

C. K. Subramania Iyer and Others

Vs

T. Kunhikuttan Nair and Six Others

Civil Appeal No. 2227 of 1966

(J.C. Shah, K.S. Hegde JJ)

08.10.1969

JUDGMENT

HEGDE, J. –

1. The question for decision in this appeal by certificate is short but important and that question is what are the principles of governing the assessment of damages under Sections 1-A and 2 of the Fatal Accidents Act (Act XIII of 1855), (to be hereinafter referred to as the Act) ?
2. One Krishnamoorthy son of Plaintiffs 1 and 2 aged about 8 years was hit by a bus owned by the 1st defendant (who died during the pendency of this suit) and driven by the second defendant on February 26, 1956. As a result of that accident Krishnamoorthy sustained very severe injuries. He became unconscious almost immediately after the accident and died in the hospital on the early morning of February 28, 1956. Krishnamoorthy was the eldest son of plaintiffs 1 and 2. Both the courts have come to the conclusion that he was a bright boy and was at the top of his class in his school. At the time of his death he was in Standard III. His parents are affluent. They could have afforded to give him goods education. Hence there was a bright future for him. The plaintiffs claimed a sum of Rs. 30,000/- as damages under Sections 1-A and 2 of the Act. The District Judge computed the damages under Sections 1-A and 2 at Rs. 5,000/-. In appeal the High Court determined the damages under Section 1-A at Rs. 5,000/- and under section 2 at Rs. 1,000/-. Aggrieved by that decision, the plaintiffs have brought this appeal.
3. We shall first read Sections 1-A and 2 for the purpose of ascertaining the principles governing the assessment of the damages under those sections.

Section 1-A reads :

"Whenever the death of a person shall be caused by wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person

deceased;"

Section 2 reads thus :

"Provided always that not more than one action or suit shall be brought for, and in respect of the same subject-matter of complaint. Provided also, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recovered, shall be deemed part of the assets of the estate of the deceased."

4. The rights under the two provisions are quite distinct and independent. Under the former section the damages are made payable to one or the other sections enumerated therein whereas the latter section provides for the recoupment of any pecuniary loss to the estate of the deceased occasioned by the wrongful act complained of. Sometimes, the beneficiaries under the two provisions may be the same. Section 1-A is in substance a reproduction of the English Fatal Accidents Acts 9 and 10 Vict. Chapter 93 known as the Lord Campbell's Acts. Section 2 corresponds to one of the provisions in the English Law Reform (Miscellaneous Provisions) Act, 1934.

5. The scope of Section 1 of the Campbell's Acts was considered by the house of Lords in *Davies and Another v. Powell Dufferyn Associated Collieries Ltd.* Dealing with the mode of assessment of damages under that section Lord Russell of Killowen observed :

"The general rule which has always prevailed in regard to the assessment of damages under the Fatal Accidents Act is well-settled, namely, that any benefit accruing to a dependent by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependent by the death must be ascertained, the position of each dependent being considered separately."

Lord Wright stated the law on the point thus :

"The general nature of the remedy under the Fatal Accidents Acts has often been explained. These Acts 'provided a new cause of action and did not merely regulate or enlarge an old one', as Lord Sumner observed in *Admiralty Commissioners v. S. S. America*. The claim is, in the words of Bowen L. J.; in *The Vera Cruz (No. 2)* for injuriously affecting the family of the deceased. It is not a claim which the deceased could have pursued in his own life time, because it is for damages suffered not by himself, but by his family after his death. The Act of 1846, Section 2 provides that the action is to be for the benefit of the wife 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. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered : *Grand Trunk Ry. Co. of Canada v. Jennings*. The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

6. In ascertaining pecuniary loss caused to the relations mentioned in Section 1-A, it must be borne in mind that these damages are not to be given as solatium but are to be given with reference to a pecuniary loss. The damages should be calculated with reference to a reasonable expectation of

pecuniary benefit from the continuance of life of the deceased-see *Franklin v. The South East Railway Company*. In that case Pollock, C. B. observed :

"We do not say that it was necessary that actual benefit should have been derived, a reasonable expectation is enough and such reasonable expectation might well exist, though from the father, not being in need, the son had never done anything for him. On the other hand a jury certainly ought not to make a guess in the matter, but thought to be satisfied that there has been a loss of sensible and appreciable pecuniary benefit, which might have been reasonably expected from the continuance of life."

