstathiou*\*\* . Paragraph 5 of the statement of claim makes it abundantly clear that the claim raised on behalf of the estate under s.34 with regard to future loss accruing to the estate, was confined to loss of expectation of life. The case of *Kassinou* adopted the interpretation of s.34 favouring the vesting in the estate of a right to recover loss of future earnings. On 23 May, 1984, after the close of the pleadings, the parties agreed the damage to which the plaintiff would be entitled under s.34 of Cap. 189, in addition to funeral and testamentary expenses. The agreement following a statement of the parties duly recorded by the Court, was to the effect that on a total liability basis the plaintiff would be entitled to recover £750.-- under s.34 of Cap. 189. There is no room for arguing that the note of the agreement made before the Court recorded anything other than the agreement of the parties. On the contrary, the context of the agreement coincided with the nature of the claim raised under s.34, modelled on the understanding of the law before *Gammell*; whereas the figure agreed was consonant with the conventional figure awarded for loss of expectation of life. The application to amend, resting on Ord. 25 of the Civil Procedure Rules (providing for the amendment of pleadings and orders of the Court) had a twofold objective:

(a) To modify the terms of the agreement of the parties recorded on 23 May, 1984. and

(b) to amend the statement of claim by the addition of a paragraph designed to raise on behalf of the estate a claim for loss of future earnings.

The inescapable inference is that appellant invoked the powers conferred by Ord. 25 in order to vary or by-pass the agreement recorded on 23.5.84.

A certain inference is that the agreement affecting the claim under s.34, was made without knowledge or appreciation of the implications of the decisions in *Gammell and Kassinou*. The trial Court rejected the application on the ground that what was sought to be amended was neither an error nor omission in the declaration of the agreement, or an error in the order of a court amenable to correction or rectification under r.5 and r.6 of Ord.

\* [1980] 2 All E.R. 557.

\*\* (1984) 1 C.L.R. 77.

25 Order 25 did not confer power, the Court noted, to vary the agreement of the parties. In our judgment the trial Judge was plainly right. The sole object of the application was to vary or abrogate the agreement between the parties as to quantum of damage under s 34, Cap 189, by the employment of the powers conferred by Ord 25. The decision in *Ioannis Iosif Hjihanni v Elias Hanni Yiousellis\** is perfectly distinguishable from the present case since the correction in that case affected the calculation of interest within the context of the agreement of the parties and not the agreement itself. Otherwise, the caselaw is consistent in stressing that the powers of the Court under r 6 of Ord 25 are confined to the correction of clerical mistakes and errors arising from accidental slips or omissions. The inherent power of the Court to correct errors or omissions is again limited to errors owing to failure to give expression in the order or judgment to the manifest intention of the Court\*\*. The inherent jurisdiction of the Court to remedy errors in the process is not absolute but, as judicially acknowledged, confined to « matters necessary to maintain its character as a court of justice»\*\*\*. The Court has no authority to upset the terms of a compromise between the parties, on the contrary it will, in good conscience, extend its powers to implement their agreement\*\*\*\*. On the other hand, there is no authority under the slip rule to vary the terms of a compromise. As the case of *R v Crpps\*\*\*\*\** illustrates, the power can only be invoked where the slip is evident, in fact the power to correct errors under the slip rule belongs to the Court and may in an appropriate case be exercised by a member of the Court other than the one who made the order fraught with the error. In *de Lasala v de Lasala\*\*\*\*\** it was pointed out that a consent order can only be varied on appeal or by a fresh action. The Court has no power to vary the terms of the agreement of the parties as distinct from making orders in aid of its enforcement\*\*\*\*\*. In *Siebe*

---

\* (1963) 2 C.L.R. 407

\*\* (See, inter alia *Katanna Snipping v Ship «Poly»* (1978) 1 C.L.R. 486 *Re Inchape Craigmyle v Inchape* [1942] 2 All E.R. 157)

\*\*\* (See, *Bremer Vulkan Schiffbau Und Maschinenfabrik v South India Shipping Corpn* [1981] 1 All E.R. 289, 295 (H.C.), *Corby D.C. v Holst & Co Ltd* [1985] 1 All E.R. 321 (C.A.))

\*\*\*\* (*Anders Rederi v Lovisa Stevedoring Co* [1985] 2 All E.R. 669 (Goulding, J.))

\*\*\*\*\* [1983] 3 All E.R. 72 (C.A.)

\*\*\*\*\* [1979] 2 All E.R. 1146 (P.C.)

\*\*\*\*\* (See also, *Thwaite v Thwaite* [1981] 2 All E.R. 789)

*Gorman & Co. Ltd. v. Pneupac Ltd.*,\* it was explained that a consent order is of two kinds:-

- (i) One recording an agreement of the parties, and
- (ii) an order of the Court founded on an agreement of the parties.

5

In the latter case the order reflects the exercise of judicial power and as such it is amenable to variation. In the former case there is no power to vary the agreement of the parties except on like grounds as a contract may be varied.\*\*

The application for amendment in this case was solely intended to vary the agreement of 23 May, 1984, between the parties and thereby free the appellant from the error under which he laboured as to his rights under s.34, Cap. 189. The error was not one of the Court but an error deriving from a misappreciation of the rights of the appellant. He could not get rid of the agreement by the invocation of any of the powers vested in the Court under Ord. 25.

10

15

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

---

\* [1982] 1 All E.R. 377 (C.A.).

\*\* (See, also, *Chandless-Chandless v. Nicholson* [1942] 2 All E.R. 315 at 317; *Huddersfield Banking Co. Ltd. v. Henry Lister & Son Ltd.* [1895] 2 Ch. 273; *Chanel Ltd. v. F.W. Woolworth & Co. Ltd.* [1981] 1 All E.R. 745).