

WALIAMMA

v.

LEYLANDS LIMITED AND ANOTHER

[SUPREME COURT, 1962 (Hammett Ag. C. J.), 27th, 28th February,
19th March]

Civil Jurisdiction

Damages—fatal accident—negligent driving—basis of assessment—plaintiff entitled to one fifth of estate of deceased—estate increased by damages awarded under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17)—one fifth of total estate deducted from damages under the Compensation to Relatives Ordinance (Cap. 20).

In an action for damages in respect of the death of her husband, attributable to the negligent driving of the second defendant, the plaintiff was awarded the sum of £150 for loss of the deceased's expectation of life and £50 for his pain and suffering, under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance. Under the Compensation to Relatives Ordinance her damage was assessed at £200.

The estate of the deceased had been sworn at £256 which would be increased by the £200 damages awarded under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance. Under the will of the deceased the plaintiff was entitled to one fifth of his estate. This sum, amounting to £91-4-0 fell to be deducted from the damages assessed under the Compensation to Relatives Ordinance, which were therefore reduced from £200 to £108-16-0.

Action in the Supreme Court for damages for death caused by negligent driving. The case is reported on the question of damages only.

S. M. Koya for the plaintiff.

D. M. N. McFarlane and *C. L. Jamnadas* for the first defendant.

S. D. Sharma for the second defendant.

The facts sufficiently appear from the judgment.

HAMMETT Ag. C. J. (in part) : [19th March, 1962]—

I now come to the question of damages. The plaintiff has claimed a round sum of £2,000 general damages. She does not claim any special damages by way of medical or funeral expenses and no

Provisions) (Death and Interest) Ordinance, Cap. 17, in her capacity as executrix of the estate of Kutti Gounden deceased she is entitled to damages for

- (a) loss of expectation of life and
- (b) pain and suffering.

In assessing the damages for loss of expectation of life it is necessary to bear in mind not only the need for some consistency in awarding damages in similar cases in Fiji but also the fact that in a case where the deceased is well over 70 years of age one cannot ignore the fact that the expectation of life must be considerably shorter than that where the deceased is a person of middle age. With these considerations in mind I award the sum of £150 damages in respect of damages for loss of expectation of life. On the question of pain and suffering no evidence has been adduced in support of this part of the claim. Nevertheless the deceased must have undergone some pain and suffering and considerable discomfort and I award £50 damages under this head.

Secondly, under the Compensation to Relatives Ordinance, Cap. 20, the plaintiff who is admitted to be the sole dependant of the deceased, is entitled to damages in respect of the extent to which she was dependant upon the deceased. On the evidence before me I am quite satisfied that the plaintiff would appear to be, according to her marriage certificate, only one year younger than the deceased and lived with the deceased in a house on the property owned by one of their sons. I accept her evidence that the deceased used to work only 3 or 4 days a week as a labourer for wages of about 8/- or 9/- a day and of his earnings he kept the majority for his own use and in buying food and clothing for the pair of them.

On the evidence before me it would appear that the extent of the plaintiff's dependence on the deceased did not amount to more than £50 a year. For the rest it would appear that she was dependent on her sons who now maintain her. The medical evidence indicated that the deceased might have expected to live another 5 years had he not met with this accident. It is, however, doubtful whether he would have been working as a labourer until he died had he not met with this accident. Having regard to all these factors, I assess the plaintiff's damages under the Compensation to Relatives Ordinance at the sum of £200.

The deceased died testate and under the terms of his will all his property was divided between his widow, the plaintiff, and his sons Perumal, Govind Raj, Krishna and Subramani, his son Murgesa having pre-deceased him. It is agreed that the deceased's estate was sworn at £256. The size of his estate will, however, be increased by the sum of £200, being the damages the plaintiff has recovered in her capacity as executrix under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17, which brings the total estate up to a value of £456. Of this sum the plaintiff was entitled to 1/5th, namely £91.40., under the terms of the deceased's will and it is by this amount that the damages assessed under the Compensation to Relatives Ordinance namely £200, must be reduced

A to a net figure of £108.16.0 in making the award to her under this Ordinance. In the result, therefore, the plaintiff is awarded the following damages: firstly, under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17, the sum of £200 and, secondly, under the Compensation to Relatives Ordinance, Cap. 20, the net sum of £108.16.0, making a total of £308.16.0 together with the costs of this action.

B On the subject of costs I direct that they be taxed on the lower scale. I further direct that because the trial of the action should have been completed in one day had the Plaintiff's pleadings been in order, the defendants shall only bear the costs of one day's trial of this action.

Judgment for the plaintiff.