

~~CI. 62~~

Judgment
7, 1965

IN THE PRIVY COUNCIL

No. 51 of 1961

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

GULBANU RAJABALI KASSAM (Plaintiff) Appellant

- and -

KAMPALA AERATED WATER CO.
LTD. (Defendant) Respondent

RECORD OF PROCEEDINGS

KINGSFORD DORMAN & CO.,
13 Old Square,
Lincoln's Inn W.C.2.
Solicitors for the Appellant.

GARDINER & CO.,
18 St. Swithins Lane,
London, E.C.4.
Solicitors for the Respondent.

~~P.C.~~
~~G.I.G.2~~

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
STUDIES
- 8 FEB 1966
25 BEDFORD SQUARE
LONDON, W.C.1.

80933

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICAB E T W E E N :

GULBANU RAJABALI KASSAM (Plaintiff) Appellant.

and

KAMPALA AERATED WATER CO. LTD. (Defendant) Respondent

RECORD OF PROCEEDINGSINDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE HIGH COURT OF UGANDA</u>		
1	Plaint	16 February 1960	1
2	Defence	22 April 1960	4
3	Notes of Evidence	16 September 1960	6
4	Notes of Evidence at adjourned proceedings	20 September 1960	12
5	Notes of Evidence at adjourned proceedings.	21 September 1960	18
6	Notes of Evidence and proceedings at adjourned proceedings	22 September 1960	22
7	Judgment as to Liability	23 September 1960	26
8	Notes of Evidence and proceedings as to Damages and Exhibits A B & C	28 September 1960	33
	(A) Account of Assets and Liabilities of Rajabali Kassam deceased		36a
	(B) Trading account of Rajabali Kassam deceased.		36b
	(C) Balance Sheet of Rajabali Kassam deceased.		36c

No.	Description of Document	Date	Page
9	Further Judgment as to Assessment of Damage	30 September 1960	37
10	Formal Order	30 September 1960	38
11	Letter Chand and Mehta to Registrar	6 December 1960	39
<u>IN THE COURT OF APPEAL FOR EASTERN AFRICA</u>			
12	Memorandum of Appeal by Kampala Aerated Water Co.	12 December 1960	41
13	Notes of Court Proceedings by Forbes V-P.	22 March 1961	46
14	Notes of Court Proceedings by Gould J.A.	22 March 1961	58
15	Notes of Court Proceedings by Corrie Ag. J.A.	22 March 1961	70
16	Judgment (a) Gould J.A. (b) Forbes V.P. (c) Corrie Ag. J.A.	8 May 1961 8 May 1961 8 May 1961	75 95 95
17	Formal Order	8 May 1961	96
18	Application for Conditional Leave to Appeal	8 September 1961	97
19	Order Granting Leave to Appeal to Her Majesty in Council	20 November 1961	99

IN THE PRIVY COUNCIL

No. 51 of 1961

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

GULBANU RAJABALI KASSAM (Plaintiff) Appellant

- and -

KAMPALA AERATED WATER CO.
LTD. (Defendant) Respondent

RECORD OF PROCEEDINGS

10

No. 1

PLAINT

IN HER MAJESTY'S HIGH COURT OF UGANDA AT
KAMPALA.

In the High
Court of Uganda

CIVIL CASE NO.133 of 1960.

No.1

GULBANU RAJABALI KASSAM)
as daughter of Rajabali)
Kassam Deceased.) Plaintiff

Plaint
16th February
1960

versus

20

KAMPALA AERATED WATER COMPANY
LIMITED Defendant

1. The Plaintiff is an Asian woman resident at Bamunanika Uganda whose address for service in this suit is care of Messrs. Wilkinson & Hunt, Advocates, Barclays Bank Chambers, P.O. Box 146, Kampala, Uganda.

2. The Defendant is a Company incorporated in Uganda with limited liability and carrying on

In the High
Court of Uganda

No.1

Plaint
16th February
1960
continued

business at Kampala and elsewhere whose address for service in this suit is Plot No.46, William Street, Kampala, Uganda.

3. The Plaintiff is a daughter of RAJABALI KASSAM deceased.

4. The Defendant was at all material times the owner of motor lorry registered number UFW 703.

3. On or about the 31st day of August 1959 the said RAJABALI KASSAM (deceased) and the Plaintiff amongst others were being lawfully driven along the road from Kampala to Bombo in Peugeot car No. UFN 887 when the Defendant's servant or agent so negligently drove the Defendant's motor lorry No. UFW 703 on the said road that it collided with the said Peugeot car No. UFN 887 and damaged the same whereby the said Peugeot car was damaged and the said RAJABALI KASSAM (deceased) suffered injuries from which he died and the Plaintiff has thereby been put to loss and expense and has suffered damage.

10

20

(A) PARTICULARS OF NEGLIGENCE

The Defendant's servant or agent was negligent in that he:-

- (a) Drove too fast or too fast to stop within the range of his view.
- (b) Drove on the wrong side of the road.
- (c) Failed to keep any or sufficient look-out.
- (d) Drove without any sufficient lighting.
- (e) Failed to give any sufficient warning of his approach.
- (f) Failed to apply his brake sufficiently or in time or to manoeuvre his said lorry so as to avoid hitting the said Peugeot car No. UFN.887.

30

(B) PARTICULARS OF INJURY

The injuries suffered by the Plaintiff were:-

40

- (i) She was shocked and distressed considerably.
- (ii) She had a dislocated right shoulder and suffered much pain.

In the High
Court of Uganda

No.1

Plaint
16th February
1960
continued

(C) PARTICULARS OF SPECIAL DAMAGE.

