

Singapore Bus Service (1978) Limited

Appellant

v.

Lim Soon Yong (m.w.)

Respondent

FROM

THE COURT OF APPEAL OF THE  
REPUBLIC OF SINGAPORE

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY 1985

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*Present at the Hearing:*

LORD KEITH OF KINKEL

LORD EDMUND-DAVIES

LORD BRANDON OF OAKBROOK

SIR OWEN WOODHOUSE

SIR EDWARD EVELEIGH

*[Delivered by Sir Edward Eveleigh]*

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Section 12 of the Civil Law Act of Singapore makes provision for the recovery of damages on behalf of the dependants of a deceased person in terms which for the purpose of this appeal can be said to be very similar to those contained in the Fatal Accident Acts in England.

Section 8 of the Civil Law Act provides that a cause of action vested in a deceased shall survive for the benefit of his estate.

On 26th May 1979 Kwan Yat Hong was killed in a motor accident for which the appellants eventually admitted liability. On 6th May 1980 the respondent, the widow of the deceased, brought an action under section 12 of the Civil Law Act claiming damages on her own behalf and on behalf of the children and the parents of the deceased. No claim was made on behalf of the estate under section 8 and such a claim eventually became barred under the provisions of section 6 of the Limitation Act.

[29] In the Statement of Claim as originally drafted it was alleged that the dependants had "suffered loss

and damage amounting to \$800 a month". The case came before the Assistant Registrar for the assessment of damages and before him the pleading was amended to add the words "in addition to the C.P.F. contributions". These were monthly contributions paid by the deceased and his employer under the Central Provident Fund Act. The Act and regulations and rules made thereunder laid down the conditions under which money standing to the credit of a member of the Fund could be withdrawn. Section 12(2) permitted the withdrawal if a member had attained the age of 55 years and provision was made for payment from the Fund on the death of a member. Section 16(1) read as follows:-

"Any member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under subsection (1) of section 13 as the memorandum shall indicate."

Section 13 provided, *inter alia*, that a person nominated under section 16(1) should be paid such portion of the money standing to the credit of a member as that person had been nominated to receive. There were other circumstances in which money could be withdrawn but it is not necessary to recite them.

The deceased had nominated his wife and his parents and on their behalf it was submitted that as contributions to the Fund ceased to be made after his death the sum from which they stood to benefit was less than it would have been had he lived so that they suffered a loss of dependency in this respect.

The Assistant Registrar assessed the general damages at \$118,560 and indicated that \$44,856 of that sum was in respect of the loss attributable to the cessation of contributions to the Central Provident Fund. The total figure for general damages was increased to \$148,000 on appeal to Whahab Ghows J. and his assessment was upheld in the Court of Appeal, but the amount attributable to the cessation of contributions to the Fund was not disturbed.

The appellants now contend, as they did below, that the loss resulting from the cessation of contributions to the Fund is a loss suffered by the deceased's estate and as such should have been claimed under section 8 of the Civil Law Act. They say that the dependants have suffered no loss of dependency in relation to the contributions and the fact that they were nominated under section 16(1) does not entitle them to claim as dependants.

Whahab Ghows J. gave no reasons for his decision in relation to the \$44,856. The Court of Appeal however said:-

"We are unable to accept the contention of the appellants. C.P.F. contributions are not chargeable with estate duty. The money does not go to the estate of the contributor. In this case it goes to the widow and the parents of the deceased. Had the deceased lived to the age of 55 he would have withdrawn the sum standing to his credit in the C.P.F. and the widow and children would necessarily have benefited from the deceased having this money if not for this accident. In our view, therefore, the C.P.F. contributions do form part of the widow's dependency claim."

The reference to contributions not being chargeable with estate duty is based upon section 15(2) of the Central Provident Fund Act which states:-

"All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of -

- (a) the person or persons nominated under subsection (1) of section 16 by the deceased member (if any); or
- (b) the person or persons determined by the Public Trustee in accordance with subsection (2) of section 16 to be entitled thereto,

but shall, without prejudice to the operation of the Estate Duty Act, be deemed not to form part of the deceased member's estate or to be subject to his debts."

The appellants submit that the Court of Appeal misconstrued the provisions of section 15 and misdirected itself in holding that if the deceased had lived to 55 years his widow and children would have benefited from the sum standing to the deceased's credit in the Central Provident Fund.

It has not been contended that the figure of \$44,856 is wrong if in principle there was a loss of dependency in this case. Their Lordships are therefore not concerned with quantum but only whether on the facts of this case the cessation of contributions to the Fund could be taken into account in assessing the loss of dependency.

