Principles of Civil Law

Lecture Title: Liquidation of Damages

Diploma in Law (Malta)

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Compensation for Accidents

The law of damages is conveniently summed up in the two Latin words ***Neminem Laedere*** meaning, that whoever causes damage either negligently or maliciously is in duty bound to make good that damage. This important principle is also embodied in our Civil Code in article 1030:

1030. Any person who makes use, within the proper limits, of a right competent to him, shall not be liable for any damage which may result therefrom.

Damages must necessarily have to be reduced to a monetary consideration. As the Court rightly explained in Vincenti v. Micallef, the victim can never be restituted to the same state of health, or condition of health as he was before, as money can never bring back to life a dead person, or an amputated foot etc, but as there is no other option of reparation, the payment of money is considered as the most adequate way of applying the notion of restitutio in integrum.

Damages must be full and adequate – in assessing the quantum the court should not seek to over compensate the victim, nor can the court take a restrictive attitude. Thus the court is bound to make a fair assessment

Damages are normally addressed once and for all

Difficulty and uncertainty of assessment does not preclude an award of damages

It seems that the notion of compensation embraces at least 3 distinct ideas:

- It may be granted as an equivalent for what has been lost – This includes the payment of a physical deprivation of the property, the costs incurred by the victim, payment of the lost expectations
- It may be granted as a substitute for what has been lost - this second type of compensation is not allowed under Maltese law.
- It may be granted not because of what has been lost but because if what the victim has never had in comparison with others in similar situation – this is based on notions of egalitarianism and the meeting of needs as opposed to the making good of losses. This is especially applicable when a person's need for compensation is not the result of human conduct but of natural causes.

The First Type of Damages Awarded Under our Law for Personal Injuries: Damnum Emergens

- The relevant section is found under section 1045 of the Civil Code,
- **1045.** (1) The damage which is to be made good by the person responsible in accordance with the foregoing provisions shall consist in the **actual loss** which the act shall have directly caused to the injured party, in the **expenses** which the latter may have been compelled to incur in consequence of the damage, in the **loss of actual wages or other earnings**, and in the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused.

- It is evident from the start that in terms of our law only material damages are allowed. Moral damages, i.e. an amount which is given as compensation for the pain, suffering, trouble, and inconveniencies caused by the accident are only permitted by our law in specific cases namely:

This part of **Moral Damages** was added in the year 2018:

Provided that in the case of damages arising from a criminal offence, other than an involuntary offence, and only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First of the Criminal Code and of wilful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First of the said Code, up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, the damage to be made good shall also include any moral harm and, or psychological harm caused to the claimant.

Damages following tort action can only be granted under the four headings outlined in section 1045 that is:

1. The actual loss suffered
2. The expenses incurred
3. Loss of actual wages or other earnings
4. Loss of future earnings

The first three are grouped under the heading Damnum Emergens, whereas the latter is commonly refereed to as Lucrum Cessans. The former are easy to asses since they can be factually determined and no problems are entered in the majority of cases. It is the latter type of damages, the Lucrum Cessans, which have been always a preoccupation of our courts, since they are the most problematic.

Distinction between Lucrum Cessans and Damnum Emergens

Therefore the distinction between the two can be summarized as, whereas the Damnum Emergens can be described as the amount of damages in reality sustained by the plaintiff, the Lucrum Cessans can be described as the damages which the plaintiff will sustain in the future as a result of any permanent incapacity caused by the act of the defendant. What is a must to both type of damages is that there must be a nexus between the act of the defendant and the harm/loss suffered by the plaintiff.

What falls under Damnun Emergens?

Under the heading damnum emergens, the actual expenses incurred compromise amongst others, expenses reasonably incurred for medical treatment, nursing, special medial appliances, improvements or reconstruction carried out in his house as a consequence of his injuries, extra domestic help etc. The most important factor in this context is that such expenses must have been incurred as a direct consequence of the accident; therefore there must be the nexus of cause and effect between the wrongful act of the defendant and the ensuing damage.

However, the term damnum emergens incorporates rather wide types of damages. This is because, the expenses may also include for instance the cost of hiring a car, travelling expenses to seek medical treatment abroad, expenses incurred for availing oneself of the services of a translator when the plaintiff has to travel abroad for medical treatment, amounts paid t persons hired by the plaintiff to carry out the domestic work.