- (i) Funeral expenses Shs.1,000/-
- (ii) Medical expenses for Plaintiff " 320/-
- 10 (iii) Value of Peugeot UFN 887 which was completely written off. " 3,500/-
- And the Plaintiff claims damages.

6. By reason of the foregoing the said RAJABALI KASSAM was killed and lost the normal expectations of a happy life and his estate has suffered loss and damage.

7. PARTICULARS PURSUANT TO THE ORDINANCE

20 (Law Reform Miscellaneous Provisions)
Ordinance 1953.

This action is brought on behalf of the plaintiff herself as a daughter of the said deceased and on behalf of the following other dependants:-

- (a) SADRUDIN RAJABALI KASSAM aged 20 years, son of the said deceased.
- (b) BADRUDIN RAJABALI KASSAM " 19 years son of the said deceased.
- 30 (c) ZARINA RAJABALI KASSAM aged 17 years daughter of the said deceased,
- (d) SHAH SULTAN RAJABALI KASSAM, " 15 years
- (e) AMIRALI RAJABALI KASSAM aged 12 years
- (f) ROSHANALI RAJABALI KASSAM aged 10 years
- (g) NAZMA RAJABALI KASSAM aged 3 years

8. The Plaintiff and the aforesaid dependants reside at Bamunanika, Uganda.

9. The said deceased was immediately prior to

In the High Court of Uganda

No.1

Plaint
16th February
1960
continued

the said accident the proprietor of a business known as RAJABALI KASSAM situate at Bamunanika in Uganda, and was earning an average annual income of Shs.25,000/-. He was the sole support of the Plaintiff and the aforesaid dependants who by his death have lost such support and living.

WHEREFORE the Plaintiff claims from the Defendant:-

- (a) General Damages
- (b) Shs.4,820/- special damages as per paragraph 5 (C) hereof. 10
- (c) Interest on such sums as may be awarded at 6% from the date of filing till payment.
- (d) Costs.
- (e) Any other or alternative relief.

DATED this 16th day of February, 1960 at Kampala.

Sd.
COUNSEL FOR PLAINTIFF 20

Filed by:-
Messrs. Wilkinson & Hunt,
Advocates,
P.O.Box 146,
Kampala.

No.2

Defence
22nd April
1960

No.2

DEFENCE

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA
CIVIL CASE NO.133 of 1960.

GULBANU RAJABALI KASSAM Plaintiff 30

Versus

KAMPALA AERATED WATER
COMPANY LTD. Defendant.

WRITTEN STATEMENT OF DEFENCE

1. The Defendant Company denies that it or any

of its servants or agents were negligent as alleged or at all.

In the High
Court of Uganda

No.2

Defence
22nd April 1960
continued

2. The Defendant Company does not admit that the said accident was caused by the alleged or any negligence of the Defendant Company or any of its servants or agents or that the said Rajabali Kassam died as a result of the accident or of the alleged or any injuries. The said accident was caused solely by the negligence of the said Rajabali Kassam or his servant or agent in driving Peugeot Car No. UFW.887 in which the said Rajabali Kassam, the Plaintiff and others were travelling.

PARTICULARS OF NEGLIGENCE OF RAJABALI
KASSAM OR HIS SERVANT OR AGENT

The said Rajabali Kassam or his servant or agent was negligent in that he -

- (a) Drove too fast or too fast to stop within the range of his view;
- 20 (b) Drove on the wrong side of the road;
- (c) Failed to keep any or sufficient look-out;
- (d) Drove on without dipping his lights;
- (e) Failed to give any sufficient warning of his approach;
- (f) Permitted the said Peugeot Car to be so much overcrowded with passengers that it made it impossible for the driver of the car either to control or to manoeuvre the car so as to avoid hitting the Defendant Company's lorry No. UFW.703.
- 30 (g) Failed to apply his brake sufficiently or in time or to manoeuvre his said Peugeot car so as to avoid hitting the Defendant Company's motor lorry No. UFW. 703.

3. The injuries, loss and damage alleged to have been suffered by the said Rajabali Kassam, his estate or the Plaintiff are not admitted.

4. The particulars pursuant to the Ordinance are not admitted.

40 DATED at Kampala this 22nd day of April, 1960.

Sd. M.B. Mehta
COUNSEL FOR DEFENDANT CO.

Drawn and filed by:-

M/S CHAND & MEHTA, ADVOCATES, KAMPALA.

In the High
Court of Uganda

No. 3

NOTES OF EVIDENCE

No.3

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA

Notes of
Evidence
16th September
1960

CIVIL CASE NO.133 of 1960.

GULABANU RAJABALI KASSAM

Plaintiff

versus

KAMPALA AERATED WATER COMPANY
LIMITED

Defendant

Before - The Honourable Mr. Justice Lyon

PROCEEDINGS:

10

Wilkinson: Para.6 - not pursued. Shs.5,000/-
to be deducted from Shs.25,000/-. Defence (d)
amended. Not contested father died as a re-
sult of the accident.

P.1 GULABANU RAJABALI KASSAM. a/s -

Oldest living child of Rajabali Kassam.

Until he died I lived with him. He was
40 - 45 years old. I produce his passport
(Ex.1).

Children alive - as marked by Judge on
Plaint. All living with deceased. He kept
us all. (Para.7 of Plaintiff admitted). He
never suffered any illness. Never in Hospital.
Never treated by a doctor. He was active and
worked hard. On 31. 6. 59. I was in Peugeot
car going from Kampala to Bombo. It was our
car. Driver Nasura (id). No longer employed
by us. We have no car. It was a pick-up. I
was at the back - the cover was open. Accident
about 10 miles from Kampala. I did not see the
cause of the accident. We collided with another
vehicle and I was knocked unconscious and
injured on the shoulder. I was treated in
hospital. It was put in plaster. I was 7
days in Hospital. I was shocked (translation).
And I was shocked to learn my parents and sister
were killed. It was painful.