7. In *Taff Vale Railway Company v. Jenkins*, the Judicial Committee observed that it is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, that the deceased should have been actually earning money or money's worth or contributing to the support of the plaintiff at or before the date of the death provided that the plaintiff had a reasonable expectation of pecuniary benefit from the continuance of the life. Therein Lord Atkinson stated the law thus :

"I think it has been well established by authority that all that is necessary is that a reasonable expectation of pecuniary benefit should be entertained by the person who sues. It is quite true that the existence of this expectation is an inference of fact - there must be a basis of fact from which the inference can reasonably be drawn; but I wish to express my emphatic dissent from the proposition that it is necessary that two of the facts without which the inference cannot be drawn are, first, that the deceased earned money in the past, and second, that he or she contributed to the support of the plaintiff. These are, no doubt, pregnant pieces of evidence, but they are only pieces of evidence; and the necessary inference an I think be drawn from circumstances other than and different from them."

8. In an action under the Act, it is not sufficient for the plaintiff to prove that he lost by the death of the deceased a mere speculative possibility of pecuniary benefit. In order to succeed, it is necessary for him to show that he has lost a reasonable probability of pecuniary advantage. In *Barnett v. Cohen and Others*, McCardie, J., speaking for the Court quoted with approval of the following observations of Lord Haldane in his judgment in *Taff Vale Ry. Co. v. Jenkins* (supra) :

"The basis is not that has been called solatium, that is to say, damages given for injured feelings or on the ground of sentiment, but damages based on compensation for a pecuniary loss. But them loss may be prospective, and it is quite clear that prospective loss may be taken into account. It has been said that this is qualified by the proposition that the child must be shown to have been earning something before any damages can be assessed. I know of no foundation in principle for that proposition either in the statute or in any doctrine of law which is applicable; nor do I think it is really established by the authorities when you examine them..... I have already indicated that in my view the real question is that which Willes, J., defines in one of the cases quoted to us, *Dalton v. South Eastern Ry. Co.* aye or no, was there a reasonable expectation of pecuniary advantage ?"

Proceeding further the learned Judge referred to the observations of Pollock, C. B, in *Taff Vale Ry. Co. v. Jenkins* (supra) :

"It appears to me that it was intended by the Act to give compensation for damage sustained, and not to enable persons to sue in respect of some imaginary damage, and so punish those who are guilty of negligence by making them pay costs."

9. Dealing with the facts of the case before him McCardie, J., observed :

"In the present factio the plaintiff has not satisfied me that he had a reasonable expectation of pecuniary benefit. His child was under four years old. The boy was subject to all risks of illness, disease, accident and death. His education and upkeep would have been a substantial burden to the plaintiff for many years if he had lived. He might or might not have turned out a useful young man. He would have earned nothing till about sixteen years of age. He might never have aided his father at all. He might have proved a mere expense. I cannot adequately speculate one way or the other. In any event he would scarcely have been expected to contribute to the father's income, for the plaintiff even now possesses 1,000, a year by his business and may increase it further, nor could the son have been expected to aid in domestic service. The whole matter is beset with doubts, contingencies and uncertainties. Equally uncertain, too, is the life of the plaintiff himself in view of his poor health. He might or might not have survived this son. That is a point for consideration, for, as was pointed out by Bray, J., when sitting in the Court of Appeal in *Price v. Glynea and Castle Coal Co.* : 'Where a claim is made under Lord Campbell's Acts, as it is here, it is not only a question of the expectation of the life of the claimant'. Upon the facts of this case the plaintiff has not proved damage either actual or prospective. His claim is pressed to extinction by the weight or multiplied contingencies. The action therefore fails."

