**JOHN NWAFOR AND ANOTHER**

**V.**

**NWAMVO NDUKA AND ANOTHER**

SUPREME COURT OF NIGERIA

19TH DAY OF APRIL, 1972

SUIT NO. SC. 704/65

**LEX (1972) - SC 704/65**

OTHER CITATIONS

2PLR/1972/109 (SC)

(1972) All N.L.R 311

**BEFORE THEIR LORDSHIPS:**

TASLIM ELIAS, C.J.N.

GEORGE BAPTIST A. COKER, J.S.C.

IAN LEWIS, J.S.C.

UDO UDOMA, J.S.C.

**ORIGINATING COURT**

HIGH COURT OF EAST CENTRAL STATE HOLDEN AT ONITSHA (Kaine, J., Presiding)

**REPRESENTATION**

K SOFOLA Esq., for the Appellant.

G.R.I. EGONU, for the Respondents.

**ISSUES FROM THE CAUSE(S) OF ACTION**

TORTS AND PERSONAL INJURY LAW – Fatal Accidents Act - Negligence – Defendant’s negligent driving resulting in death of family’s bread winner – Assessment of Damages for immediate family and other Dependants - Allowable deductions from general damages awarded under the Fatal Accidents Law.

TRANSPORTATION AND LAW - MOTOR VEHICLE & TRAFFIC MATTERS:- Fatal Motor Accident - Proof of negligence under the Fatal Accidents Law – Assessment of damages arising therefrom – Relevant considerations

CHILDREN AND WOMEN LAW: Women and Justice administration – Young woman widowed via fatal accident of young spouse/breadwinner - Award of damages under the Fatal Accident Act – Whether quantum of damages can be reduced by widow’s private income, potential to remarry or likelihood of coming into significant assets from deceased husband’s estate - Children and death of Bread-winner due to fatal accident – Damages awarded – Whether court can make order for the investment of same for children’s long-term benefits

**PRACTICE AND PROCEDURE ISSUES**

COURT**:-** Supreme Court – Judgment reached per incuriam – Whether can be affirmed and adopted in a latter case – Relevant considerations

COURT:- Award of damages arising from fatal accident under Fatal Accidents act – General principles - Relevant considerations

**MAIN JUDGMENT**

**ELIAS, C.J.N.** (DELIVERING THE JUDGMENT OF THE COURT):

This is an appeal from the judgment of Kaine, J. in the High Court at Onitsha on January, 25, 1965. The action was brought, under the Fatal Accidents Law Cap.52 of 1963 Edition of the Laws of the former Eastern Nigeria, by the father of the deceased on behalf of himself and the other dependants.

The relevant facts may be summarised as follows:

The deceased, Victor Nduka, was in the early hours of April 5, 1962, a passenger on a lorry driven by the second defendant (who had been sued jointly and severally as the servant or agent of John Nwafor, the first defendant, being the owner of the lorry No. EO 2441). It was established that the lorry was at the material time on its way from Onitsha to Kumba in the Cameroons; that it was travelling at an excessive speed when it ran off the road for a ditch; somersaulted and became a complete wreck; that the road was a straight and tarred one, very wide and there was no rain, that the deceased was one of the six passengers who died on the spot as a result of the accident, negligence having been proved against the defendant; and that it was a case of res ipso loquitur.

On the Issue of damages, the trial Judge held that the deceased was a promising lad of only about 28 years at the time of his death, and proceeded to award each of the widow and her two infant children the sum of £60 per annum for a period of twelve years during which he would actively have supported them had he lived. With regard to the father, mother and all other dependants including the two brothers of the deceased whom he was helping their father to maintain at school at the time of his death, the Judge awarded a lump sum of £240 although the father claimed to have been in receipt of a monthly subsidy of £30 from the deceased. In total, the learned trial Judge thus awarded the sum of £2,400 as damages to all the deceased’s dependants who had claimed the sum of £10,000.

Against this judgment, the defendants, the owner and the driver of the lorry respectively, brought this appeal on the following grounds:

(a) the learned trial Judge erred in law and in fact in entering Judgment against the defendants In that there was no conclusive proof before him of the speed of the lorry to Indicate that the speed was excessive;

(b) the learned trial Judge erred In law and in fact In failing to show dearly the grounds of negligence relied upon in entering judgment against the defendants In that in his judgment he treated it as a case of speeding and at the same time as a matter of res ipsa loquitur,

(c) the learned trial Judge erred in law and in fact in failing to show how he arrived at £60 each a year for the second plaintiff and her infant children when he had held as a fact that he did not believe that the deceased was making up to £44 a month. He also failed to show the deceased’s earnings and his personal and living expenses;

(d) the learned trial Judge proceeded upon wrong principles of law In that the awards were clearly erroneous estimates of damages being manifestly too large and that a datum or basic figure should be turned into a lump sum which should be taxed down having due regard to uncertainties, namely, the widow again marrying and thus ceasing to be a dependant and other like matters of speculation and doubt as required by law;

(e) the learned trial Judge fated in law to take into consideration assets worth over £ 2,300 left by the deceased which but for his death would not have come to the possession of the plaintiffs and for which deductions should have been made as the plaintiffs’ interests had been accelerated.

