

SCOTLAND / JUDGMENT

Constable Or Sargent & Ors v Dewar

[2000] ScotCS 238 (25 August 2000)

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[2000] ScotCS 238 [New search] [Help] OUTER HOUSE, COURT OF SESSION OPINION OF LORD CLARKE in the cause (FIRST) MRS PATRICIA CONSTABLE or SARGENT; (SECOND) KEITH SARGENT; (THIRD) JACQUELINE SARGENT; and (FOURTH) ADRIAN SARGENT Pursuers; against THE RIGHT HONOURABLE DONALD DEWAR, M. P. Defender:

Pursuers: J. D. Campbell, Q. C., Skinner; Balfour & Manson (for Reilly & McGinley, Solicitors, Glasgow) Defender: Paterson; Scottish Executive 25 August 2000

- [1] In this action the pursuers seek damages in respect of the loss, injury and damage they say they sustained as a result of the death of the late John William Sargent ("the deceased") in a road accident which occurred on 30 October 1988. The first named pursuer is the widow of the deceased and the second to fourth named pursuers are his children. The case came before me by way of proof before answer. The circumstances of the accident
- [2] On 30 October 1988, the first named pursuer and the deceased were returning by car, driven by the deceased, from a short holiday in Plockton to their home in Milton Keynes. They had spent the holiday with their friends, Mr and Mrs Graham Inkpin, who were also passengers in the car. The car, an Austin Montego estate, had been purchased, new, some 8 days before they had left on holiday. Mr Inkpin was in the front passenger seat, the first named pursuer was seated in the nearside rear passenger seat and Mrs Inkpin was seated in the other rear passenger seat. At about 9.15am on the day in question the car was being driven southbound from Tarbert, in the direction of Luss on Loch Lomondside on the A82 trunk road. At the material time the said road, which was notorious for containing a number of hazards along its length, was being subjected to a programme of upgrading. The road carried a large amount of traffic, including commercial and tourist traffic. At a point on the road, some 400 metres north of Inverbeg, the road narrowed to a total width of about 5 metres and bent sharply around an out crop of rock known as Weeping Rock. On the other side of the road

from the out crop of rock was Loch Lomond, some 20 feet below the level of the roadway. The drop from the edge of the road to the Loch at this point was virtually sheer.

- [3] The speed limit on this stretch of the road was, at the material time, 60mph. The road, at that point, was a two-way undivided carriageway with white painted centre line markings separating the carriageway. Over a distance of some 100 metres before reaching Weeping Rock from the north, there were four large "slow" signs painted on the road. The centre line on the roadway was also broken, the intention of which was said to be to indicate a possible, but undefined hazard. For some considerable time before 30 October 1988, it was a common occurrence for lorries or buses coming in opposite directions at the said bend to block each other's pathway because of the narrowness of the bend. The bend was indeed colloquially, and locally, known as the "Spanish Bend" because of the frequency of Spanish fish lorries finding themselves in this predicament. On 30 October 1988 realignment works were ongoing on the stretch of road leading up to Weeping Rock. Along the loch-side stretch of the road leading up to Weeping Rock there was in situ a metal barrier of a type known as an Armco barrier. The purpose of such a barrier is generally to prevent vehicles from leaving the roadway. The length of barrier, however, terminated at a point just before Weeping Rock, where there was a length of stone wall which stood at a height of between 5 to 7 metres. A section of that wall had, however, been removed over a period of time by virtue of vehicles coming into contact with it, as they negotiated the bend, to avoid colliding with other vehicles coming in the other direction. A virtually complete gap, between the end of the barrier, and the remaining height of the wall, save for a small portion of the stone wall, amounting to about the height of a ordinary kerb, had existed for at least several months before 30 October 1988. There was produced a set of photographs taken shortly after the accident which showed the various features of the road at the time of the accident which I have just described.
- [4] As the vehicle, being driven by the deceased, came to the bend at Weeping Rock, a tourist bus, being driven on the north side of the road, suddenly appeared and crossed over the centre line of the road in front of the deceased's vehicle. The deceased's vehicle finished up in the loch, as a result of which accident the deceased died. The cause of the accident
- [5] The pursuers maintained that the accident was caused by virtue of the deceased having taken avoiding action to prevent his vehicle colliding with the bus, at a point where such avoiding action necessitated his driving to the side of the road, where there was no restraining barrier of any kind and at a point where there was a sheer drop to the loch. The defender, who has succeeded to the responsibilities of the roads authority in charge of the said road at the material time, maintained, on the other hand, that the accident was caused by the deceased failing to control his car properly, driving it at an excessive speed in the circumstances and driving it over the existing stretch of Armco barrier.
- [6] I heard evidence from the first named pursuer and Mr and Mrs Inkpin about what they recalled had occurred at the time of the accident. I should say, at the outset, that I found these three witnesses both credible and reliable. The first named pursuer, in particular, left

a very favourable impression with me. She gave her evidence in a coherent, careful and dignified manner. I had no reason to suppose that she was saying anything other than the truth and my impression was that the details of the last moments, before the car finished submerged in the loch, had remained vividly with her, notwithstanding the very long time that has ensued since the accident. In the essential elements of her description of how the accident happened she was, in my opinion, supported by Mr and Mrs Inkpin. The first named pursuer explained that on their journey up to Plockton they had passed the Weeping Rock, in the late afternoon, when it was just becoming dark. This was the first time that the deceased or herself had travelled on that road. On the return journey they were in no particular hurry home. She estimated that, as he approached the bend at Weeping Rock, the deceased was driving at about 35-40mph, though she accepted that she had not been looking at the speedometer at the time. As the car came up to the bend she recalled seeing a coach suddenly appear, being driven from the other direction, coming round the bend and "blocking everything before them". The coach, she said, in negotiating the bend, came across the central line of the roadway. At the same time the deceased shouted "Where the hell do we go?" As he did so, he swerved to avoid the bus and braked. The car began to rock and rolled over, doing a complete 360 o turn, finishing up in the loch. The first named pursuer explained that she recalled that she had noticed the stretch of Armco barrier and that it was in a buckled down or crumpled condition, just before the point where the deceased's car rolled over and that she had also noticed that thereafter there was a gap. As she put it, the barrier just petered out at the bend. She said that she clearly recalled the presence of a gap after the end of the section of Armco barrier and that thereafter she noticed that there was no barrier on the edge of the road. She described this gap quite vividly by saying "It was as if it was waiting for us or inviting us".

