C. K. Subramonia Iyer & Ors vs T. Kunhikuttan Nair And 6 Ors on 8 October, 1969

Equivalent citations: 1970 AIR 376, 1970 SCR (2) 688, AIR 1970 SUPREME COURT 376, 1970 2 SCR 688, 1970 2 SCJ 381, 1970 ACJ 110, 1970 MADLJ(CRI) 691

Author: K.S. Hegde

Bench: K.S. Hegde, J.C. Shah

PETITIONER:
C. K. SUBRAMONIA IYER & ORS.

Vs.

RESPONDENT:
T. KUNHIKUTTAN NAIR AND 6 ORS.

DATE OF JUDGMENT:
08/10/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SHAH, J.C.

CITATION:
1970 AIR 376 1970 SCR (2) 688
1970 SCC (3) 64

ACT:
Fatal Accidents Act (13 of 1855), ss. 1A and 2-Assessment of damages-Principles for.

HEADNOTE:
The appellants filed a suit claiming a sum of Rs. 30,000 as damages under ss. 1A and 2 of the Fatal Accidents Act, 1855 for the death of their son aged 8 years. The boy had stood first in Standard III and his future was claimed to be bright. The trial court computed the damages under ss. 1A and 2 at Rs. 5,000. In appeal the High Court determined the damages under s. 1A at Rs. 5,000 and under s. 2 at Rs. 1,000. In appeal by certificate before this Court..
HELD : Compulsory damages under s. IA of the Act for

wrongful death must be limited strictly to the pecuniary loss to the beneficiaries and under s. 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 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 the damages the court must exclude all considerations of matter which rest in speculations or fancy though conjecture to some extent is inevitable. As a general rule parents are entitled to recover the present cash value of the prospec-tive 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. [695 F-696 A]

Davies and Anr. v. Powell Dufleryn Associated Collieries Ltd. [1942] A.C. 601, Franklin v. South East Railway Company, 157 E.R. 3 H. & N. 448, Taff Vale Railway Company v. Jenkins, [1913] A.C. 1, Bartlett V. Cohen & Ors. [1921] 2 K.B. 461, Nance v. British Columbia Electric Rly. Co. Ltd. [1951] A.C. 601 and Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors. [1962] 1 S.C.R. 929, applied.

(ii) In the present case although the deceased was a bright child, it was uncertain how much assistance he would have given after growing up to his parents. The father was a prosperous business man and hardly needed assistance. There was no material on record as to the age of the parents and their state of health. On the basis of the evidence on record it could not be said that the damages ordered by the High Court were inadequate. [696 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2227 of 1966.

Appeal from the judgment and decree dated December 10, 1963 of the Kerala High Court in Appeal Suit No. 1094 of 1959. S. V. Gupta and Lily Thomas, for the appellants. Rameshwar Nath, for respondent No. 2. Sardar Bahadur, Vishnu Bahadur Saharya and Yougindra Khushalani, for respondent No. 3.

The Judgment of the Court was delivered by Hegde, J. The question for decision in this appeal by certificate is short but important and that question is what are the principles governing the assessment of damages under ss. 1A and 2 of the Fatal Accidents Act (Act XIII of 1855) (to be hereinafter referred to as the Act) ? 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 good education. Hence there was a bright future for him. The plaintiffs claimed a sum of Rs. '30,000 as damages under ss. IA and 2 of the Act. The District Judge computed the damages under ss. IA and 2 at Rs. 5,000. In appeal the High Court determined the damages under s. 1A at Rs. 5,000 and under s. 2 at Rs. 1,000. Aggrieved by that decision, the plaintiffs have brought this appeal. We shall first read s. 1A and 2 for the purpose of ascertaining the principles governing the assessment of the damages under those sections. Section IA 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 it 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 that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased."

