

1967 Present : Manicavasagar, J., and Samerawickrame, J.

J. M. A. PETER and others, Appellants, and PARAPATI,
Respondent

S. C. 299/65—D. C. Colombo, 55784/M

Delict—Death caused by negligent driving—Damages claimed by deceased person's widow—Assessment of damages.

Where a widow claimed damages for the loss sustained by her in consequence of the death of her husband caused by the negligence of the defendant—

Held, that the quantum of damages should be determined by the pecuniary loss which the widow sustained by her husband's death.

APPEAL from a judgment of the District Court, Colombo.

C. Thiagalingam, A.C., with *N. C. J. Rustomjee*, for the defendant-appellant.

J. A. L. Cooray, with *L. W. Athulathmudali*, for the plaintiff-respondent.

Cur. adv. vult.

February 25, 1967. MANICAVASAGAR, J.—

This is an appeal from the decree of the District Court of Colombo awarding Rs. 30,000 as damages to the plaintiff against the two defendants-appellants jointly and severally, for the loss of support sustained by her as widow, and dependant of Jhamatmal Chandiram Hathiramani who died as a result of a taxi-car colliding with him.

The 1st defendant was the owner, and the 2nd defendant the driver of the car at the time of the collision which occurred at Bambalapitiya, on the Galle Road shortly after dark on the night of April 12th, 1961. The plaintiff attributed the collision to the negligence of the 2nd defendant and the Additional District Judge held that this was established by the evidence.

Mr. Thiagalingam for the appellants contended that the evidence did not prove that the plaintiff was the wife of the deceased. He submitted that the marriage certificate was not in evidence and invited the production of it even at that stage. A certificate of marriage no doubt is the best evidence of a marriage, but it is not the sole evidence and may be established by other evidence. However, Mr. Cooray for the respondent accepted the invitation and tendered in evidence the marriage certificate (exhibit X) which we admitted. Mr. Thiagalingam argued that this certificate does not relate to the marriage of the deceased as (1) the male party in X1 is Jhamatmal Chandiram and not Jhamatmal Chandiram Hathiramani, the husband of the plaintiff, (2) the oral evidence is that the marriage took place at the Sindhi Community Centre, while the certificate states that the marriage was at the Registrar-General's office in Colombo, and (3) the widow's evidence is that it took place on 5.8.60 whereas the date on X1 is 1.9.60. The testamentary proceedings of the estate of the deceased reveal that the deceased was known by several names, and two of them were Jhamatmal Chandiram Hathiramani and Jhamatmal Chandiram; in regard to the remaining submissions it is not unusual to have a religious ceremony, as well as a registration in accordance with the provisions of the Marriage Ordinance, and this may be on different days; so that the religious ceremony being on 5.8.60 at the Sindhi Community Centre, whilst the registration being on another date, and at a different place does in no way assist the submission of Mr. Thiagalingam. But even if X1 had not been produced, the uncontradicted oral evidence in my view is sufficient proof of the marriage between the deceased and the plaintiff.

I am satisfied that the status of the plaintiff as widow has been established.

The evidence of the deceased's brother is that the deceased and he did not use the pedestrian crossing which was a little distance away, but they crossed from the land side of the Galle Road towards the sea side to take bus to the Fort. He said there was no traffic to impede their crossing over to the centre of the road, that he saw lights of vehicles 200 to 300 yards away. He reached the centre line, whilst the deceased who followed him was just behind him; he stopped looking to the left to make sure that it was safe for him to proceed towards the sea side, when he heard a noise and saw the deceased flung on to the road about 15 or 20 feet away from him. The defence did not offer any oral evidence but relied on the statement (D1) made by the deceased's brother to the Police, and D2 to D6 being excerpts from his evidence in the criminal case against the two defendants in the District Court; Mr. Thiagalingam submitted that the contents of these documents were in such conflict with the evidence of the witness on material points that his evidence must be rejected as unreliable. The issue then is whether the Judge was right in accepting the witness's evidence. I think he was; true, there is a certain degree of conflict but I do not think it affects the credibility of the witness. In the situation in which the witness found himself

at the time of collision, it is unreasonable to expect him to be precise and exact in regard to distance and minute details. It was submitted that, his story of there being no traffic at the time is preposterous and therefore untrue. I have examined the witness's evidence and what he meant by that was that there were no vehicles in sufficient proximity to make it unsafe to cross over to the centre of the road. There are moments on Galle Road when there is a gap in the flow of traffic. When the witness says in evidence that he saw lights of vehicles, at night, 200 or 400 yards away, and in the criminal case that the lights were 300 or 400 yards away, surely no person can give anything more than a very approximate estimate; the witness's answer "actually we did not know how far it was" conveys the idea that the lights were at such a distance that it was safe to cross the road. However, the main argument was that the witness did not in fact know where the deceased was when the car struck him, and his evidence in regard to this was a mere guess and that accounted for the different versions he had given. I have examined the evidence of the witness in the light of the documents D1 to D6 and I am satisfied that he was aware that the deceased had followed him and was just behind him at the time that the witness was on the centre line looking for oncoming traffic from Dehiwela before crossing over to the sea side. This appears to be a reasonable inference, on a consideration of the entirety of the evidence, and in my view the material on which Mr. Thiagalingam relies does not controvert this or render the evidence improbable or unreliable. The Judge was right in accepting the evidence of the witness, and on the facts which have been proved negligence has been established.

Mr. Thiagalingam contends that the damages awarded by the trial Judge is excessive, and he asks for a re-assessment. I would be slow to reverse the Judge's finding unless I am quite satisfied that he has made an erroneous estimate due either to misapprehension of the facts, or adopted a wrong principle of law.

Damages are awarded for the benefit of the dependants of a deceased for the loss of prospective pecuniary advantage suffered by his death. A good general guide in estimating damages, which I propose to follow, is to be found in the speech of Lord Wright in *Davies v. Powell Duffryn Associated Colliers, Ltd.*¹. He said "There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings, and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent 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 certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependant, and other like matters of speculation and doubt"

¹ (1942) 1 A. E. R. 657 H. L.

The widow was 25 years old, and the deceased 31 years and in good health at the time of his death ; they are Indian nationals. They lived in the same house along with the deceased's brothers—there are 3 of them—and their wives ; the widow continues to live with the rest of the family and is supported by them, though there is no certainty that this state of affairs will continue throughout her life. She may not, according to custom, marry again, though the law does not prohibit the marriage of a Hindu widow. There is a child of the marriage and it must be borne in mind that a part of the income of the deceased would have gone to support it. The deceased was in business at the time of his death : by a deed of partnership (D7) his 3 brothers and he began in 1958 a business known as the Beauty Silk Store in Bambalapitiya ; he was one of the two partners who directed and controlled the business, and was given an allowance of Rs. 250 each month, inclusive of board : he was also entitled to a $\frac{1}{4}$ share of the nett profits, and was liable for an equal share of the loss. This business began with a loss in the first year, the deceased's share being Rs. 384/80, but the profits have grown since then, and has continued to do so after his death.

The question is what is the pecuniary loss which the widow has sustained by her husband's death ? She has lost the pecuniary benefits which would have been hers through her husband if he was alive, having regard to the normal expectation of life. Some of the data, relevant to the assessment of damages, to which I have referred, cannot be ascertained with definiteness, and any reckoning of damages, though necessarily a matter of estimate must also be influenced by conjecture. Bearing this in mind, and the principle so clearly stated by Lord Wright, the award of the trial Judge on the data stated by me, must stand.

The appeal is dismissed with costs.

SAMEBAWICKRAME, J.—I agree.

Appeal dismissed.