No. 19 of 1954.

# 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 (Defendant) . . . . *Appellant*

AND

LIM SIEW CHOO and CHIA BOON LAI (the Administratrix and Administrator of the Estate of CHIA BOON POH alias CHIA BOON PAH, Deceased) (Plaintiffs) . . . . . *Respondents.*

# Case for the Respondents

RECORD.

1. This is an Appeal from a Judgment dated 16th January, 1953, of the Court of Appeal of the Supreme Court of the Colony of Singapore, pursuant to leave granted by the said Court on the 26th May, 1953, dismissing with costs the Appellant's Appeal from a Judgment dated 2nd October, 1952, of the Supreme Court of the Colony of Singapore. p. 19. p. 28. p. 10.

2. The Respondents, who were the Administratrix and Administrator of the Estate of Chia Boon Poh Deceased and who were the Plaintiffs, sued the Petitioner, who was the Defendant, and by the said Judgment dated 2nd October, 1952, obtained judgment for $2,000 under Section 7 of the Civil Law Ordinance and for $15,000 under Section 8 of the Civil Law Ordinance together with costs. p. 10.

3. Section 7 of the Civil Law Ordinance (hereinafter called "Section 7") is the local equivalent of the Law Reform (Miscellaneous Provisions) Act, 1934, enabling Administrators to sue for damages for loss of expectation of life and for funeral expenses. The Order drawing up the Judgment makes provision for part of the sum so awarded to be allocated amongst those beneficially entitled on an intestacy. The explanation of this is that the Trial Judge also exercises jurisdiction in Probate and this allocation is made in respect of this particular jurisdiction.

4. Section 8 of the Civil Law Ordinance (hereinafter called " Section 8 ") is the local equivalent of the Fatal Accidents Acts 1846 to 1908 and the damages awarded were apportioned amongst the dependants of the Deceased as follows :—

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|---|---|
| $10,000 | Plaintiff Administratrix and Widow. |
| $1,200 | Chia Kwee Hock, a child. |
| $1,000 | Chia Goek Keow, a child. |
| $2,800 | Chia Kwee Kim, a child. |

p. 6. 5. Liability was admitted in the Defence. The only issue at the trial, in the Court of Appeal and on this Appeal, is *quantum*.

6. It is conceded by the Petitioner that the Trial Judge, Murray-Aynsley, C.J., misdirected himself when assessing the sum of $2,000 under Section 7. He purported to award the Respondents $350 in respect of the cost of Letters of Administration. It is conceded that such an item is not recoverable under Section 7. But the practical effect of this misdirection is negligible and is dealt with in paragraphs 27–35 hereafter. The real dispute is in respect of the claim under Section 8.

7. Under Section 8 the main questions in dispute are :—

(A) Whether or not there have been concurrent findings of fact on *quantum*.

(B) Whether or not the Court of Appeal upheld the figure of $15,000 awarded by the Trial Judge by reference to the cost of an annuity for an annual sum equivalent to that paid by the Deceased to the widow; and, whether, if so, they erred in law in so doing.

(C) Whether or not the Court of Appeal misunderstood the true effect of the evidence and, in so doing, based their decision on false premises.

(D) Whether or not the estimate of $15,000 by the Trial Judge was so manifestly excessive that it should have been reduced by the Court of Appeal.

p. 4, l. 22. p. 7, ll. 27–32. 8. The Deceased was a trishaw driver. The Deceased died in consequence of an accident on the 3rd June, 1951. He was then 49 years old, married and having four children. At the date of the trial in October, 1952, the three sons were aged respectively 20, 10 and 2 years old, and the daughter was 13 years old.

p. 7, ll. 7–12. 9. The Pathologist said that the deceased was in good health and had no organic trouble. In cross examination he said that the normal span of life of a trishaw driver was 60 years and that he doubted whether a person would be able to continue this occupation up to the age of 60 years. The Respondents contend that a Pathologist is not an expert on life statistics and/or the effect on a healthy man of working as a trishaw driver. The Respondents rely on the following further evidence :—

p. 7, l. 32. p. 7, l. 38. (1) The evidence of the widow that the Deceased was a strong man who never got sick.

(2) The evidence of Dr. Illarky that the occupation of a trishaw driver was a healthy one, healthier than that of clerks. p. 8, ll. 3–4.