- [7] She was quite adamant that at the point where the car left the roadway there was no barrier of any kind and that the car simply rolled off the road, over onto its roof and down into the loch and she maintained that, had there been any barrier at the point where the car left the roadway, the car would not have gone into the loch. The first named pursuer gave evidence to the effect that she had not been over concerned, at first, when the deceased had taken the avoiding action which he did. The car had seemed, indeed, to stop at the edge of the road for a few seconds but then rocked and went slowly over on its side at an angle of 360 o . Prior to that there had been no noise of the car having hit anything. She said the vehicle seemed to drop in slow motion, hitting the rocks on the loch side as it did so. At that stage she said she did not even think that either herself or any of the other passengers would be hurt. The next thing she remembered was that they were in the water, which alarmed her because she cannot swim. It was, she said, all over in "a flash". When it was put to her in cross-examination that the deceased's vehicle was travelling at, at least, 50mph just prior to the accident, she firmly replied that that was absolutely not the case.

- [8] Mr Inkpin gave evidence that just prior to the accident he and his fellow passengers were in a relaxed mood. He was looking out at the scenery. As they approached the bend at Weeping Rock the coach suddenly appeared across the centre white line in the path of the deceased's vehicle. He remembered the deceased saying something like, "Where do we go now?". The deceased swerved to the side of the road. He said that the vehicle became "almost stationary". It then proceeded to roll over the edge of the road doing a complete turn and "plopping" into the water, wheels up. Mr Inkpin was certain that there had been no form of restraining barrier at the point on the roadway side where the vehicle went over into the loch. He recalled that there appeared to be a gap in the Armco barrier and his recollection, under reference to the photographs, was that the car rolled over at the point where the section of the stone wall had been removed. As he put it, "after the coach had come into view there was only one place to go - we went to the nearest gap - the bus was taking up the rest of the road". His evidence was also to the effect that the deceased was driving the vehicle at a speed of 35-40mph, though he, too, admitted that he was not looking at the speedometer at the relevant time. He said he had not been feeling concerned about the speed at which the vehicle was being driven. In the circumstances, he thought that the deceased must have braked and the car went sideways as it toppled over. He thought the wheels on the passenger side of the car went onto the low degraded remains of the stone wall and then went over into the loch. He also spoke to the fall of the car over into the loch as being, as it were, in slow motion. He described it as "a quite sedate fall". He thought that the deceased's vehicle had got just ahead of the front of the bus when it toppled over. This witness gave his evidence in a straightforward manner and said that his recollection of the event remained good.
- [9] His wife, Mrs Valerie Inkpin, in evidence said that at the time of the accident they were in no hurry and indeed intended to make a day of the journey back home. She recalled the coach suddenly appearing at the Weeping Rock bend and "taking up our side of the road". She, too, spoke of the deceased saying at this point, "Where do we go now?". Mrs Inkpin thought that the deceased had managed to bring the car safely to a halt, but then felt the car swaying and going down the cliffside. She said that the deceased was, immediately prior to the accident, driving at what she described as "a comfortable speed - 35-40mph" and was certainly not being driven fast. She said that she knew, from the journey up to Plockton, that it was a bad road but felt quite secure just prior to the accident.
- [10] At the time of the accident there was being driven behind the deceased's car, a Ford Sierra estate car. The driver of that vehicle, Mr John Rathburn, gave evidence at the proof. He said that he had noticed the deceased's car in front of him as he was driving on the straight stretch of road leading to Weeping Rock. He said he was quite close to the deceased's car, but he said the deceased's vehicle then began to pull away from him, at a point where he himself was dropping his speed from 60mph to 50mph. Mr Rathburn said that he saw the bus come round the corner. He said that the deceased's car seemed to swerve to the left, hit the barrier and roll over. Under reference to the photographs, he indicated that the car had gone over at a point somewhere before the gap, that existed between the end of the section of the barrier and where the wall was at its full and original height. He stopped and went to the aid of the

passengers in the deceased's car. He pulled out Mrs Inkpin and the first pursuer from the deceased's car. He seemed to recall having to move a section of the barrier to get them up onto the road. The barrier, he said, was loose and had a lump of concrete attached to the end of it. A lump of concrete is visible in the photographs. Later in his evidence, however, this witness said he could not now say exactly where the car had come off the road, but his recollection was that he saw the deceased's car slightly swerve and slowly start to roll over, having, he thought, hit the Armco barrier. In cross-examination he said that the deceased's car and the coach seemed to meet at the sharp right-hand bend but, while he said that he had thought that the deceased's car had hit the crash barrier as a result of which the barrier had become loose, he frankly accepted that he had difficulty in remembering that far back. He accepted that he may have dropped his speed to 40-45mph at the point at which he was approaching the bend but he did not think that he was doing less than 40mph. He maintained that he was driving slower than the deceased was. Significantly, however, though this witness said he knew the road well, the manner and speed in which the deceased was driving had not registered any concern or alarm in him. He could not recall having seen the deceased's brake lights coming on, though he accepted that he may have said this at the Fatal Accident Inquiry into the accident. Overall I found this witness's evidence to be somewhat uncertain, which was quite understandable having regard to the very considerable lapse of time since the accident, and I preferred the clear evidence of the first pursuer and Mr and Mrs Inkpin as to the speed at which the deceased was travelling just prior to the accident. I also considered that their evidence as to the point at which the car left the road was clear and more reliable than that of Mr Rathburn. The evidence of the first pursuer and Mr and Mrs Inkpin as to the place where the car left the road was given very clearly and vividly and is supported by other evidence to which I will refer in due course.

- [11] Two police officers, who inspected the locus of the accident, shortly after it had occurred, gave evidence. The first was Police Constable Dominic Swan. His recollection was that the section of Armco barrier on the side of the road leading to Weeping Rock had only been temporary in nature. It had been in situ for a number of years but had been erected while the ongoing work on the road was being carried out. He said that at the point where the wall had become degraded, its remains stood only about the height of an average kerb above the road itself, that is about 4 inches. He was unable to say how long the wall had been in that condition. When asked for his opinion as to where the deceased's car had come off the road, he said that this was not easy to say. The fact that he had observed some fresh scuff marks on the lump of concrete attached to the loose section of the barrier led him to think that these may have been caused by the deceased's vehicle. He had examined the car after it was recovered from the loch and discovered that there was some damage to the steering arm of the car on the underside of the front of the vehicle. He thought that that was where the car had hit the concrete. If that was correct, the nearside of the car would have had to pass over the barrier. He accepted, however, that no marks were found on the barrier itself and there was no damage to the body work of the car. He frankly accepted that if the vehicle had been driven over the barrier at any speed he would have expected to witness damage to the