20

30

Father was in front near the nearside door and someone in between him and the driver. It was dark about. We all live in Kampala with Sadrudin who has a shop in Kampala. I have not seen the Peugeot since the accident.

In the High
Court of Uganda

No.3

Notes of
Evidence
16th September
1960
continued

10 Xxn. I am 23, single, but engaged to be married. Zarina will be married in a month too. Father never had malaria. We used to live at Bamunanika - no malaria there. He was not weak. He was strongly built, not thin. Three men in front, one woman and five others at the back.

20 Nasuru was our driver, employed by my father. There were not 11 passengers. There were 9 and 2 small children. Only 3 men in front - no child in front. We were not going fast. Accident at about 6.45 p.m. or 7.00 p.m. I was sitting and praying on the floor at the back. All others sitting; some others praying. Open at the rear. Canvas roof. I don't know the speed. Father was a trader. Shop is still in the same name as in Bamunanika.

(By Court: I was unconscious for 3 days)

Dislocated shoulder. When I came round I knew my parents were dead. I went unconscious again for about an hour. I am still worrying about it. I still get pain in the shoulder two to three times a week. I left school four years ago.

30 Rxd. Nil.

(Sgd) M. D. LYON
Judge.

P.2. RAMBHAI DHAIBHAI PATEL. a/s -

Inspector of Police, Central Police Station.
Police photographer.

40 Exs.2 (Exs.2-8). I took the 7 pictures and developed them to 8. On 1st September, 1959, Mr. Smith took me there. Ex.2 is looking towards Bombo. Ex.3 is looking towards Bombo, a bit past the lorry. Ex.4 is the lorry. Ex.5 is looking towards Kampala. Ex.6 is looking towards Kampala but nearer the lorry. Ex.7 is the Peugeot van.

In the High
Court of Uganda

No.3

Notes of
Evidence
16th September
1960
continued

Ex.8 same, but different angle. I printed these.

Exn. No question.

(Sgd) M. D. LYON
Judge.

P.3 NASURU YUSUF SALIM. a/s -

Sudanese. Trade in Bamunanika market.

I have a driving licence. In August last I was employed by Rajabali Kassam. Licensed 6 years. Never convicted of driving offence. Worked for deceased about two months. On 31.8.59 I was driving his Peugeot van from Kampala to Bombo. Collision 7.20 - 7.30 p.m. Quite dark. Macadam road. Dry. Visibility good. No rain. Peugeot and a lorry collided about mile 11. I was on the flat approaching a hill. In front two men and I. One was Rajabali who was by the door. No child in front. I could drive properly. I was not obstructed by the passengers. I was doing about 30 m.p.h. in top.

10

Ex.2. I saw a vehicle's lights coming down the hill. Ex.2 shows the scene. I know the road well. I would be bearing to my right. I was on my nearside. There was a white line. I was on my extreme left close to the grass. The other vehicle had two headlights on but very dim. I did not see sidelights. I saw him come over the brow. I had on two headlights in front in good condition. I dipped the head lights. I don't remember if the side lights were on. I never put the headlights up again. My nearside wheels were on the murrum on the nearside. I took my foot off the accelerator. I was hit by the other vehicle while still on my near side of the road. I did not swerve to the right. The other vehicle hit my right mudguard and then right side of cab and knocked off the right rear mudguard. I was slightly injured. It was hit and was forced to cross road and go into the grass and fell over its near side.

20

30

Adjourned to 2.15 p.m.

40

(Sgd) M. D. LYON
Judge.

2.15 p.m.

In the High
Court of Uganda

Court as before.

No.3

Nasuru Yusuf Salim (Continuing in chief) -Notes of
Evidence
16th September
1960
continued

I got out of the van. I went in a police tender to the Kawempe Police Station, with the dead people. That tender came along a few minutes after the accident.

10 The other vehicle's lights were so dim, he could not see properly. When the collision occurred, I had not yet started to go round the bend.

Xxn. I was driving a Peugeot van - there were two seats in the front. No child in front, only three adults. I could drive properly even if there were three people in the front. There was enough room although there were three in front, which is not allowed. It was a 203 Peugeot.

20 Bamunanika from Kampala is 35 miles. We did not want to get home as soon as possible. At first I was doing 20 - 25 m.p.h. I went faster when I left the town. I was not doing 60 m.p.h. before the accident. I had been doing 30 m.p.h. for a long time. Speedometer was working. I began to do 30 - 35 at 6 miles from Kampala. I reduced speed to 30 m.p.h. to pass the other vehicle. I always do that, even on a straight road. It is a wide road. I did not accelerate, but I would have done if I'd passed
30 the other vehicle. The other driver could not see far. He had not got on bright lights. He did not dip his lights. I did dip my lights. I was not on my wrong side. I passed another bend just behind - 150 yards back. I did not get over on the wrong side because I came round that bend too fast. My near wheels were on the murrans when we were hit - some distance from the centre line. I was hit with great force
40 just behind the cab. Our tyres were not smooth. We did not somersault.

Rexn. I had driven that car for two months - three to four times a week.

No difficulty in steering that day.

In the High
Court of Uganda

No.3

Notes of
Evidence
16th September
1960
continued

Hand brake on right side.

(Sgd) M. D. LYON
Judge.

P.4 ERIC FRANCIS DALE, s/s -

Assistant Superintendent of Police.

