

Eileen Patricia Feeney

Plaintiff

And

Patrick Ging and the County Council for the County of Laois Defendants.

JUDGMENT of Mr. Justice Ellis delivered the 17th day of December 1982.

1. On the 26th September 1977 a collision occurred near Portlaoise in the County of Laois between a motor car driven by Leo Joseph Feeney the husband of the plaintiff and a motor car, the property of the second-named Defendant and driven by the first-named Defendant, as a result of which the Plaintiff's husband received injuries from which he died on the same day. This action is brought by the Plaintiff as the widow and personal representative of her late husband under the provisions of Part IV of the Civil Liability Act 1961 as amended, to recover the loss which she, her six children and her late husband's parents, James and Rose Feeney, as his dependants have suffered as a result of his death. Liability has not been contested by the Defendants.

Under the provisions of section 49 sub-section 1 (a) of the above Act the damages recoverable by the dependants of the deceased (apart from

compensation for mental distress and funeral and other expenses actually incurred by the deceased or the personal representative by reason of the wrongful act of the Defendants in respect of which there is no dispute in the case) are:

"The total of such amounts (if any) as the Court shall consider proportioned to the injury resulting from the death to each of the dependants respectively for whom or on whose behalf the action is brought."

Accordingly, as mentioned by Griffin, J., in his judgment in O'Sullivan -v- C.I.E. (1978) I.R. 407 at 421 (Supreme Court), the damages are to be based on the reasonable expectation of pecuniary benefit or other benefit which can be reduced to a monetary value. As was also noted by Griffin, J., in his same judgment, the action is given to the dependants as individuals so that each of them is entitled to be compensated for the loss resulting to him or her.

Mr. and Mrs. Feeney both came from Ireland but had been living for many years in England where all their six children were born. He was a golf professional by occupation and for some years prior to the accident had been employed as such at Chapel en le Frith Golf Club in Derbyshire,

England. He was the sole support of his wife and children. He owned his own house in which all the family lived. His earnings or sources of income consisted of an annual retaining fee from the club; profits from sales in the club golf shop which he ran, fees for lessons, and income from bets and winnings. The Plaintiff described him in evidence as abstemious, and a hard worker. They very rarely went out. The late Mr. Feeney was born in 1934 and the Plaintiff was born in 1937. He died Intestate, and Letters of Administration of his Estate were granted to the Plaintiff on 17th November 1977.

The six children of the marriage are:

- (1) Rosemary, who was born on 14th July 1959;
- (2) Teresa Anne, who was born on 28th April 1963;
- (3) James Patrick, who was born on 14th May 1964;
- (4) Leo Joseph, who was born on 3rd November, 1965;
- (5) Brendan, who was born on 23rd April 1967, and
- (6) Kevin who was born on 15th November 1971

ROSEMARY.

In September 1977 she was a day pupil at St. Anne's School, Stockport, Greater Manchester. The annual cost of sending her to this school, which was paid for by her Father, was £530. This was her last year at school

and it was intended that she would then go to Manchester University for a Degree. She did not do so however until 1979 due to ill effects from the accident in which she was involved as a passenger.

Mrs. Feeney gave evidence, which I accept, that if her husband had lived he would have had to pay £2,000 p.a. for University fees because of his position, but that on account of his death Rosemary gets and will continue to get a full grant consisting of full lecture allowance, free books and free travel whilst at the University. She does not however get living expenses and she resides at home. If Mr. Feeney had lived she would have resided in the University. The cost of her living at home she said comes to £600 to £700 p.a. It was put to her that her husband's income would not have been able to afford the expense of sending Rosemary to a University, but Mrs. Feeney maintained that he would have done so. She denied that he would have kept her at home because she said that by doing so Rosemary would have missed the University social life, and would have studied better and saved travel expenses.

Teresa Anne

She was going to the same school in Stockport as Rosemary in September 1977 at an annual total cost to her father of £555 under the same heads. She remained at school until she went to Notts University in October 1980. Mrs. Feeney

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said Teresa Anne also gets a Government grant on account of her father's death. If he had lived she said she would not have got a full grant but what she called a minimum grant. He would have had to pay a contribution of £1,500 p.a. She now gets a full grant. Mrs. Feeney also said it would have cost a lot to maintain Teresa Anne at University as she would have had to be resident. She did not give amounts.

