

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. of 168 1959

Between:

RAM RAJI

Plaintiff

v.

BABU NANDAN BHIM

Defendant

Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17)—Compensation to Relatives Ordinance (Cap. 20)—quantum of damages.

The plaintiff's daughter was killed through the negligent driving of the defendant. Liability was admitted, the only issue being the quantum of damages. Damages were claimed by the plaintiff, as administratrix of her daughter's estate, under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17) and under the Compensation to Relatives Ordinance (Cap. 20).

At the time of her death, the deceased was 19 years of age, in good health, earning £1 17s. 7d. per week as an uneducated seamstress. The only person claiming as a dependant under the Compensation to Relatives Ordinance was the plaintiff, who was herself unemployed, with no private means, and who had received weekly payments of an unknown amount from the deceased.

Held.—(1) Damages awardable to the deceased's estate under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17) for loss of expectation of life were assessed at £525.

(2) The plaintiff was awarded £350 under the Compensation to Relatives Ordinance (Cap. 20), less the share (£175) accruing to her from the deceased's estate, by reason of the award under (1).

H. A. L. Marquardt-Gray for the Plaintiff.

D. M. N. McFarlane for the Defendant.

KNOX-MAWER, Ag. J. (29th July, 1960).

The plaintiff is the administratrix of the estate of her daughter Sumintra who was killed on 8th July, 1959 by the negligent driving of the defendant's servant. The plaintiff seeks to recover damages under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17) and the Compensation to Relatives Ordinance (Cap. 20). Liability is admitted by the defendant, the action having been defended solely upon the issue of quantum of damages.

The deceased was 19 years of age and in good health at the time of her death. She was uneducated and earned £1 17s. 7d. a week as a seamstress. She died intestate leaving a father, a mother, a sister and a brother. Her father has for some years lived separately from the family and has entered into a deed of renunciation renouncing all claims either in respect of this action or otherwise to the estate of the deceased. The deceased lived with her mother, sister and brother. It is agreed that her mother received weekly payment from her but the amount is unknown. The deceased's sister is now aged 17 and at present earns £1 5s. 0d. per week. Her brother is aged

15 and at present earns £1 2s. 6d. a week. Her mother is unemployed and has no means of her own. She receives no maintenance from her husband, the father of the deceased.

Normally, in a claim for the benefit of the estate of the deceased under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17), the two main heads of damage are for pain and suffering sustained by the deceased prior to death and for loss of expectation of life. In the present case it is agreed that death was virtually instantaneous and there was no pain and suffering. It is necessary therefore to assess the damages to be awarded in this case for loss of expectation of life. These are not to be calculated solely or even mainly, on the basis of the length of life that is lost, but should be fixed at a reasonable figure for the loss of a measure of prospective happiness (*Benham v. Gambling* (1941) A.C. 157, H.L.). I have no reason to doubt that the deceased can be described in similar words to those used by Wrottersley J., in *Moody v. Shell Mex and B. P. Ltd.*, (Winchester Assizes, February 24th, 1942) reported in Bingham's Motor Claim Cases, Third Edition, at page 345, namely as "a girl . . . with her life before her, happy . . . enjoying life, and likely to go on, as far as could be foreseen enjoying life . . . a highwater mark case". There is no evidence before this Court to render this less than a "highwater mark case". I assess the damages for loss of expectation of life at £525. Accordingly I award the plaintiff as administratrix of the estate the sum of £525 under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance Cap. 17.

Under the Compensation to Relatives Ordinance, which corresponds to the English Fatal Accidents Act 1846, the measure of damage is the pecuniary loss which has been suffered or is likely to be suffered by each dependant. "There is no question of what may be called sentimental damage for bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence" (per Lord Wright in *Davis v. Powell Duffryn Associated Collieries Ltd.*, (1942) A.C. 601 at p. 617). Moreover a deduction must be made from a dependant's damages under the Compensation to Relatives Ordinance (Cap. 20) in respect of any pecuniary benefit accruing to that dependant by reason of the damages awarded to the deceased's estate under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17).

The only person claiming as a dependant under section 4 of Cap. 20 is the mother of the deceased. It is necessary therefore to assess the amount of actual pecuniary benefit which the mother might reasonably have expected to enjoy had her daughter not been killed. In making such an assessment there are inevitably so many uncertain and imponderable elements, the prospect of the girl's marriage for example, that an accurate arithmetical approach is quite impossible. The court has to do the best it can in the circumstances (see *Kemp and Kemp on Quantum of Damages* Volume 2 at p. 4). I consider that in this case £350 is a proper assessment of the mother's claim under the Compensation to Relatives Ordinance.

From this must be deducted the £175 which the mother will receive as her third share of the £525 accruing to the personal estate of the deceased in respect of the award under Cap. 17 above; for it is agreed that as the father has entered into a deed of renunciation, the mother, brother, and sister of the deceased take equal shares in the personal estate of the deceased (see *Halsbury Laws of England* 2nd Edition Vol. X at p. 603). Under Cap. 20 therefore, the plaintiff is awarded £175.

In the outcome, judgment is awarded against defendant for a total sum of £700.

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