Inspector of Vehicles, Kampala. I inspected this Peugeot on 3/9/59 - UFN. 887. It was in good order before the accident in my opinion. Neither brakes nor steering bad.

I also saw UFW. 703, a 3-ton lorry, there. Extensive damage - more than that of the van. An old vehicle. No mechanical defect.

10

Xxn. No questions.

By Court: Pictures 6, 7, and 8 show vehicles.

(Sgd) M. D. LYON
Judge.

P.5. ARLENDAR FRANCIS CARACIOLA de CUNHA, s/s

M.O. Uganda Government, M.B., B.S., Poons.

On 31.8.59 I was on duty. I received the bodies of four people, and the Plaintiff (id.). She was shocked and distressed, and had an injury to right shoulder. Later we found it was dislocated. Detained in Hospital till 8.9.59. If there was damage to the ligaments she might still feel pain, but not serious.

20

Xxn. She was not unconscious, but dazed. Lun (?) set her shoulder and it was alright. I saw her at 8.00 - 8.30 p.m. She was not sure her parents were dead.

Rexn. We gave her a sedative. She would not know what happened the first two days in Hospital.

30

(Sgd) M. D. LYON
Judge.

P.6 BADRUDIN RAJABALI KASSAM, a/s -

In the High
Court of Uganda

Son of deceased, and brother of Plaintiff.

No.3

10 On 31.8.59 I was in father's Peugeot van on Bombo Road. I was in the back sitting - right in the rear on the nearside. There was a collision about Mile 11 Just before, we were praying. I was also watching towards the back. There was a vehicle behind. I saw the lights of it. We were on our left side. I often travelled in that van, and often in front and often at the back. Driver used to go at 25 - 30 m.p.h. We used to carry a fairly heavy load sometimes. The driver was Nasuru (id). He had been with us 2-3 months. I have been with other drivers in that vehicle. We never did 60 m.p.h. We were not going at an unusual speed on 31.8.59.

Notes of
Evidence
16th September
1960
continued

20 Xxn. I was praying, but I saw a light from the back. I do know where the van was travelling - on our left - I don't know the speed of our vehicle. I have not been in a vehicle doing 50 - 60 m.p.h. and not in our Peugeot. Vehicle behind was 100 ft. away at the time of the collision I was thrown out on our right side. I sent to Hospital with her. She was unconscious. On 2/9 she was still unconscious and on the next day as well. My evidence is not untrue. I have not suppressed the truth.

30 Age 19. I work in our shop - not doing well. I never said we were going too fast.

Rexn. Vehicle behind was not catching us. We were not doing an unusual speed. Vehicle behind doing the same speed. After the accident I saw it - it was a Police-tender - the one which took the bodies to Hospital.

Our shop is registered under the name Rajabali Kassam.

Adjourned to 20/9 at 9.00 a.m.

40

(Sgd) M. D. LYON
Judge.
16.9.60.

In the High
Court of Uganda

No.4

NOTES OF EVIDENCE AT ADJOURNED
PROCEEDINGS.

No.4

Notes of
Evidence at
Adjourned
Proceedings
20th September
1960

20.9.60:

Wilkinson.
Mehta.

P.5. BHARCHAND NAGJI SHAH, a/s

Accountant and auditor. B. of Commerce.

I knew Rajabali Kassam. I used to do his
Income Tax returns and prepared the accounts,
from 1956. 1957 and 1958.

10

Business profits:

1955 - net profit	£750
1956 - " "	£640
1957 - " "	£995
1958 - " "	£527 - Boycott.

Ex.9 I made up Ex.9 and Ex.10. (Mehta and Wilkin-
Ex.10. son and witness will try to agree figure of
assets).

Xxn. I used books of account for 1956, 1957
and 1958. In 1957 he drew Shs. 13,000/- for
his family.

20

Xxn. Reserved. (See page 23).

P.6. RAWESH RANSHINDIA SHANABHAI PATEL, a/s -

Salesman in a shop at Bamunanika. In
August 1959 I was in Kampala. I wanted to go
to Bamunanika. I got a lift with Rajabali.
I was in the middle in front with the driver
and on my left Rajabali. About mile 11 -
collision - dark. Just before we were going
slowly, at normal speed. I saw two dim
lights on a vehicle coming down a hill. We
were on the flat. Our driver dipped his
lights. We were on our near side of the road.
I don't know how close to the nearside grass.

30

Xxn. Van was going slowly from Kampala. The

speed varied. We were on the left side - our nearside. We had come on the nearside from Kampala. Those at the back were praying - I heard that. I was not injured. We were going fast. I am not related to Sultan Ally.

Rexn. I don't know if the Defendant in this case is one of my clan. The Sterling Insurance Co. have not interviewed me. I have not met Mr. Sultan Ally.

In the High
Court of Uganda

No.4

Notes of
Evidence at
Adjourned
Proceedings
20th September
1960
continued

10

(Sgd) M. D. LYON
Judge.

P.7. SADRUDIN RAJABALI KASSAM. a/s

Eldest son of Rajabali.

I have paid father's funeral expenses. I paid Shs.1,000/-. Shs.600 for digging three graves, Shs.300/- for three coffins, Shs.100/- for religious rites in the mosque.

My uncle lent me the Shs.1,000/-. Estate will repay that.

20

Rexn. Letter of administration were given quite recently to me and Plaintiff.

(Sgd) M. D. LYON

C A S E.

D.1. HENRIKO KIGOZI. Muganda, a/s - (From shorthand notes).