James Patrick

He won a scholarship to St. Bedes College in Manchester. The only school expenses therefore for him were for meals and uniform of £160 p.a. for two years. These were paid by Mr. Feeney. Mr. Feeney would not have been liable for school fees for James Patrick on account of his scholarship. In his last year James Patrick failed O levels and had to go back to retake them but got a grant to do so. In this year however, the expenses for school meals and uniform had increased to £275 for the year. It is hoped when he finishes school to send him to Loughborough University to qualify in accountancy. Here, however, because she had two other children at University, the University grant for James Patrick would not be as big. If Mr. Feeney were alive he would have had to pay a contribution nearer to £2,000 p.a. whereas as a widow her contribution will be £1000 p.a. towards the grant.

Leo Joseph

He also had gone to St. Anne's School Stockport, but in September 1977 he had just started at St. Bedes College. The annual school fees there were then £650 p.a. plus £200 p.a. for travel and lunch expenses. He had two more years to run at St. Bedes. Mrs. Feeney said it is then hoped and intended for him to go to Manchester University to take a degree. She said that as she had two other children at the University the grant for Leo Joseph would be minimal but accepted that the overall cost to her husband had he lived would have been greater. She did not give any figures.

Brendan

He also went to St. Anne's School at Stockport, and he went to St. Bedes College in September 1978. St. Anne's for him was free except for £120 p.a. for school meals and uniform. The fees for St. Bedes in 1978 were £732 p.a. and the cost of travel was £200 p.a. He has three years to go at St. Bedes where the fees have since gone up. Evidence of these fees was not given. It is also expected and intended that Brendan will go to University with similar expenses as James.

Kevin

He is also at St. Anne's School at Stockport. In 1983 it is intended to send him to St. Bedes with similar expenses as for James where Mrs. Feeney

said Mr. Feeney would have been liable for full school fees plus expenses for school meals and travel.

The evidence indicated that in due course Kevin would also go to University. Mrs. Feeney gave evidence that the only hobby of Mr. Feeney was photography and that this cost him about £400 p.a. He ran a motor car for which he paid out of the golf shop business. She had her own car which was also paid for out of the business. Food and clothes for the members of the family were also paid for by cash out of the business. She estimated that the cost of food for the whole family came to about £40 to £50 per week and that the cost of clothing for herself and each of the children came to about £200 each p.a. Her husband usually dressed in casual wear from the shop and purchased only an odd suit which she estimated at not more than a personal cost to him of £100 p.a. She assisted in the shop when her husband was out or away for which she was paid £13 weekly out of the shop takings as already mentioned. This was her only source of income and none of the children had any job or other source of income. The whole family went free of cost except for travelling expenses for holidays to Mr. Feeney's parents in County Sligo. He contributed to their joint upkeep a sum of £250.00 p.a.

Evidence was given by Mr. Lester who is a qualified accountant

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practising in Sheffield. He looked after Mr. Feeney's financial affairs since 1964 and prepared his accounts annually for tax purposes. He prepared and submitted in evidence an analysis from his accounts of the late Mr. Feeney's expenditure and drawings from his income for the years ended 25th November 1975, and 1976, and from 25th November 1976 to 26th September 1977. I do not think it necessary to give these in detail for each year except to mention that the total spending by Mr. Feeney for the ten months of 1977, immediately prior to his death, came to £7,949 approximately and as projected by Mr. Lester for the full year would have come to £9,500 approximately. Over the same period Mr. Feeney's income or earnings from all sources would have come to £8,439 made up of £1,378 for Club retaining fee; £6,261 (net of £13 per week paid to Mrs. Feeney for attendance in shop in his absence) and for lessons, and £800 derived from winnings, and bets. Mr. Feeney's actual overall earnings from 5th April 1977 to 26th September 1977 amounted to £3,357. This indicated a drop in profit for which Mr. Lester was unable to offer an explanation. He gave figures however to show that in 1972 Mr. Feeney's profit or income was less than 1971 but that 1973 showed an increase on 1972 but not on 1971. Mr. Lester also gave figures to show that for the ten months ending 26th September 1977 Mr. Feeney had overspent and was overdrawn in his bank in the sum of £1,830.15, but for the



full year ending November 1976 he had been overdrawn by £2,147 so that his overdraft had gone down by £347.