nearside of the vehicle. His evidence was also that the barrier had not been displaced. From measurements taken by him of the road at the locus and, having regard to the measurements of the bus, he accepted that it was inevitable that the bus would have to encroach onto the other side of the road to get round the bend. The bus itself had not been damaged. There could, at most, have only been .8 metre left of space between the deceased's car and the bus, as it manoeuvred round the corner. There was some damage to the roof and bonnet of the deceased's car, which was consistent with it having rolled onto its roof. This witness's recollection prior to the road works having been commenced, was that there was no Armco barrier on this section of the road but instead there was a section of wooden fence which led then to the stone wall at the bend. He thought that the Armco barrier had been erected by the road contractors. He accepted that the deceased's vehicle could have gone up and over the small remaining section of the wall and that this could have happened at whatever speed it was being driven at at the material time. When this witness, who is a traffic department officer, was asked about the significance of the centre line on the road being broken, just prior to Weeping Rock, he said he did not know what the Highway Code said, if anything, was signified by this.

- [12] The other police witness was Police Sergeant David Hall. At the time of the accident he was the village policeman at Luss, who passed the locus of the accident several times a day in the course of his work. He thought that the stretch of Armco barrier had been in place prior to the contractors commencing work on the upgrading of the road. He recalled that it had been deformed for some time prior to the accident and was becoming progressively worse in condition as minor accidents occurred, with vehicles hitting it. He explained that after the section of the stone wall at the bend, the barrier resumed. Most significantly he gave evidence to the effect that the gap between the barrier and the section of the wall where the wall had become degraded had been in existence for "quite some time prior to the date of the accident". He said that it was very common for buses and lorries to meet on the bend and it was quite common for this to result in minor damage to the wall. This witness also confirmed that for a coach travelling from the south to negotiate the bend, it was necessary for it to get on to the other side of the road. If two large vehicles met it was quite likely that the southbound vehicle would cause damage to the wall since it would be forced to go close to the loch side because of the approach of the other vehicle. His view was that neither the barrier, nor the wall, would necessarily have prevented a car, which had swerved off the road, going over into the loch. He accepted that, had the deceased's vehicle struck the side of the barrier, he would have expected marks on the barrier or that the barrier would show signs of having been recently deformed at that point. The witness contended that if the car had hit the barrier square on, the barrier would not have stopped the car going over, because of the angle it was lying at and the fact that he considered it had become detached from the road prior to the accident. He had been involved in examining the locus after the accident but he could not recall that there was any sign of where the car had gone over into the loch. For someone like himself who knew the road extremely well, this was a bend that one had to take with considerable care, particularly because of the number of accidents

involving large vehicles that had occurred. At the time of the accident it was always busy throughout the year with commercial traffic and tourist buses. Sets of traffic lights had been erected along this road at various points as the works progressed. He could see no reason why traffic lights could not have been erected at this particular locus. The witness also spoke to the existence of a set of traffic lights on the road at a point known as Pulpit Rock which contained a similar bend, the purpose of the lights being to confine traffic to a single line. That had been the position at Pulpit Rock for many years before the accident.

- [13] In cross-examination the witness said that there had been many accidents involving cars and large vehicles at the locus of Weeping Rock as well as large vehicles becoming locked together. He was frequently called out to deal with these and noticed damage to the wall which he put down to these accidents. Prior to October 1988, however, to his knowledge there had been no accident involving a vehicle actually going over into the loch exactly at this point but there had been such accidents at other points on the road. He considered that the effectiveness of the barrier depended on the circumstances including the speed, at which the vehicle was being driven, the weight of the vehicle, and the angle of impact. This witness considered that a vehicle should only have been driven at a speed of 15-20mph when taking the bend itself. This witness also stated that the Highway Code provided that a broken centre line was a hazard warning.
- [14] The pursuers led as an expert witness Mr Graham Geary. Although this witness's training was not in civil engineering, but in mechanical engineering, he has been employed as the head of the Traffic Research Group of Durham University for five years. For the last three years he has been engaged in road accident investigations. A report prepared by him was lodged.
- [15] He dismissed the possibility that the deceased's car had hit the barrier and had gone over it. The barrier was designed to impede a vehicle, in such circumstances, going off the road. If struck with sufficient force it would be distorted. Had the car gone over the barrier and hit the concrete block attached to the end of it, he would have expected the vehicle to push the concrete over the edge and pull the barrier over into the Loch. That had not happened and the fact that no marks were found on the barrier itself demonstrated that the vehicle had not made contact with it. It was Mr Geary's opinion that had the stone wall been at full height at the time of the accident, the car would not have gone into the loch but would have scraped along the wall. In all the circumstances this witness was of the opinion that the car left the carriageway at the point where the wall had been degraded. This formed no impediment to the car going over since the wall at that point was just the height of an average kerb. The damage to the steering track of the vehicle was consistent with the impact that occurred as it toppled over. The description given by the first pursuer and Mr and Mrs Inkpin of how it felt when the vehicle toppled, was consistent with the vehicle having gone over at a point where there was no barrier or wall in place. His position was that there was a very obvious hazard of an on-coming vehicle trespassing over to the other side of the road causing a driver, in the position of the deceased, to take avoiding action. Had the wall been in place to its full

height, the car would have hit it and would not have plunged into the loch. With a sizeable gap in the wall it was almost certain that a accident involving a vehicle going over into the loch would happen.

- [16] In cross-examination this witness said that his explanation of the accident was that the nearside wheels of the deceased's car went over the degraded section of wall at some point, the centre of gravity of the vehicle went over the edge of the road and the vehicle toppled over - all of which had occurred as a result of avoiding action being taken by the deceased because of the encroaching bus. The limited damage to the car was entirely consistent with it having been driven, at the material time, at a reasonably slow speed before it swerved. In re-examination the witness also pointed out that, had the car been driven at speed over the section of the barrier and the concrete block attached to it, he would have expected that the surviving passengers would have felt themselves being shaken about dramatically. If they did not speak to having experienced this and felt that no harm was going to come to them, this was inconsistent with the vehicle having crossed the barrier and having hit the concrete block. He therefore could not agree with the opinion of the police officers as to where the accident had occurred. I found the evidence of this witness, which was consistent with that of the first named pursuer and the passengers, Mr and Mrs Inkpin, to be entirely persuasive. I, accordingly, find that the deceased's vehicle:
- (1) came off the road at the space between the end of the section of Armco barrier and where the stone wall remained at its original height and where, accordingly, there was no structure to inhibit the vehicle from toppling down the sheer drop into the loch;
 - (2) that it did so as a result of the deceased having taken avoiding action on being faced with a tourist bus crossing onto his side of the highway, having negotiated the bend at Weeping Rock; and
 - (3) that immediately prior to the deceased taking the avoiding action he was driving his vehicle at a reasonable speed in the circumstances and had his vehicle under control. Foreseeability of such an accident
- [17] I am entirely satisfied that the possibility of this kind of accident occurring was reasonably foreseeable in the circumstances. In this connection, the defender led as his principal witness Mr Duncan McNeill who is the principal engineer in the Road Network Management and Maintenance Division of the Scottish Executive. He is a qualified civil engineer whose career has almost entirely been involved in the design, maintenance and management of roads, formerly for local authorities and latterly for central government. He was not responsible for the road in question at the time of the accident. The information that he had about the road at that time came from his having looked up what records there remained extant in relation thereto. He was also personally familiar with the state of the road at the material time, and for some time prior to the accident, as it was a road that he, for personal reasons, had to travel on regularly. All he could say regarding the accident record in relation to that section of the road, prior to the accident to the deceased, was that, in the five year

