

A **THE PUBLIC TRUSTEE (as Administrator of the Estate of SIRI  
RAM deceased)**

v.

**PARMANAND**

B [SUPREME COURT, 1964 (Mills-Owens C.J.), 17th, 25th August]

Civil Jurisdiction

C *Damages—death from negligent driving—claim by widow—principles of assessment—Compensation to Relatives Ordinance (Cap. 20)—Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17).*

D In assessing damages under the Compensation to Relatives Ordinance where the deceased's widow is the sole dependant it is necessary to assess the amount of her strictly pecuniary loss, and secondly to determine whether some deduction is to be made on account of any benefit accruing to the widow where she is a beneficiary of the estate of the deceased. Among the contingencies to be considered are the possibilities in relation to the deceased's expectation of life, that the widow might possibly have predeceased her husband, that the deceased's future earnings might have fluctuated considerably, or that he might not have continued in business for the remainder of his life. As to deductions, in the present case the possibility of the widow's marriage could be disregarded, and any deduction to be made on account of any benefit received from the estate of the deceased would have to be reduced by the amount of administration expenses incurred: there must be an appropriate discount in respect of accelerated payment, but the inevitable progressive fall in the value of money must be kept in mind. In the present case also, as the widow would in any event have continued to occupy and enjoy the house which devolved upon her under the will of the deceased, no deduction on account of accelerated succession thereto ought to be made. The probability that the deceased would have continued to reduce the mortgage on the house, also went to increase the pecuniary detriment to the widow.

G The sum awardable under the head of loss of expectation of life under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, is almost a conventional figure provided due regard is had to the age of the deceased and to any special circumstances.

H Cases referred to: *Heatley v. Steel Co. of Wales Ltd.* [1953] 1 All E.R. 489; 97 Sol. Jo. 149, C.A.; *Bowskill v. Dawson* [1955] 1 Q.B. 13; [1954] 2 All E.R. 649; *Nance v. British Colombia Electric Railway Co. Ltd.* [1951] A.C. 601; [1951] 2 All E.R. 448; *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601; [1942] 1 All E.R. 657.

Action by widow for damages under the Compensation to Relatives Ordinance and the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance.

R. I. Kapadia for the plaintiff. A

R. A. Kearsley for the defendant.

The case is reported on the question of damages only.

MILLS-OWENS C.J.: [25th August, 1964]— B

This is an action brought by the Public Trustee as personal representative of Siri Ram (deceased) for the benefit of the widow Phul Raji under the Compensation to Relatives Ordinance (Cap. 20) and on behalf of the estate of the deceased under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 17), arising out of the alleged negligent driving of a motor vehicle by the defendant in consequence of which serious injuries were caused to the deceased on the 19th March, 1961, at Samabula, resulting in his death the same day. The widow Phul Raji is the only person alleged to have been dependant upon the deceased. C

On the issue of negligence I have heard the evidence of an eye-witness Punu Lal s/o Foaz Dar, a painter employed by the Suva City Council, and I have also had the advantage of seeing a sketch plan or diagram of the scene prepared by an Inspector of Police, Shri Raman, who was called to the scene shortly after the accident occurred, but after the deceased had been removed to hospital. It is common ground that the motor vehicle driven by the defendant came into contact with the deceased or with a hand cart which was being pushed by the deceased at the time of the accident, he being a sweet-meat vendor. No evidence has been called on the part of the defence. According to Punu Lal he was waiting at a bus stop in King's Road, Samabula, when he saw the deceased, whom he knew and whom he had seen acting as a sweet-meat vendor on previous occasions. On this particular occasion the deceased was pushing his hand cart along King's Road in the direction of Suva. According to the witness the deceased was on the left-hand side of the road, facing the direction in which he was proceeding, and at the edge of the grass verge. He had just about proceeded past the junction of Grantham Road and King's Road when the motor vehicle driven by the defendant approached from the direction of Suva, crossed over diagonally to its incorrect or righthand side of the road and struck the deceased or the hand cart, throwing the hand cart on to the grass verge and dragging the deceased himself under the car for some 10 or 15 yards' distance along the King's Road, beyond the junction with Grantham Road. The diagram prepared by Inspector Shri Raman bears out the evidence of this witness and I accept him (Punu Lal) as a witness of truth. Whatever was the intention of the defendant, whether to turn from King's Road into Grantham Road, cutting the corner in the course of it, or otherwise, his manoeuvre was highly negligent if not thoroughly dangerous. I therefore have no hesitation in concluding that liability has been clearly established. D  
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A The deceased was a man of 65 years of age, employed on his own account. He had been pursuing a similar vocation for 30 years. His widow Phul Raji is aged 59 years. Their surviving children are all self-supporting adults. The deceased and his widow lived in the house owned by the deceased subject to a bank mortgage. According to the medical evidence the deceased was a healthy man, in better than usual condition for his age. It was uncertain, according to the doctor, how long the deceased survived following the accident, but B it was unlikely to be more than a few hours. The immediate cause of death was cerebral haemorrhage following a fracture of the skull. The witness Punu Lal said that in fact portions of the deceased's brain matter were on the ground following the accident. According to the widow her late husband earned between £40 and £50 a month, of which some £25 a month was paid to the bank in reduction of the mortgage. The balance of his earnings went to support himself C and his wife. The widow is the sole beneficiary of her late husband's will and the net value of the estate to which she succeeds, consisting of the house in which they lived, is approximately £1,500.