When a death ensues the heirs of the deceased have the right to receive the funereal expense. Originally our courts were rather reluctant to reimburse such expenses in the ground that such expenses would still be incurred at some point on the future. However in Grech v. Azzopardi, it was established that funeral expenses were also recoverable.

The method adopted today for assessing damages for loss of actual earnings was first established by our courts in Butler v. Heard. in that case the judge said that the total loss of the wages or profits of the victim depend on three elements:

1. The wage of the victim
2. Whether he was for some time effectively barred from doing that profit in full or in part
3. Whether this was in consequence of an exclusive action of the defendant

It is only after a detailed examination of these three elements that the court can arrive at an accurate estimation of the actual wages lost by the plaintiff.

When a plaintiff is paid wages or salary the loss of earnings up to the date if the judgment can usually be determined by a simple calculation and an award will be made in respect to this loss. In Angelo Galea v. Joseph D' Agostino et the court allowed a reimbursement of the wages lost between the date of the accident and the date when the plaintiff is boarded out.

Problems tend to arise in the case of a self-employed professional plaintiff. In these cases it is not always easy to determine the loss of earnings as a result if an injury due to the fact that the income of a self-employed or a professional is not fixed and tends to fluctuate.

One system adopted was that in the case Stephen Bustill Naudi v. Herry Hunt. The plaintiff was a self-employed worker who suffered injury. The plaintiff had no permanent disabilities so he did not ask for lucrum cessans, however there was a claim for loss of actual wages. The difficulty faced by the court was how was it going to determine the actual loss of earnings suffered by the plaintiff. The solution favored by the court was to examine the Income Tax returns of the plaintiff over a number of years. It calculated the average rate of increase of his income from year to year and then established an average rate of income. Nevertheless the court is not bound to follow the system in every case dealing with a self-employed plaintiff.

The court is not even bound to award the loss of actual wages or earnings. In fact in the case Mario Caruana v. Joseph Gatt noe, the court argued that since the plaintiff received the injury benefit during the period that he was incapacitated form work, which was equivalent to the plaintiff's salary, the court decided that the plaintiff during that year did not suffer any loss of wages.

The Second Type of Damages awarded under our law for personal injuries: **Lucrum Cessans**

The applicable method for the calculation of the lucrum cessans is still that which has been laid down in Michael Butler v. Peter Christopher Heard.

The fourth heading in section 1045 provides that damages are to be awarded for the loss of future earnings arising from any permanent incapacity, total or partial, which the act may have caused, in other words the Lucrum Cessans. This literally means that that whosoever has suffered the injury is entitled to the profits which he has lost as a result of the injury.

Undoubtedly the plaintiff is entitled in theory to the exact amount of his prospective loss if it can be provided. But in practice, since the future loss cannot usually be proved, the court has to make a broad estimate, taking into account all the proven facts and the probabilities of the particular case, all this was stated very clearly in the English case British Transport Commission v. Gorley, where it was held that damages must be assed as a lump sum once and for all, not only in respect of the loss accrued before the trail but also in respect of prospective loss, such damages can only be an estimate, often a very high estimate, of the present value of the prospective loss.

- As highlighted in Butler v. Herd, the awarding lucrum cessans, is always a difficult task, because the court has to rely on proof and indications which are not fully certain and there is also the possibility that the profit may even fluctuate in the future. However the judge Caruana Curran in Butler v. Heard held that in the civil law ambit, the criteria of probability is sufficient for a moral convincement of the adjudicator.

- The difficulty of the courts besides the nature of the uncertainty of the factors to be taken into account is the fact that the only guidelines offered by our law in the assessment to lucrum cessans are to be found in section 1045 (2)
- (2) The sum to be awarded in respect of such incapacity shall be assessed by the court, having regard to the circumstances of the case, and, particularly, to the nature and degree of incapacity caused, and to the condition of the injured party.

Therefore the court has to take into account these factors:

- The circumstances of the case
- The nature and degree of incapacity of the injured party
- The condition of the injured party

Examples of the court's considerations are:

- Whether or not the plaintiff contributed to the accident or not
- His age at the time of the accident and his working life expectancy
- The possibility of finding more lucrative work or the lack of it
- The type of work that he was engaged in before the accident and whether he has retained such work or not
- The effect of the type of injury sustained on the nature of the work carried by the victim

The basic system that is applied so as to calculate the amount of lucrum cessans was first laid done in Butler v. Herd. The case established an objective formula for the liquidation of lucrum cessans. This system that is based in the English system, consists in:

- Establishing the weekly basic wage of the person injured at the time of accident or tort
- Then increasing it to cater for probable future wage increases including cost of living allowances
- Multiplying that amount by 52 (number representing a year)
- The result is then, multiplied by the number of years that represent the expectation of the victim's working life (the multiplier)
- The amount is the multiplied by the percentage disability that is determined by medical experts
- the result is then reduced by 20% lump sum payment.