period prior to the deceased's accident, there had been ten accidents in a section of about 1km in which the locus of the accident was situated. The records did not apparently pinpoint the precise location of each accident, beyond placing it within that 1km stretch. The majority of these accidents had involved vehicles running into each other and most involved only slight injury. The records that he had examined indicated that there had been one serious accident involving a vehicle carrying out a turning manoeuvre. Another accident involved a car leaving the road at the loch side. Mr McNeill was not able to say precisely where the last mentioned accident had occurred, but he did say it had not been a fatal accident. This witness attempted to suggest that the wall, in its original condition, would have been erected simply to mark the line of the road and not to form any restraining barrier. I was unable to accept this. It seemed to me that the section of wall had, on the balance of probabilities, been erected, at that spot precisely to perform the function of preventing vehicles going over into the loch where the drop was sheer. The evidence of the police witnesses to which I have referred, in my opinion, demonstrated that the locus of the accident presented a patently serious hazard. As I have already noted, at this section of the roadway, the drop from the edge of the road to the loch was virtually sheer. There was at this point a very sharp bend with overhanging rock on the northbound carriageway. The width of the road was such that vehicles, such as lorries and coaches, which frequently travelled on the road, were driven to cross from their carriageway into the pathway of vehicles coming in the other direction. The lack of any restraining structure, such as properly maintained and installed Armco barrier, or a properly maintained wall at the point where the accident occurred, meant that a vehicle leaving the road would inevitably plunge into the loch, with potentially fatal consequences. The fact that no such fatal accident appears to have occurred in the five year period prior to this particular accident, in my opinion, does not assist the defender.

[18] In *Levine &c v Morris &c*

(1970) 1 W. L. R. 70, which concerned a claim for damages in respect of injuries suffered in a road accident, involving a vehicle striking a road sign, which was found to have been situated in a hazardous way, Sachs L. J. at p.78 said: "The fact that vast numbers of cars have traversed this stretch without harm since June, 1964, although a weighty matter, cannot tip the balance against the factor that, on the above evidence taken as a whole, an accident of this type, or indeed, in due course a series of accidents of this type, was almost inevitable, and that when such an accident occurred it might very likely be disastrous." In my opinion that dictum can be applied to the state of the evidence in this case. It was particularly significant that the defender's witness Mr McNeill accepted that the road works being carried out at the material time involved the complete realignment of the road at Weeping Rock, and indeed the removal of the overhang of rock, because it was recognised as a hazardous stretch of road. In my opinion the pursuers' witness Mr Geary was justified in saying "that this was an accident waiting to happen". Liability

- [19] It is clear that the highway authority have a duty at common law to take reasonable care to remove hazards from the road, to prevent reasonably foreseeable accidents arising therefrom. In *Smith v Middleton &c* 1971 S. L. T. (Notes) 65 Lord Emslie, at p.66, referring to the *Levine* case supra said: "From this case it may be taken that the duty of a highway authority towards road users is to take reasonable care in all the circumstances. As the duty is explained by *Widgery L. J.* at p.79 it is 'limited by the fact that it is only required to do what is reasonable in order to avoid reasonably foreseeable accidents.'" An instructive application of this approach, in the days of the horse-drawn carriage, as opposed to the motor vehicle, can be seen in the judgment of Lord McLaren in the case of *Fraser v Magistrates of Rothesay*
- (1892) 19 R. 817. In that case the question for the jury was whether an unfenced road, with a drop of 8 or 9 feet at one side onto the seashore, was so dangerous as to impose on the roads trustees the duty of fencing the road. Lord McLaren at p.819 was to the following effect: "There may be long stretches of straight road carried to a height, much exceeding the height of the road in question, which would in the opinion of most persons be quite safe, because if the road is of sufficient breadth there would be no occasion to drive near the edge, and carriages meeting on the road would pass each other at a walking pace. One has seen long stretches of such unfenced road in valleys in the Highlands and other mountainous districts of this country. On the other hand, there may be danger altogether irrespective of the height of the retaining wall. There is the case of a road carried along the slope of a valley, and where the road turns at an acute angle, so that the drivers of two approaching carriages could not see each other until they met at the angle. That might be held to be a very dangerous place, and a place which ought to be fenced irrespective of the height of the road. The whole question is one of circumstances and of degree, and even the amount of traffic on a road is an element of consideration on the question of danger." Those words, in my opinion, can be applied to the present case and, in my judgment, the locus of the accident was to be regarded, to use Lord McLaren's words, as a "very dangerous place". The duties in the circumstances
- [20] The pursuers' position was that, since the accident was reasonably foreseeable, there were three steps which the defender should have taken. The first was the erection of a traffic sign, prior to the Weeping Road bend, which would have dramatically indicated to oncoming drivers that the bend was subject to vehicles crossing from their side of the road in order to negotiate the bend. This matter was explored in evidence with the witness, Mr Geary. I should note at this stage, that an objection was taken by counsel for the defender in relation to questions being put to this witness about the powers of the Secretary of State to provide for such a sign. The objection was based on no notice having been given of such a case. I allowed the line of questioning subject to questions of relevancy and competency. In the event I repelled the objection. In Article 3 of condescendence it is averred by the pursuers that it was the defender's "duty to take reasonable care to adequately signpost the road at the locus of said accident hereinbefore condescended upon". After making averments about the particular risk of tourist buses coming on to the other side of the road at the said bend, the averments continue that the defender "knew or ought to have known that if the said buses

