

**SIRISENA**  
**v**  
**RAMACHANDRAN AND ANOTHER**

COURT OF APPEAL  
DISSANAYAKA, J.  
SOMAWANSA, J.  
C.A. 672/2000 (AF)  
D.C.COLOMBO 16322/MR  
JULY 8, 2003

*Accident – damages – Computation – Proof of patrimonial loss – Computation on the basis of future support – Apportionment of the deceased's income – Principles applicable?*

The plaintiff-respondent instituted action for the recovery of Rs. 1.2. million on account of the death of her husband as a result of the negligence of the 2<sup>nd</sup> defendant-respondent while driving a vehicle belonging to the 1st defendant-appellant in the course of his employment.

After trial Rs. 1 Million was awarded as damages.

It was contended that the amount ordered is excessive.

**Held:**

- (i) The plaintiff must show that she has suffered patrimonial loss through being deprived of benefits whether in the form of maintenance of services, rendered by the deceased under a legal duty to do so ...., the dependents are entitled to compensation only for the actual pecuniary loss which they have suffered, by reason of the death."
- (ii) In the ordinary way, when the head of household is killed his wife and children are dependent on him to the extent of his earnings or other income less a deduction for money spent on the maintenance of the husband and his other personal needs.
- (iii) The award of Rs. 1 Million as damages is not excessive but just and reasonable.

**APPEAL** from the Judgment of the District Court of Colombo.

**Cases referred to:**

- 1 *Ceylon Transport Board and another v Nandawathie and others* - 3 Srikantha Law Reports 14.

- 2 *Siriwardena and another v Lokuge and another* 1995 - 2 Sri LR 115:(CA)
- 3 *Davis v Powell Druffryn Associated Collieries Ltd.,* 1942 AllER 657 at 665
- 4 *Lokuge and another v Siriwardena* - 1995 2 Sri LR 150 (SC)

*I.S.de Silva* with *D.Perera* for 1st defendant-appellant.

*S. Sinnathamby* with *Ms. Jayanthy Ganeshamoorthy* for plaintiff-respondent.

*Cur.adv.vult*

November 7, 2003

### **SOMAWANSA, J.**

The plaintiff-respondent instituted the instant action in the District Court of Colombo for the recovery of a sum of Rs.1,200,000 on account of the death of her husband caused as a result of the negligence of the 2nd defendant-respondent while driving a vehicle belonging to the 1st defendant-appellant in the course of his employment.

The 2nd defendant-respondent did not file answer. The 1<sup>st</sup> defendant-appellant filed answer pleading that the accident occurred due to contributory negligence of the deceased. At the trial paragraphs 3 and 4 of the plaint were admitted and 07 issues were raised by the parties. At the conclusion of the trial the learned District Judge by his judgment dated 24.07.2000 held with the plaintiff-respondent and proceeded to award a sum of Rupees One Million as damages. It is from the said judgment that the 1st defendant-appellant has lodged this appeal.

At the hearing of this appeal, the only matter canvassed was the quantum of damages. Counsel for the 1st defendant-appellant contended that the learned District Judge has failed to consider the fact that the major part of the income of the deceased went to maintain himself and that in assessing damages the learned District Judge has failed to consider that the plaintiff-respondent was in receipt of a salary much larger than that of the deceased. He also contended that the learned District Judge failed to address his mind as to the basis of computation of damages, but merely proceeded to state he assesses compensation at Rupees One Million without setting out how he arrived at that figure. In support of the above submissions counsel has cited the case of *Ceylon Transport Board and another v Nandawathie and others* <sup>(1)</sup> and the case of *Siriwardena and another v Lokuge and another* <sup>(2)</sup>.

On an examination of the judgment, it is to be seen that the learned District Judge in awarding Rupees One Million as damages has not considered the money spent on the maintenance of the deceased himself nor has he considered the fact that the plaintiff-respondent herself was employed and was drawing a salary much larger than that of the deceased. In the case of *Ceylon Transport Board and another v Nandawathie and another (supra)* cited by the counsel for the 1st defendant-appellant, Court of Appeal cited with approval the case of *Davis v Powell Druffryn Associated Collieries*<sup>(3)</sup> wherein Lord Wright stated a passage which is frequently quoted.

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“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 basis 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 dependent, or other like matters of speculation and doubt.