Therefore on the basis of the case Butler vs Herd the formula used is the follows:

Yearly Income x Percentage Disability x Remaning Years till Pension – 20% lump sum payment

1. Detrmining the Income

The first matter that the Court has to take into account is the basic weekly wage of the victim. Once established the amount is then increased to provide for future increases in salary including inflation allowances, and then multiplied by 52 to represent the wage for a period of one year.

If the victim is self-employed, the Court is usually guided by the income tax returns. Thus if the victim did not declare all his income, then he is certainly at a disadvantage when he submits a claim for damages. This point is well illustrated in Josephine Schembri et v. Nathalie Navarro. The victim had a bar that he managed together with his wife. The latter declared that they earned around Lm3500 and Lm4000 p.a. however in the Income Tax Return the spouses had only declared Lm2499 and it was on this amount that the Court proceeded to liquidate the lucrum cessans.

On the other hand if the victim is in employment than his salary can easily be ascertained, overtime is taken into consideration except when it is occasional overtime.

In Victor Mallia et v. Joseph Cammilleri, the plaintiff was employed as a watchman with the Government and he worked part-time as a tile layer. Following the accident he retained the job with the Government but he had to give up his part-time job. The court held that although the disability suffered by the plaintiff had in no way affected the job with the Government, and thus one would be included to conclude that the plaintiff was not entitled to any lucrum cessans, yet that disability had severely affected his earning capacity as a tile layer. The court felt that the plaintiff should nonetheless be compensated for this loss.

When calculating the basic weekly wage is that it is the gross salary that is relevant and not the net amount, i.e. the balance in salary after deduction of national insurance and income tax contributions.

In *Maria pace pro et noe v. Joseph Abela*, it was held that the income tax and the National Insurance Contribution that the deceased person would have to pay if he remained alive, are both factors that should be taken into consideration when one is establishing the annual medium wage for the purpose of computing the future earnings. The reason behind this principle is that the plaintiff is eventually going to pay tax on amount of compensation that he receives.

Nonetheless there have been occasional cases where the court has taken into account the net pay.

In *Vincent Axisa v. Alfred Fenech et* the court disagreed with the Legal Referee's submission in this respect and stated that, *the legal expert was not correct when he taken into account the gross wage. This is not correct as it is obvious that the plaintiff should be given the amount that he truly lost and not more than this. Thus the court should taken into account the net pay and not the gross pay.*

Thoughts?

Housewives

In the past no compensation was awarded in cases where the plaintiff was a housewife on the premise that housework doe not earn any salary, however recently it was felt that if a housewife is injured, it should be entitled to compensation even though she is not paid for the service that she renders to her family. Today the service that is being offered by a housewife is being given a financial standing and in case of death or injury compensation is due.

In Nazzareno Apap pro et noe v. Francis Degiorgio, 1984 COA, the court held that even though the deceases is a housewife and she performs no lucrative job, she is thus nonetheless entitling for damages lucrum cessans. This principle has been accepted since the housewife also has the potential to work and earn a living.

This highlights the reasoning behind awarding lucrum cessans to housewives. Notwithstanding that the victim does not work yet through the injure her potentiality to start working in a lucrative job and earn money has been impaired,

This has been confirmed in the judgment Elizabeth sive Alice Grech et v. Mario Briffa, which dealt with a housewife that suffered a 10% disability following the accident. The court explained that since the woman did not work in a paid job, one cannot say what her medium wage was. Nonetheless housework has an economic value and the contribution that is given by a housewife and her contribution that she gives to the domestic economy should not be considered as less significant to the contribution given by a man. The Court held that the work of a housewife should not be considered as being valued less from the minimum wage. In fact at the time of accident, the minimum wage was Lm 43.88 weakly, while the Court valued the housework as Lm50 weakly.

Thus in calculating the basic weekly age of a housewife the court in this case adopted the minimum wage criterion subject to increases. One can further argue that the housework has an economic value, because if the wife were unable to perform that service, the family would have to employ another person for that purpose.