turned the said corner in this fashion, they would present a hazard to oncoming traffic such as the car that the first named pursuer was a passenger in. It was reasonably practical to erect signposts warning of the hazard to oncoming motorists such as the driver of the vehicle in which the first named pursuer was travelling as a passenger." Later on in the same Article of condescendence there is an averment, "there were, however, no adequate warning signs erected to warn traffic coming from the direction of Tarbert that there was a real risk of meeting oncoming traffic at the said corner, which traffic would be on the wrong side of the said road." I am of the opinion that those averments gave the defender adequate notice of a case to the effect that a sign could, and should, have been erected which depicted the particular form of hazard at this locus. The question of whether the Secretary of State had the legal power to do this or not being a question of law, was not something that, in my opinion, needed to be specifically averred. The witness Mr Geary said that what he had in mind here was what he described as an "exclamation mark" hazard warning sign incorporating appropriate wording underneath to warn southbound drivers that there was "danger of oncoming vehicles being in the centre of the road". Such a sign, said Mr Geary, would have reduced the hazard at this bend. Counsel for the pursuers contended that had such a hazard sign been in place at the time of the accident then the deceased would have been prepared for the hazard that did occur and would have driven even more slowly than he had done in the circumstances. The element of surprise would have been reduced and he would have been warned to drive with extreme caution, increasing his ability to stop without any significant degree of abruptness.

- [21] Apart from the objection previously noted, the defender took a technical position against this case. The Traffic Signs Regulations and General Directions S. I. 1981 No.859 in Schedule 1, Part 1 thereof provide for use of a sign specified as No.575 with the words "oncoming vehicles in middle of road", but states that this plate is for use "with signs and diagrams 516, 517, 528, 529.1 and 530". The schedule also provides for a warning sign comprising a triangle with an exclamation mark inside it. This sign is numbered 562 in the schedule. Accordingly, there is no express statutory authority in these regulations for use of the words in sign 575, in combination with sign 562. Regulation 6, however, provides that "nothing in these regulations shall be taken to limit the powers of the Secretary of State under section 54 of the Act to authorise the erection or retention of traffic signs of a character not prescribed by these Regulations." The Act referred to is the Road Traffic Regulations Act 1967. Section 54(1) thereof provides: "In this Act 'traffic sign' means any object or device (whether fixed or portable) for conveying to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description specified by Regulations made by the Minister and the Secretary of State acting jointly or authorised by the appropriate Minister, any line of mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions." Section 54(2) goes on to provide that: "Traffic signs shall be of the size, colour and type prescribed by Regulations made as aforesaid, except when the appropriate Minister authorises the erection or retention of a sign of another character." The defender's position was that as a result of the foregoing

provisions, the type of sign desiderated by Mr Geary was not authorised by the relevant regulation and that for such a sign to have been erected would have required a specific approach to the Secretary of State, who, in deciding whether or not to authorise it would have had a number of different considerations to take into account. A special case would require to be made out and it was not at all certain that the Secretary of State would have considered that such a case had been made. The defender's witness, Mr McNeill, however, as I understood him, appeared to accept that the installation of a sign of the sort suggested by Mr Geary would have been a good idea, but he appeared to think that it was completely ruled out because there was no warrant for it in the Regulations.

- [22] I accept the pursuers' position that the existence of such a sign might well have reduced the possibility of the accident occurring and had this been the only way in which the serious hazard which I have accepted existed at the locus could have been addressed, I would have held that an application to the Secretary of State should have been made for the erection of such a sign and should have been granted but, in my opinion, as explained below there was another step that could and should have been taken which would not only have reduced the hazard but would have removed it.
- [23] The second step which the pursuers contend could have been taken to remove or reduce the hazard was the erection of a barrier at the point at which I have held the vehicle left the road. What was envisaged here was either the re-building of the section of stone wall which had become degraded or the erection of a section of Armco barrier at that point. Mr Geary's evidence was that either of these expedients would have prevented the accident. I had some difficulty with Mr McNeill's evidence in relation to this matter. In the first place he contended that neither the wall in its undegraded condition nor a section of Armco barrier would necessarily have prevented this accident occurring. He contended, indeed, that the section of barrier visible in the photographs, which was in place at the edge of the road before the gap, had been positioned there simply to prevent road users parking on the area of ground beyond it and, as I have previously noted, that the wall was not designed as a physical barrier to vehicles going over into the Loch but was simply there to mark the road's edge. [This, of course was simply an opinion since he was not personally involved with the maintenance of this road when the accident occurred or at any time prior thereto.] Nevertheless, he did appear to accept that the main and normal purpose of the Armco barrier is to prevent vehicles leaving the road but he contended that there was a risk that a vehicle would simply steer clear of the barrier with the result of coming closer to the centre line of the roadway, thus, perhaps, causing a collision with oncoming vehicles. The same may be true, he said, of the stone wall whose main effect would be to make drivers shy away from it rather than act as a physical barrier to vehicles going over into the loch. Ultimately, however, his position was that the problem at the Weeping Rock bend was, during the period immediately prior to the accident, one which was to be removed by the ongoing road realignment programme. Accordingly, if there was a problem when the gap appeared in between the section of the Armco barrier in situ and the remaining part of the wall, it was of a temporary nature. The cost of erecting a section of Armco barrier at that point in the road

would have been significant as it would have necessitated building up from the loch side to provide for a foundation for the barrier. The cost of designing and building a barrier at the locus would have, in 1988, cost, he estimated, in excess of £30,000. Mr Geary accepted that the building of the barrier may have been expensive, though he was not in a position to provide an estimate of the cost. Mr McNeill's position was that such a cost, having regard to the temporary nature of the problem and general budgetary constraints, would not have been justified, having particular regard to the fact that there had been no previous examples of precisely such an accident occurring. He accepted that there was no technical problem in reinstating the degraded section of the wall and I did not understand him to suggest that the cost of so doing would have been prohibitive or inappropriate simply because of what he described as the temporary nature of the problem. His position was rather that it would have been inappropriate to carry out such work when, within a short period of time, the wall would no longer be required because of the road realignment. In examination-in-chief he said that if there had been no budgetary constraints and no programme of realignment in progress, he would simply have reinstated the wall once the gap in it had become obvious. The fact that the re-building of the section of the wall or the erection of Armco barrier would have contributed to traffic disruption at the spot would also have led him to the conclusion that such steps should not be taken, given that the problem would be eradicated, in due course, by virtue of the ongoing improvement programm