D Under both the Ordinances referred to above there is a claim for funeral expenses, which is put at £25. No objection is taken to this amount and accordingly I award it as a separate item of claim to the plaintiff.

E The provisions of the Law Reform Ordinance extend, in appropriate circumstances, to the recovery of damages for pain and suffering caused to the deceased, medical expenses, and loss of earnings and of amenities between injury and death, but in the present case there is no evidence to substantiate any such item; death occurred on the same day and it is not known whether the deceased was in an unconscious state or not. I therefore make no award in respect of any such item. The plaintiff, as personal representative, is also entitled to recover a sum for loss of expectation of life. According to the medical evidence he could have been expected to live a further five years or so, although the doctor agreed that based on life expectancy tables the period would be longer. The sum awardable under this F head is almost a conventional figure provided due regard is had to the age of the deceased and to any special circumstances. There are no such circumstances in this case. Under this head of damages I award the sum of £200.

G Turning to the claim under the Compensation to Relatives Ordinance, it is necessary to arrive at an assessment of the amount properly payable to the widow in respect of her strictly pecuniary loss as the sole dependant of the deceased, and, secondly, to determine whether some deduction is to be made from the claim under that head on account of any benefit accruing to the widow as the sole beneficiary of the estate. The value of the dependancy claimed is to be determined as a matter of hard cash, but with due regard to many contingencies. There is the contingency that although the H deceased's probable expectation of life was, as I would put it, some six years, he might have lived for a much longer or much shorter period. As to the widow also, although no doubt she has a longer expectation of life, it was not beyond the bounds of possibility that

she would pre-decease her husband. In the case of a business such as that of the deceased it might well have been that his earnings in the future would have fluctuated considerably. He may or may not have continued to carry on the business for the remainder of his life. Any possibility of the widow's remarriage may, I think, be entirely disregarded. Whatever amount is deductible from the widow's claim as a dependant on account of a benefit received by her from the estate of the deceased would have to be reduced by the amount of any administration expenses incurred with respect thereto. Any damages for prospective loss, being in the nature of an accelerated payment, must be subject to an appropriate discount, but it must also be borne in mind that as time progresses there is almost inevitably a fall in the value of money.

The conventional method of assessing the amount payable to a dependant is, initially, by the ascertainment of the figure provided by the deceased before his death for the annual maintenance of the dependant; this sum is to be multiplied by the figure representing the number of years which the deceased might have been expected to live; the resulting amount is then taxed down to take account of the contingencies to which I have referred and to allow for any necessary discount as I have mentioned; from the resulting amount is to be deducted any net pecuniary benefit accruing to the defendant in consequence of the death of the deceased.

Bearing these considerations in mind, and making the best estimate which I can, I award the sum of £1,500 to the widow on account of her claim as a dependant under the Compensation to Relatives Ordinance. In arriving at that amount I have taken the deceased's life expectancy to be six years. I have also directed myself, as to the following matters, in the terms which I shall now discuss. First, there is the question whether, with respect of the net value of the house which has devolved to the widow under the Will of the deceased, a deduction should be made on account of her accelerated succession thereto due to the deceased having died six years earlier than was probable. It has been held in a number of cases that where the estate, the benefit of which has devolved upon the dependant, consisted of a house which, had the deceased lived, the dependant would have continued to occupy and enjoy throughout his or her lifetime, no deduction on account of accelerated succession ought to be made; as the dependant would have had every prospect of residence in the home during the deceased's lifetime there is, in fact, nothing to deduct on that account. (*Vide Heatley v. Steel Co. of Wales* [1953] 1 All E.R. 489; *Bowskill v. Dawson* [1955] 1 Q.B. 13). That is the position in the present case and I do not, therefore, make any deduction on account of the acceleration in the widow's succession to the net estate. A second matter is whether it is proper to award "a sum representing such portion of any additional savings which (the deceased) would or might have accumulated during the period for which, but for his accident, he would have lived, as on his death at the end of this period would probably have accrued to his wife . . . by devolution . . . under his will" (*Nance v. British Columbia Railway Co. Ltd.* [1951] A.C. 601, 614). I have not wholly accepted the evidence of the widow as to the earnings of the deceased, and it would

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A have been a comparatively easy matter to have proved exactly what repayments were made by the deceased to the bank in respect of the mortgage and interest thereon. Nevertheless, I accept that in addition to supporting himself and his wife, the deceased was making substantial repayments in respect of the mortgage and that but for his death he would have continued to make such repayments throughout the course of his probable life expectancy of six years, to the benefit of which repayments the widow would have succeeded. On this account also his untimely death goes to increase the pecuniary detriment sustained by the widow, subject to adjustment on account of the contingencies to which I have referred and the necessity for making a discount on account of acceleration, but subject also to regard being had to the probable future fall in the value of money.

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C The sum of £200 which I have awarded in respect of the claim under the Law Reform Ordinance must be deducted from the award of £1,500 as it is a benefit which accrues to the widow as a result of her husband's death and for no other reason (*Davies v. Powell Duffryn* [1942] A.C. 601). There will therefore be judgment for the plaintiff for the sum of £200 under the Law Reform Ordinance, £1,300 under the Compensation to Relatives Ordinance and £25 for funeral expenses.

D As to costs I do not consider that the late amendment sought by the plaintiff, pleading that the defendant drove on the incorrect side of the road, ought to give rise to a variation of the usual order, namely that costs should follow the event; it is ordered accordingly.

*Judgment for the plaintiff.*