

PC  
~~611.6.2~~

Judgment  
7, 1965

IN THE PRIVY COUNCIL

No. 51 of 1961

O N A P P E A L

FROM HER MAJESTY'S COURT OF APPEAL FOR  
EASTERN AFRICA

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
STUDIES  
- 3 FEB 1966  
2. ...  
LONDON, W.C.1.

80934

B E T W E E N :-

GULBANU RAJABALI KASSAM Appellant

- and -

KAMPALA AERATED WATER COMPANY  
LIMITED ... Respondent

10 C A S E FOR THE APPELLANT

Record

1. This is an appeal from the Judgment and Order of the Court of Appeal for Eastern Africa dated the 8th day of May, 1961, allowing in part an Appeal by the Respondent herein from a Judgment and Decree of the High Court of Uganda dated the 30th day of September, 1960.

pp.75-96

pp.37-38

2. The action arose out of a car accident on the 31st day of August 1959 in which one Rajabali Kassam, the father of the Appellant was killed. The Appellant brought an action on her own behalf as daughter of the said deceased and on behalf of the other dependants:-

20

(a) SADRUDIN RAJABALI KASSAM aged 20 years, son of the said deceased.

p.3 11.24-34.

(b) BADRUDIN RAJABALI KASSAM aged 19 years, son of the said deceased.

(c) ZARINA RAJABALI KASSAM aged 17 years, daughter of the said deceased.

30

(d) SHAH SULTAN RAJABALI KASSAM aged 15 years.

(e) AMIRALI RAJABALI KASSAM aged 12 years.



The assets of deceased up to the time of his death consisted of a fixed deposit in the Diamond Jubilee Investment Trust Ltd. amounting to Shs.111,000/-, and he had Shs.3,000/- invested in shares in the same Company. The value of the stock remaining at the shop soon after his death was Shs.14,583/-.

10 In 1958 his drawings were Shs.9,100/- for his family and children. According to the books three children were drawing a small salary of Shs.90/-.

Out of his income he was actually paying £140 insurance premiums on life insurance. The benefit of the life insurance has been paid to the estate. (Here Mr. Wilkinson refers to Law Reform (Miscellaneous Provisions) Ordinance of 1953).

20 The profit of the duka was Shs.10,283/- and his actual drawings were Shs.11,916/-. In addition to his drawings he put aside sums of money from time to time which accumulated over the years to the amount of Shs.111,000/- invested in the Diamond Jubilee Investment Trust Ltd.

All the children were living with the father at the time of his death.

30 There is a temporary building at Bamunanika where he was living. It is now empty and no rent is being received from it. The building is a temporary one of corrugated iron sheets. He had it on a year to year basis - African land. The building was 20 to 25 years old.

Xxn. Mehta -

Q. You say that in the year 1958 the deceased drew Shs.11,916/-. How much did he draw in 1959?

40 A. I cannot say, as he died in 1959.

Q. This amount of personal drawings represents the amount which deceased spent on family and himself less amounts which he spent on premiums, etc.?

Record

A. For 1958 I would like to show these figures. Shs.16,000/- gross. Nett figure is Shs.11,916/-. His living expenses were ₹684/- (hands in Exhibit 17). Actually, the family were getting, including the father, a profit of Shs.10,000/- approx. plus the Shs.10,000/- approx. credited in the books to wages.

(Mr. Mehta inspects Ex.17).

Q. These details you have here - you say the total amount of Shs.16,726/- less contribution from children. That means he himself drew Shs.11,916/25. Is that it? 10

A. Yes. The nett amount left after contribution of poll tax, income tax and life insurance. If you take out all that, the balance from whatever is left will be for the maintenance of himself and his family. Therefore, Shs.8.889/- is the amount he spent for himself and his children. 20

Court:

Q. Having looked after his books for nearly 5 years would you say he spent nearly three-quarters of his earnings on his family?

A. Yes.

Wilkinson to Court:

The business is now closed because the eldest son came to Kampala for education purposes, etc. and they have opened a shop in Kampala under the trade name of Rajabali Kassam. The two sons are running the business in that name. The other children have got nothing to do with the new shop. 30

Xxn: Mehta:

Q. The boycott started in March 1959?

A. Yes.

Wilkinson:

Q. You gave us a figure of Shs.12,000/- approximately as being his profits in eight months of 1959 if you work at that rate - 40

£900 for the whole year. He was able to invest a further sum in the Diamond Investment Trust Ltd. that year.

