Lord Templeman

My Lords,

For the reasons given by my noble and learned friend Lord Bridge of Harwich I would dismiss this appeal.

Lord Bridge of Harwich

My Lords,

The appellants are the parents of two girls, Sarah and Victoria Hicks, who died in the disaster at Hillsborough Football Stadium on 15 April 1989 when they were respectively 19 and 15 years of age. In this action they claim damages under the Law Reform (Miscellaneous Provisions) Act 1934 for the benefit of the estate of each daughter of which they are in each case the administrators. The respondent is the Chief Constable of South Yorkshire who does not contest his liability to persons who suffered damage in the disaster. The basis of the claim advanced here is that at the moment of death Sarah and Victoria each had an accrued cause of action for injuries suffered prior to death which survived for the benefit of their respective estates. The action was tried by Hidden J. who held that the plaintiffs had failed to prove that either girl suffered before death any injury for which damages fell to be awarded. His decision was affirmed by the Court of Appeal (Parker, Stocker and Nolan L.JJ.). Appeal is now brought to your Lordships' House by leave of the Court of Appeal.

No one can feel anything but the greatest sympathy for the relatives of those who died in the disaster, the circumstances of
which are now all too well known. The anguish of parents caused by the death in such a horrifying event of sons and daughters who were on the very threshold of life must indeed have been almost unbearable. But the common law has never awarded damages for the pain of bereavement. The Administration of Justice Act 1982 section 3(1), by substitution of section 1A of the Finance Act 1976, introduced such a claim for the first time in the fixed sum of £3,500 (subsequently increased by statutory instrument to £7,500) but only for the benefit of a spouse in respect of the death of the other spouse or for the benefit of parents in respect of the death of a minor child. The same Act, by section 1, abolished the right to an award of damages in a conventional sum for the benefit of the estate of the deceased under the Act of 1934 in respect of the deceased's loss of expectation of life, save to the limited extent provided by section 1(l)(b), which is not here relevant. Such conventional awards had long been felt to be anomalous. In respect of the deaths of Sarah and Victoria there was no dependency and hence no claim under the Fatal Accidents Acts. Thus, apart from a bereavement claim under the Act of 1982 in respect of Victoria, a claim for damages in respect of injuries suffered before death was the only claim which Mr. and Mrs. Hicks could bring.

This action and another action tried by Hidden J. at the same time, which also failed and has not been pursued beyond the Court of Appeal, were said to be test cases which would afford guidance in relation to other similar claims arising out of the Hillsborough disaster. We were assured by counsel, and I have no reason to doubt it, that the action was not brought for the sake of the money that may be awarded but rather to mark the anger of these parents and other bereaved relatives at what occurred. But whatever justification there may be for that anger has no relevance to damages in a civil action for negligence, which are compensatory, not punitive.

The difficulty which immediately confronts the appellants in this House is that the question what injuries Sarah and Victoria suffered before death was purely one of fact and Hidden J.'s conclusion on the evidence that the plaintiffs had failed to discharge the onus of proving any such injury sufficient to attract an award of damages was a finding of fact affirmed by the Court of Appeal. The appellants must therefore persuade your Lordships to reverse those concurrent findings if they are to succeed. Mr. Hytner says that the primary facts were not in dispute and submits, therefore, that the House is in as good a position as the courts below to draw the proper inferences from those primary facts. But this submission ignores the special restraint with which the House approaches findings of fact which are concurrent. In Higgins v. J. & C. M. Smith (Whiteinch) Ltd., 1990 S.C. (H.L.) 63, Lord Jauncey of Tullichettle, in a speech with which the rest of their Lordships agreed, said at p. 82:

"Where there are concurrent findings of fact in the courts below generally this House will interfere with those findings only where it can be shown that both courts were clearly wrong. It is nothing to the point that this House might on the evidence have reached a different conclusion, ... The principle does not depend upon the advantage possessed by the judge of first instance of seeing and hearing the
This statement of principle in a Scottish appeal accurately reflects previous authority to the like effect in an English appeal (see The Owners of the "P. Caland" and Freight v. Glamorgan Steamship Co. Ltd. [1893] A.C. 207) and clearly applies to concurrent inferences of fact whether or not the primary facts are in dispute.

The evidence here showed that both girls died from traumatic asphyxia. They were in the pens at one end of the Hillsborough Stadium to which access was through a tunnel some 23 metres in length. When the pens were already seriously overcrowded a great number of additional spectators, anxious to see the football match which was about to start, were admitted through the turnstiles and surged through the tunnel causing the dreadful crush in the pens in which 95 people died. Medical evidence which the judge accepted was to the effect that in cases of death from traumatic asphyxia caused by crushing the victim would lose consciousness within a matter of seconds from the crushing of the chest which cut off the ability to breathe and would die within 5 minutes. There was no indication in the post mortem reports on either girl of physical injuries attributable to anything other than the fatal crushing which caused the asphyxia, save, in the case of Sarah, some superficial bruising which, on the evidence, could have occurred either before or after loss of consciousness. Hidden J. was not satisfied that any physical injury had been sustained before what he described as the "swift and sudden [death] as shown by the medical evidence." Unless the law were to distinguish between death within seconds of injury and unconsciousness within seconds of injury followed by death within minutes, which I do not understand to be suggested, these findings, as Hidden J. himself said "with regret," made it impossible for him to award any damages.

Mr. Hytner sought to persuade your Lordships, as he sought to persuade the Court of Appeal, that on the whole of the evidence the judge ought to have found on a balance of probabilities that there was a gradual build up of pressure on the bodies of the two girls causing increasing breathlessness, discomfort and pain from which they suffered for some 20 minutes before the final crushing injury which produced unconsciousness. This should have led, he submitted, to the conclusion that they sustained injuries which caused considerable pain and suffering while they were still conscious and which should attract a substantial award of damages. The Court of Appeal, in a judgment delivered by Parker L.J. with which both Stocker and Nolan L.JJ. agreed, carefully reviewed the evidence and concluded, in agreement with Hidden J., that it did not establish that any physical injury was caused before the fatal crushing injury. I do not intend myself to embark on a detailed review of the evidence. In the circumstances I think it sufficient to say that, in my opinion, the conclusion of fact reached by Hidden J. and the Court of Appeal was fairly open to them and it is impossible to say that they were wrong.
A good deal of argument in the courts below and before your Lordships was addressed to the question whether damages for physical injuries should be increased on account of the terrifying circumstances in which they were inflicted. This may depend on difficult questions of causation. But on the facts found in this case the question does not arise for decision. It is perfectly clear law that fear by itself, of whatever degree, is a normal human emotion for which no damages can be awarded. Those trapped in the crush at Hillsborough who were fortunate enough to escape without injury have no claim in respect of the distress they suffered in what must have been a truly terrifying experience. It follows that fear of impending death felt by the victim of a fatal injury before that injury is inflicted cannot by itself give rise to a cause of action which survives for the benefit of the victim's estate.

I would dismiss the appeal.

LORD GRIFFITHS

My Lords,

For the reasons given by my noble and learned friend Lord Bridge of Harwich I would dismiss this appeal.

LORD GOFF OF CHIEVELEY

My Lords,

For the reasons given by my noble and learned friend Lord Bridge of Harwich I too would dismiss this appeal.

LORD BROWNE-WILKINSON

My Lords,

For the reasons given by my noble and learned friend Lord Bridge of Harwich I too would dismiss this appeal.