

-4 JUL 1956

43578

G.M.H.G. 12
23, 1955

No. 19 of 1954.

INSTITUTE OF LEGAL STUDIES
In the Privy Council.**ON APPEAL****FROM THE COURT OF APPEAL OF THE SUPREME COURT
OF THE COLONY OF SINGAPORE. ISLAND OF SINGAPORE.**

BETWEEN

LIM JOO CHIANG *Appellant*
(Defendant)

AND

10 LIM SIEW CHOO and CHIA BOON LAI (the
Administratrix and Administrator of the Estate
of CHIA BOON POH, alias CHIA BOON PAH,
deceased, *Respondents*
(Plaintiffs)**Case for the Appellant**

RECORD.

1. This is an appeal from a Judgment of the Court of Appeal of the p. 19.
Supreme Court of the Colony of Singapore, Island of Singapore given
upon the 16th January 1953 whereby the Court dismissed the Appellant's
appeal from a Judgment of the Chief Justice of the Colony of Singapore, p. 9.
20 Island of Singapore, given upon the 2nd October 1952.

2. The matters in issue arise out of a claim by the Respondents as p. 1.
Administratrix and Administrator respectively of the estate of Chia Boon
Poh, alias Chia Boon Pah, deceased, for damages for the estate and for
the benefit of the dependants of the deceased who are alleged to have
suffered damage by reason of the negligence of the Appellant in the driving
of a motor car whereby the deceased was killed on the 4th June 1951.

The Appellant admitted liability for negligence and the sole issue p. 6.
is as to the quantum of damages to be awarded to the Respondents under
the provisions of the Civil Law Ordinance of the Straits Settlements,
30 Chapter 42, Sections 7 and 8, as repealed and re-enacted, so far as concerns
Section 7, by the Civil Law Ordinance No. 30 of 1940.

3. The new Section 7 of the said Ordinance provides as follows :—

Effect of
death on
certain
cases of
action.

7.—(1) Subject to the provisions of this section, on the
death of any person after the 10th day of June 1940 all causes
of action subsisting against or vested in him shall survive
against, or, as the case may be, for the benefit of, his estate.

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to any claim for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages ;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that 10 person as flows from the breach of promise to marry ;
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—

- (a) proceedings against him in respect of that cause of 20 action were pending at the date of his death ; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been 30 subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 8 of this Ordinance and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action 40 under the said section as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to

be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

4. Section 8 of the said Ordinance provides as follows :—

10 Compensation to the family of a person for loss occasioned by his death.

8.—(1) Whenever the death of a person is 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 for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to an offence under the Penal Code.

(2) Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

20

(3) In every such action the Court may give such damages as it thinks proportioned to the loss resulting from such death to the parties respectively for whom and for whose benefit such action is brought.

(4) The amount so recovered after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them in such shares as the Court by its judgment or decree directs.

30 Not more than one action to be brought.

(5) Not more than one action shall be brought for and in respect of the same subject matter of complaint, and every such action shall be brought within twelve calendar months after the death of such deceased person.

(6) In any such action the executor 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.

40 Plaintiff shall deliver particulars.

(7) The writ of summons in any such action shall give full particulars of the person or persons for whom or on whose behalf such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

Where no executor or no action brought within six months, action by persons beneficially interested.

(8) If there is no executor of the person deceased or there being such executor no action as in this section mentioned has, within six calendar months after the death of such deceased person, been brought by the executor, such action may be brought by all or any of the persons, if more than one, for whose benefit such action would have been brought if it had been brought by the executor, and every action so to be brought shall

be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be as if it was brought by the executor.

Money paid
into Court
in one sum.

(9) It shall be sufficient for any defendant in any action brought under this section to pay any money he is advised to pay into Court as a compensation in one sum to all persons entitled under this section for his wrongful act, neglect or default, without specifying the shares into which it is to be divided.

(10) If the said sum is not accepted and an issue is taken 10 by the plaintiff as to its sufficiency and the Court thinks the same sufficient, the defendant shall be entitled to judgment upon that issue.

Interpreta-
tion.

(11) The following words and expressions used in this section are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter :—

“ parent ” includes father and mother and grandfather and grandmother ; and

“ child ” includes son and daughter and grandson and 20 granddaughter and stepson and stepdaughter.

p. 6.
p. 7.

5. At the hearing before Chief Justice Murray-Aynsley it was agreed between the parties that the cost of obtaining Letters of Administration amounted to \$350. Evidence was given by :—

p. 7.

(i) *Lim Siew Choo*, the administratrix and widow of the deceased, that she (aged 43) and her four children, namely, three sons aged respectively 20, 10 and 2 years and a daughter aged 13 years, were the dependants of the deceased. That the deceased was 49 when he died and that he paid her \$8 daily (or \$250 per month) to run the home, of which the deceased cost her \$50 30 (appearing in the notes of the Chief Justice as \$.150) per month for food. That during the deceased's lifetime she ran a coffee-stall and coconut plantation in front of the matrimonial home, which business belonged to the deceased, from which she made about \$100 monthly.

p. 9.
p. 7.