(3) The evidence of the other trishaw drivers, one of whom was 60 and the other of whom was 58 and both of whom were continuing their occupation as trishaw drivers. p. 7, ll. 13–24.

(4) The evidence of Mr. Geddes, an actuary, that the expectation of life of a Chinaman aged 49 was an expectation of 17 years. p. 8, l. 9.

10. The Deceased used to pay the widow $8 a day for household expenses. Out of this the widow used to provide the Deceased with one meal a day. As an estimate, food cost about $1 a day per head. The Deceased bought his own clothes. p. 7, l. 32. p. 7, ll. 27–40.

11. The Deceased and his family lived in an attap in a cocoanut plantation. The widow described this attap as her house. No evidence was given as to its value. People used to come to the entrance of this attap for cups of coffee. The widow used to make coffee which she sold to such people. This brought her in an income of about $100 per month. p. 7, ll. 27–40.

12. At the date of the death of the Deceased the widow was in possession of $800 which were savings. There is nothing in the evidence to indicate whether these savings were from the housekeeping money paid by the Deceased to the widow or from the profits made from the sale of coffee. p. 7, l. 36.

13. After the death of the Deceased and prior to the trial the brother-in-law of the widow had been paying the widow $40 per month to assist her to carry on. It is not stated in the evidence that these payments were made as gifts. p. 7, l. 31.

14. Mr. Geddes, the actuary, stated that the value of an annuity for payment at the rate of $200 per month for 17 years' certain was $29,000, and that the value of an annuity for payment at the same rate for 10 years' certain was $19,000. p. 8, ll. 8–10.

15. Murray-Aynsley, C.J., assessed the damages on the above evidence. In his Judgment he did not indicate how he had arrived at the figure assessed. He merely said, " Under Section 8 I award $15,000. This is in addition to what may be received from the estate of the Deceased." The amount receivable from the estate of the Deceased was in fact $1,250. Therefore, the estimate which the Respondents have to uphold in this Appeal is in total $16,250. p. 14, ll. 1–2.

16. The Respondents contend that, on the evidence, this is a fair and proper estimate, and that there is no ground for presuming that the Learned Judge misdirected himself in computing this estimate.

17. The Petitioner appealed. The first ground of appeal was a general allegation that the damages were excessive and erroneously assessed. The second ground of appeal was that the Trial Judge erred in law by failing to take into account the fact that the widow had acquired the Coffee Shop on her husband's death. The Respondents contend that this ground of appeal is based on a misconception of the evidence. There was no " Coffee Shop " in the sense of there being any independent premises. It was merely the practice of the widow to make and sell pp. 12–13.

cups of coffee from the entrance to her attap. Any profits accruing therefrom would be her profits and would be unaffected by the death of the Deceased.

18. The third ground of appeal was that the Trial Judge erred in
p. 13, ll. 6–13. law in failing to take into account the payment of $40 per month made by the brother-in-law to the widow after the death of the Deceased. The Respondents contend that it is impossible to know whether or not and to what extent the Trial Judge took this fact into consideration. The Respondents further contend that there is no reason why any deduction from the amount otherwise recoverable should be made in respect of this matter. In the absence of an *animus donandi* the brother-in-law would be entitled to sue the widow either for money had and received or for money lent. There is no reason to presume an *animus donandi* in the absence of express evidence and there is every reason to presume the contrary. These payments were obviously motivated by the need of the widow occasioned by the death of her husband. At the time these payments were being made proceedings were being taken by the widow to recover from the Petitioner the loss occasioned to her thereby. A gift in law to the widow would be in substance a gift to the Petitioner. It is contended that there is no reason to presume an intent on the part of the brother-in-law to benefit the Petitioner, and that in consequence thereof there is no reason to presume, in the absence of express evidence, that these payments were by way of gifts.

19. The fourth ground of appeal was that the Trial Judge based his calculations on the assumption that the household would lose $170 per month in consequence of the death of the Deceased, whereas on the evidence the highest monthly figure which should be used as a calculator
p. 13, ll. 14–25. is $150 per month. The Respondents contend that the sum awarded as damages is consistent with the Trial Judge having used as a general calculator the figure of $170 per month or $150 per month and that there is no means of ascertaining the exact figure on which the Trial Judge based his calculation. The Respondents further contend that there is no mathematical formula which can be applied so as to arrive at a precise figure by way of damages. The estimate must be, in all the circumstances, fair, and the sum so awarded is a fair estimate.