It also appeared that Mr. Feeney had purchased his house on mortgage at the end of 1974 and that he had two life insurance policies, the premium cost of which of course ended at his death. Mrs. Feeney gave evidence that the annual mortgage repayments amounted to £1,267.

Mr. Lester was unable to provide a figure for the net take home pay of the deceased out of the golf shop business and his other income over the years immediately prior to and including his death. Neither was he able to give evidence as to how much more money would have been available to Mr. Feeney in due time to meet the costs of his children's school or university expenses as they grew older had he not died.

He also gave the following additional figures -

The turnover of the shop business for the ten months prior to 26th September 1977 was £24,983 which gave a profit over this period of £3,548 (net of £13 weekly to Mrs. Feeney) or an estimated projected profit over the full year of £4,200, plus retaining fee and estimated income from lessons, winnings and bets which over this ten month period would have given Mrs. Feeney an income of £6,350 (net of £13 per week to Mr.<sup>s</sup> Feeney). This on the evidence of Mr. Lester would have been the cash available to

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Mr. Feeney for spending up to the time of his death, or projected over the full year would have given him something over £7,000, to which must also be taken into account the sum of £676 p.a. which he paid or would have paid to Mrs. Feeney. There would thus appear to have been a substantial relative discrepancy or difference between Mr. Feeney's income and expenditure of something short of £2,000 for the last year of his life. Having regard to the analysis of Mr. Feeney's drawings for the financial years 1975 and 1976 made by Mr. Lester and to the fact that there was an overdraft for these years and for 1977, it would seem financially speaking that had he lived Mr. Feeney would have had a very difficult task to finance his six children through secondary and university education as was his intention. Mr. Lester, however, expressed the view that Mr. Feeney had good overdraft facilities.

The calculations of the Actuaries for both parties were based on this assumption and accepted save as referred to later.

Both Mr. R.P. Delany F.I.A. Actuary for the Plaintiff, and Mr. Joseph G. Byrne A.C.A. Actuary for the Defendants were both present in Court to hear the whole of the evidence given by the Plaintiff and Mr. Lester. Based on such evidence, they were each in a position to give evidence to assist the

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Court in calculating the appropriate sums to which in their respective opinions each of the dependants and claimants was entitled.

Each made his calculations on certain further assumptions which were not disputed. These included allowance for Mr. Feeney to have retired at 65 years of age. In his calculations for the period Sept. 1977 to date of Trial (Nov. 1982) Mr. Delany allowed for support to the Plaintiff to increase in line with increases in the United Kingdom Retail or Consumer Price Index. This was disputed by the Defendants as not justified by the financial affairs and earnings income of the deceased in the years prior to and including his death. I will refer to this later. Mr. Delany based his calculations on the ages and the general school and University and living expenses of each child at each stage to age 21 to date and where relevant for the future according to the evidence of Mrs. Feeney.

As Mr. Byrne did not differ from Mr. Delany in these calculations it was agreed between Counsel for the parties to accept them. It is therefore not necessary to set out in detail the comprehensive manner in which the capitalised loss for each child was calculated. I am satisfied the methods used are correct. It is sufficient if I give the amounts which were agreed by the Actuaries and the parties as follows:-

Rosemary - £898.00;

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Teresa Anne - £5,404.00;

James - £3,733.00;

Leo - £11,554.00;

Brendan - £10,921.00, and

Kevin - £11,786.00

The computed capitalised loss to Mr. and Mrs. Feeney Senior also was not in dispute between the Actuaries and the parties, and was agreed between them as £5,437. Having regard to their respective ages this sum is divisible on the evidence as to £3,000 to Mrs. Feeney and £2,437 to Mr. Feeney.

I think it appropriate at this stage to refer to Mr. Delany's approach to the way in which provision for school fees was made in his calculations having regard to the financial position of Mr. Feeney deceased. Mr. Delany accepts that when all school fees became payable at their various stages and amounts, the cost would exceed the average or assumed average income of Mr. Feeney. On the basis that Mr. Feeney had favourable overdraft facilities and that these would continue, Mr. Delany's approach was to provide for school fees only to age 18 in the case of each child where relevant, and after age 18 to provide only for maintenance, i.e. except for maintenance not to allow for some reversion in the children between ages 18 and 21 or even following 21. On the assumption therefore

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that Mr. Feeney could have continued to avail of his overdraft facilities, the fees which would have ceased to be payable at 18 could have been used to pay off the overdraft. Mr. Delany therefore has valued the reversion from age 21 and not age 18, thereby giving these three years to pay off the overdraft and has stated in evidence that these sets of figures match. This approach commends itself.

