



24 February 2016

PRESS SUMMARY

Knauer (Widower and Administrator of the Estate of Sally Ann Knauer) (Appellant) v Ministry of Justice (Respondent) [2016] UKSC 9
On appeal from: [2014] EWHC 2553 (QB)

JUSTICES: Lord Neuberger (President), Lady Hale (Deputy President), Lord Mance, Lord Clarke, Lord Reed, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

Mrs Knauer was employed by the Ministry of Justice as an administrative assistant at Her Majesty's Prison, Guy's Marsh. In the course of her employment, she contracted mesothelioma, from which she died in August 2009. Her husband, Mr Knauer, made a claim for future loss of dependency under the Fatal Accidents Act 1976.

The Ministry of Justice admitted liability for Mrs Knauer's death in December 2013. In a hearing before Bean J in July 2014, the parties agreed the annual figure for the value of the income and services lost as a result of Mrs Knauer's death, the "multiplicand". A dispute arose between the parties as to whether the number of years by which that figure is to be multiplied, the "multiplier", should be calculated from the date of death or from the date of trial. The trial judge held that he was bound to follow the approach adopted by the House of Lords in the cases of *Cookson v Knowles* [1979] AC 556 and *Graham v Dodds* [1983] 1 WLR 808 and to calculate the multiplier from the date of death.

The trial judge made it clear that, absent that authority, he would have preferred to calculate the multiplier from the date of trial in line with the approach recommended by the Law Commission in their report *Claims for Wrongful Death* (1999, Law Com No 263). Bean J granted a certificate under section 12 of the Administration of Justice Act 1969 to enable Mr Knauer to appeal direct to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows Mr Knauer's appeal. Lord Neuberger and Lady Hale give a joint judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Calculating damages for loss of dependency from the date of death, rather than the date of trial, means that the claimant suffers a discount for early receipt of the money when in fact that money will not be received until after trial, a discount that results in under-compensation in most cases [7].

A ruling that damages should be assessed from the date of trial would involve departing from the established law as laid down by the House of Lords in *Cookson v Knowles* [1979] AC 556 and *Graham v Dodds* [1983] 1 WLR 808. Therefore, the question is whether this is a case in which the Court should apply the 1966 *Practice Statement* and depart from precedent [19-22].

The Court has no hesitation in concluding that it should do so in the present case [23]. In the current legal climate, the application of the reasoning in the two House of Lords decisions is illogical and its application also results in unfair outcomes.

The most important reason for coming to that view is that there has been a material change in the relevant legal landscape [23]. *Cookson v Knowles* [1979] AC 556 and *Graham v Dodds* [1983] 1 WLR 808 were decided in a different era, when the calculation of damages for personal injury and death was nothing like as sophisticated as it is now and the use of actuarial evidence or tables was discouraged [12]. Lord Bridge, in *Dodds*, outlined two concerns which were said to justify the rule. First, adopting the date of death reduced the need to deal with uncertainties around what would have happened to the deceased between the death and the date of trial. Secondly, were the date of trial to be adopted, this would lead to the anomaly that, the longer the trial were delayed, the more a claimant would be able to recover [13-15].

The Ogden Tables were produced in 1984 and endorsed by the House of Lords in the landmark case of *Wells v Wells* [1999] 1 AC 354. As the Ogden Tables include fatal accident calculations based on the recommendations of the Law Commission, there is now a perfectly sensible way of addressing the first of Lord Bridge's concerns [16-17]. As to the second of Lord Bridge's concerns, this is less of an issue due to the respect in which the litigation landscape has been transformed since 1984; under the Civil Procedure Rules 1998, the court is now in a position to set timetables and insist that the parties keep to them. In any event, the proper use of the Ogden Tables makes the concern irrelevant [18].

Another reason why the Court should depart from *Cookson* and *Dodds* is that the unfair effect of the rule as set out in those cases, has led courts to distinguish them on inadequate grounds, which means that certainty and consistency are being undermined [8-9, 23].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>