20. The fifth ground of appeal was that the Trial Judge erred in law in failing to take into account—

p. 13, ll. 26–31. (A) $1,250 awarded as general damages for loss of expectation of life under Section 7;

(B) $800 which the widow admitted were savings.

21. The Respondents contend that in respect of (A) above, it is clear that the Trial Judge had taken into account the sum of $1,250. The Respondents further contend that there is no means of ascertaining whether or not and to what extent the Trial Judge took into consideration the sum of $800. In respect of the $800 the Respondents further contend that, having regard to the fact that the wife was earning money from the sale of coffee, there is no reason to presume that the $800 was the property

of the deceased. Furthermore, the Trial Judge should have regard to the fact that, accident or no accident, this sum might still have become the property of the widow.

22. The Appeal came on for hearing on the 16th December, 1952, before Mathew, C.J., and Brown and Knight, JJ. On 27th January, 1953, a Judgment was delivered by Mathew, C.J., with which the other two Judges concurred. pp. 19-21.

23. Mathew, C.J., stated that the Trial Judge had not set out in his Judgment how he arrived at the figure of $15,000. He further stated p. 19, l. 34.
10 that the sum awarded under Section 8 should have regard for the sum p. 20, ll. 3-10.
awarded as general damages under Section 7. He then reviewed the evidence to ascertain whether such evidence showed a loss to the dependants of $16,250, being the $15,000 awarded under Section 8, together with the p. 20, l. 25-
$1,250 awarded under Section 7. As a result of this review of the evidence, p. 21, l. 6.
Mathew, C.J., concluded that the sum awarded by the Trial Judge was not excessive even if one arrived at this figure after deducting from the sum otherwise recoverable—

(A) $800 in respect of savings ;

(B) $600 in respect of moneys advanced by the brother-in-law.

20 24. The Respondents contend that the sum awarded is a proper one, having regard to the evidence ; that there are concurrent findings of fact to this effect ; and that, in consequence, it is contrary to practice to permit the evidence to be reviewed once again on this Appeal.

25. The Petitioner in his Affidavit for Leave to Appeal contends that the Court of Appeal erred in law because they commenced their calculation by computing the cost of an annuity. It is contended by the p. 26, ll. 30-40.
Respondents that the Court of Appeal approached the question of *quantum* in the only practical way. They first considered the payments being received by the widow. They secondly considered the period over which
30 such payments were likely to continue. They then recognised that there must be a discount from any sum so computed by reason of the fact that the sum awarded is presently payable, but the loss in respect of which it is awarded is spread over a number of years.

26. The Respondents contend that the other matters relied upon by the Petitioner in his said Affidavit do not disclose that the Court of p. 26, l. 40-
Appeal acted on any wrong principle of law or any misconception of the p. 27, l. 17.
evidence.

27. The Respondents now desire to deal with the claim under Section 7. The sum awarded was $2,000, made up as follows :—

| | |
|---|---|
| 40 General Damages for loss of expectation of life .. .. | $1,250 |
| Costs of Letters of Administration (agreed) .. .. | 350 |
| Funeral Expenses .. .. .. .. .. .. | 400 |
| | $2,000 |

28. The Respondents contend that the award of $1,250 for general damages for loss of expectation of life is insufficient and that $1,600 is the minimum which should be awarded under this heading. There is no cross-appeal, but the Respondents rely upon this as appears from paragraph 35 hereof.

29. In 1952, when the case came on for hearing, it was the practice in Singapore for Plaintiffs to include in the Pleadings the cost of Letters of Administration and to cite as authority therefor the case of *Feay* v. *Barnwell* [1938] 1 A.E.R. page 31. In this case the costs of Letters of Administration were pleaded.