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 relations 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 IA is in substance a reproduction of the English Fatal Accidents Acts 9 and 10

Vict. ch. 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. The scope of s. 1 of the Campbell's Acts was considered by the House of Lords in Davies and Anr. v. Powell Dufferyn Associated Collieries Ltd.(1), Dealing with the mode of asse ssment of damages under that section Lord Russel 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 dependant by reason of the relevant death must be taken into account. Under those Acts the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately." Lord Wright stated the law on the point thus "The general nature of the remedy under the Fatal Accidents general 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 Summer observed in Admiralty Commissioners v. S. S. (1) [1942] A. C. 601 America(1). The claim is, in the words of Bowen L.J., in The Vera Cruz (No. 2)(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, s. 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(4). The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing, on the one hand, the loss to him of the future pecuniary benefit, and, on the other, any pecuniary advantage which from whatever source comes to him by reason of the death."

In ascertaining pecuniary loss caused to the relations mentioned in s. IA, 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 r easonable expectation of pecuniary benefit from the continuance of the life of the deceased-see Franklin v. The South East Railway Company (4 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 ought 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 the life."

In Taff Vale Railway Company v. Jenkins(5), the Judicial Committee observed that it is not a condition precedent to the maintenance of an action under the Fatal Accidents Act, 1846, (1) [1917] A. C. 38,52 (3) 13 Appeal Cases.800, 804.

(4) 157, English Reports 3 H & N.T. 448. (5) [1913] A. C. 1.

(2) (1884) 9 P. D. 96, 101:

> 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 :
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> "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 can I think be dr awn from circumstances other than and different from them."

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 proba- bility of pecuniary advantage. In Barnett v. Cohen and ors.(1), McCardie J. speaking for the Court quoted with approval the following observations of Lord Haldane in his judgment in Taff Vale Ry. Co. v. Jenkins(2) :

> " "The basis is not what 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 then 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 (1) [1921] 2 K.B. 461 (2) [1913] A.C. 1.

Eastern Rv. Co.(1) '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(2) :
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> " "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." "

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

> "In the present action the plaintiff has not satisfied me that he had a reasonable expectation of pecuniary benefit. Ms 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 1,0001, 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 his 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.(3): "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 ht or multiplied contingencies. The action therefore fails."

The mode of assessment of damages is not free from doubt. It is beset with certain difficulties. It depends on many impon- derables. The English courts have formulated certain basis for (1) (1858) 4, C. B. (N.S.) 296.

(2) [1913] A. C. 1.

(3) 9 B. W. C. C. 188, 198.

calculating damages under Lord Campbell's Acts. The rules ascertained by the English courts are set out in Winfield on Torts 7th Edn. at pp. 135 and 136 as follows :

> "The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some ex tent 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 balance will give a datum or basic figure which will generally be 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 of 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 man. These principles are, however, only appropriate where 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 decased's contribution to the family was in kind and not in cash. In truth, each case must depend upon its own facts. In Dolbey v. Godwin(1), 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."

The mode and manner of ascertainment of damages in fatal accidents cases came up for consideration in Nance v. British Columbia Electric Rly. Co. Ltd.(2). 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 dependant. In fixing the expectation of life of the deceased regard must be had not only to his age and bodily (1) [1955] 1, W. L. R. 553, 1103.

(2) [1951], A. C. 601:

health but premature termination of his life by a later accident. In estimating future provision for his dependant 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 dependant from the acceleration of his interest in his estate and further allowance must be made for the possibility that the dependant himself might have died before he died.

In Gobald Motor Service Ltd. and anr. v. R. M. K. Veluswami and ors.(1), 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 dependant 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 dependants of the deceased, such findings cannot be disturbed, in second appeal except for compelling reasons.

> The law on the point arising for decision may be summed up thus : Compulsory damages under s. IA of the Act for worngful death must be limited strictly to the pecuniary loss to the beneficiaries and that under s. 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 (1) [1962] 1 S.C.R. 929 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.

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 boy 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 his 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 about their state of health. On the basis of the evidence on record, we are unable to come to the conclusion that the damages ordered by the High Court are inadequate.

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.

G.C. Appeal dismissed.