Q. On 1st March, 1959, he put £1,000 in investments. In eight months he increased capital, in spite of the boycott. He was still living in that village at the time of his death."

10 The accounts for 1958 showed salaries to Sadrudin Rajabali, Miss Dolatkhanu Rajabali (also killed in the accident) and Miss Gulbanu Rajabali, of 3,900/-, 2,900/- and 2,900/- and counter-entries of 1,800/-, 1,500/- and 1,500/- for maintenance for the said children respectively. The account of assets and liabilities of the deceased at the date of his death showed a balance of 5,705/- and of 1,400/- owing to Sadrudin Rajabali and Badrudin Rajabali respectively. p.36b p.36a

20 6. In his Judgment dated the 30th day of September 1960 the learned trial judge held :- pp.37-38

30 "I am not satisfied that the three alleged payments of Shs.3,900/-, Shs.2,900/- and Shs. 2,900/- were or would be made to any of the children in this case. I am, however, satisfied that the deceased father did earn an average of £744 per annum over the five years 1955-1959. He was killed at the end of August, 1959. Some of the children are still carrying on his business, but in Kampala not in Bamunanika. He left an estate of some Shs.120,000/-. I am quite satisfied that had he not died he would have continued to pay out, for the benefit of his children, something between £10 to £12 per week. p.37 l.24 - p.38 l.9

40 Making use of the actuarial table to which Mr. Wilkinson referred me on the 28th September, I propose to award a round figure as damages and a figure which includes the agreed special damage. The figure in that table over a 15 year period on the basis of £10 per week is £5,400.

Judgment is therefore entered for the Plaintiff for £6,000 with costs and interest as prayed."

Record

- p.38 1.34                   And further ordered that interest be paid at the rate of 6% per annum from the said 30th day of September 1960.
- pp.41-45                   7. That the Respondent appealed to the Court of Appeal for Eastern Africa on two major points:  
p.41 1.38                   (a) that the learned trial judge had made no allowance for the reduction of the award by reason of the benefit received by the dependants from the deceased's estate and (b) in failing to decide what financial loss had been suffered by each of the alleged dependancies and/or failing to apportion between them the damages which should properly be awarded.                   10
- p.42 1.4
- p.42 11.25-30
- pp.75-95                   8. In the Judgment of Gould J.A. with which Forbes V.P. and Corrie Ag. J.A. concurred the following passages occur:-
- p.82 1.28                    "In the present case the value of the estate must undoubtedly be taken into consideration and a relevant factor in the determination of the net benefit to the surviving children is the expectancy that they would in any event ultimately have received something by way of inheritance. In the approach to the problem I prefer the guidance to be derived from Nance v. British Columbia Electric Railway Co. Ltd. (supra) in the particular circumstances, to the method adopted in Muirhead v. Railway Executive (supra). The approach I propose to adopt approximates what was urged in argument by counsel for the Respondent.                   20
- p.83 1.20                   30
- I pass now to the second broad difference between counsel. It will be necessary to go into the facts with more particularity later, but for the present it is sufficient to say that counsel for the Appellant Company urged that the dependency of two daughters was about to terminate at the time of the accident by reason of their approaching marriages and that there was some evidence that the Respondent, Sadrudin and Badrudin were self supporting. The learned judge made no allowance for this but proceeded on the basis that the deceased would have expended £10-£12 per week on his children during the whole period of fifteen years which the learned judge apparently fixed as his                   40

10 expectancy of working life. The period of  
expectancy of life was not disputed, and  
I would accept it. Counsel for the Respondent  
submitted that the principle urged by counsel  
for the Appellant company was wrong. He  
(counsel for the Respondent) contended that a  
court did not take the case of each dependant  
and say what each had lost; the question was  
what the family as a whole had lost by the  
death of the deceased. Having arrived at that  
total sum it was then necessary for the court  
to apportion it.