30. The said case is authority for the following proposition. When the persons beneficially entitled under Section 7 are identical with the dependants under Section 8, one should not deduct from the damages otherwise recoverable under Section 8, all the damages recoverable under Section 7 ; for the dependants would not receive all such damages. The amount receivable would be the damages awarded, less the cost of Letters of Administration. In 1952 the true effect of this case had been generally misunderstood by the Judges in Singapore and the practice had been wrongly to allow the cost of Letters of Administration as damages under Section 7. When the persons beneficially entitled under Section 7 were identical with the dependants under Section 8, this error would not affect the amount which defendants had to pay in total or the amounts which other parties would receive in total.

31. The proposition for which the said case is an authority is now and has been for some time properly understood in Singapore and properly applied. Consequently, no question of principle is involved.

32. In this case the persons beneficially entitled under Section 7 were almost identical with the dependants under Section 8. The exception is the eldest son, who was a beneficiary under Section 7 but was not a dependant under Section 8. This son was entitled to one-sixth of the Estate. He was in fact awarded one-sixth of $1,250, which is $208.33. On the actual findings of the Trial Judge he was only entitled to one-sixth of $900, which is $150.

33. Mr. Murphy, counsel for the Respondents, has no positive recollection whether or not the case of *Feay* v. *Barnwell* was cited at the trial or on appeal. His general recollection is that the argument on appeal was treated in substance as a question of whether or not the evidence in the case justified an overall figure of $17,000. The notes of the argument taken by the judges on appeal support the following conclusions :—

p. 14, l. 15. (1) That Mr. Smith, counsel for the Petitioner, submitted that the costs of Letters of Administration was not a head of damage.

(2) That Mr. Smith did not admit that the costs of Letters of Administration were a relevant factor, the effect of which was to reduce the sum otherwise deductible from the damage awarded under Section 8.

p. 14, l. 40.
p. 16, l. 34.
p. 18, l. 20. (3) That Mr. Murphy cited the case of *Feay* v. *Barnwell*.

(4) That Mr. Murphy submitted that the intention of the Trial Judge was to give a general award of $17,000; and that the justification of this was the true question in the appeal. p. 16, ll. 36–39. p. 18, ll. 21–22.

(5) That Mr. Smith in reply did not challenge the above submission of Mr. Murphy; or argue that the principle enunciated by *Feay* v. *Barnwell* had been misapplied.

34. In support of the above contentions, the Respondents not only rely on the passages referred to in the margin to paragraph 33 hereof but on the absence of notes by the learned judges which might reasonably be expected to have been made if the above conclusions were wrong. In particular the Respondents rely on the fact that there was no finding by Mathew, C.J. in giving the judgment of the Court as to whether or not the cost of Letters of Administration were recoverable as damage under Section 7. The Respondents contend that this is only explicable on the assumption that Mr. Smith permitted the Court to treat this matter as irrelevant for practical purposes, having regard to the principle enunciated in *Feay* v. *Barnwell*.

35. In these circumstances it is contended that the Petitioner should not be permitted to take this point in this Appeal; but if the point is permitted to be taken, the Respondents make answer as follows. The Respondents admit that the Trial Judge ought not to have allowed the cost of Letters of Administration " $350," but the Respondents contend that the Trial Judge should have awarded a sum of not less than $1,600 for general damages for loss of expectation of life. If this contention be correct, it follows that the finding of $2,000 as the *quantum* under Section 7 should not be disturbed.

The Respondent humbly submits that this Appeal should be dismissed with costs for the following amongst other

## REASONS

(1) THAT the Petitioner should not be allowed to complain about that part of the Judgment which deals with the claim under Section 7.

(2) THAT the sum recoverable as general damages for loss of expectation of life under Section 7 should be at least $1,600.

(3) THAT there have been concurrent findings of fact that the amount recoverable as damages under Section 8 is $15,000.

(4) THAT on the evidence, $15,000 is a fair estimate of the loss occasioned to the dependants of the Deceased consequent upon his death.

(5) THAT there is no ground for presuming that the Trial Judge misdirected himself in calculating the figure of $15,000.

(6) THAT, for the reasons given by the Court of Appeal, the estimate of damage by the Trial Judge should not be set aside.

IAN BAILLIEU.

No. 19 of 1954.

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** (Defendant) . . . *Appellant*

AND

**LIM SIEW CHOO** and **CHIA BOON LAI** (the Administratrix and Administrator of the Estate of Chia Boon Poh Deceased) (Plaintiffs) . *Respondents.*

# Case for the Respondents

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