I come now to deal with the financial loss of Mrs. Feeney. Here also a large measure of agreement has been expressed between the Actuaries and the parties and the differences between them have been narrowed down to three issues - (i) whether the University grants to which the children have become entitled on the death of their father are benefits which should or should not be taken into account by virtue of section 50 of the Civil Liability Act 1961 in computing the cost of University fees, (ii) if any increase in income should be allowed or imputed to Mr. Feeney had he lived, and if so the manner and extent in which it should be measured or allowed in computing Mrs. Feeney's financial loss and (iii), if Sec. 50. of the above Act is held not to apply for the benefit for the Plaintiff whether or not the sum calculated by Mr. Delany for the Plaintiff's own loss and damage should be further reduced by a reduction of the amount to be included or allowed for tax on Interest on such lesser sum if invested. These are

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the only three real issues in the case although I have deemed it necessary as relevant to refer as briefly as possible to the background financial position of the members of the family as a whole and individually.

Mr. Delany computed Mrs. Feeney's total financial loss and damage to be £121,895 made up of £96,290 for recurring overheads, personal expenses and maintenance, and £25,605 for the value of her reversion. In calculating these amounts he allowed originally a sum for tax at 20%, but as part of this sum was attributable to past loss from date of death to date of Trial (November 1982), he agreed that the appropriate rate of Tax should be 15% and therefore that the sum of £121,895 for Mrs. Feeney's total personal loss should be reduced to £120,420. Mr. Byrne agreed with this sum as such and the method of calculation.

Children. The total loss for the six children combined comes to £44,296 and is not disputed.

Mr. and Mrs. Feeney Senior Their total joint loss comes to £5,437 and is not disputed.

On Mr. Delany's adjusted calculations the total for all the dependants' loss and damage comes to £170,153, to which should be added damages for mental distress and allowable expenses.

I have already referred to the three objections by the Defendants and

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Mr. Byrne to the manner in which these losses for Mrs. Feeney herself have been made up.

The first difference and submission by the Defendants can be shortly stated as follows.

The actual capitalised cost of the University fees for the children between ages 18 to 21 would have been £50,900 on the basis of £2,000 p.a. for each except Teresa Anne for whom the cost would have been £1,500 p.a. Whilst Mr. Byrne was otherwise in agreement with Mr. Delany's calculations for Mrs. Feeney's loss he was of opinion that from the sum of £120,420 there should be deducted this figure of £50,900 as the capitalised value of the University fees that would have been paid between the ages of 18 and 21 in respect of each child. For this purpose he was of opinion that part of such cost should be deducted from the portion or share of the late Mr. Feeney's income attributable to himself (£1,100) and from the amount allocated to the Plaintiff (£3,180), or, expressed in percentages, that there should be deducted from the Plaintiff's loss of £120,420 74% of £59,900. If this were done there should be a reduction of £37,819 from her total loss of £120,420 as found by Mr. Delany. It was contended that the purpose of this reduction is to put the family back into the position as if the deceased had would have had paid these University fees himself had he lived. If not

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it was submitted by Counsel for the Defendants supported by Mr. Byrne's evidence there would have been an additional benefit to the family generally to the extent that the Plaintiff's future income had been fully allocated in Mr. Delany's original calculations, that is, that compensation was being included as if University fees were being paid without making provision or allowance for the fact that by reason of the University grants the children were now getting the benefit of free University education on account of Mrs. Feeney's position following on the death of her husband. Also it is submitted on behalf of the Defendants that this deduction should be made on the basis that if a re-allocation of income had to be made to provide for the cost of University fees there would have been a loss to the parents if fees had been paid, whereas in fact no fees have been paid in the events which have occurred.