At the opening of the hearing before us, Mr. Sofola for the defendants/appellants sought and was granted leave to abandon grounds (a) and (b) of the appeal and to argue grounds (c) to (e) together. Both prayers were granted. Having thereby admitted the liability of his clients under the Fatal Accidents Law of 1956, he said that his main line of attack would be against the quantification of damages as assessed by the trial Judge. It soon became clear that he was not questioning the damages awarded in respect of the deceased’s parents and children; rather, he was concerned to show that, with respect to the widow, the Judge had been wrong in using twelve as the multiplier of the datum of £60 per annum as the damages due to her.

Perhaps a convenient starting point would be grounds (d) and (e) regarding the general principles underlying the basis of assessment of damages payable to a deceased’s dependants under the Fatal Accidents Law 1956, s.7 of which is in terms equivalent to section 2 of the English Fatal Accidents Acts 1846-1908. With reference to the English Acts, Lord Wright suggested in Davies v. Powell Dulfrym Associated Collieries Ltd. (1942) A.C. 601, the following text regarding the mode of assessment of damages, at p.617: ‘There is no question here of what may be called sentimental damages, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a number of years’ purchase. That sum, however, has to be taxed down by having regard to the uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt.” It is clear that this formula is only appropriate where the deceased is the breadwinner of the family and, apparently, where he is also a wage earner. Now there are two ways of dealing with the issue of quantification of damages in cases of death arising from accidents; either to begin by awarding a lump sum representing the total liability of the defendants and thereafter to apportion the damages between the various dependants, or to begin with individual claims, the pecuniary loss suffered by each dependant being separately assessed. The latter mode has in practice been generally preferred, as per Lord Guest in Kassam v. Kampala Aerated Water Co. (1965) 1 WL.R. 668, at p.672. Section 7(2) of the 1956 Law requires that any amount recovered from the defendant, be apportioned amongst the persons entitled thereto in such shares as the Court may direct. It is, therefore, not for the defendants to specify the shares into which the lump sum should be divided by the Court Is. 8(1)]. We therefore reject Mr. Sofola’s attempt to press this upon us.

Section 6(1) of the 1956 Law reads: “it shall be sufficient; if the defendant is advised to pay money into court, that he pays it in as compensation in one sum to all persons entitled under this Law for his wrongful act, neglect or default without specifying the shares into which it is to be divided by the Court.” One important matter arising out of this is to consider what the ideal multiplier should be in any given case. Mr. Sofola for the defendants/appellants referred to Daniels v. Jones (1961) 3 All E.R. 24, at p. 30 in support of the proposition that the court must balance the loss to a dependant of the future pecuniary benefit of which he had a reasonable expectation and any pecuniary advantages which from whatever source come to him by reason of the death. He also cited Kassam v: Kampala Aerated Water Co., (1965) 2 All E.R. 875, at p.879, to indicate the judicial attitude in the matter. But the Privy Council there considered that, on the basis of a fifteen-year working life, a multiplier of ten would not be unreasonable and that, having regard to the anticipated savings which might reasonably have been expected to have been made by the deceased if he had lived, no deduction should be made on the score of accelerated benefit. Their Lordships further held that the trial Judge’s award which did not take into consideration the £6,000 as the value of the deceased’s estate had been right. We are of the opinion that this case does not help Mr. Sofola’s argument on these points, even though the total award was reduced because the multiplier of ten was substituted for fifteen.

Mr. Egonu for the plaintiffs/respondents referred us to Daniels v. Jones (1961) 3 Ail E.R. 24, at p.27 and also to Gray and Another v. Barr (1971) 2 All E.R.949, especially Lord Denning’s observation at pp. 958-9 to the effect that damages arising as a result of the death of a deceased should not be unduly diminished by benefits “arising by reason of the death”. Lord Reid’s judgment in Taylor v. O’Connor (1971) 1 All E.R. 365, was further cited to the effect that in assessing the amount of damages the court must not take into account any private income or assets of the deceased’s widow.