10. The mode of assessment of damages is not free from doubt. It is best with certain difficulties. It depends on many imponderables. The English courts have formulated certain basis for calculating damages under Lord Campbell's acts. The rules ascertained by the English courts are set out in *Winfield on Torts*, 7th Edn. at Pages 135 and 136 as follows :

"The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of his employment. Then there is an estimate of how much was required or expended for his own personal and living expenses. The turned into a lump sum by taking a number of years' purchase. That sum, however, has to be taxed down by having regard to the uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters speculation and doubt. The number of years' purchase is left flud, from twelve to fifteen has been quite a common multiple in the case of a healthy man, and the number should not be materially reduced by reason of the hazardous nature of the occupation of the deceased was the bread-winner of the family. Obviously they cannot be applied, for example, where the claim is in respect of a mere expectation of pecuniary benefit from the deceased or where the deceased's contribution to the family was in kind and not in cash. In truth, each case must depend upon it sown facts. In *Dolby v. Godwin*, the plaintiff was the widowed mother of the deceased, an unmarried man 29 years of age, and he had contributed substantially to her upkeep. The Court of Appeal held that it would be wrong to assess the damages on the same basis as if the plaintiff were the widow of the deceased, principally on the ground that it was likely that he

would have married in due course and that then his contributions to his mother would have been reduced."

11. The mode and manner of ascertainment of damages in fatal accident cases came up for consideration in *Nance v. British Columbia Electric Rly. Co. Ltd.* In that case Viscount Simon, formulated the following tests for ascertaining the damages : (1) First estimate what was the deceased man's expectation of life if he had not been killed when he was and (2) What sums during those years, he would have probably applied to the support of the dependent. In fixing the expectation of life of the deceased regard must be had not only to his age and bodily health but premature termination of his life by a later accident. In estimating future provision for his dependent the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted. After making the calculations on the basis of the two tests, His Lordship observed that deduction must further be made for the benefit accruing to the dependent from the acceleration of his interest in his estate and further allowance must be made for the possibility that the dependent himself might have died before he died.

12. In *Gobald Motor Service Ltd. and Another v. R. M. K. Veluswami and Others*, this Court held that the actual extent of the pecuniary loss to the aggrieved party may depend on a data which cannot be ascertained accurately but must necessarily be an estimate, or even partly a conjecture. Shortly stated, the general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources come to them by reason of the death, that is, the balance of loss and gain to a dependent by the death must be ascertained. Therein it was further observed that where the courts below have on relevant material placed before them ascertained the amount of damages under the head of pecuniary loss to the dependents of the deceased, such findings cannot be disturbed in second appeal except for compelling reasons.

13. The law on the point arising for decision may be summed up thus : Compulsory damages under Section 1-A of the Act for wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and that under Section 2, the measure of damages is the economic loss sustained by the estate. There can be no exact uniform rule for measuring the value of the human life and the measure of damages cannot be arrived at by precise mathematical calculations but the amount recoverable depends on the particular facts and circumstances of each case. The life expectancy of the deceased or of the beneficiaries whichever is shorter is an important factor. Since the elements which go to make up the value of the life of the deceased to the designated beneficiaries are necessarily personal to each case, in the very nature of things, there can be no exact or uniform rule for measuring the value of human life. In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospective service of the deceased minor child. In addition they may receive compensation for loss of pecuniary benefits reasonably to be expected after the child attains majority. In the matter of ascertainment of damages, the Appellate Court should be slow in disturbing the findings reached by the courts below, if they have taken all the relevant facts into consideration.

14. Now applying the above rules to the facts of the present case, it is seen that the deceased child was only 8 years old at the time of his death. How he would have turned out in life later is at best a guess. But there was a reasonable probability of his becoming a successful man in life as he was a

bright by in the school and his parents could have afforded him a good education. It is not likely that he would have given any financial assistance to him parents till he was at least 20 years old. As seen from the evidence on record, his father was a substantial person. He was in business and his business was a prosperous one. As things stood he needed no assistance from his son. There is no material on record to find out as to how old were the parents of the deceased at the time of his death. Nor is there any evidence unable to come to the conclusion that the damages ordered by the High Court are inadequate.

15. In the result this appeal fails and the same is dismissed. But in the circumstances of the case we make no order as to costs.

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