30

I am a driver employed by Kampala Aerated Water Company. On the 31st August, 1959, I was driving a 3-ton Ford lorry UFW.703 from Bombo to Kampala. The accident happened about 7.30 p.m. I had left Bombo about 5.00 p.m. I was going slowly because I kept stopping to distribute soda. From Mile 12 I was driving at 20 miles per hour, and at place of accident I was driving at 15 m.p.h.

Court: I was going slowly because I was heavily loaded with crates of soda. I had a turn boy in the cab with me. I put my headlights on at Mile 12

In the High
Court of Uganda

No.4

Notes of
Evidence at
Adjourned
Proceedings
20th September
1960
continued

because it was getting dark. Before the accident I was going downhill, in 2nd gear, i.e. next gear to the top. There were five gears.)

I was driving on the left-hand side of the road, downhill, when I saw vehicle coming towards me. I saw two head-lights. They were bright, not dipped. I dipped mine three times. The vehicle which was coming towards me did not dip at all, and it was coming at high speed, and hit me. At time of impact I had been blinded by the lights from the other car. I could not avoid this accident. At the time of the impact I was on the left hand side of the road and my nearside tyres were off the tarmac. After the accident my vehicle went off the road to its offside. I lost control. The other vehicle ran off the road on my nearside.

10

(Witness demonstrates how his lorry was hit by the other vehicle. Places Peugeot van at about 45° to lorry, and impact at van on offside front mud-guard and impact at lorry at about 1 ft. behind cab.)

20

I could see the road properly in my own lights. I could see about 150 yards. The other vehicle was coming in the middle of the road.

(Court: It was dry, not raining at the time of the accident. I was only slightly injured on my leg. I was not thrown out. My lorry finished up as shown in Pictures No.4 and No.2. I did not see the driver of the other vehicle after the accident, but I saw him at the Police Station. I did not speak to him. I had been driving that particular lorry for 1½ weeks.)

30

Xxn. I am still employed by the Kampala Aerated Water Co. as a driver. I still have a licence. I have been continuously employed there since the accident, nowhere else.

40

I have spoken the whole truth. I did not converse with the driver of the other vehicle at the Police Station. It was only a greeting. I did not have any conversation except "sorry".

He spoke to me first and I replied. I have a good memory. We did not speak about the accident.

In the High
Court of Uganda

No.4

I remember giving evidence in another Court about this matter.

Notes of
Evidence at
Adjourned
Proceedings
20th September
1960
continued

P.9. Q. Did you say there: "I went to the Police Station that night and I saw the accused there" - (the accused at that time being the driver of the other vehicle)? A. I said so.

10 Q. Did you go on to tell the court that you greeted one another?
A. I am not sure whether I said so.

Q. Would it be true if you had said that?
A. No, it would not have been true.

Q. You went on to say "We spoke about the accident".
A. I did not say to the Magistrate that we spoke about the accident.

20 Q. Did you have any conversation with the other driver at the Police Station about your battery?
A. No. I never spoke to him about my battery.

30 Q. Did you say in the other court: "I do not remember saying anything about my battery. I am not sure if I told the accused that my battery was low."?
A. Yes. I did say that to the Magistrate. I am sure that I never told the accused that my battery was low. My lights were very bright. As I was going along I dipped my lights 3 or 4 times, when I first saw the lights of the other vehicle. I was going downhill. When I first saw this car coming it was at a distance of about 150 yards. There were no other vehicles on the road.

40 Q. How far away were the lights when you first saw them?
A. I first saw the lights of the other vehicle when it was about 300 yds. away. When I first saw the other vehicle its lights did not dazzle me. I was blinded at about distance of 100 yds. away from the car. I was going down the hill. I had gone round the bend at the bottom of the hill before the lights of the other vehicle first dazzled me. I was about 50 yds. from the other

In the High
Court of Uganda

No.4

Notes of
Evidence at
Adjourned
Proceedings
20th September
1960
continued

vehicle when I was first dazzled by its lights. I was on a straight road when it happened. I remember giving evidence on this matter before.

Q. Did you say that you were travelling at 15 m.p.h. going down the hill?

P.8.

A. Yes, I said so.

Q. Did you say "When I saw a vehicle coming towards me I slowed down. I applied my brakes when the lights shone in my eyes."?

A. Yes, I was dazzled.

10

Q. I suggest to you that you are not telling us any of the truth about that part of the case.

A. I am telling the truth.

Q. Did you make this statement in the other court: "I applied my brakes when the lights shone in my eyes. There is a left hand bend at that place. I had not come to the bend when the lights shone in my eyes."?

A. I said so. It was true.

20

Q. May I remind you that a minute ago you told us that you had already passed round the bend and were going on the straight when you first saw the lights shining.

A. Yes, I had already gone round the bend.

Q. And you agree that in the other court you said you had not yet come to the bend when the lights shone in your eyes.

A. This was a misinterpretation.

Q. Who has discussed with you the evidence which you gave in the other court?

30

A. I have not discussed with anyone the evidence I gave in the previous court - not even with a European.

I was going along at a steady speed on my own side of the road, and I carried on like that on extreme left until the moment of the accident. I was surprised when we were hit. Until the moment I felt the impact I did not think there was any possibility that the other vehicle would hit me. The other vehicle did not dip its lights at all before the collision. So, for a considerable distance, at least 100 yds. I was dazzled by its lights. I could see

40

a short distance, about 15 yds. In spite of the fact that I was dazzled I could nevertheless see about 15 yds. Headlights had nothing to do with accident. I did not swerve at all just before the accident took place. I became frightened after the collision, not before.

(Witness warned a second time that if he tells lies he will go to prison).

(Court: Yes, I did tell the magistrate:
10 "I became so frightened I did not know what way I swerved. I became frightened and dipped my lights twice". I swerved to my left, but not sharply, because I wanted to avoid the other car, which came into the middle of the road.)

Q. But you could not see him, you were dazzled?

20 A. I could see a short distance.

Q. I suggest you saw him come for a long distance, in the middle of the road. A. Yes.

Q. So when you first saw him in the middle of the road he was only the distance from you to that wall?

30 A. No, I had seen his vehicle before my eyes were dazzled - it was in the middle of the road - although I was on one side of the bend and the vehicle was on the other side of the bend. I did not swerve to the right just before the accident.

Q. Is it not a fact that you had gone down this hill and round this bend and you found you were not able to steer correctly round that bend to the left?

A. I did not go down the hill fast.

40 Q. You came round the bend sufficiently fast that you were unable to keep on the left hand side of the road, and you continued to go out into the centre of the road.

A. No.

Q. Did you tell the magistrate in the other court "Prior to the accident I had turned my steering wheel to the right."?

In the High
Court of Uganda

No.4

Notes of
Evidence at
Adjourned
Proceedings
20th September
1960
continued

In the High Court of Uganda

No.4

Notes of Evidence at Adjourned Proceedings 20th September 1960 continued

A. Both front wheels were on the murrum.

Q. Did you tell the magistrate in the other court that you went on to the murrum at left hand side of the road?

A. I may have said so.

Adjourned to 9.00 a.m. tomorrow, 21st September.

(Sgd) M. D. LYON Judge.

No.5

Notes of Evidence at Adjourned Proceedings 21st September 1960

No.5

NOTES OF EVIDENCE AT ADJOURNED PROCEEDINGS.

21. 9.60.

Wilkinson Mehta.

HENRIKO KIGOZI (Xxn. continued) -

I had slowed down and kept to my near side. I went off the tarmac. My front and rear near-side wheels were on murrum, the others on tarmac. Was like that for some distance. I swerved to the left because of the oncoming vehicle which was then 40 yards away. My two front wheels were never both on the murrum. I think I said to the magistrate that both my front wheels were on the murrum. I don't remember all that happened on that occasion. I did not get so far off of the road that my vehicle was tilted over to its near side. I turned my steering wheel to the right very slightly. I can't remember all that happened. No one has told me what to remember. I was not frightened at all just before the collision. I told the magistrate "I became so frightened I do not remember which way I swerved." That was just before I came round the bend. I had not lost control of my vehicle. That was not what caused my fear. The lights in my eyes frightened me. This was before the bend and the other vehicle had not reached the bend. But I say the lights were in my eyes.

10

20

30

I have 12 years' driving experience. I have met other cars which did not dip their lights. I get frightened then, sometimes I stopped, sometimes I slowed down. On this occasion I braked hard to slow down. That was necessary because of the lights. I was doing 15 m.p.h. down the hill. At the time of the impact I was applying my brakes hard. I put my foot down hard on the brake - brakes were in good condition and effective.

In the High
Court of Uganda,

No.5

Notes of
Evidence at
Adjourned
Proceedings
21st September
1960
continued

10

District Court record put in (Ex.11) by consent.

Court refers only to those passages mentioned in Mr. Wilkinson's cross-examination.

Rexn. Nil.

(Sgd) M.D.LYON
Judge.

D.2. PAULO KASSERMAKERS, s/s.

20

Insurance assessor and surveyor for 5 years.

Dutch qualified engineer I.V.A., particularly for motor cars. I have done many investigations of accidents.

30

I did not go to the scene until day before yesterday. I have surveyed the lorry on 9th September in the garage in Kampala, i.e. 10 days later. Right hand front end of lorry had received an impact just behind the axle at rear end of off side front wheel; and damage as though vehicle had run into a ditch - cabin tilted forward and more damage at the front. That is all the major damage.

(Court: Head lights cannot dazzle you if you are going round a curve if the lights are properly adjusted.)

203 Peugeot is a light van. Three people in front might cause some obstruction. Gear lever and brakes in the centre. It would not affect the proper steering.

40

Xxn. No questions.

(Sgd). M. D. LYON
Judge.

In the High
Court of Uganda

No.5

Notes of
Evidence at
Adjourned
Proceedings
21st September
1960
continued

D.3. IBRAHIM JANMOHOMED, s/s -

Businessman. I have a shop at Kaliro since May 1960. Before that at Bamunanika since 1922 up to April 1960, trading. Ismaili Khoja.

I left because of the boycott. There were 20 shops there then, now only 5. My turnover per day used to be Shs.200/- to 250/-. After boycott Shs.15/- to Shs.20/- per day. Kaliro is slightly better. I knew Rajabali Kassam. He was not very fat and healthy. He had malaria, but not often. It recurred about every four months, and would go to bed if he had fever. I was chairman of the Ismaili school at Bamunanika. Deceased belonged to my community.

10

Xxn. He would come to Kampala to see a doctor. I was called to give evidence by the Sterling people - Sultan Ali (id), also of my community. He was a teacher at the school at Bamunanika. I was not chairman then. He telephoned me at Kaliro. My neighbour has a 'phone at Kaliro - 95 miles from Kampala. Bamunanika is 32 miles away. I have seen no shopkeeper in Court who is still doing business at Bamunanika. I did not leave Bamunanika in July 1959. I rented my shop at Kaliro from 1.5.60. I never traded at Iganga. I never rented the cinema there. Govils; I heard was worth Shs.15,000/-to Shs.20,000/-. I trade in my own name and I traded at Bamunanika in my name. There was competition at Bamunanika. I have been back to Bamunanika, the last time in June 1960, and two or three times from May to June to see if business was better. The only trouble was the boycott. Competition is less. I do not know what is happening at Bamunanika today. Rajabali made money by retail and a small amount of local produce. I am surprised he left Shs.150,000/-. I thought his condition was like mine. If Rajabali was taking Shs.12,000/- per month for 1958 I would be surprised. I was making Shs.7,000/- per month, Shs.7,000/- per annum profit.

20

30

40

I cannot mention any doctor who attended Rajabali at Bamunanika.

Rexn. Nil.

(Sgd) M. D. LYON
Judge.

D.4. DAVID THOMAS SMITH, s/s -

In the High
Court of Uganda

Assistant Superintendent of Police,
attached to Provincial Headquarters.

No.5

Accident at mile 10½ on Bombo road - I went there on 31/8 at 9 o'clock. I have dealt with many accidents.

Notes of
Evidence at
Adjourned
Proceedings
21st September
1960
continued

Ex.12 I drew Ex.12 that night.

Adjourned for 10 minutes.

11.15 a.m.

10 Court as before.

DAVID THOMAS SMITH (Continued in Chief) -

Ex.14 is correct and the measurements are correct on Ex.14. I also looked at the vehicles. The Peugeot UFN 887 was lying on near side as shown. Front off side tyre burst and wheel buckled. Lorry - nose into a concrete culvert on south side of road. Most of damage caused then, and so I can't say what was caused by the impact. Point of collision is 17" north of white line, if I have construed the signs aright.

20 At E, there was some murrum on the road at the mark M. E - start of wheels skid marks of lorry. G. - H. debris. At the impact the murrum would fall off the mudguards. Debris on south side of white line - glass and splintered wood, none on the north side. Murrum more reliable than glass - glass flies. Murrum, glass and broken wood scattered over wide area. Both vehicles going fast. D. off side head lamp of Peugeot.

30 Xxn. Off side front wing of Peugeot was dented. There was a smash behind the cab of Peugeot. It perhaps rolled over several times, and did not damage the wings. I do not agree the main impact is behind the cab. Off side head lamp smashed. If a lorry hits the off side wing of a car, the wing would be torn. Only reason I say E. is point of impact is the murrum. I found murrum under the wings of both vehicles. Mixture of dark red mud. Small pile of murrum at E. I put E. and M. at the start of the skid. The near side wheel mark of the lorry was 14" wide, and therefore I thought it

40

In the High
Court of Uganda

No.5

Notes of
Evidence at
Adjourned
Proceedings
21st September
1960
continued

was the rear wheel mark. Point of impact cannot be placed within inches. I don't agree it could have been 10 ft. away from the murrum pile. One vehicle was on the north side of the road. It would take half a second or quarter of a second for the murrum to fall off. Wing of lorry at highest point is 4 ft. from the ground; Peugeot 2½ ft. Peugeot was going towards Bombo. G. - H. glass from both vehicles. Wood in G. and H. came from the Peugeot. The line of G. - H. would continue into line of Peugeot's wheelmarks G. - K. Broken glass of a lamp or windscreen would fall forwards. Glass debris by lorry. Debris. G. - G. might have been from the Peugeot only. H. was about 6 ft. south of the white line. Glass at G. was from the Peugeot. H. may have been debris from either vehicle. No evidence of any glass of lorry broken on the lorry. I say Peugeot was going fast because the collision would slow them down.

10

20

I. to K. is 55 ft. A. to K. is 35 ft.
A. to I. is 55 ft. A. to M. is 125 ft.

Peugeot could have rolled over between E. to 6. I can't tell Peugeot's speed. Lorry went 89 ft.

Rexn. My plan is not to scale.

Adjourned to 9.30 a.m. on 22/9.

(Sgd) M. D. LYON
Judge.

30

No.6

Notes of
Evidence and
proceedings at
Adjourned
Proceedings
22nd September
1960

No.6

NOTES OF EVIDENCE AND PROCEEDINGS
AT ADJOURNED PROCEEDINGS

22.9.60:

Court as before.

DAVID THOMAS SMITH -

Rexn. (Contd.)

I examined the front off side wheel of the

Peugeot. Tyre was flat and wheel rim twisted and bent. Debris between G. and H. scattered about. As two vehicles meet coming in opposite directions the vehicles would tend to stop instantaneously.

In the High
Court of Uganda

No.6

D.5. ERIC FRANCIS GALE. s/s

I made these Exhibits Nos.15 and 16.

Notes of
Evidence and
Proceedings at
Adjourned
Proceedings
22nd September
1960
continued

10 Exg. I examined the vehicles at our examination yard. I did not see the vehicles on the site. Nearly all damage to lorry would have been caused by collision with the Ex.4. concrete culvert as shown on Ex.4.

(Sgd) M. D. LYON
Judge.

C A S E

Mehta : I would like Court to see the site.

Court : I am not prepared to go.

Mehta : Plaintiff's evidence useless

Praying at the back. Not unconscious.

20 Her evidence on father's condition unreliable. He was a sick man.

Driver's evidence.

Son Badrudin also praying.

Lorry driver - stupid, muddle-headed.

Smith's evidence - murrum - point N.

Murrum at beginning at skid-marks of lorry. No murrum on south side of white line.

Silent witnesses that point of impact was north of white line.

30 Speed of Peugeot high.

Three in front seat, therefore driver obstructed.

In the High
Court of Uganda

No.6

Notes of
Evidence and
Proceedings at
Adjourned
Proceedings
22nd September
1960
continued

Reads passage from Woodroffe on "Law of Evidence" 8th edition, at page 681: "there the burden of proof lies upon You have not proved yours."