- [24] What was remarkable about this aspect of the case was that Mr McNeill accepted that, some weeks after the accident, such temporary traffic lights were erected at exactly this location and remained in situ until the road works had removed the hazard. The particular reason, he explained, for the traffic lights being erected, was not the occurrence of the accident involving the deceased's vehicle but that, shortly thereafter, a lorry had gone off the road causing a part of the loch side of the road to become unstable, the lorry having hit the retaining wall on the loch side. Whatever the reason for the erection of the temporary traffic lights, the importance of this evidence was that it indicated that it was reasonably practicable for such traffic lights to be erected without delay. It was also accepted that the cost was not excessive nor prohibitive, having regard to budgetary factors, and that the erection of such traffic lights after the degradation of the wall would have prevented the accident to which the present proceedings relate. Although Mr McNeill valiantly attempted to suggest that a decision to erect such traffic lights, prior to the accident to the deceased, may not have been appropriate because of the effect such lights would have on delaying traffic and traffic flow, it seemed to me that such considerations should not have outweighed the very real risk of vehicles going over the edge of the loch, because of the width of the road, the sharpness of the bend and the existence of the overhanging rock. Moreover, Mr McNeill accepted that a set of traffic lights had been erected at the point on the same road known as Pulpit Rock because of a hazard of falling rock. That was done and maintained for a very considerable period of time, notwithstanding that it would have an effect on traffic flow. I am satisfied that it would have been practicable for the defender to have installed temporary traffic lights at the locus of the accident at reasonable cost in the circumstances

once the gap in the wall had occurred. Such traffic lights could have been erected without any material delay. Once the hazard at the locus was obvious, which I consider was the position once the wall had become degraded to the extent it had been, for some considerable time prior to the date of the accident, it was, in my opinion, incumbent upon the defender's predecessor in fulfilling his duty of reasonable care, to have erected such traffic lights at the locus prior to the occurrence of the accident. I accordingly find that the defender is liable to the pursuers for their loss, injury and damage caused to them by his predecessor's failure to take such reasonable care. Contributory negligence

- [25] My findings in fact have already, in effect, ruled out any case of contributory negligence but I should now deal with the defender's case in this respect in some more detail. The defender sought to persuade me that the accident had been substantially contributed to by the fault of the deceased himself, but that was, to a large extent, predicated on the accident having occurred by virtue of the deceased having driven over the barrier at a speed which was excessive in the circumstances. It was also submitted by counsel for the defender that "a question mark" arose over the deceased's control of the vehicle. I have, for the reasons already given, discounted the defender's explanation of the accident being that the car was driven over the barrier, by the deceased, while driving at an excessive speed in the circumstances. Apart from the evidence which came from the pursuers' witnesses, the two police officers, and to some extent the defender's witness Mr Rathburn, which was supportive of the car being driven over the barrier, at an excessive speed in the circumstances, the defender did not lead any evidence to support the defence that the accident was caused, or materially contributed to, by the car not having been kept adequately under control by the deceased, prior to its toppling off the road. In that respect I accept the evidence of Mr Geary, who said that, in his opinion, what had happened was that, in taking appropriate action to avoid colliding with the bus, the deceased had swerved to the side of the road. The front nearside wheel had gone over the low degraded section of the wall and, at some point, the centre of gravity of the vehicle went over the edge of the road and the vehicle consequently toppled into the loch. I am consequently of the opinion that there is no basis for any finding of contributory negligence on the part of the deceased.
- Quantum

- [26] I now turn to deal with quantum . The deceased and the first pursuer were married in 1965. The deceased was 45 at the time of the accident. The first pursuer is presently aged 54. They had three children who are the other three pursuers in this action. The deceased had his own building contractors business which he had built up steadily over the years. It was a one-man business but he employed, on a regular basis, a team of sub-contractors. The evidence from the first pursuer and the other witnesses was that the deceased's life was his work and his family. When he was not working, he spent most of his time engaged in making improvements to the family home or spending time with the family. The first pursuer and the deceased were clearly an extremely close couple. The first pursuer said in evidence that she was the deceased's "only hobby". The deceased's general health prior to the accident was excellent. His business was prospering at the time of his death. Economic

activity in the area in which he lived was such that there was always plenty of business for building contractors with his skills. The first pursuer, in evidence, said that, from time to time, however, the deceased had expressed the wish to retire at 55 if he could afford to do so financially. She did, however, express some doubt about this, given his dedication to work and his need to be active. Her feeling was that it was more likely that he would have gradually reduced his work-load until he was "semi-retired". Loss of support claim

- [27] I should say at the outset that the fact that the deceased was self-employed in his own business, to my mind raises some imponderable contingencies. The accounting evidence placed before me did demonstrate that over the years prior to his death the deceased, as I have already said, was building up his business very successfully. The evidence from the first pursuer, however, did not suggest that he really wanted to expand it any further and there was the evidence that his wish, at least, expressed from time to time, was to retire at 55. Notwithstanding the fact that he worked, apparently, in a part of the country where his skills would apparently have continued to be in great demand, had he not died, in my view, it cannot be said, with any degree of confidence, that either he would have continued to work at quite the level he was working before his death, or that, necessarily, his business would have attracted customers to the extent that he had benefited from in the past. I had placed before me a report from accountants, Kapoor and Murray, prepared on behalf of the pursuers. This report was spoken to by Mr Stewart, Chartered Accountant, who I understood was in large measure responsible for its compilation. The report included some discussion of the law in relation to multipliers in cases such as the present, but I was invited, quite properly, by counsel for the pursuers to ignore these parts of the report. What counsel for the pursuers did rely upon was the witness's calculation of projected net income for each of the years until the present time. At paragraph 4.10 of the report it is stated: "It is apparent from the data at schedules 2 and 3 that Mr Sargent's business was growing significantly at the time of Mr Sargent's death. The rate of growth over the last thirty months, in money terms, exceeded 18% per annum compound - well in excess of the rate of growth in either the retail prices index or the index of average earnings. Consideration of the retail prices and average earnings indices for the period from October 1988 to October 1997, abstracts from which are given at schedule 7, shows average annual compound increases in real earnings of approximately 1.5%. This must be the minimum rate of real increase which is appropriate to apply in the consideration of future losses. Application of the average earnings index to the figure of expected net pre-income tax and national insurance contributions profit for the year ended 31 March 1989 of £36,250 gives an assessment of the net profits of earnings from the business before deduction of income tax and other for years from that ended 31 March 1989 to 31 March 1998 all as shown at Schedule 5. The net amounts of income, after deduction of income tax and national insurance at the prevailing rates, for the balance of the year ended 31 March 1989 and for the years from 1 April 1989 to 31 March 1998 calculated using the same assumption as are used in Schedule 4, produced the amounts of net profit (and hence net losses of income consequent upon Mr Sargent's death) as follows: 1989 (5 months only) - £9,896 - £27,860 - £30,441 - £32,764 - £33,563 -

£35,473 - £36,292 - £37,923 - £39,727 - £41,644 Aggregate past losses of net income - 1 November 1988 to 31 March 1998 - £325,583" At the proof a revised calculation of the above figures was produced which, nevertheless, applied this approach and which brought out a figure of total past losses of net income to 2000, exclusive of interest, of £408,192. Mr Stewart had then carried forward the exercise to the year 2004. The defender did not lead any evidence in relation to quantum . While Mr Stewart was cross-examined on his approach and his figures, ultimately the defender's position was, in submission, to attack his approach as a matter of principle. I will return to that matter in due course.

