

Lim Joo Chiang - - - - - Appellant

v.

Lim Siew Choo and another - - - - - Respondents

FROM

THE HIGH COURT OF THE COLONY OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 12TH JULY, 1955

Present at the Hearing:

LORD MORTON OF HENRYTON
LORD RADCLIFFE
LORD KEITH OF AVONHOLM
LORD SOMERVELL OF HARROW
MR. L. M. D. DE SILVA

[Delivered by LORD SOMERVELL OF HARROW]

This is an appeal by the defendant on quantum of damages. The plaintiffs are the widow and administratrix and the administrator of Chia Boon Pah, hereinafter called the deceased. He earned his living as a trishaw rider. He had a wife and four children, three of whom were dependent. He was killed in a collision with a motor car driven by the defendant, who, by his defence, admitted liability.

The respondents claimed under sections 7 and 8 of the Civil Law Ordinance of the Straits Settlements. Section 7 deals with the survival of causes of action for or against a deceased on lines similar to those to be found in the Law Reform (Miscellaneous Provisions) Act 1934. Section 8 contains provisions similar to those to be found in the English Fatal Accidents Acts.

The first and main submission for the appellant was that the damages were in any event excessive and should be reduced. Apart from a small and subsidiary point under section 7 the submission was directed to the sum awarded under section 8.

The basis of the claim under section 8 is the amount of the pecuniary benefit which the plaintiffs might reasonably have expected to enjoy. In the present case the widow sued on behalf of herself and the three dependent children. She received, she said, from the deceased \$8 per day to run the home.

The appellant submitted that there fell to be deducted from this a sum of about \$100 per month, the profits of a coffee stall which had been run by the wife. It was suggested that these profits were handed over by the wife to her husband and were therefore part of the \$8 handed to her. As she could continue to run the coffee stall as her own the \$8 it was said should be reduced to about \$5. There is no suggestion in the notes of evidence that this sum from the coffee stall was handed over to the husband and handed back as part of the \$8 per day. The Court of Appeal expressly rejected this view. It is clear from the notes of argument

that the learned judge also rejected it. The appellant is therefore asking the Board to interfere with concurrent findings of fact which are plainly in accordance with the notes of the evidence. That point fails.

It is then submitted that if the sum is calculated in accordance with recognised principles a much lower figure would be obtained. In particular it is submitted that having regard to the man's age the Court of Appeal in a recalculation of the sum, made to see whether there was any ground for interfering with the trial judge, took too high a multiplier.

These cases raise questions of opinion on which minds whether of judge or jury applying right principles may differ substantially. No appellate court will interfere only because the figure awarded by a trial judge is greater or less than that which the appellate court would itself have awarded. The burden on an appellant who invites this Board to interfere with a figure which has commended itself to two courts below is indeed a heavy one. Their Lordships do not find it necessary to review the evidence in detail. They are satisfied that there was evidence as to the deceased's expectation of working life which justified the sum awarded allowing for all proper deductions. As has been stated the appellant criticised the multiplier adopted by the Court of Appeal as too high. The respondents could with equal force have criticised as too low the figure which the Court took for the quantum of monthly or annual benefit which the deceased might have been expected to provide.

Their Lordships will now deal with a further point. Under section 7 the learned Judge awarded inter alia a sum for loss of expectation of life. A proportion of this sum would go to diminish the sum otherwise to be awarded under section 8 (see *Davies v. Powell Duffryn Associated Collieries, Ltd.* [1942] A.C. 601. A judge can of course first state the gross sum under section 8 and then deduct what falls to be deducted of the claim under section 7. He can on the other hand having stated first the amount awardable under section 7 then give under section 8 a figure which takes into account the necessary deduction. The latter may well be a convenient course when as here there is a son interested in the estate who is not interested in the claim under section 8. It was submitted that the learned Judge had failed to take his award under section 7 into account at all in fixing the figure under section 8. It would be surprising if this were so as the *Powell Duffryn* case was cited to him. The appellant relied on the words which he used which are as follows. "I award under section 7 of the Civil Law Ordinance \$2,000. This includes funeral expenses and costs of Letters of Administration. Under section 8 I award \$15,000. This is in addition to what may be received from the estate of the deceased." It is suggested that when the learned judge used these latter words he had not in mind the proportion of the sum awarded under section 7 which would be "received from the estate". In their Lordships' view there is no foundation for the suggestion that the words should be so read. On the contrary they indicate that the learned judge had in mind this very point.

The last point deals with an item of costs of Letters of Administration awarded under section 7. It is agreed that this could not be awarded under that section. There is a special provision as to funeral expenses but costs of administration are clearly outside the general provisions of the section dealing with survival of causes of action.

On the other hand in a double claim such as this the costs of administration may in effect be borne by the defendant. In *Feay v. Barnwell* [1938] 1 A.E.R. 31 the deceased's claim against the defendant was assessed at £600. This would have come to the plaintiff, who was the husband, under the Law Reform Act, and would fall to be deducted from his claim under the Fatal Accidents Acts. Testamentary expenses were agreed at £25. Singleton, J., deducted from the sum he awarded under the Fatal Accidents Acts not the full £600, but that sum less the testamentary expenses. This case was cited below and it is possible that no one was, as it were, troubling as to whether the sum was borne by the defendant directly under section 7 or indirectly by diminishing the deduction to be made under section 8. There is, however, no cross

appeal and the Order which in terms awards \$350 as the costs of administration as such under section 7 is wrong on the face of it and that item must be deleted.

This minor error will not affect costs. The appellants will pay the costs of the appeal for which in their Lordships' opinion there was no justification. Their Lordships will humbly advise Her Majesty that the Order below be varied by deleting the words "\$350.00 for costs for Letters of Administration and." but that otherwise the Order be affirmed.

In the Privy Council

LIM JOO CHIANG

v.

LIM SIEW CHOO AND ANOTHER

DELIVERED BY
LORD SOMERVELL OF HARROW