The principle upon which a claim for damages for loss of dependency is based has been clearly stated in *Davies v. Powell Duffryn Associated Collieries Ltd.* [1942] A.C. 601. At page 611 Lord Wright said:-

"The Act of 1846 section 2 provides that the action is to be for the benefit of the widow or other member of the family, and the jury (or judge) are to give such damages as may be thought

proportioned to the injury resulting to such parties from the death. The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value."

The courts following this statement of principle have frequently awarded damages to compensate for loss going beyond that of daily maintenance. For example they have taken into account the value of services rendered to the dependants by the deceased and have compensated a dependant who had a reasonable expectation of benefiting under the will of the deceased for the fact that the value of the estate would have been greater if the deceased had lived longer and so been able to save more for his dependants.

In *Nance v. British Columbia Electric Railway Co. Ltd.* [1951] A.C. 601 at page 614 Viscount Simon delivering the judgment of the Board said:-

"The claim to damages in the present case falls under two separate heads. First, if the deceased had not been killed, but had eked out the full span of life to which in the absence of the accident he could reasonably have looked forward, what sums during that period would he probably have applied out of his income to the maintenance of his wife and family? (Under this head in the present case the wife or widow need alone be considered, since his children and step-children were all adults and self supporting, and at the time of his death he contributed nothing material to their maintenance.). Secondly, in addition to any sum arrived at under the first head, the case has been argued on the assumption, common to both parties, that according to the law of British Columbia it would be proper to award a sum representing such portion of any additional savings which he 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 and family by devolution either on his intestacy or under his will, if he made a will."

At page 615 he said:-

"A figure having been arrived at under this first head, there should be added to it a figure arrived at under the second head. The question there is what additional amount he would probably have saved during the x years if he had so long endured, and what part, if any, of these additional savings his family would have been likely to inherit."

For the appellants it was submitted that in referring to savings Viscount Simon was dealing with the claim made on behalf of the estate and not with the claim for damages by the dependants. This, however, cannot be correct because at page 617 he said:-

"Whatever sum he would have saved over x years must again be reduced to its lump sum equivalent here and now, and further discounted to allow for the contingency that his wife might have died before him; though these reducing factors would have been to some extent offset by any interest carried by the savings annually set aside."

The reference to the wife dying first can only be relevant to an assessment of damages for loss of dependency.

On the facts of the present case their Lordships can see no material difference between the loss of the expectation of a greater sum payable from the Fund in consequence of additional contributions that would have been made and the loss of expectation under a will or intestacy resulting from additional savings. The widow and the parents had an expectation that they would benefit personally from the Fund for section 12(5) of the Central Provident Fund Act provides:-

"After the death of a member of the Fund a person nominated by such member in accordance with subsection (1) of section 16 shall be entitled to withdraw such portion of the sum standing to the credit of such member in the Fund as is set out in the memorandum executed in accordance with that subsection."

Moreover section 16(1) specifically contemplates that the nominated person or persons will receive the money "in his or their own right".

The deceased would have continued to contribute and so would his employer if the accident had not occurred for payment was compulsory under the Act. Their Lordships are not concerned to determine for how much longer contributions would have been paid because they are not asked to deal with quantum. The evidence clearly shows that the deceased was a caring husband and son. The learned judge took that view for the figure awarded for general damages apart from the amount referable to the cessation of contributions was substantial. That figure, which is not challenged, involves a finding that the probability was that the deceased would have continued to work and inferentially therefore to contribute to the Fund for many years. Had he died before the age of 55 his dependants would have been entitled to their portions by virtue of section 12(5). The deceased might have lived beyond 55 and

withdrawn the sum standing to his credit. In that event it is reasonable to infer that he would have used the money not only for his own benefit but for the benefit of his dependants. To the extent that he did not spend it he would have saved it and his dependants, particularly his widow who was younger than he was, would reasonably have expected to inherit from him.

The fact that the deceased's estate might have had a claim for the value of lost contributions to the Fund in no way affects the right of the dependants to claim for their own loss. The fact that, in England, before the Administration of Justice Act 1982 damages could be claimed by the estate for loss of the ability to earn over the "lost years" (see *Gammell v. Wilson* [1982] A.C. 27) did not take away the right of dependants to claim for their loss of dependency. The claim by the estate might affect the valuation of the claim by the dependants to the extent that they benefited from the estate but the two claims are independently sustainable.

In their Lordships' opinion section 15 of the Central Provident Fund Act supports the respondents' claim to a reasonable expectation of a benefit from the Fund. There is no reason to think that the Court of Appeal misunderstood that section.

Their Lordships accordingly dismiss the appeal with costs.



