

LOKUGE AND ANOTHER
v.
SIRIWARDENE AND ANOTHER

SUPREME COURT
G. P. S. DE SILVA, C.J.
KULATUNGA, J.
RAMANATHAN, J.
S.C. APPEAL 29/95
C.A. 499/92(F)
D.C. COLOMBO 8113/M
MAY 5, 1995.

Roman Dutch Law – Accident – Death of widowed mother – Right to support a Minor and an unmarried daughter – Computation of damages.

The widowed mother of the Plaintiffs died in an accident. The 1st Plaintiff an unmarried daughter and the 2nd plaintiff a minor son claimed damages. The District Court awarded Rs. 150,000/- to both Plaintiffs. On appeal the Court of Appeal varied the award by disallowing the claim of the minor son for the reason that he was 18 years of age at the time of the accident and entitled to an orphans allowance until the age of 21; and thereafter obliged to support himself; the court awarded Rs. 50,400/- to the 1st plaintiff.

Held:

After the exclusion of the claim of the 2nd Plaintiff, the computation of damages on the basis of loss of future support should be on the basis of an apportionment of the deceased's income between the deceased and the 1st Plaintiff only.

Appeal from the Judgment of the Court of Appeal

Bimal Rajapakse for Plaintiff-Respondent-Petitioner.
Kumar Paul, S.C., for Respondents.

Cur. adv. vult

May 05, 1995.

KULATUNGA, J.

This is an appeal against the judgment of the Court of Appeal which varied the judgment of the District Court awarding a sum of Rs. 150,000/- to the 1st and 2nd plaintiffs.

The Court of Appeal held that the 2nd plaintiff who was the son of the deceased was not entitled to any damages for the reason that he was 18 years of age at the time of the accident which resulted in the death of the deceased; that thereafter he was entitled to a payment of an orphan's allowance until the age of 21 years; and that thereafter he was obliged to support himself. In regard to the 1st plaintiff who was an unmarried daughter of the deceased, the Court of Appeal held that under the Roman Dutch Law she has a right to support from her parents and that by reason of the death of the deceased who was a widow at the age of 56, the 1st plaintiff qualified to the payment of damages.

The Court of Appeal next proceeded to compute damages and in this respect took into account the fact that the deceased's life expectancy was 70 years; hence had the deceased lived, the 1st plaintiff would have received support for 14 years. In regard to the quantum of damages the Court of Appeal computed it on the basis that the deceased's income was Rs. 1134/- per month; and the court was of the view that she had spent about Rs. 300/- per month on the 1st plaintiff. On that basis, the Court of Appeal awarded damages to the 1st plaintiff in a sum of Rs. 3600/- per year for the period of 14 years, aggregating Rs. 50,400/- with legal interest from the date of plaint till payment in full.

We are of the view that the computation of damages in favour of the 1st plaintiff on the basis of an apportionment of Rs. 300/- out of the income of Rs. 1134/- which was the deceased's pension, cannot be supported. It is our view that after the exclusion of the claim of the 2nd plaintiff, the computation of damages on the basis of loss of future support should have been, in the circumstances of this case, on the basis of an apportionment between the deceased and the 1st plaintiff only. In this view of the matter, we hold that proper apportionment should be in a sum of Rs. 600/- a month, in favour of the 1st plaintiff. The calculation of damages on this basis for a period of 14 years at the rate of Rs. 7200/- per year would amount to Rs. 100,800/-.

Mr. Paul, Learned State Counsel for the respondents very properly agreed that this would be a reasonable basis of computation.

Mr. Rajapakse, Learned Counsel for the appellants is agreeable to an adjustment of the appeal on that basis, in favour of the 1st plaintiff.

We accordingly vary the award made by the Court of Appeal and enhance the payment of damages to a sum of Rs. 100,800/-, with legal interest from the date of plaint till payment in full, in favour of the 1st plaintiff. We direct that payment be made accordingly. Thus, only the 1st plaintiff succeeds in this appeal. We allow her appeal accordingly. The 2nd plaintiff's appeal is dismissed. In the circumstances, we make no order as to costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal of the 1st plaintiff allowed.

Appeal of the 2nd plaintiff dismissed.
