

1944

Present: Howard C.J. and Keuneman J.

B. J. FERNANDO, Appellant, and SUNTHARY PILLAI,
et al. Respondents.

45—D. C. Colombo, 13,315.

Cause of action—Action to recover damages—Death caused by rashness or negligence—Action by widow and children of deceased—Joinder of causes of action—Civil Procedure Code § 11.

The plaintiffs, who are the widow and minor children of Selliah, sued the first and second defendants in the alternative, alleging that one of the defendants had caused the death of Selliah by rashness or negligence.

Held, that there was no misjoinder of causes of action.

A PPEAL from an order of the District Judge of Colombo.

H. V. Perera, K.C. (with him E. F. N. Gratiaen and D. M. Weerasinghe), for second defendant, appellant.

N. K. Choksy (with him R. A. Kannangara), for first defendant, respondent.

J. E. M. Obeyesekere (with him S. R. Wijayatilleke), for plaintiffs, respondents.

Cur. adv. vult.

February 25, 1944. KEUNEMAN J.—

The plaintiffs, who are the widow and minor children of Selliah, brought this action against the first and second defendants in the alternative, alleging that one of the defendants had caused the death of Selliah by rashness or negligence. The only matter argued in appeal was that there was a misjoinder of causes of action in view of the fact that these plaintiffs have joined in bringing the action.

For the purpose of deciding this point it is necessary to consider the nature of the action brought, but I do not think it is necessary to go into the history of the development of this kind of action. As Innes C.J. said in *Jameson's Minors v. C. S. A. R.*¹, the action is anomalous and should properly be regarded as an action *sui generis*. The learned Chief Justice explained that "While on the one hand it resembles the ordinary action for personal injury in that it is based on *culpa*, and while the breach of duty essential to its existence is a breach of duty owed at the time of the wrongful act to the injured man; yet, on the other hand, the compensation claimable under it is due to third parties, who do not derive their rights through his estate, but on whom they are automatically conferred by the fact of his death". See also *Union Government v. Warnecke*², *Union Government v. Lee*³.

The question we have to decide is the application of section 11 of the Civil Procedure Code to this form of action. The section runs as follows:—

"All persons may be joined as plaintiffs in whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action."

In section 5 of the Code the term "cause of action" is defined as follows:—"Cause of action" is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury".

These two sections bring into sharp contrast two aspects of the same matter, namely, (a) "the wrong" and (b) "the right to relief". We have to decide whether there is only one "wrong"; it does not matter that "the right to relief" is claimed jointly, severally, or in the alternative by several persons.

In this particular class of case the "wrong" alleged is a breach of duty towards the deceased; that is one wrong. The "right to relief", however, *i.e.*, the compensation, may be available to a number of persons. I incline to the view that the right to relief is "several", but it does not matter whether it is joint or several. In any event all these persons can join as plaintiffs in the action. In my opinion there has been no misjoinder of causes of action. The appeal is dismissed. The appellant will pay the costs of appeal to the plaintiffs, respondents.

HOWARD C.J.—I agree.

Appeal dismissed.

¹ (1908) T. S. at p. 584, 5.

² S. A. L. R. 1911, A.D. 664.

³ S. A. L. R. 1927., A. D. at 222.