In reply to Mr. Sofola’s contention that the learned trial Judge had wrongly based his assessment on a multiplier of twelve in respect of the widow which he submitted was excessive, Mr. Egonu drew our attention to Mallet v. McMonagle (1969) 2 All E.R. 178, in particular Lord Diplock’s view at p.191 to the effect that a multiplier of sixteen is now usual in Fatal Accidents cases ‘where the deceased died in his early twenties’. Mr Egonu, therefore, contended that the trial Judge had been quite reasonable in awarding damages based on a multiplier of twelve in the case of a twenty-eight-year-old, as in the instant case. On the question as to whether the trial court should have taken the probability of the widow re-marrying into account in reduction of the damages payable to her, Mr. Egonu cited Buckley v. John Allen AND Ford (Oxford) Ltd. (1967) 1 All E.R. 539 in which Phillimore, J. had refused to make any deductions for the widow’s chance of re-marrying urging the Court to regard it as irrelevant consideration in the present case since there was no evidence that the widow had re-married or that there was a probability of her doing so.

The next question is the submission of the defendants in paragraph (e) of the grounds of appeal that the learned trial Judge should have taken into account the deceased’s assets worth over £2,300 which should have been deducted from the lump sum of £2,400 assessed by the Judge as general damaged.

Now, what is the position in law as regards allowable deductions from general damages awarded under the Fatal Accidents Law? Section 7 of the Law stipulates that funeral expenses may be included in damages recoverable for the beret of the estate if incurred by the dependants [s.7(4)]; also, money paid or payable under any contract of assurance or insurance must be disregarded whenever made or by whomsoever made, and it Is reasonable to assume that, equally, loss of annuity or a life interest must be excluded in calculating the amount of damages.

Thus, under the equivalent provision of the English Fatal Accidents Acts, it was held In Heady v. Steel Co. of States Ltd., (1953) 1 W.LR. 405 that no deduction was to be made where the widow lived with her children in the house inherited from her husband. In the Instant case, the house in which the wife and her children now live was bought with money derived from the estate. It would appear that damages recovereable by the dependants are the same as would have been recoverable by the deceased himself had he not been killed. It would seem also that the damages recoverable are available for the payment of the deceased’s debts and pass under his Will or upon his intestacy. The dependants claimed to have paid the deceased’s debts before using the balance to purchase the house in which they were residing.

In Daniels v. Jones (1961) W.L.R. 1103, Pearce, L.J. at p.1110 observed that arithmetic is a good servant but a bad master although, as observed by Diplock, LJ., in Whittome v. Coates (1965) 1 W.L.R. 1285, at p. 1293, the figure taken as the multiplier must have some relation to the arithmetic.

As a necessary corollary of his argument that the deceased’s net asset of £2,400 awarded by the learned trial Judge, counsel for the defendants/appellants invited us to over-rule Chief Nelson Anamali v. Meme Ijirigho (1960) 5 F.S.C. 97 in so far as it lays down the principle that no such deduction be made and to prefer Akambi Layiwola AND Anor. v. Sinotu Bello AND OTHERS. (1965) 1 All N.LR. 318 which favours such deduction.

The learned counsel’s argument is that Anamali’s case must be regarded as having been impliedly over-ruled in the later Layiwola’s case in which Peacock v. Amusement Equipment Co. Ltd. (1954) 2 O.B. 347 was cited only on appeal, although it was never cited in the Anamali’s case.

The Court hereby re-affirms its previous decision in the Anamali’s case for the reason that, even though it was reached per Incuriam of the Peacock’s case, it is in accordance with established principle and with the provisions of the Fatal Accidents Law, Cap. 52.

Mr. Sofola’s brief reply was that the judgment of the trial Judge should be set aside and that the assessment of the damages should be based on the difference between the £2,400 awarded and the £2,300 spent in purchasing the house for the widow and the children. When asked by the Court whether the resultant sum of £100 would be a fair award, he conceded that it would not seem fair in the circumstances of this particular case although he could see no alternative to a strict adherence to his abstract principle of balancing of assets against benefits accruing to a deceased estate. We do not accept that both law and justice requires us to come to such a conclusion.

In our view, the parents’ as well as the widow’s portions should be paid to them, but the balance in favour of the children should be paid into the High Court at Onitsha to be transferred, if necessary, to a Magistrate’s Court of the area in which the two children reside, to be invested for their benefits.

In the event, the appeal is hereby dismissed, and we award to the respondents costs in-this Court, assessed at 54 guineas.