[28] In his submissions, counsel for the pursuers, first of all, addressed me on the question of the appropriate multiplier for the loss of support claims. The peculiarity that arises, in this case, is that while the accident occurred in 1988 it is only in 2000 that the court is being asked to determine what the damages should be. The pursuers have all survived that period. They have not had the benefit of an award for future loss in respect of a twelve year period, paid before any of those years had been reached. In the normal course the multiplier chosen would include a discount to reflect the possibility of the death of the pursuer and to reflect the fact that the sum awarded would be paid in full, in advance, for future loss. Having regard to these factors, counsel for the pursuers submitted that the conventional approach, in a death case, of taking the multiplier from the date of death, following the decision of the court in the case of *Dingwall v Walter Alexander & Sons* 1981 S. L. T. 313 and, by reference to the Ogden Tables, would produce an unfair result. He submitted that following the statements of principle set out in the speeches of the House of Lords in the case of *Wells v Wells*

(1991) 1 A. C. 345, it was important to avoid such a result by approaching matters, having regard to actual realities rather than some purely rigid conventional basis. He also referred, in that connection, to the case of *Corbett v Barking Havering and Brentwood Health Authority*

(1991) 2 QB 408 . In that case a majority of the Court of Appeal took the view that, in a case involving a claim by a child for loss of his mother's services, where there had been similar delay in bringing the matter to a trial, as has arisen in the present case, that the known fact of the dependants' survival up to the date of the trial should be taken into account when calculating the multiplier from the date of death. In his dissenting judgment, Ralph Gibson L. J. considered that the effect of what the majority had decided was to calculate the multiplier as at the date of trial, which he said was not permissible, having regard to established English House of Lords' authorities. The whole topic has been the subject matter of discussion in a Law Commission paper, No.263 which includes a reasoned recommendation as to why the rules should be changed and that in death cases the multiplier should be fixed as at the date of the trial. For my part, I am bound to say that the reasons advanced for the proposed change, discussed in the Law Commission paper appear, at least at first sight, to be persuasive. The Law Commission were of the view that any such change did not require legislation but could be brought about by judicial

decision. Whether that be the case or not, I am entirely satisfied that it is not for a judge at first instance to depart from the established practice, as set out by the Inner House in the case of *Dingwall supra*. Such a change, in my judgment, if it is to be brought about by judicial decision should be done by a higher court and should be made only after a more considered debate on the issues which would be involved in such a change than I was presented with in the present case.

- [29] I, accordingly, approach the question of loss of support by searching, in the first place, for the appropriate multiplier fixed as at the date of death. In so doing I have reached the conclusion that, on the basis of the evidence to which I have already referred regarding the deceased's expression of intent regarding retirement, the deceased would, on the balance of probabilities, have retired not at the age of 65, but at the age of 60. I reached that conclusion having regard to the evidence as to his expressed intention and to evidence that he had been providing for retirement, by contributing towards a personal pension. My view of matters is that he was probably not unlike many men in his situation, who express a wish to retire at 50 or 55, but who, in the event, find that they either wish or require, when reaching that age, to continue for some time longer at work. Doing the very best I can, on the evidence put before me, I consider that the likelihood would have been that he would have fully retired at the age of 60, having possibly reduced the amount of work he took on gradually before that. The multiplier for loss of earnings to pension aged 60 (males) for a male aged 45 is given in table 15 of the existing Ogden Tables as 11.83 if a 3% rate of return is contemplated (which is the applicable discount following the decision of the House of Lords in *Wells v Wells*). I should add that counsel for the pursuers invited me to select a multiplier having regard to what appears apparently in new draft Ogden Tables. These were not supplied to me and, in any event, since they are only in draft, I did not consider that it was appropriate that I should have any regard to what was said to be "coming from such a draft".
- [30] As far as the multiplicand is concerned, as I have already indicated this was the subject of a very detailed report by accountants, which was spoken to by the witness Mr Stewart. Mr Stewart had had access to all the extant business books and accounts of the deceased's business. The deceased had died before the completion of the financial year 1988 to 1989. As I have already indicated the exercise carried out by Mr Stewart suggested that the net income of the deceased would increase by between approximately £1,000 to £3,000 each year until the present time. I quite accept that these figures were presented by Mr Stewart as the minimum increase that could be anticipated and discounted the business expanding at anything like the rate it had been doing before the deceased's death. Nevertheless, for the reasons already alluded to, in this opinion, I am of the view that this approach still fails to take into account adequately various imponderables that must arise in the case of a self-employed person running his own business. It is, in my view, for present purposes, an over-optimistic approach to matters. The starting point, it seems to me, is to take the figure for actual net earnings at the date of death, but to have regard to the possibilities that, for example, the deceased would have subsequently been content not only not to expand the business any further but, indeed, to reduce the amount of work he was doing which, at the

date of death, was, on the evidence, clearly very great and also the possibility that he would be faced with more competition for the available business in his locality. There was no agreement in this case about the rate at which the net income of the deceased would have increased, if at all. In that situation the position is different from that which arises in a case where the deceased was employed and it is possible to show, as a matter of evidence, wage increases which other employees in his position have enjoyed since the date of death and which are being enjoyed at the date of proof as is illustrated, for example, in the case of *Worf v Western SMT* 1987 S. L. T. 317 which was referred to by counsel. Nor is the position the same as obtained in *Prentice v Chalmers* 1985 S. L. T. 8 where, in a time of very high inflation, the court was prepared, on the particular facts of that case, to assume that the deceased would have worked to maintain, in real terms, the family's standard of living, whether or not the business profits kept pace with inflation. In my judgment, in a case like the present, counsel for the defender was justified in submitting that the appropriate approach is to take a multiplier, and to apply it to a multiplicand which, having regard to all the circumstances I have just referred to, is considered to be fair. I am prepared to accept Mr Stewart's calculation that the deceased's net income for the year 1988 to 1989 was £26,351. I am also prepared to accept that, having regard to all the evidence, and taking into account such inflation as there was over the relevant period (which was nothing like that which arose in the *Prentice* case *supra*) it is reasonable to take as the multiplicand a figure in excess of that sum. Doing the best I can following that approach I consider that a multiplicand of £30,000 is appropriate. Apart from anything else this would take into account a real possibility, in my view, that while, as I have already concluded, on the balance of probabilities, the deceased would have carried on working till the age of 60, he may very well have reduced the amount of work he did progressively before reaching that age. I would apply to that multiplicand a multiplier of 11. The total net income therefore available for support of the deceased's family should be fixed at £330,000.