- The case of minor and/student

The main difficulty is that here the court does not have a fixed salary as its yardstick since the victim does not earn a living yet. Thus the Court has to approximately determine what his income would be when he starts working. The starting point is the minimum wage at the time of the accident. This amount is then increased because when the victim starts working the minimum wage would certainly have increased. This was explained in Savior Micallef pro et noe v. Mario Psaila, where the victim was an 11 year old girl. When it came to establishing the weekly age the Court held that the weekly age should not be determined by an equal reference to the minimum age, but this should be increased, since the girl would start working at a time when the minimum age would have increased.

In Paul Scerri et noe v. Tancred Cesareo, where the victim was a 14 year old student the Court remarked that the fact that the son was a student, his prospects were that he would earn more than the minimum wage. This is because of he had become a teacher he would be earning more than the minimum age. Thus the court took this into consideration and ordered a higher wage than the minimum wage.

The case of an unemployed

- In Hadrian Borg v. Mario Caruana, the court held that even though the plaintiff was unoccupied at the time of the job, the court took into consideration the fact that he was a panel beater and he had worked with the Malta Dry-docks. The court held that the fact the plaintiff was unemployed at the time of the action; this does not mean that he has no right to demand payment for damages. This is because it has been upheld by our courts the one is entitled for compensation, even though one is not a breadwinner or an earner.

2. Multiplier (remaining years till pension age)

- This may be described as the number of years or the working-life expectancy of the victim. There from the age of the victim at the time of the accident is crucial. As was firstly established in Butler v. Heard, the court has to take into account the changes and chances of life consequently the multiplier is never applied in full.

- Our Courts have always held that one must thread with caution in establishing the multiplier. The concept of multiplier has been explained in *Paul Scerri et noe v. Tancred Cesareo* where it was stated that the multiplier will be less than the average working life expectancy of a person of that age but the theory of the matter is that the income from the capital sum, supplemented by drawings on the capital will provide the plaintiff with the equivalent of his total net earnings throughout the period. The multiplier is set as a figure which takes into account both the fact that a capital sum capable of investment is more valuable than an equivalent aggregate income over a period of time and the chance that the plaintiff might anyway not have earned that income.

In fact in Butler v. Heard the court adopted a multiplier of 15 for a 22 year old victim. The court justified this by saying that, even though the probability that a worker of 25 years has a life expectancy and the probability that he remains working for an extreme number of 40 years, due to the **changes and chances of life** it is rarely the case that a multiplier of more than 15 years is in fact adopted.

It was always thought that the chances and changes of life should be given priority and that consequently the multiplier should be reduced as possible. In the primary stages of jurisprudence, our courts were quite conservative when they came to establish the multiplier notwithstanding that the plaintiff was still of a young age at the time of the accident. In fact up to relatively recently, the multiplier was normally between 15 and 20 even though the victim was 30 years old or younger. The multiplier in the older jurisprudence never exceeded 20.

Il-Qorti thoss li hemm bzonn ta' certu uniformita` f'dan l-aspett li naturalment jghin biex wiehed ikun jaf minn qabel kriterji regolari. Huwa veru li kull kaz trid tarah ghalih izda li jkun hemm skeda li l-konsulenti legali u ditti ta' *insurance* ikunu jistghu jirreferu ghaliha tkun ta' utilita` kbira. Ghalhekk il-Qorti kif presjeduta sejra tuza c-*chart* hawn taht:

Eta' Vittma	***Multiplier***
	Massimu
0 - 15	40
16 - 20	37
21 - 25	35
26 - 30	30
31 - 35	25
36 - 40	20
41 - 45	15
46 - 50	13
51 - 55	11
56 +	5 jew anqas

Pagna 11 minn 15

Judge Farrugia Sacco era

- In Paul Vassallo et v. Carmelo Pace, the First Hal Civil Court adopted a multiplier if 20 in respect if the a victim who was only 23 years old at the time of the accident. Commenting on this the court the Court of Appeal stated that; the multiplier of twenty years adopted from the First Court is one if the highest multipliers that the Court have adopted. This confirmed that a multiplier of 20 was, in the majority of cases, the maximum that a plaintiff could hope to obtain. In fact in appeal the multiplier in the case was reduced to 15.