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In the ordinary way, when the head of a household is killed, his wife and children are dependent on him to the extent of his earnings or other income, less a deduction for money spent on the maintenance of the husband and his other personal needs.”

Mckerron in “The Law of Delict” 1965 6th edition at pages 140 and 141 states as follows:

“In every case the plaintiff must show that he has suffered patrimonial loss through being deprived of benefits, whether in the form of maintenance of services, rendered by the deceased under a legal duty to do so ... The defendants are entitled to compensation only for the actual pecuniary loss which they have suffered by reason of the death.”

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On an examination of the evidence led in this case, it is to be seen that at the time of death on 19.02.1994 the deceased was 42 years and was in receipt of salary of Rs.4359 per month. The relevant salary scale applicable at the time of his death being 30,720 – 7×660 – 15 ×780 – 47,040. With the salary revision in 1994 at the age of 55 years he would have been entitled to a salary of Rs.1,11,600/- per annum, the salary scale applicable being 67,320/18 × 2460 – 1,11,600/-. It is evident that as there is no adverse comments on his service the deceased would have been granted the extension and therefore he would have received as salary for the period from 55 years to 60 years a sum of Rs.1,11,600 × 5 and as transpired in the evidence of the witness Wijethilaka in terms of Administration Circular No.93/22 the deceased would have received a pension of 88%. Thus if he lived up to 70 years of age he would have received a pension of Rupees 98,208 × 10. As relief duty allowance from the date of death to 60 years he would have received 2500 × 6 × 18. He has also passed the Efficiency Bar Examination on 18.05.1983 and another examination on 31.10.1992. As such was due for promotion to Unified Postal Service Grade B (1) the salary scale of which was 74,140 –18 × 2460 – 118,440 per year. In addition to the basic salary the deceased would also be entitled to allowances.

Accordingly from the date of death on 1994.02.19 till the end of 1994 he would have received Rs.4359 × 9 = Rs.39,231. As per salary revision in 1994 by Circular No.2/97 new salary scale being 67,320 - 18 × 2460 - 111,600 from the 43rd year to his 55th year the deceased if he had lived would have earned with increments a sum of Rs.1,073,520/-. From 55 years to 60 years the deceased would have earned 111,600 × 5 = Rs.558,000. From 60 to 70 years of age a pension of Rs. 98,208 × 10 and for relief duty from date of death to 60 years of age Rs.270,000 in the circumstances without taking into account the promotion the deceased would have earned during the period from the date of death to his 70th year a total amount round Rs.2,922,831 and out of this amount he would have spent half for himself and the plaintiff-respondent would thus be entitled to the balance which would be round Rs.14,614,155. On the other hand in the year 2000 had he been alive he would have been earning a salary around Rs.6650 per month. He was 43 years old at the time of his death and was a government servant. Therefore he could have gone on working till he would have retired at the age of 60 years, that would be 17 years.

Therefore Rs. 6650 × 12 × 17 would be Rs.1,356,600, taking into account the fact that the deceased's life expectancy was 70 years from his 60th year to 70th year he would have received as a pension of Rs. 98,208 × 10. The total being Rs. 2,338,680 half of which would be Rs.1,169,340/-.

In the case of *Siriwardena v Lokuge (supra)* the widowed mother 110 of the plaintiff died in an accident. On an appeal preferred against the award of damages by the learned District Judge the Court of Appeal 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 120 awarded damages to the 1st plaintiff in a sum of Rs.3600/- per year for the period of 14 years, aggregating to Rs. 50,400/- with legal interest from the date of plaint till payment in full.

Against this judgment of the Court of Appeal an appeal was preferred to the Supreme Court and the Supreme Court held;

“After the exclusion of the claim of the 2<sup>nd</sup> 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”.

*Per Kulatunga, J.*

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“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 2<sup>nd</sup> 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

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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/-".

Applying the principles laid down in the above cases to facts of the instant action, it would appear that the award of Rs.One Million as damages is not excessive but is just and reasonable.

For the foregoing reasons, I see no reason to interfere with the judgment of the learned District Judge. Accordingly the appeal of the 1st defendant-appellant will stand dismissed with costs fixed at Rs. 5000/.

The Registrar is directed to send the case record to the appropriate District Court forthwith. 150

**DISSANAYAKE , J.** - I agree.

*Appeal dismissed.*