

**HERATH AND OTHERS**  
**v.**  
**TILAKARATNA *alias* SOYSA**

COURT OF APPEAL,  
WIJETUNGA, J., AND ANANDACOOMARASWAMY, J.,  
C.A. No. 590/86F,  
D.C. KANDY CASE No. 14301/M.R.,  
JULY 02, SEPTEMBER 03 AND NOVEMBER 05, 1990.

*Delict – Negligence or intentional causing of death – Damages.*

Where two defendants were charged with the murder of the deceased and pleaded guilty to the lesser offence of culpable homicide not amounting to murder on the ground of exceeding the right of self defence, the fact is relevant in a suit for damages but not conclusive on liability in damages.

The fact that the 2nd defendant was despite such plea exonerated at the Civil trial for damages will not ensure to the benefit of the 1st defendant. The trial judge must decide the question of liability on the evidence before him. On the evidence before him the trial judge found that the 1st defendant-appellant shot the deceased intentionally and therefore he was liable to pay damages for the loss of support of deceased.

The damage of Rs. 100,000 awarded was fair and reasonable.

**Cases referred to:**

*Peter v. Parapati* 69 NLR 525

APPEAL from the judgment of the District Judge of Kandy.

S. L. Gunasekera for appellant.

S. C. B. Walgampaya for respondent.

December 05, 1990

**ANANDACOOMARASWAMY, J.**

This is an appeal from the judgment of the Learned District Judge of Kandy dated 04.08.1986 awarding damages to the 1st Plaintiff and her children for the death caused to the 1st Plaintiff's husband and 2 to 4 Plaintiff's father, by the 1st and 2nd Defendants. Damages in a sum of Rs. 100,000 were awarded as compensation payable by the 1st Defendant to the Plaintiffs. The 2nd Defendant was not ordered to pay any damages as the Learned District Judge was of the view that the 2nd Defendant was not liable to the Plaintiffs on the ground that although the 2nd Defendant pleaded guilty to the offence of culpable homicide not amounting to murder in the criminal case, the evidence led before him proved that the 2nd Defendant had caused no harm to the deceased.

It is the 1st Defendant who had appealed from the said judgment.

There are only two primary matters in issue in this case, to wit,—

- (a) Whether the 1st Defendant intentionally or negligently caused the death of the deceased Abeysinghe Mudiyanseelage Heen Banda Abeysinghe; and
- (b) If so, what damages, if any, did the Plaintiffs suffer thereby.

The case of the Plaintiff was that the 1st Defendant did deliberately and intentionally cause the death of the said deceased while the defence was that the death resulted while the 1st Defendant was exercising his right of private defence.

The two (2) Defendants were indicted in the High Court of Sri Lanka for murder of the deceased, the husband of the 1st Plaintiff. They pleaded guilty to the lesser offence of culpable homicide not amounting to murder on the ground of having exceeded their right of private defence of the person. The Learned High Court Judge then fined the 1st Defendant Rs. 2,000 payable in 4 monthly instalments of Rs. 500 each, directed that the fine be paid to the 1st Plaintiff as compensation, and bound him over to be of good behaviour for a period of 2 years on a personal bond of Rs. 500. He also bound the 2nd Defendant over to be of good behaviour for a period of 6 months on a personal bond of Rs. 100.

The Plaintiffs who are members of the family of the deceased sued the 1st and 2nd Defendants, who were the accused in the case before the High Court. No evidence was led in the High Court trial because the accused pleaded guilty to the lesser offence of culpable homicide not amounting to murder on the ground of having exceeded their right of private defence of the person. Evidence was led in the trial before the District Court and the facts briefly are as follows:—

At about 10.30 p.m. on 22.09.1977 the 1st Plaintiff was at home attending to her children's home work, and the deceased was asleep, when the dog barked. She opened the door and went out and saw the two Defendants on the road opposite her house. The 1st Defendant was armed with a gun and he abused the dog. She called the dog into her house and the two Defendants went away in the direction of the 2nd Defendant's house. At about 10.45 p.m., the dog barked again and the deceased got up and went out of the house. Thereafter she heard a gun shot and ran out to see the deceased lying fallen on the road. The deceased told her that the 1st Defendant shot him. The 2nd Defendant was also there. The two Defendants then went to the house of the 2nd Defendant's sister. The place where the deceased lay fallen was about 45 feet away from her house.

