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The Adequate Award: A Footnote

*Zelman Cowen**

Mr. Melvin M. Belli in his interesting article *The Adequate Award*¹ in the March, 1951, number of this Review makes the point that damage awards have not risen proportionately to the cost of living. It may be of interest to note that this problem has been the subject of consideration by courts in the United Kingdom. Very recently the House of Lords, which is the supreme court of appeal for both England and Scotland, made some observations on the point in *Glasgow Corporation v. Kelly*,² decided in February of this year. This was an appeal from the Scottish courts and was an action brought by a husband on behalf of himself and his five children in respect of the death of his wife as the result of injury negligently inflicted by the corporation's servant. The trial judge found that the deceased and the corporation's driver were equally to blame. He assessed the damages at £150 for the husband and £100 for each of the children and then halved the aggregate sum because of the deceased's contributory negligence. On appeal to the Scottish Court of Sessions, the court increased the assessment to £250 for the husband, £150 for the child of 13, £200 for the child of 9, £250 for the child of 8, £300 for the child of 7 and £350 for the child of 5. These sums were then halved because of the deceased's contributory negligence. The Glasgow Corporation appealed to the House of Lords. One of the principal questions raised on the appeal concerned the circumstances in which the Court of Sessions was entitled on appeal to review and increase the sums awarded as damages by the trial judge. The House of Lords unanimously rejected the appeal which was characterised by Lord Simonds as "an appeal which has nothing to commend it".³ Lord Normand dealt specifically with the question of the increase of the amount of damages.

Their Lordships of the First Division⁴ were unanimously of opinion that the Lord Ordinary's⁵ awards were in keeping with awards which used to be made 20 or 30 years ago when the value of money was considerably higher than it is now, and that the change in the value of money ought to have been taken into account. . . . I adhere to the opinion that permanent changes in the value of money must be considered in making awards for solatium. No doubt, also, the recent expansion of the social services must be set against the depreciation of the pound sterling. But I agree with the Judges of the First Division that the economic changes in the last 20 or 30 years require that awards of solatium should be considerably greater than they were then.⁶

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¹ 39 CALIF. L. REV. 1 (1951).

² [1951] 1 T. L. R. 345.

³ *Id.* at 346.

⁴ The Scottish Appeal Court.

⁵ The trial judge.

⁶ [1951] 1 T. L. R. at 347.

The reference to solatium in this passage was to the cause of action under Scottish law. This head of claim, which is not recognised by English law, permits the grant of damages partly on the basis of nearness of relationship between the deceased and the claimant and partly on the existence during life as between the deceased and the claimant of a mutual obligation of support in case of necessity. As Lord Normand put it in the *Kelly* case, "it is therefore a claim for lacerated feelings and for the loss of natural support which the deceased afforded or might in future have afforded."⁷

In the course of his observations, Lord Normand also referred to an earlier case in which the Scottish Court of Session made similar observations, again in a case involving a claim for solatium. That was *Sands v. Devan* decided almost six years earlier.⁸ There Lord Normand, then Lord President (before his elevation to the House of Lords), said:

The relation of money compensation to the grief and suffering of a father is necessarily vague and even arbitrary, and the very attempt to measure such suffering by money is pitifully discordant. There are many authoritative warnings in the books against excessive awards induced by sympathy. To these warnings we are bound to lend an obedient ear. But that does not mean that we are still to observe the limits laid down when the purchasing power of money was much greater than it is now. Since we must perforce measure the damage in money, we must, I think, take account of large and relatively permanent variations in the value of money.⁹

Lord Moncrieff gave brief assent to the proposition that the court must take note of changes in the value of money. In this case, the action was brought by a father in respect to the death of his son aged 5, and the damages were assessed at £250.

The actual sums awarded, particularly in light of figures quoted by Mr. Belli, may seem pathetically small to American readers. In *Sands v. Devan* the damages awarded were purely in respect of mental suffering, although in *Glasgow Corporation v. Kelly*, the children suffered loss of support, increased by the fact that their father died shortly after the mother had been killed. This was held to be an additional reason for increasing the damages. Both these cases are of particular interest because of the deliberate statements by appellate tribunals, including the highest appeal court in the United Kingdom, upon the necessity for fixing awards in light of the diminished value of money. What is also of especial importance in the *Kelly* judgment is the statement that the availability of many social services must be set against the depreciated value of money. Between *Sands v. Devan* in 1945 and *Glasgow Corporation v. Kelly* in 1951, there has been a great expansion in social services in the United Kingdom. This may be particularly relevant to the assessment of damages in suits based on physical injury to the plaintiff.

⁷ [1951] 1 T.L.R. at 347.

⁸ 1945 Session Cases 380, 1945 Scots L. T. 288.

⁹ 1945 Scots L. T. at 288.

It would be extremely interesting to examine damage awards in the United Kingdom and other British law districts, to attempt to determine, as Mr. Belli has done for United States tribunals, how far the changed value of money has been accorded recognition. It is very probable that such an investigation would disclose a finding that the recognition of the decline, and of the extent of the decline, in value is far from adequate. But it is worth noting that the problem has been expressly formulated and recognised by the House of Lords.