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Court of Appeal

*Haxton *v* Philips Electronics UK Ltd

[2014] EWCA Civ 4

2014 Jan 14; 22 Elias, Beatson LJJ, Dame Janet Smith

B

Damages — Measure of damages — Diminution in value of claim — Claimant and her husband contracting mesothelioma as a result of husband's employment with defendant — Husband dying and claimant's life expectancy reduced — Claimant's loss of dependency claim diminished in value by reduced life expectancy — Whether diminution in value of loss of dependency claim recoverable head of damage in claimant's personal claim — Fatal Accidents Act 1976 (c 30) (as amended by Administration of Justice Act 1982 (c 53), s 3(1)), ss 1, 3(1)

C

The claimant's husband died from mesothelioma contracted as a result of asbestos contact occurring during his employment with the defendant. The claimant also contracted the disease as a result of washing her husband's work clothes, with a consequent reduction in her life expectancy. She brought two actions against the defendant in negligence and breach of statutory duty. In the first action she claimed damages as, inter alia, a dependant of her husband under the Fatal Accidents Act 1976[1]. Liability was admitted and damages for loss of dependency were agreed on the basis that the claimant had a life expectancy of only 0·7 years. In the second action, brought in her own right, she claimed damages for, inter alia, the diminution in value of her claim under the 1976 Act caused by the reduction in her life expectancy. The deputy judge ruled that this was not in law a recoverable head of damage.

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On the claimant's appeal—

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Held, allowing the appeal, that where a claimant's right under the Fatal Accidents Act 1976 to recover for loss of dependency was diminished in value as a result of negligence which reduced the claimant's life expectancy there was no reason why the diminution in value of that right could not be recovered as a head of loss in a personal action brought by the claimant; that, further, a loss of this kind would not in principle be too remote, it being reasonably foreseeable that a reduction in life expectancy might lead to a diminution in the value of a litigation claim, even where different tortfeasors were responsible for the injuries to the deceased and the dependant; and that, accordingly, the deputy judge had erred in holding that the damages claimed by the claimant under this head were not recoverable (post, paras 14–15, 21, 23–24, 25, 26).

F

Decision of David Pittaway QC sitting as a deputy judge of the Queen's Bench Division [2013] EWHC 1764 (QB) reversed.

G

The following cases are referred to in the judgment of Elias LJ:

Baker v Willoughby [1970] AC 467; [1969] 2 WLR 489; [1969] 2 All ER 549, CA; [1970] AC 467; [1970] 2 WLR 50; [1969] 3 All ER 1528, HL(E)

[1] Fatal Accidents Act 1976, s 1, as substituted: "(1) If death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured. (2) Subject to section 1A(2) below, every such action shall be for the benefit of the dependants of the person ('the deceased') whose death has been so caused. (3) In this Act 'dependant' means— (a) the wife or husband or former wife or husband of the deceased; . . ."

H

S 3(1), as substituted: "In the action such damages, other than damages for bereavement, may be awarded as are proportioned to the injury resulting from the death to the dependants respectively."

Cookson v Knowles [1979] AC 556; [1978] 2 WLR 978; [1978] 2 All ER 604, HL(E)
Fox v British Airways plc [2013] EWCA Civ 972; [2013] ICR 1257, CA
Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5) [2002] UKHL 19; [2002] 2 AC 883; [2002] 2 WLR 1353; [2002] 3 All ER 209, HL(E)
Lagden v O'Connor [2003] UKHL 64; [2004] 1 AC 1067; [2003] 3 WLR 1571; [2004] 1 All ER 277, HL(E)
Liesbosch Dredger (Owners of) v Owners of SS Edison (The Liesbosch) [1933] AC 449, HL(E)
Livingstone v Rawyards Coal Co (1880) 5 App Cas 25, HL(E)
O'Laughlin v Cape Distribution Ltd [2001] EWCA Civ 178; [2001] PIQR Q73, CA
Pickett v British Rail Engineering Ltd [1980] AC 136; [1978] 3 WLR 955; [1979] 1 All ER 774, HL(E)
Wright v Cambridge Medical Group [2011] EWCA Civ 669; [2013] QB 312; [2012] 3 WLR 1124, CA

The following additional cases were cited in argument:

Corbett v Barking, Havering and Brentwood Health Authority [1991] 2 QB 408; [1990] 3 WLR 1037; [1991] 1 All ER 498, CA
Griffiths v Kerkemeyer (1977) 139 CLR 161
Oliver v Ashman [1962] 2 QB 210; [1961] 3 WLR 669; [1961] 3 All ER 677, CA
Phipps v Brooks Dry Cleaning Services Ltd [1996] PIQR Q100, CA
Skelton v Collins (1966) 115 CLR 94
Welsh Ambulance Services NHS Trust v Williams [2008] EWCA Civ 81, CA
Wood v Bentall Simplex Ltd [1992] PIQR P332, CA

No additional cases were referred to in the skeleton arguments.