\* \* \* \* \*

20 It is apparent that, whatever method  
of calculation may be used, the object is to  
ascertain the loss to each dependant, and  
there is in my opinion, nothing to prevent a  
court from approaching the cases of the  
various dependants individually if it is more  
convenient.

p.85 11.9-15

\* \* \* \* \*

In my opinion, in the present case the  
learned judge did not give adequate, or indeed  
any, consideration to the question of duration  
of dependencies but appears to have assumed  
their continuance in all cases over the full  
period of the expectancy of working life of  
the deceased.

p.85 1.39  
- p.86 1.15

30 Counsel on both sides requested this  
court, if it came to the conclusion (as, for  
myself, I have done) that the learned judge  
had misdirected himself in important aspects  
of the case not to send the issue back for re-  
trial but itself to assess the damages.  
40 Acknowledging as I do the general undesirability  
of retrials I propose to make the attempt  
though with reluctance, as the evidence is  
meagre indeed, and there are many imponderables.  
There is no evidence at all, for example, as to  
whether, on marriage, the daughters might  
expect dowry or any subsequent benefit from  
their father. Such matters will therefore have  
to be resolved against them as it was for them  
to prove their damages.

\* \* \* \* \*

Record

p.89 11.3-32

I come now to the question of the duration of the dependencies of the surviving dependent children. The expectancy of life of the deceased I have accepted as being fifteen years but there is no reason to suppose that he would have been called upon to support the remaining members of the family during the whole of that period; in fact the evidence of the accounts already discussed is against that view. In the case of sons I would deem it reasonable to fix the age of twenty-one years as that at which they could be expected to be self-supporting. In the case of daughters the question of marriage has to be considered; there is no evidence concerning dowry and in the absence of any evidence to the contrary I must assume that dependency would cease on marriage. The Respondent married at twenty-three and Zarina at eighteen. On the other hand the eldest daughter Dolatkhanu, who must have been at least twenty-four, was still unmarried when she was killed. In the case of the unmarried daughters I think it is reasonable to treat their dependencies at an end at the age of twenty five, which means that that of Shah is ten years and that of Nazma fifteen years, being the expectancy of life of the deceased. The dependency of Zarina, who married a little over one year from the death of the deceased, is limited accordingly to one year.

\* \* \* \* \*

p.90 11.32-40

Therefore, if the amount is divided per capital the amount allocated to the nine children would be roughly £560 per annum which corresponds with the learned judge's £10-£12 per week. I therefore accept his figure so far as the amount spent on the children is concerned. I will return to this question after dealing with the amount receivable by the surviving children from the estate.

\* \* \* \* \*

p.92 11.10-34

I arrive then at this proposition - the net value of the acceleration is the difference between the amount actually received (Shs.89,425/60) and the present value of the



10 same sum payable in fifteen years plus the present value of the estimated savings also payable after 15 years; the difference must be diminished by an amount in respect of the uncertainty which I have mentioned above and the fact that Dolatkhanu (now deceased) might also have shared in the estate - this amount is almost completely speculative and I would fix it at Shs.20,000/-. Working on a basis of simple interest at 5% I find that the present value of a sum receivable in fifteen years time is four-sevenths of that sum. Therefore the present value of the estate (Shs. 89,425/-) plus the estimated savings (Shs.80,000/-) is four-sevenths of Shs.169,425/- which is Shs.96,814/-: after deduction of the sum of 20,000/- above mentioned the net result is Shs.76,814/-.

20 The amount actually receivable from the estate being Shs.89,425/- the difference, or the value of the acceleration, is Shs.12,611/-.

\* \* \* \* \*

p.93 l.47  
- p.95 l.15

30 I have accepted the estimate of the learned trial judge of the amount spent upon the children, of whom there were nine. The estimate of £10, £12 per week can be averaged at £11, a total annual dependency of £572. That is approximately £63.10. 0 per annum for each child and as the dependency of the daughter Zarina is limited to one year it is clear that the benefit receivable by her arising out of the death of the deceased (one-eighth of Shs.14,611/-) exceeds the value of her dependency - she is therefore not entitled to damages. I have already held that the respondent, Sadrudin and Badrudin were not dependants, and it follows that only Shah, Amirali Rshanali and Nazma are entitled to general damages. In accordance with what I have said earlier I estimate their dependencies respectively as 10 years, 40 9 years, 11 years and 15 years. That is an average dependency of  $11\frac{1}{4}$  years which, multiplied by four-ninths of £572 = £2860 or Shs.57,200/-. This amount must be discounted as it would in the normal course have been applied for the benefit of the dependants in question over a number of years, and its equivalent as a lump sum