- In of the first judgments which sought to bring about change was that delivered in the case of Mary Bugeja noe et v. George Aguis boe, decided in 1987. The plaintiff's husband was involved in an accident at the place of work, with the consequence that he lost his life. The first Hall stated that although Butler v. Heard had laid down the foundation of ye system to be used yet a certain amount of discretion was left in the hands of the Judge. In this case the court disregarded completely the notion of the chances and changes of life, one of the most fundamental aspects in the multiplier system. In fact in this case, the court established multiplier of 26 years old or for a man of 34 years of age. Thus in this case, the court awarded a full multiplier for the person until he achieved the 60-year-retiurment age.

Do pensioners have a right to be compensated under Lucrum Cessans?

For a plaintiff was 60 years old at the time of the accident and who worked as a charge hand in refueling of appliances, the court adopted a multiplier of 8 arguing that at the age of 60, the plaintiff can reasonably be expected to have a lucrative life of maximum of 8 years more, considering the nature of the work. (Galea v. D'Agostino)

For a pensioner of 72 years old who however ran a bar together with his wife, the Court applied a multiplier of 4 years (Scehmbri v. Navarro).

It has been stated in numerous cases that the multiplier must not be based on the life expectancy of the victim but on his working life expectancy. The courts when calculating the multiplier, are trying to determine how many years the victim would have worked had it not been for the accident, and not how much more he would have lived.

The period of the multiplier starts to run from the date of the accident.

3. Percentage Disability

Awarding damages for lucrum cessans presupposed that the plaintiff has suffered a personal injury at the hands of the defendant. The disability suffered by the plaintiff is translated into a percentage disability and this forms an integral part of the formula used for calculating the amount of compensation to be given.

The percentage disability depends on the nature of the injury suffered. This is determined by a member of the medical profession. In the past the medical practitioner was guided by Schedule VI of Act VI of 1956 which established the degree of disability relative to various losses. This was repealed in 1987.

Although the report drawn up by a medical expert carries a lot of weight, yet the report remains essentially a recommendation to the court. The latter is not bound to adopt that repost and there have been cases where the court increased or decreased the percentage disability arrived at by the medical expert.

- In the past it was argued that before any amount of compensation was fixed, it had the result that a person had actually suffered a loss in earnings because of the disability, that he has suffered through the accident.
- However, through developments, our courts have come up with the argument that a person may suffered a disability which can be translated into a percentage notwithstanding that there are no substantial changes in his working life. The idea behind this is that even though a person may retain his job and his salary yet, because of his injury, he is prevented from moving on to more rewarding jobs.

- This was stated in *Edgar Gatt v. Oliver Theuma*, where the Court explained that the fact that the victim remains working in the same employment that he had before the accident, does not prejudice him his rights to claim damages a s consequence of the permanent disability that the damage has incurred. This is because this permanent disability can always be a difficulty for him to improve his financial position, and for this reason this he has a right to demand damages.

The leading case in this regard is *Joseph Magro v. Tony sive Anthony Busuttil*.

The plaintiff suffered an amputation of his middle finger., the defendant claimed that the plaintiff was not entitled to any lucrum cessans since he had retained his job with the same wage. The court however concluded that, in the previous 34 working years there was nothing that precluded the plaintiff to change the job with a higher wage. However, after the accident, this cannot be done as a result of the injury suffered. Therefore the damages for loss of earning for the future cannot be excluded simply because the plaintiff remained in the same job.

In Victor Cachia et v. Carmelo Mifsud the defendant refused to pay damages for future losses to the plaintiff on the ground that the latter not only was not effected in the earning capacity, but also his commercial activity increase without difficulty. However the Court held that it cannot accept this submission. The plaintiff was 17 years old at the time of the accident and thus at the time of the accident he had a full working life. Due to the accident, he has found himself in a position where he cannot easily change his work in order to earn more.

What happens in the event that the victim already suffers a physical disability before the accident?

This was dealt in Maria Aguis v. Herman Bezzina.

Prior to the accident the plaintiff was disabled and not gainfully employed. Nonetheless she still used to perform household tasks. As a result of the accident, she ended up relying on third parties for all her needs. The Court noted that in normal circumstances the plaintiff would have been entitled to substantial damages. however the damage liquidation was usually computed on the basis of loss for future income. Since the plaintiff had not sustained any loss or reduction of income, then this method of computation could not be applied in this case. Nonetheless she was still entitled to damages for the loss of independence she had sustained. In view of the particular circumstances of the case, the Court felt that it would be inappropriate to follow Butler v. Heard. Rather it considered that it would be more appropriate to liquidate an amount *arbitorio boni vori.*

- *The link of cause and effect*

An important point is that the disability must have been caused directly through the accident, i.e. there must be the link of cause and effect between the disability suffered and the act of the defendant. If the disability was already there or it was not caused through the defendants' tortuous action, then the plaintiff cannot expect any damages for loss of future earnings.