It appears that she handed over these moneys to the deceased, and that she had continued since the deceased's death to make about \$100 monthly from the said coffee stall and coconut plantation. That at the date of the deceased's death she had saved a little over \$800 from moneys given to her by the deceased for household expenses. That she has been given presents of \$40 a month by her 40 brother-in-law since the deceased's death. That the funeral expenses amounted to \$663 which she had paid out of savings.

p. 7.

(ii) *Dr. Balasingham*, pathologist, that the general health of the deceased was good and that he could have expected a normal span of life, i.e., 60 years, but that it was doubtful if he could have pulled a trishaw up to the age of 60.

(iii) *Alan Edward Geddes*, actuary, that the deceased had an actuarial life expectation of 17 years. That an annuity at the rate of \$200 per month would at 4 per cent. cost \$29,000 for 17 years and \$19,000 for 10 years. p. 8.

(iv) *Goh Chiew Chwee*, undertaker, that the price of \$660 charged for the funeral was fair but that the coffin cost \$200 more than the type good enough for the deceased. p. 8.

6. The Chief Justice awarded—

10 (A) \$2,000 (to include \$400 for funeral expenses and \$350 for costs of Letters of Administration) under Section 7 of the Civil Law Ordinance (of the \$1,250 one-third was allocated to the widow and the remaining two-thirds was divided equally between the four children). p. 9. p. 10.

(B) \$15,000 under Section 8 of the same Ordinance apportioned as to \$10,000 to the widow and \$5,000 between the three younger children. p. 10.

7. The Appellant appealed to the Court of Appeal in Singapore. His Counsel argued that the award of \$15,000 was excessive and erroneously assessed and that the Chief Justice did not take into account the following 20 items :— p. 12.

(A) the \$100 per month from the coffee-shop which had been acquired by the widow (either with or without the children sharing in it) as a result of the death ; p. 13.

(B) the voluntary contributions to the widow of \$40 per month made by the deceased's brother from the date of the death up to the date of the award (15 months—\$600) ;

(C) the basic loss of the dependants, which was not more than \$150 per month—instead of the \$170 calculated by the Trial Judge ;

30 (D) the \$800 saved by the widow out of housekeeping money, which was the property of the deceased ;

(E) the amount awarded under Section 7 of the Civil Law Ordinance, which should have been deducted from any sum awarded under Section 8 ;

(F) the fact that \$350, the cost of the Letters of Administration, should not have been awarded under Section 7 of the said Ordinance.

8. The Court of Appeal by the Judgment of the Honourable Mr. Charles Mathew, Chief Justice of the Federation of Malaya, dated the 16th January 1953, in which the other two members of the said Court concurred, dismissed 40 the said appeal with costs, having reassessed the amount to be awarded by taking into account items (B) (C) and (D) of the preceding paragraph, and making an allowance for item (E), but transferring item (F) from the claim under Section 7 to that under Section 8 of the said Ordinance. The p. 19. p. 21. p. 20.

Court of Appeal did not, however, make any allowance for item (A), the \$100 per month from the coffee-shop, on the grounds that this did not require consideration in calculating the sum to be awarded.

p. 28.

9. On the 26th May 1953 the said Court of Appeal granted to the Appellant liberty to appeal from the said Judgment of the Court of Appeal.

10. The Appellant submits that the Judgments of Murray-Aynsley, C.J., as affirmed by the Court of Appeal should be varied by substituting for the said awards such lower sums as may in the premises seem fit for the following (amongst other)

REASONS

10

- (1) BECAUSE the sums awarded under both Section 7 and Section 8 of the Civil Law Ordinance were excessive and erroneously calculated.
- (2) BECAUSE the award under Section 8 should have been reduced by the value of the \$100 per month from the coffee-shop, in addition to the items (B) (C) and (D) in paragraph 8 of this case, which were allowed (it is submitted properly) in the calculations of the Court of Appeal, which on the same basis would have reduced the "annuity" loss of the dependants to \$3,960, and the final calculation to \$4,221.67 plus \$288.33 = \$4,510. 20
- (3) BECAUSE the cost of letters of administration should not have been included under Section 7 nor any allowance made therefor under Section 8 of the Ordinance.
- (4) BECAUSE the damages recoverable under Section 7 of the Ordinance must be taken into account in assessing damages under Section 8 in the case of dependants who will benefit from the damages under Section 7.
- (5) BECAUSE it is incorrect to assess damages on the basis of the cost of an annuity for the full expectation of 30 life of a deceased.
- (6) BECAUSE there was no evidence to justify holding the deceased would have continued to obtain his former earnings as a trishaw driver up to the full age of 60 or that he would thereafter have been able to earn any sums in excess of his own living expenses.

FRANK WHITWORTH.

In the Privy Council.

ON APPEAL

*from the Court of Appeal of the Supreme
Court of the Colony of Singapore, Island
of Singapore.*

BETWEEN

LIM JOO CHIANG . . . Appellant
(Defendant)

AND

**LIM SIEW CHOO and CHIA
BOON LAI** (the Adminis-
tratrix and Administrator of
the Estate of Chia Boon
Poh, alias Chia Boon Pah,
deceased) *Respondents*
(Plaintiffs)

Case for the Appellant

SPEECHLY, MUMFORD & CRAIG,
10 New Square,
Lincolns' Inn, W.C.2,
Solicitors for the Appellant.