50 payable at death must be arrived at. For

Record

the purpose of this calculation I have referred to Whitaker's Almanac (1916) p.1046 and am content to accept  $8\frac{1}{2}$  years purchase of the equivalent annuity ( $\frac{4}{9}$ th x £572) as a sufficiently approximate guide to its present value. The result is Shs.43,218/-. I have applied this principle at this stage as that was the approach adopted in Nance v. British Columbia Electric Railway Co. Ltd. (supra): otherwise I would have been in some doubt as to whether it was not more logical to apply it to the net cash payable after deduction of the benefit receivable from the estate. As has been seen, the total benefit from the estate is Shs.14,611/- of which these four dependants are entitled to four-eighths, or Shs.7,305/-. After deduction of that figure there remains the sum of Shs.35,913/- as general damages. This I would apportion among the four dependants as follows:-

Shah Shs.7,981/-  
Amirali Shs. 7,183/-  
Rashanali Shs. 8,778/-  
Nazma Shs.11,971/-

In addition to the general damages of Shs.35,913/- there are agreed items of Shs.1,000/- general damages to the Respondent personally Shs.600/- special damages for funeral expenses and Shs.320/- for medical expenses, bring the total to Shs.37,833/-.

In the final result I would allow the appeal to the extent that I would reduce the award of damages from Shs.120,000/- to Shs.37,833/- and order that the decree be amended accordingly. I would not disturb the order for costs in the court below but would order that the Respondent pay three quarters of the Appellant Company's costs of the appeal in this court. I would certify for two Counsel."

pp.99-100

9. Final leave to appeal to Her Majesty in Council was granted on the 20th day of November 1961.

10. The Appellant humbly submits that this appeal should be allowed, the judgment of the

Court of Appeal for Eastern Africa be set aside, the judgment of the trial court be affirmed and the Respondent be ordered to pay the costs in the Eastern African Court of Appeal and of this appeal for the following among other

R E A S O N S

- (1) BECAUSE the award of £6,000 was fair and reasonable in the circumstances.
- 10 (2) BECAUSE the learned trial judge was correct in viewing the matter as a jury and awarding a round figure.
- (3) BECAUSE the Court of Appeal for Eastern Africa erred in concluding that the learned trial judge had not considered the benefits received by the dependants from the estate.
- (4) BECAUSE the Court of Appeal for Eastern Africa erred in its calculation as to  
20 the value of the acceleration of the receipt of the estate moneys.
- (5) BECAUSE the Court of Appeal for Eastern Africa erred in holding that the dependency of each dependant should be calculated separately.
- (6) BECAUSE the Court of Appeal for Eastern Africa erred in regarding the dependency of each dependant as constant.
- 30 (7) BECAUSE the Court of Appeal for Eastern Africa erred in its calculation of the dependencies of the said children by including in the dependants for the purpose of averaging the dependency of each child the children Zarina, the Appellant, Sadrudin and Badrudin whilst at the same time holding that they were not dependants.
- 40 (8) BECAUSE the Court of Appeal for Eastern Africa erred in taking into account for the purposes of calculating the acceleration of the receipt of the value of the estate monies the estimated savings of the deceased, but failed to make any award under the heading of estimated savings in its final award of damages.

- (9) BECAUSE the Court of Appeal for Eastern Africa erred in its calculation as to the general damages for the dependants.

*Dermond Reker.*

~~F. ELWYN JONES~~

THOMAS O. KELLOCK.

IN THE PRIVY COUNCIL

---

O N A P P E A L

FROM HER MAJESTY'S COURT  
OF APPEAL FOR EASTERN  
AFRICA

---

B E T W E E N :

GULBANU RAJABALI  
KASSAM Appellant

- and -

KAMPALA AERATED  
WATER COMPANY  
LIMITED ... Respondent

---

C A S E FOR THE APPELLANT

---

KINGSFORD DORMAN & CO.,  
13, Old Square,  
Lincoln's Inn,  
London, W.C.2.

Solicitors for the Appellant.