4. Lump Sum Deduction

Damages awarded by a court in a tort action are awarded in a lump sum. The award is made once and for all and there is no possibility of incasing or decreasing it. The lump sum remedy raises acute problems wherever a person suffers serious injuries the effects of which may still be felt long after the damages are assessed. The claims which raise problems with lump sums are those involving future earnings losses.

It is highly questionable whether awarding damages for lost income in a once and for all payment is appropriate in cases where the loss will continue after the date when the damages are assessed. The sum awarded can, of course, be invested to provide an income or used to purchase an annuity.

Is the Lump Sum Dedecution always twenty percent?

Normally and only latley this is being reduced when there are court delays:

In Anthony Tabone v. Salvatore Guillaumier et noe, the court adopted the Legal Referee's calculations in that the lump sum deduction should be 10% and not 20% since a relatively long period of time had passed since the date of the accident.

Mr Justice Guiseppe Mifsud Bonnici, in the case Mario Cammilleri v. Mario Borg et noe held that there was no justification for a deduction being made simly because the plaintiff was receiving the amount at once. He held that there is absolutely no real justification for a deduction simply because the payment is being made in a lump sum.

In Carmelo Schembri v. Alfred Caruana noe, the Court did not deduct the usual 20% since the payment was being made at once. The court arrived at this conclusion partly also due to the fact that this lawsuit had been pending for a total of 19 years, in fact the court stated that of the damages were given in a shorter period of time, the plaintiff would have earned interest on the lump-sum payment and thus if that case it would have reasonable that there would have been a deduction.

Rikors Maħluf Numru 180/2018LM in the names Lawrence Camilleri et vs Construct Furniture, decided 26th January, 2022 (Pending Appeal)

This dealt with an accident at the place of work. Camilleri lost a finger and lost the sensation of another finger after an injury at the place of work.

Facts are these:

- *Illi l-esponenti Lawrence Camilleri kien impjegat mas-soċjetà intimata Construct Furniture Company Limited (C 11786) bħala* machine operator *fix-xogħol tal-injam.*
- *2. Illi nhar is-sittax (16) t'April tas-sena elfejn u ħmistax (2015) waqt illi l-istess esponenti kien qed jagħmel xogħol fil-kors tal-impjieg tiegħu mas-soċjetà intimata l-esponenti weġġa' gravament f'idejh il-leminija meta s-swaba' inqabdulu mill- magna li huwa kien qed jaħdem fuqha.*
- *Illi l-istess esponenti ġie ammess l-isptar Mater Dei f'żewġ okkażjonijiet fejn sarulu interventi kirurġiċi f'idu l-leminija: fejn għalkemm sar sforz sabiex l-indiċi tal-id il- leminija jkun salvat, dan ġie eventwalment imputat. Inoltre, bħala konsegwenza tal-istess inċident fuq il-post tax-xogħol, l-esponent sofra wkoll minn telfa ta' funzjoni u sensazzjoni f'subgħu tan-nofs tal-istess id.*

Respodent Company Replied:

- *1. Illi l-inċident de quo seħħ bi ħtija esklussiva tar-rikorrenti Lawrence Camiller innifsu u mhuwiex imputabbli għal xi tort jew ħtija tas-soċjetà esponenti li ottemperat ruħha mal-obbligi tagħha naxxenti mil-liġijiet u r-regolamenti dwar is-sigurtà fuq il-post tax- xogħol. Konsegwentement ma hemm l-ebda danni x'jiġu likwidati favur ir-rikorrenti.*

- *2. F'kull każ u mingħajr preġudizzju għas-suespost, jispetta lir-rikorrenti li jagħmlu l- prova tad-danni skont il-liġi inkluż il-prova li l-allegata diżabilità fiżika u mentali permanenti li qed jilmentaw minnha hija kollha kemm hi riżultat tal-korriment ta' Lawrence Camilleri u mhux ta' xi kundizzjonijiet mediċi jew ta' saħħ[illegible] antecedenti l- inċident*

The Court held:

Din il-Qorti evalwat il-provi kollha prodotti, u dak li ntqal mix-xhieda, kif ukoll ir-rapporti li ħejjew l-esperti ġudizzjarji. Il-Qorti tibda billi tirrileva li l- Espert Tekniku Ġudizzjarju l-Inġinier John Scerri, għamel xejn anqas minn erba' żjarat fil-fabbrika tas-soċjetà intimata, ikkonstata kif isir ix-xogħol, għamel għadd ta' simulazzjonijiet sabiex jifhem kif seħħet id-dinamika tal-inċident mertu ta' dawn il-proċeduri, kif ukoll ħejja rapport dettaljat b'diversi rakkomandazzjonijiet li fil-fehma tiegħu s-soċjetà intimata għandha tadotta sabiex tilqa' għan-nuqqasijiet ikkonstatati. Dan kollu wassal lill-Qorti biex tagħmel tagħha l-konklużjonijiet milħuqa mill-Ing. John Scerri dwar x'ikkawża l- inċident in kwistjoni. L-Inġinier Scerri kien konvinċenti wkoll u dettaljat fl-ispjegazzjonijiet li ta għad-domandi li sarulu waqt l-eskussjoni.

- 26. Il-Qorti tqis li r-rikorrent weġġa' fil-kors tal-impjieg tiegħu mas-soċjetà intimata, wara li kien ilu impjegat ma' din il-kumpannija għal diversi snin, u għalhekk kellu ċerta esperjenza tal-prattiki tax-xogħol u ta' dak li kien mistenni minnu, partikolarment f'dik li hija produzzjoni. L-inċident li wassal biex ir- rikorrent tilef is-saba' l-werrej fl-id id-dominanti tiegħu, u li eventwalment għalhekk spiċċa wasslu wkoll biex tilef l-impjieg li kellu, seħħ meta r-rikorrent kien qiegħed jagħmel xogħol ta' qtugħ tal-injam b'magna partikolari. Fir- rapport tal-Espert Tekniku Ġudizzjarju John Scerri ġie kkonstatat li l-inċident seħħ għaliex kien hemm parti mis-*safety features* tal-magna li ma kinux qegħdin jaħdmu kif suppost. Esponenti tas-soċjetà intimata, waqt id-depożizzjoni tagħhom, qalu li ma setgħux jifhmu kif seħħ l-inċident, partikolarment għaliex din il-magna għandha diversi *safety features.* Imma kif wera l-Espert Tekniku Ġudizzjarju John Scerri, li għamel diversi simulazzjonijiet b'din l-istess magna sabiex seta' jasal għall-konklużjonijiet tiegħu, is-*safety features* tal-magna setgħu jiġu sorvolati faċilment minn min ikun qiegħed iħaddem il-magna.

L-Inġinier John Scerri elenka diversi nuqqasijiet gravi min-naħa tas- soċjetà intimata għal dik li hija s-saħħa u s-sigurtà tal-ħaddiema fuq il-post tax-xogħol, u stabbilixxa li l-*motion sensor* ma kienx effettiv biex iwaqqaf il-magna milli tkompli għaddejja. Fil-fehma tal-Inġinier John Scerri, kien hemm riskju li ma ġiex stmat biżżejjed mis-soċjetà intimata, u kien hemm *safety checks* li kellhom jiġu attwati mis-soċjetà intimata, iżda li ma sarux jew ma sarux kif suppost. ….

L-Inġinier John Scerri kkonstata wkoll li wara l-inċident in kwistjoni, il-kumpannija ma għamlet l-ebda *risk analysis,* u ma kien hemm l-ebda *equipment inspection report* disponibbli li seta' faċilment jingħatalu. L-Inġinier Scerri kkonkluda li dan l-inċident fuq il-post tax-xogħol kien possibbli li jseħħ għax ma kinitx qed tiġi adoperata *a safe system of work*, u l-kawża prossima tal-inċident kienet li l-pożizzjoni tal-*motion sensors* tal-magna li kien qiegħed jaħdem fuqha r-rikorrent, li għal dak li jirrigwarda l-għoli u d-distanza bogħod mix-xafra tal- magna, mhumiex effettivi għal persuna ta' statura kbira jew twila.

L-Espert Tekniku Ġudizzjaru l-Inġinier Scerri qal li r-responsabbilità għall-inċident għandha tiġi apporzjonata fil-grad ta' 85% għas-soċjetà intimata u 15% għar-rikorrent, għaliex ir-rikorrent kellu r-responsabbilità li jinforma lid-diriġenti tas-soċjetà intimata li t-taħriġ li ngħata ma kienx adegwat, u li l-magna li kien qiegħed iħaddem ma kinitx tipprovdilu l-aħjar sistema ta' sigurtà għalih. Il-Qorti hija tal-istess fehma.