APPEAL from David Pittaway QC sitting as a deputy judge of the Queen's Bench Division

The claimant, Monica Haxton, brought two actions in negligence and breach of statutory duty against the defendant, Philips Electronics UK Ltd, her late husband's former employer. The claimant's husband had contracted mesothelioma from asbestos contact at work and had died in 2009. The claimant, too, had contracted the disease, and in February 2013 her life expectancy had been stated to be between six and 12 months. In the first action the claimant sought damages on behalf of her husband's estate pursuant to the Law Reform (Miscellaneous Provisions) Act 1934 and also as a dependant under the Fatal Accidents Act 1976. Liability was conceded, damages were agreed and a consent order was made. The damages in the loss of dependency claim were assessed on the premise that the claimant had a remaining life expectancy of 0·7 years because of her illness. In the second action the claimant sought damages in her own right. Liability was conceded. David Pittaway QC sitting as a deputy judge of the Queen's Bench Division [2013] EWHC 1764 (QB) held that the diminution in value of the claimant's loss of dependency claim caused by the reduction in her life expectancy was not a recoverable head of damage.

By an appellant's notice dated 26 July 2013 and pursuant to the permission of the judge, the claimant appealed on the grounds, inter alia, that the judge had erred in holding that the damages which she claimed for the diminution in value of her loss of dependency claim were not recoverable.

The facts are stated in the judgment of Elias LJ.

Robert Weir QC and *Harry Steinberg* (instructed by *Irwin Mitchell LLP*) for the claimant.

Catherine Foster (instructed by *Wragge & Co LLP*) for the defendant.

The court took time for consideration.

22 January 2014. The following judgments were handed down.

ELIAS LJ

1 This is an unusual case raising a point of some novelty. Both Mr and Mrs Haxton developed mesothelioma as a result of being exposed to asbestos. Mr Haxton was employed as an electrician by the defendant, Philips Electronics UK Ltd, for over 40 years until he retired in 2004. In the course of his work he was subjected to asbestos dust. He began to develop symptoms attributable to mesothelioma in June 2008 and subsequently died from the disease in 2009. Mrs Haxton ("the claimant") was never employed by the defendant but she washed her husband's boiler suits and work clothes and as a result also came into contact with the dust lodged in the fibres. She developed mesothelioma symptoms in January 2011 and was diagnosed with that disease in January 2012. The medical prognosis in a report dated February 2013 was that she would live between six and 12 months; in fact happily she is still alive and attended the appeal hearing.

2 The claimant has issued two separate proceedings against the same defendant, Philips. One was in her capacity as widow and administratrix of the estate of her late husband. She claimed damages on behalf of the estate under the Law Reform (Miscellaneous Provisions) Act 1934, and also as a dependant under the Fatal Accidents Act 1976, as amended. The claim, which was issued on 25 June 2012, alleged negligence and breach of statutory duty. Liability was conceded and ultimately damages were agreed and a consent order made on 13 May 2013. The damages for loss of dependency were premised on the assumption that she had a remaining life expectancy of 0·7 years because of her illness.

3 Earlier, on 11 February 2012, she had issued proceedings in her own right, also in that action seeking damages for negligence and breach of statutory duty. Liability was again conceded and damages agreed at £310,000 save for one disputed item which is the subject of this appeal. It relates to the claim for future dependency arising from her husband's death. Her case can be simply summarised. She says that but for the defendant's negligence, her life would not have been cut short and the assessment of her dependency claim in the first action would have been significantly greater. The defendant should therefore compensate her for that loss. It is agreed that, if recoverable, the loss under this head, which results principally from lost earnings and pension benefits, is £200,000. The issue is whether this is in law a recoverable head of damage.