Mr. Delany took the opposite view to that for which Mr. Byrne and the Defendants contended. He was of opinion and it was so contended by Counsel for the Plaintiff that Mrs. Feeney was entitled not to have taken into account what Mr. Feeney would have paid in University fees had he lived because these are now paid by the University grants (except for the sum of £200 p.a. which Mr. Delany allocated to each child for expenses other than tuition fees) and are not payable on this account.



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This difference of opinion emerged and was agreed as the real issue and point of difference to be determined according to whether or not the provisions of section 50 of the Civil Liability Act 1961 applied to the University grants.

This section provides as follows: -

"In assessing damages under this part (of the Act) account shall not be taken of - (b) any pension gratuity or other like benefit payable under Statute or otherwise in consequence of the death of the deceased".

In O'Sullivan .v. C.I.E. (1978) I.R. Supreme Court, at page 424 Griffin, J., in his judgment quoted with approval that part of the judgment of Kingsmill Moore, J., in Byrne .v. Houlihan (1966) I.R. 274 at page 278 where he said:-

"That in computing the injury resulting from the death gains are in general to be set off against losses is shown by section 5 (of the Fatal Injuries Act 1956) which by specifically excluding from such computation certain benefits by way of insurance moneys and pensions implies that benefits not so expressly included must be taken into account".

Griffin, J., stated that these observations of Kingsmill Moore, J., apply equally to section 50 of the Act of 1961. In O'Sullivan .v. C.I.E. (above)

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Griffin, J., also quoted with approval the passage from the Judgment of Lord Wright in Davies v. Powell Duffryn Associated Collieries (1942) A.C. 601 where he stated that:-

"In computing the loss suffered by the dependants the actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefits and on the other, any pecuniary advantage which comes to him by reason of the death."

It is however, contended by Counsel for the Plaintiff that the University grants in question come within the description of "other like benefit payable under Statute or otherwise" which became payable in consequence of the death of Mr. Feeney. If this submission is correct then the Plaintiff's losses, that is £120,420.00, remain intact.

Other than the very general description of the grants given by Mrs. Feeney which I have given from her evidence, I have no other or additional information as to how, or the conditions under which such grants are made. I would assume there are some conditions to be met such as a meant test and certain minimal

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educational standards to be achieved by the intending student as a condition of acceptance by the University. For the purpose of deciding the issue however, I will accept Mr. Hickey's submission that all he has to establish is the death of Mr. Feeney resulting in an alteration in the position of Mrs. Feeney which entitled each of the children to the benefit of a University grant, and that this is sufficient information to enable the Court to determine whether or not such grants or benefits are like a pension or gratuity.

In my view it is neither fair, reasonable, or logical that the Plaintiff should recover damages for the cost or expense of providing such university education for her children which has not been or will not be incurred. I do not consider that the benefit of University grants for this purpose and arising in this way were ever intended by section 50 to be regarded as a like benefit to a pension or gratuity or that they can be regarded in the same category or description as a pension or gratuity of which account should not be taken in assessing damages. Neither do I consider that the manner in which the University grants in question are applied and the purpose for which they are used can be likened to the benefit of a pension or gratuity of the kind envisaged or intended under section

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50(b) of the Act. Counsel have referred me to the case of Murphy .v. Cronin (1966) I.R. 699 Supreme Court. This case however, was concerned with a particular type of "benefit" and no guidelines of a general nature were enunciated as to how the provisions of section 50 were to be interpreted or applied. Such task would be very difficult and I do not think any general principle could feasibly be laid down. I think each case must depend for its determination under the section on its own facts and circumstances.

For these reasons I accept as correct the submission of Counsel for the Defendants and the manner in which Mr. Byrne has arrived at the Plaintiff's own loss. Accordingly, the sum of £120,420 falls to be reduced to £82,601 for the Plaintiff's own loss made up of £21,756 for personal loss; £35,877 for recurring overheads and £24,968 being the value of the reversion. These sums on this basis are not disputed.