The Defendant's version of the incident is as follows :

The 1st Defendant gave evidence and said that on 22.09.1977 he went with the 2nd Defendant to visit a property of one of his children, for the protection of the crop, and returned home at about 8.00 p.m. When he left home he took a gun with him. Thereafter they went towards his field Yanthandeniya. When he came near the field he heard a noise from the direction of his house, and when he went there, he saw Gunatilleke and Seneviratne running away. There were others too. He chased them. Gunatilleke, Seneviratne and some others had damaged his house. He chased them until they came opposite the deceased's house when a crowd of people armed with swords, clubs, etc., came to attack the 2nd Defendant. The deceased came to chop the 2nd Defendant. The deceased came on to the road armed with a sword and when he jumped towards the 1st Defendant, he shot the Deceased through fear. The cartridge he used was "bird shot".

The Learned District Judge found the 2nd Defendant not liable for causing the death of the deceased for the reason that there was no evidence to implicate the 2nd Defendant in the murder of the deceased, except for his plea of guilt of exceeding the right of private defence before the High Court.

The Learned Counsel for the Defendant-Appellant submitted that the proceedings in the High Court equally implicate both Defendants and logically if the 2nd Defendant was not found in this case to be liable to pay damages to the Plaintiffs, the 1st Defendant too should not be found to be liable. We do not agree with this submission. It is the duty of the Trial Judge to ascertain whether the Defendants are liable on the evidence led before him. The admission of guilt before the High Court though relevant is not conclusive proof of the fact that the Defendant is liable in an action for damages in the District Court. If the Defendant denies any such liability, the Trial Judge must decide the question of liability on the evidence led before him. In the present case the 1st Defendant admitted that he committed the offence both in High Court and in the District Court. In addition there was evidence from the Plaintiffs too. In the case of the 2nd Defendant there was no such admission of guilt in the District Court and no evidence to that effect in the trial before the District Judge.

The Learned Counsel for the Defendant-Appellant further submitted "that it does not follow from the mere fact that the 1st Defendant pleaded guilty to culpable homicide not amounting to murder on the basis of having acted in excess of his right of private defence in the criminal case, that he acted in breach of the duty owed by him to the deceased and committed a delict. It must be remembered that in practice, many an accused person who has ever so slightly exceeded the right of private defence allowed him by the Penal Code, or even acted within the limits of that right, often pleads guilty to culpable homicide not amounting to murder rather than risk a trial before a jury because of the wide discretion given by law to the Judge in the matter of imposing punishment, and/or because he has been promised a lenient punishment. It is a notorious fact that 'Plea Bargaining' before the commencement of a criminal trial, has become the order of the day in High Courts". The Learned Counsel for the Defendant-Appellant little realises the fact that it is perhaps the "notorious fact that 'Plea Bargaining' before the commencement of a criminal trial, has become the order of the day in High Courts" that saved the Defendant-Appellant from getting a different verdict and higher sentence in the High Court, had the evidence that was led before the District Judge, been led before the High Court Judge and the Jury. The Learned High Court Judge and the State Counsel prosecuting in the High Court might have had numerous reasons for deciding to accept the plea for the lesser offence.

If the Defendant-Appellant had caused the death of the deceased in the exercise of the right of private defence, no offence would have been committed, by reason of Section 89 of the Penal Code. It is because the Defendant-Appellant exceeded the right of private defence he committed an offence in terms of Section 294 exception 2, punishable under Section 297 of the Penal Code.

In the present case the Learned District Judge found as the matter of fact that the 1st Defendant-Appellant shot the deceased intentionally and therefore he was liable to pay damages for the loss of support suffered by the Plaintiffs by reason of the death of the deceased.

As regards the quantum of damages payable by the Appellant to the Plaintiffs-Respondents, the Learned District Judge had carefully considered this question and awarded Rs. 100,000. He had taken into consideration the deceased's age, capacity to earn and services status, the approximate income he could have earned between the date of his death and the period during which he could have worked. The Learned Counsel for the Defendant-Appellant relying on the decision in the case of *Peter v. Parapati* reported in 69 New Law Reports page 525 where the Supreme Court (Manicavasagar, J., with Samarawickreme, J., agreeing) said at page 527 : "Damages are awarded for the benefit of the dependants of a deceased for the loss of prospective pecuniary advantage suffered by his death", submitted that the Learned District Judge failed to consider how much was required or expended for the deceased's own personal and living expenses, had he lived. So also the Learned District Judge failed to take into consideration the sums received and receivable as a "widow's and Orphan's Pension" by the Plaintiffs.

As pointed out by the Learned Counsel for the Plaintiffs-Respondents these sums are small amounts and would not have materially altered the quantum of damages payable to the Plaintiffs. In the context of the present day cost of living and expenditure, the sum awarded by the Learned District Judge is by no means excessive and is fair and reasonable.

For the foregoing reasons we are of opinion that the 1st Defendant was liable to pay damages to the Plaintiffs and the Learned District Judge rightly awarded the sum of Rs. 100,000. We accordingly dismiss the appeal with costs.

WIJETUNGA, J. – I agree.

*Appeal dismissed.*