4 Mr David Pittaway QC, sitting as a deputy judge of the Queen's Bench Division [2013] EWHC 1764 (Admin), held that it was not. The claimant now appeals that decision by leave of the judge.

5 The underlying principle in assessing the value of a dependency claim is laid down by section 3(1) of the 1976 Act which provides that the courts must award "such damages . . . as are proportioned to the injury resulting from the death to the dependants respectively". In order to be proportioned

they must be related to the actual loss suffered, although statute has modified that principle in certain ways. The position was summarised by Lord Diplock in *Cookson v Knowles* [1979] AC 556, 567–568:

> "When the first Fatal Accidents Act was passed in 1846, its purpose was to put the dependants of the deceased, who had been the breadwinner of the family, in the same position financially as if he had lived his natural span of life . . .
>
> "Today the assessment of damages in fatal accident cases has become an artificial and conjectural exercise. Its purpose is no longer to put dependants, particularly widows, into the same economic position as they would have been in had their late husband lived. Section 4 of the Fatal Accidents Act 1976 requires the court in assessing damages to leave out of account any insurance money or benefit under national insurance or social security legislation or other pension or gratuity which becomes payable to the widow on her husband's death, while section 3(2) forbids the court to take into account the remarriage of the widow or her prospects of remarriage. Nevertheless, the measure of the damages recoverable under the statute remains the same as if the widow were really worse off by an annual sum representing the money value of the benefits which she would have received each year of the period during which her husband would have provided her with them if he had not been killed. This kind of assessment, artificial though it may be, nevertheless calls for consideration of a number of highly speculative factors, since it requires the assessor to make assumptions not only as to the degree of likelihood that something may actually happen in the future, such as the widow's death, but also as to the hypothetical degree of likelihood that all sorts of things might happen in an imaginary future in which the deceased lived on and did not die when in actual fact he did."

6 The significance of the claimant's own death is that dependency would in any event have ended at that point even had her husband still been alive, and the widow suffers no loss after that date. The agreed damages in the first action were calculated in accordance with that principle and Mr Weir QC accepts that this was the proper basis of assessment. The claimant was necessarily limited to damages calculated by reference to her own life expectancy. However, had she not herself contracted mesothelioma as a result of the defendant's negligence, she would have recovered more in her dependency claim because her life expectancy would have been greater. Mr Weir submits that, although this is an unusual case in that the same defendant is common to both claims, that is not a material factor. The position would be the same, and the head of loss would be recoverable, even if a different tortfeasor had negligently shortened the claimant's life.

7 Mr Weir submits that the starting point in assessing whether this is a recoverable head of loss should be the principle enunciated in the well known passage in the judgment of Lord Blackburn in *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25, 39:

> "where any injury is to be compensated by damages, in settling the sum of money to be given . . . you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has

A suffered, in the same position as he would have been in if he had not sustained the wrong . . ."

8 Mr Weir accepts, however, that whilst this is the starting point, it is not the end of the compensation analysis. Establishing a causal link between the negligence and the damage is a necessary but not always sufficient condition to ground liability. Lord Nicholls of Birkenhead explained the B position in *Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883, 1090–1091:

"69. How, then, does one identify a plaintiff's 'true loss' in cases of tort? This question has generated a vast amount of legal literature. I take as my starting point the commonly accepted approach that the extent of a defendant's liability for the plaintiff's loss calls for a twofold inquiry: C whether the wrongful conduct causally contributed to the loss and, if it did, what is the extent of the loss for which the defendant ought to be held liable. The first of these inquiries, widely undertaken as a simple 'but for' test, is predominantly a factual inquiry. The application of this test in cases of conversion is the matter now under consideration. I shall return to this in a moment.

D "70. The second inquiry, although this is not always openly acknowledged by the courts, involves a value judgment ('*ought* to be held liable'). Written large, the second inquiry concerns the extent of the loss for which the defendant ought fairly or reasonably or justly to be held liable (the epithets are interchangeable). To adapt the language of Jane Stapleton in her article 'Unpacking "Causation" ' in *Relating to Responsibility*, ed Cane and Gardner (2001), p 168, the inquiry is E whether the plaintiff's harm or loss should be within the scope of the defendant's liability, given the reasons why the law has recognised the cause of action in question. The law has to set a limit to the causally connected losses for which a defendant is to be held responsible. In the ordinary language of lawyers, losses outside the limit may bear one of several labels. They may be described as too remote because the wrongful conduct was not a substantial or proximate cause, or because the loss was F the product of an intervening cause. The defendant's responsibility may be excluded because the plaintiff failed to mitigate his loss. Familiar principles, such as foreseeability, assist in promoting some consistency of general approach. These are guidelines, some more helpful than others, but they are never more than this."