- [31] Prior to the accident the first named pursuer received an income from the business for carrying out book keeping duties etc., to the extent of £2,000 per annum. She also, in evidence, said that she had taken up another job, in addition, prior to the deceased's death which gave her a net annual income of £5,400. Her income was paid into a savings account. She said that this money was basically hers to spend "on treats" for herself and the family. This included the purchase of shares. She also indicated that there had been talk during that journey homewards of her handing in her notice, or at least reducing the hours of her work, after their return from holiday because the deceased did not like her working long hours. I consider, however, that in the circumstances it was more likely that the first pursuer would continue to work to maintain their comfortable lifestyle and that I should have regard to what she was earning prior to the accident and to treat it as part of the family income. She did, indeed, say that she wanted to continue working, though her idea was to go over to part-time work. My impression of this witness was, however, that it was likely that she would have continued to work to earn the kind of money she was earning prior to the accident. I, therefore, consider that following the approach of the court in *Brown v Ferguson* 1990 S. L.

T. 274, as was applied also in *Wotherspoon v Strathclyde Regional Council* 1992 S. L. T. 1090, I should add a figure of 11 x £7,400 to the figure of £330,000 as representing the joint income of the parties available for the family, making a total of £411,400. In my judgment from that should be deducted 30% in respect of the deceased's own maintenance, leaving £287,980. From that figure falls to be deducted the figure for the first pursuer's income viz. £81,400 leaving £206,580 as the sum which would have been available for family support.

- [32] The third and fourth named pursuers lived in the family home at the date of the deceased's death. The evidence was that the third pursuer had purchased a car which the deceased was paying off for her at the rate of £175 per month which would have continued for approximately two and a half years. It was submitted on behalf of this pursuer that an award of £5,000 should be made in respect of bed and board. This was not disputed. I will, accordingly, make an award of loss of support in respect of this pursuer of £7,100. In the circumstances I will also award the sum of £5,000 in respect of loss of support to the fourth named pursuer. This leaves a figure for loss of support for the first pursuer of £194,480.
- [33] The first pursuer claimed damages in respect of loss of services. There was lodged considerable vouching of work done on the family home, since the deceased's death a substantial amount of which, having regard to his skills and energy, I am satisfied would have been likely to have been carried out by him. The total figure brought out by the various invoices and vouchers for the whole of the period up until the date of the hearing was £20,080 bringing out an average figure, per annum of £2,500. Pursuers' counsel contended that on the basis of the evidence, and having regard to the fact that the payments included payments in respect of materials, and also some work that the deceased may himself not have carried out, an average figure of £1,500 per annum was appropriate. Defender's counsel sought to persuade me that the figure should be £800 per annum. Again, doing the best I can, having regard to various imponderables, I consider that an annual average figure of £1,000 in respect of loss of services would be appropriate. Defender's counsel accepted that a multiplier in respect of this figure of 15 years would be appropriate, which I also accept, bringing out a total of £15,000 in respect of this item of loss. Loss of society claims
- [34] I turn next to deal with loss of society. The pursuers and the deceased were clearly a close-knit family, mutually supportive of each other. The effect of the deceased's death on all of them was devastating. It was submitted on behalf of the first named pursuer that a figure of £16,000 would be appropriate for loss of society in her case, having regard to the parties' ages and the closeness of their relationship. Defender's counsel proposed a figure of £12,000. Reference was made to *Campbell v Gillespie* 1996 S. L. T. 503 and *Beggs v Motherwell Bridge Company* 1998 S. L. T. 1215. Having regard to the awards made in those cases and the effect of inflation, I am of the view that an appropriate award in respect of loss of society to the first pursuer is £15,000. The second pursuer had left home at the date of the accident and was 21 years of age at that time. Reference was made to the awards in the cases of *McLaughlin v Strathclyde Regional Council* 1984 S. L. T. 99 and *Little v Miller* 1984 S. L. T. 99. Having regard to those cases, it was submitted by pursuers' counsel that an appropriate

figure for loss of support for this pursuer would be £2,500. Defender's counsel submitted that the appropriate figure would £2,000. I shall award £2,000 to this pursuer. The third named pursuer was aged 20 at the date of the accident. She was still living at home, though commuting to work in London. Reference was made to the award in the case of Morrison v Forsyth 1995 S. L. T. 539. Pursuers' counsel suggested a figure of £3,000 as being appropriate in respect of this pursuer, while defender's counsel suggested £2,500. I shall award £2,750 to this pursuer for loss of society.

- [35] In respect of the fourth pursuer, who was 15 at the time of the accident, and who was living at home, the parties were at one that the appropriate figure was £4,000 which sum I award. The parties were also in agreement that in respect of the children's claims for loss of society, two-thirds should be attributed to the past. I understood pursuers' counsel to submit that this should also be the position in respect of the pursuers' claim for loss of society. Defender's counsel submitted that this should be split one half to the past and one half to the future. I could ultimately see no reason to differentiate between the two sets of pursuers in this case and accordingly, in respect of all of the loss of society awards I shall apportion two thirds to the past and one third to the future. Funeral expenses
- [36] Parties were agreed that a figure for funeral headstone and related expenses of £1,323.34 should be awarded. I accordingly award that sum to the first pursuer. Interest
- [37] There remains the question of interest due on all of the foregoing sums. This is potentially a matter of some difficulty and concern because of the great delay that has occurred between the date of the accident and the proof in this case. While I was given some explanation for this delay, from both sides of the bar, before the close of the proof, it was agreed that further submissions on this matter should be made, when I had determined what principal sums should be awarded in respect of each of the heads of claim. For that purpose I shall have the case put out By Order to enable counsel to address me on the question of interest. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotCS/2000/238.html>

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