Counsel for the Defendants' second objection to Mr. Delany's calculations in assessing the Plaintiff's own loss is that he calculated this on an assumption that if Mr. Feeney had lived his earnings or income would have kept pace with the cost of living or Consumer Price Index in the United Kingdom. Mr. Delany gave evidence and it is submitted for the Plaintiff that this was not an unreasonable assumption notwithstanding

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that the accounts of the deceased's business and income for the previous few years did not support a picture of an increasing income, but rather the contrary. Mr. Delany accepted that on the three years preceding his death it was not possible to project what the increase, if any, in the business of Mr. Feeney might have been, but he maintained that fluctuations could occur and that he was justified in the circumstances in building in to his calculations and capitalised values a provision for the support and maintenance of Mrs. Feeney to increase year by year on the basis of annual increases in the Consumer or Retail Price Index. He was of opinion that the accounts of the deceased which were available were insufficient to project for the future but that one could take a more reliable line through the retaining fee for the club's professional which had increased to date to about £5,500 since September 1977; that the Retail Price Index had increased by 96 and that average earnings in the United Kingdom had doubled since that time. Having regard to these factors he thought it not unreasonable to assume that had he lived Mr. Feeney's income overall would have kept pace with the increases in the cost of living as measured by the Retail and Consumer Price Index, and that it was likely that the considerations would apply to shop prices and fees for golf lessons result in proportionately greater turnover profit and fees. This would

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leave only the substantially lesser or minor miscellaneous items such as bets and win money. Anyone with any experience of these matters will accept that these also keep on getting bigger and are likely to continue to do so. Having regard to the nature of the job, such earnings of course are likely to vary widely but Mr. Feeney's character, hard work and devotion to his job are matters which should be taken into account. I do not think comparable earning statistics would be available for similar jobs from year to year which must depend greatly on the individual employee. In their absence Mr. Byrne accepts that the application of the Retail or Consumer Price Index is ultimately probably the best indicator. I feel if I were to reject this yardstick and deny an allowance in Mr. Feeney's future income had he lived for increases in the Retail or Consumer Price Index in the future I would be acting contrary to what is probable and doing an injustice to his dependants. I feel the evidence on the balance of probabilities justifies acceptance of this factor which Mr. Delany has built into his calculation.

It is further contended by Counsel for the Defendants that if the sum of £120,420 for the Plaintiff's damages falls to be reduced to £82,601 (which in the event has happened) and the sum to be invested by her to produce interest is thereby also reduced, that the allowance factor for the Plaintiff's tax liability included therein must be calculated on such reduced amount and result in a

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further proportionate reduction in the Plaintiff's damages. In my view this result must follow, whereby instead of £82,601 the Plaintiff's damages now amount to £77,314 made up of £20,482 for personal loss; £33,717 for recurring overheads and £23,694 for the entitlement on reversion.

In summary therefore I find the Plaintiff and Dependants are entitled to the following heads of damages and loss:-

Plaintiff	£ 77,314.00
Total for children	£ 44,296.00
Mr. and Mrs. Feeney Senior	<u>£ 5,437.00</u>
Total	<u><u>£ 127,047.00</u></u>

Mental Distress

The Plaintiff and Mr. Feeney were very happily married. Understandably all the family suffered great distress as a result of Mr. Feeney's accident and death. Mrs. Feeney thought Rosemary suffered most among the children as she was in the car in the accident. She said that her husband and his parents were greatly attached and that they were very upset as he was their only son. I apportion the maximum permitted sum of £1,000 damages for

mental distress between the dependants as follows:-

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- £ 400.00 to the Plaintiff
- £ 100.00 to Rosemary
- £ 60.00 to each of the other children, and
- £ 100.00 each to Mr. and Mrs. Feeney Senior.

The total amount to which the Plaintiff on her own behalf and on behalf of the other dependants individually are entitled therefore comes to £129,175.50 which I apportion between the dependants as follows:-

- The Plaintiff - £79,442.50 made up of £77,314 for her personal loss together with £400.00 damages for mental distress and £1,728.50 for funeral and other expenses;
- Rosemary - £998.00 of which £100.00 is for damages for mental distress;
- Teresa Anne - £5,464.00 of which £60.00 is for mental distress;
- James - £3,793.00 of which £60.00 is for mental distress;
- Leo - £11,614.00 of which £60.00 is for mental distress;
- Brendan - £10,981.00 of which £60.00 is for mental distress;
- Kevin - £11,846.00 of which £60.00 is for mental distress.



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Mrs. Feeney Senior £3,100.00 of which £100.00 is for mental distress

and;

Mr. Feeney Senior £2,537.00 of which £100.00 is for mental distress

*L.S.R. Ellis.*  
*20/1/83*