G 9 Mr Weir submits that, so far as the second inquiry is concerned, there is no policy objection here to allowing the claimant to recover this head of damage and the judge was wrong to hold otherwise.

10 Ms Foster, counsel for the defendant, supports the decision of the judge. He had accepted a submission to the effect that to allow the claimant to recover this head of damage was misconceived because it would allow her to recover in respect of a period of dependency when she would never in fact H be dependent; and also because it wrongly imports a loss from a claim which arose in the first proceedings into the second claim. The judge summarised his conclusions as follows [2013] EWHC 1764 (QB) at [31]–[33]:

"31. Under Fatal Accidents Act claims, principles have developed in the case law which enable dependants to recover damages for loss of

future dependency. The methodology developed provides for the deceased's income to form part of the assessment of loss of dependency during his or her predicted life expectancy, had the deceased not died as a result of a culpable act of a third party. Similarly from early times the claim for loss of future dependency has been restricted to the actual period of the dependency determined by reference to the dependant's own life expectancy. What [counsel for the claimant] seeks to do is to find a way by which [the claimant] can avoid that latter restriction on the scope of the claim for future dependency in the first proceedings by asserting in the second proceedings that the dependency claim would have been larger if her own life expectancy had not been reduced by the defendant's negligence. In the situations referred to by Lords Wilberforce and Scarman in *Pickett* no such issues were envisaged or, indeed, considered.

"32. I have concluded that [the claimant] should not be entitled to claim in the second proceedings what she was not entitled to claim in the first proceedings as a dependant. Whilst I accept the general principles I have been referred to regarding the compensatory nature of damages in personal injury actions, I consider that it would be wrong as a matter of principle for me to permit the use of the second proceedings to enable [the claimant] to recover what she was not entitled to claim for loss of future dependency in the first proceedings.

"33. I do not accept that [the claimant] has lost a valuable legal right in the first proceedings as a result of the defendant's negligence. The information before me is that [the claimant] has recovered in the first proceedings the future loss of dependency she was entitled to do, restricted to her own predicted life expectancy. There is no future dependency on her husband to which she is entitled beyond her predicted life expectancy. I accept the force of [counsel for the defendant's] submissions that [the claimant] has made [full] recovery in the second proceedings of what she was entitled to, including her own claim for 'lost years'. I should add that it seems to me immaterial that it is the same defendant in both sets of proceedings."

11 Ms Foster seeks to uphold that analysis. She says that it is inconsistent with the scheme of the Fatal Accidents Act 1976 to allow the claimant to recover in her own right what she was unable to recover in her dependency claim. That would be inconsistent with the careful structure of the legislation which Parliament has put in place. There is no claim for dependency loss at common law; the Fatal Accidents Act 1976 was intended to remedy that defect, but it does so in a carefully structured way which would be undermined if the claimant were to succeed. Ms Foster accepts that factually the defendant's negligence caused the loss. But she says that is not sufficient to ground a claim in law; legally, the claim is unsustainable. Ms Foster does not dispute that, in principle, and in an appropriate case, a party can recover compensation with respect to losses incurred with respect to a period after the claimant has died ("lost years"). This was established by the decision of the House of Lords in *Pickett v British Rail Engineering Ltd* [1980] AC 136 and indeed the judge below referred to this case. But she contends, as the judge accepted, that the principle does not apply in the context of this case.

A **12** I should add that Ms Foster did not in fact accept that the claimant was necessarily precluded from recovering damages in her dependency claim with respect to her lost years, or at least some element of them. She does not assert that the claimant could succeed in such a claim but she submits that it is at least arguable that section 3(1) does not bar it. I do not accept that the claimant could have advanced such a claim consistent with principle since, as I have sought to explain, the dependency claim is to recompense for the B loss suffered by the dependant during the actual period of dependency, as indeed the judge below recognised. Ms Foster relied on certain observations of Latham LJ in *O'Laughlin v Cape Distribution Ltd* [2001] PIQR Q73, para 4, where he emphasised that the calculation was always fact-sensitive to support the contention that there is a discretion in the way in which the calculation is made. But the passage on which she relied still assumed that C the court is concerned with assessing loss, not some arbitrary figure it considers to be fair or which does not truly reflect the loss. Accordingly, I see no basis on which any court in the dependency action could have found that the loss should be calculated by reference to a period beyond the dependant's lifetime. In any event, I do not see how it assists the defendant's case even if the court could do this. Ms Foster's basic point is that the claim undermines the legislation and ought not to be permitted as a legally recognised head of D loss. She is not going so far as to assert that there is no need for such a claim because the loss relating to the claimant's curtailment of life is fully recoverable in the dependency claim, thereby negating the need for the personal claim altogether. So even if the damages recoverable in the dependency claim could somehow take some account of an element of lost years, it would not fully satisfy the claim. Absent full recovery, there E would still be a loss in fact resulting from the claimant's premature death. The only question is whether that loss is recoverable.

Discussion

13 The critical question in this case is whether there is any reason of principle or policy which should deprive the claimant from recovering F damages which represent the loss she has in fact suffered as a result of the curtailment of her life by the admittedly negligent action of the defendant.

14 I am not persuaded that there is. The Fatal Accidents Act 1976 confers a statutory right to recover for the loss of dependency and in her claim under that Act she cannot recover more than her actual loss. But I see no reason why the diminution in the value of that right resulting from the negligence of the defendant cannot be recovered as a head of loss G in the claimant's personal action. This does not, in my view, involve any interference with the principles governing the payment of compensation under the legislation. They are left wholly unaffected.

15 In my view, there is nothing in the legislation which justifies the inference that Parliament must have intended that the claimant should be denied the right to recover the reduction in the value of this claim, notwithstanding that it is wholly attributable to the negligence of the H defendant. It is a common law claim for damages for loss of dependency; it is a claim for diminution in the value of a valuable chose in action, a statutory right. There is nothing in the language of the Fatal Accidents Act 1976 or the authorities on that Act which suggests that there is any special attribute distinguishing this particular chose in action from any other.

It follows that Ms Foster's related submission, that this is not a head of loss which ought to be recoverable in law, fails also.

16 There is no authority directly dealing with the issue raised in this case, but Mr Weir referred us to certain authorities which I accept lend some support to his submissions. First, he relied on certain cases to support the proposition that it is in principle legitimate to allow as a head of damage a diminution in value of a chose in action resulting from the negligent act.

17 In *Baker v Willoughby* [1970] AC 467 the claimant was struck by a negligent driver causing injury to his left leg. Subsequently, before the trial, he was shot in the same leg during an armed robbery and his leg had to be amputated. The question was whether the actual and prospective loss flowing from the driver's negligent act had to be reduced because of the subsequent loss of the leg. The Court of Appeal held that it did. This would not, however, adversely affect the claimant because the second tortfeasor should compensate for the reduced value of the right. Widgery LJ said, at pp 480H–481A:

> "In the present case the plaintiff's left leg was already damaged at the date of the second accident but he had a right to recover damages for the resultant loss. In meal or in malt he had the equivalent of a good leg. If the effect of the obliteration of his injury by the second accident has been to deprive him of both his injured leg and the money differential between an injured leg and a sound one, why should he not recover from the second tortfeasor in respect of both elements of his loss? The second tortfeasor cannot complain at losing the fortuitous advantage which might otherwise flow from injuring a disabled man rather than a sound one—he takes his victim as he finds him."

Similar observations were made by Fenton Atkinson LJ, at p 482D, and Harman LJ, at p 483E–F.

18 The House of Lords [1979] AC 467 upheld the appeal but on different grounds. Only Lord Pearson commented on the Court of Appeal's approach, suggesting that the loss recoverable from the second tortfeasor looks too remote. I return to consider the remoteness issue below.

19 More recently, in *Wright v Cambridge Medical Group* [2013] QB 312, para 61, Lord Neuberger of Abbotsbury MR, in an observation with which I agreed (at para 98), held that where a doctor negligently failed to refer a patient to a hospital for treatment, the doctor could not avoid liability by showing that the hospital would in all probability have treated the patient negligently even if the referral had been made. The doctor would then be liable for denying the patient the opportunity to sue the hospital. In that case, therefore, the claim would be for depriving the claimant of a potentially valuable chose in action which he would otherwise have had rather than merely reducing its value.

20 The recent Court of Appeal case of *Fox v British Airways plc* [2013] ICR 1257 provides an analogy to this case. The claimant died following surgery three weeks after he had been dismissed from his employment. Had he not been dismissed, his dependants would have benefited from a death in service benefit of three times his salary conferred by the terms of his contract. The question before the court was whether, if he succeeded in a claim for unfair dismissal brought by his father on his behalf, he would be entitled to claim this as a head of loss. The employers argued that he should not since

A he personally did not suffer the loss; it could only benefit his estate after his death. The court rejected this submission. It recognised that in the usual way the relevant loss would be the cost of insurance to provide equivalent benefits, but in the unusual circumstances of this case that would not be appropriate. The court held that the benefit ought to be treated as belonging to the son and that the dismissal removed that benefit; accordingly if he was unfairly dismissed, it should be compensated. Underhill LJ said, at para 28:

B

> "I believe that the law would be seriously defective if an employee were unable to claim compensation where such rights were adversely affected as a result of a wrong merely because the subject matter of the right was a payment to be made to a third party; and all the more so since the potential beneficiaries of such a payment would themselves have no claim. I see no reason why that should be the case. In my view it reflects reality to treat the loss, or the diminution in the value, of the benefits in question as a pecuniary loss suffered by the claimants themselves. As Tudor Evans J emphasised in *Auty v National Coal Board* [1985] 1 WLR 784, 'the rights under the scheme attach to the member'. In that case the rule that A cannot recover for a loss suffered by B is not engaged."

C

D **21** The *Fox* case shows that the loss or diminution of a contractual right may be recoverable even though it is not directly suffered by the claimant. A fortiori that should be the case where, as here, the reduction in the dependency compensation was a loss actually suffered by the claimant herself when her dependency claim under the Fatal Accidents Act 1976 was settled. The source of this right is statutory and not contractual, as it was in the *Fox* case, but that is not in my view a material distinction.

E

Remoteness

22 Ms Foster did not suggest that recovery should be precluded because the loss would be too remote, but, as I have said, in *Baker v Willoughby* [1970] AC 467 Lord Pearson considered that it was. The report of the case shows that counsel for the plaintiff, Hugh Griffiths QC, later Baron Griffiths

F of Govilon, had argued that the loss of part of the value of a subsisting cause of action against an existing tortfeasor was too remote to constitute a proper head of damage against a subsequent tortfeasor. It was not a reasonably foreseeable consequence of the second tort. He derived that submission in particular from the observations of Lord Wright in *Owners of Liesbosch Dredger v Owners of SS Edison (The Liesbosch)* [1933] AC 449,

G 459. Lord Pearson, without reaching a concluded view on the matter, said, at p 496A: "I doubt whether that would be an admissible head of damage: it looks too remote." I respectfully disagree that a loss of this kind would in principle be too remote. Moreover, it is relevant to note that in *Lagden v O'Connor* [2004] 1 AC 1067 the House of Lords departed from the approach adopted in decision in *The Liesbosch*. Lord Hope of Craighead described the test of remoteness as it should now be applied in the following

H terms, at para 61:

> "It is not necessary for us to say that *The Liesbosch* was wrongly decided. But it is clear that the law has moved on, and that the correct test of remoteness today is whether the loss was reasonably foreseeable. The wrongdoer must take his victim as he finds him: talem qualem, as

Lord Collins said in *Clippens Oil Co Ltd v Edinburgh and District Water Trustees* [1907] AC 291, 303. This rule applies to the economic state of the victim in the same way as it applies to his physical and mental vulnerability."

23 Applying that test, it seems to me that it is reasonably foreseeable that a curtailment of life may lead to a diminution in the value of a litigation claim and if a claimant has such a claim the wrongdoer must take the victim as he finds him. I would be inclined to think that this would be the case even if the claimant's tortfeasor had not been the same as her husband's. But the remoteness argument is, in my judgment, even harder to sustain in circumstances where the same tortfeasor is responsible for injuries to both husband and wife. It must have been foreseeable to this defendant that the claimant would have dependency rights which would be diminished as a result of its negligence.

24 For these reasons, therefore, I would uphold the appeal and award the additional sum of £200,000 to the claimant.

BEATSON LJ

25 I agree.

DAME JANET SMITH

26 I also agree.

Appeal allowed.

MATTHEW BROTHERTON, Barrister