The Court held:

- ***Tilqa' t-talbiet tar-rikorrent, u tiddikjara li s-soċjetà intimata hija parzjalment responsabbli għall-inċident mertu ta' dawn il-proċeduri, fejn il-grad ta' responsabbilità li għandha ġġorr is-soċjetà intimata huwa ta' 85%;***
- ***Tillikwidad-dannisoffertimir-rikorrentfis-sommata'wieħedutmenin elf, sitt mija u sittax-il Euro u tnejn u tletin ċenteżmu (€81,616.32)***

Damages Awarded in Fatal Injuries

The law has catered for death as a result of a tortuous act in section 1046

1046. Where in consequence of the act giving rise to damages death ensues, the court may, in addition to any actual loss and expenses incurred, award to the heirs of the deceased person damages, **as in the case of permanent total incapacity**, in accordance with the provisions of the last preceding article.

- Two factors are immediately clear from the start:

The formula adopted so as to calculate the amount of compensation for fatal injuries is basically the same as that used for non-fatal injuries. The only differences being that in fatal injuries the percentage disability is 100% and the additional percentage is deduced representing the consumption of the deceased had he remained alive.

The law speaks of the heirs of the deceased person and this may give rise to certain difficulties in practice.

- In Robert Barbnara v. Saviour Galea the Court refused to deduct the 10% instead of the usual 20% from the amount of compensation on the basis that, the 10% deduction has been applied by the courts in cases where the payment of the lump sum is being made in a period shortly after the accident. On the other hand, in the case in question, the plaintiff will be paid after three years, and thus he does not qualify so that in his case, the reduction is made with the 10% rate.

- In a case that was decided 7 years after the date of the accident, only 6% reduction was made from the global amount due. Thus Court's attitude was more liberal when compared with the other cases where a 10% deduction was made notwithstanding that the accident had occurred almost 8 years before.

- The cases suggest that although one can conclude that the deductions made from lump sum are not always the same yet there is a pattern underlying them all. The longer it takes to receive compensation, the less the deduction would be. So it most depends on the particular criteria of each individual case.

The case which initially dealt with the issue of whether the spouse has the right to sue for compensation in her own name was Marianna Cini pro et noe v. Poalo Galea et.

The victim in this case was a 31 year old father of four. While working on a building site the roof caved in and he was buried under the debris. His wife and four children sued for compensation. The defendants argued that the widow was not entitled to compensation because section 1046 only grants this right to the heirs of the deceased. And as the law of succession stood at the time, the surviving spouse was not an heir. The court however held that section 1046 should not be read in isolation but it should be seen in conjunction with sections 1031 and 1033. Section 1031 states that every person shall be liable for the damage which occurs through his faukt whereas section 1033 provides that any person who, with or without intent to injure voluntarily or through negligence, imprudence, or want of attention, is guilty of any act or omission constituting a breach of the duty imposed by our law, shall be liable for any damage resulting therefore.

The court argued that on the basis of these two sections, which are of a general application, the surviving spouse has a personal right to sue for compensation.

The notion of Dependency

The term dependent may be defined as a person who is financially supported by another, there are several classes of dependents such as, the wife and children that were supported by the husband.

Death of Child

The argument of dependency does not hold so strong when one talks of the death of the child. This is due to the fact that in such cases, it the child rather than the parents who was dependent and not the other way round. Nevertheless, notwithstanding the lack of dependency, the law does not deny the parents and brothers/sisters of the deceased the right to claim damages. What happens in practice is that the amount of compensation is reduced depending on the degree of dependency between the claimants and the deceased. Hence the degree of dependency is only relevant vis-a-vis the amount actually liquidated.

In Dominic Bartolo et noe v. John Attard et noe. the plaintiffs' daughter was killed when riding as a passenger in the defendants' car. The latter claimed that the plaintiffs were not entitled to any damage since they were not dependent on their daughter for their livelihood. The court was of the opinion that although the plaintiffs were not the deceased's dependents the degree of dependence had still to be taken into account when assessing damages. the Court explained that heirs of the deceased have a right to claim damages even though they are not strictly dependent in the victim. The court further held that the degree of dependence would be reflected in the amount liquidated. The Court after taking into account the degree of the relationship concluded that the plaintiffs were entitled to one third of the compensation.

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI