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Michelle Marnham

Year of Call: 1994

SUPREME COURTS DECISION IN *KNAUER V MINISTRY OF DEFENCE, [2016] UKSC 9* REVERSES THE LAW FOR CALCULATING QUANTUM IN FATAL ACCIDENT CLAIMS

by

Michelle Marnham, Personal Injury Barrister

On 24th February 2016 the Supreme Court handed down its Judgment in the much awaited decision as to the correct approach in calculating future losses in fatal accident claims. Lord Neuberger and Lady Hale, delivering a joint Judgment, with which the other five Justices agreed, said that the previous House of Lords decisions of ***Cookson v Knowles*** [1979] AC 556 and ***Graham v Dodds*** [1983] 1 WLR 808 were "illogical" in the current legal climate and that they result in "unfair outcomes".

The Supreme Court had to two issues to consider:

(1) Whether the Cookson and Graham approach properly reflected the principle of full compensation;

(2) If not, whether the instant court should depart from the approach, applying the Practice Statement (HL: Judicial Precedent) [1966] 1 WLR, 1234.

In considering whether ***Knauer*** was a case in which the Court should apply the 1966 Practice Statement and depart from precedent, The Supreme Court had no hesitation in finding that it should do so. It noted that there had been a material change in the relevant legal landscape. The Supreme Court held that the correct date as at which to assess the multiplier when fixing damages for future loss in claims under the Fatal Accident Act 1976 should be the date of trial, not the date of

death. They found that the current approach in fatal accident cases '*mixed up a calculation based on properly considered actuarial principles with an arbitrary arithmetical deduction'* and that ***Cookson*** and ***Graham*** had been decided when the calculation of damages for personal injury and death was not as sophisticated and the use of actuarial evidence or tables was discouraged.

Thus ***Knauer*** brings the calculation in fatal accident claims in line with calculations in personal injury cases in respect of calculating future losses.

In Knauer the widower's wife had died from mesothelioma aged 46, having contracted it from being exposed to asbestos during her employment by the respondent ministry. The ministry admitted liability in the widower's claim brought under the Fatal Accidents Act 1976. The parties agreed the annual figure, or multiplicand, for the value of the income and services lost as a result of Mrs Knauer's death. But the parties disagreed as to whether the 'multiplier' should be calculated from the date of death or from the date of trial. Bean J at first instance held that 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. Bean J made it clear that had he not been bound by the previous House of Lords decisions he would have calculated the multiplier from the date of trial. Bean J granted a certificate under section 12 of the Administration of Justice Act 1969 to enable Mr Knauer to 'leapfrog' his appeal direct to the Supreme Court.

The Supreme Court's decision followed the Law Commission's recommendations in its report "*Claims for Wrongful Death" (1999) (Law Com No 263)* that, as in personal injury cases, multipliers should be used in calculating future losses in fatal accident cases from the date of trial.

The practical effect of the Supreme Court's decision is that in substantial cases Claimants will receive greater sums to compensate for loss of income and services as damages are now calculated from the trial date, not the date of death. In ***Knauer*** the difference between multipliers calculated using the date of trial as opposed to the date of death was 2.69, which amounted to over £50,000 (or around 10% of the total value of the case).

The Ogden Tables have long included guidance on fatal accident calculations following the Law Commission's recommended approach, although until now they have not been the accepted approach (see paragraph 65 of the Notes to the current edition of the Ogden Tables, and Notes that set out the methodology now to be adopted). As noted by the Supreme Court there may have to be a modest discount in respect of past losses to reflect the risk that, had there been no tort, the deceased may have died between the actual date of death and the date of trial.

Given the effect on damages it is essential that any Part 36 offers made within existing fatal accident claims are reconsidered.

The full text of the Judgment can be found here by copying the link https://www.supremecourt.uk/cases/uksc-2014-0217.html.

About Michelle

Michelle (Year of Call 1994) specialises in personal injury with associated professional negligence and fatal accident claims. She has extensive experience in all aspects of personal injury litigation, including catastrophic injury, occupational disease and psychological injury.

She is currently instructed in numerous catastrophic, multiple injury claims at maximum value and Fatal Accidents Act claims. Although she accepts work on behalf of Claimant and Defendants, her practice is predominantly Claimant. Michelle is regularly instructed in cases with technical aspects on liability (for example, construction site accidents or product liability) and in a wide variety of employers' liability, Highways Act Claims and road traffic accident claims.

Michelle is also instructed in disputes relating to professional negligence issues, in particular allegations of negligence against construction professionals including structural engineers and architects.

To read Michelle's expertise, please see: http://www.3pb.co.uk/profile/michelle-marnham/group/personal-injury-clinical-negligence

Contact details

Michelle Marnham
Email: **michelle.marnham@3pb.co.uk**
Tel: + 44 207 583 8055