Wilkinson: (Transcribed from Shorthand notes) -

No quarrel with my learned friends' "Law of Evidence". Facts are the only things that matter. Evidence of state of road, the weather, and where the two vehicles met as described by the witnesses. Clearly negligence on the part of someone, may be one or the other or both. Prima facie case is negligence on the part of someone, but who? One starts with the evidence of these who were in the vehicles at the time. Significant turn-boy who was sitting in front of lorry not called. Where is he? He gave evidence in the court below. My learned friend should produce evidence to show he is not available. He was found easily enough before. 10 20

It is seldom in a court that one finds an African witness who gives evidence so clearly and so well as the driver of the Peugeot, Nasuru. He was not shaken. Did not contradict himself. Did not even pretend that he was going at 15 m.p.h. He was truthful. He put it at a reasonable figure of 30 m.p.h.

Not suggested that speed has anything to do with this accident. Suggested that driver of Peugeot could not control vehicle, but no evidence that he was going fast. No evidence that flat or smooth tyre could have anything to do with it. Not in bad mechanical condition. What then was cause of accident? 30

Peugeot travelling well on correct side of the road. Lorry drove into it. This story strongly supported by evidence of the defence. Driver of lorry most unreliable witness - lying. Even if not lying, may be mistaken. Supposing he does not know what occurred, in what way does he contradict driver of Peugeot? Not at all. Significant he admits he swerved first to the left to such an extent that both front wheels were off the murrum, and then he 40

swerved to the right. Submit that when he did that he came well on to the wrong side and collided with Peugeot. That is supported by evidence of Mr. Smith. His rear offside wheel was only 17" from the white line at that point.

In the High
Court of Uganda

No.6

Notes of
Evidence and
Proceedings at
Adjourned
Proceedings
22nd September
1960
continued

10 Suggestion that it was front wheel of lorry, because driver of lorry said he was hit behind the cab. Immediately before accident he was serving to the right; if so, with his rear wheel 17" over the line, most of his lorry was on the south side of the line. He admits that he applied his brakes, and that is the skid mark.

20 Also clearly explains the position of the glass. That would be exactly where the glass would be expected to fall. He in fact struck the Peugeot as it came along at an angle, shifting glass forward and landing approximately where Mr. Smith said first lot of glass was. Completely consistent with our story. Accident happened not on the north side of the road, but well over to the south side.

30 In regard to speed, credibility of driver of the lorry badly shaken by suggestion that he was driving at only 15 m.p.h. when he applied his brakes hard. In Gibbs on "Collisions on Land" you will find a table showing what brakes will do to pull up a vehicle at various speeds, reaction of driver which takes a certain time, and braking distances. At a speed of 10 m.p.h. pull up at 15 ft. at 20 m.p.h. pull up at 40 ft., and so on. This driver travelled 89 ft. then went down a slight bank and struck some concrete with tremendous force. His story not true.

40 Some of the glass may be from lorry. One lamp shattered on collision with Peugeot. Could not be carried on Peugeot because driver says he was struck behind cab. The whole of Mr. Smith's evidence supports very fully my client's evidence.

Weight of lorry empty about $2\frac{1}{2}$ tons ;

In the High Court of Uganda

weight of Peugeot empty about $\frac{5}{4}$ ton.

(End of transcription)

No.6

Notes of Evidence and Proceedings at Adjourned Proceedings 22nd September 1960 continued

(Sgd) M. D. LYON Judge

23.9.60:

Hunt.

Mehta.

Judgment dictated.

(Sgd) M. D. LYON Judge.

10

No.7

Judgment as to Liability 23rd September 1960

No.7

JUDGMENT AS TO LIABILITY

IN HER MAJESTY'S HIGH COURT OF UGANDA AT KAMPALA.

CIVIL CASE NO.133 OF 1960

HULBANU RAJABALI KASSAM ... Plaintiff.

versus

KAMPALA AERATED WATER COMPANY LIMITED ... Defendant

Before - The Honourable Mr. Justice LYON

20

J U D G M E N T

This is a tragic case because no less than three people were killed as a result of the collision with which I am concerned. Two of them were the parents of the Plaintiff. The Plaintiff claims damages for alleged negligence by a servant of the Defendant Company.

The defence is a denial of negligence, and allegations that the Plaintiff's driver was himself negligent; and the particulars of the alleged negligence are set out clearly both in the plaint and in the defence.

30

Before the Plaintiff can succeed, onus of proof of negligence must be discharged by her.

The vehicle in which the Plaintiff's family were travelling at the time of the collision was a Peugeot 203 van, the weight of which was about $\frac{1}{2}$ ton. The vehicle belonging to the Defendant Company with which the Peugeot collided, weighed about $2\frac{1}{2}$ tons, and it is admitted it was fully loaded with bottles.

In the High
Court of Uganda

No.7

Judgment as
to Liability
23rd September
1960
continued

10 The collision took place in the dark on the 31st August, 1959, at about Mile 11 on the Kampala/Bombo Road. The Plaintiff's vehicle was travelling towards Bombo and the lorry towards Kampala.

20 The framework of the Plaintiff's case is that as it was approaching a slight bend in the road the Defendant's lorry swerved to its right, crossed the white line in the middle of the road, and therefore was on its wrong side, collided with the van on its offside, the main point of impact being just behind the Peugeot cab, but the rear offside mudguard of the Peugeot was also completely smashed. The Plaintiff alleges the lorry driver was going too fast; he was on the wrong side of the road; he failed to keep a proper look out, and was driving with insufficient lighting; (e) of the plaint does not apply but (f) does; that he failed to apply his brakes sufficiently or in time to manoeuvre his lorry so as to avoid hitting the Peugeot.

30 On the other hand the frame-work of the defence case is that the lorry was coming down the hill quite slowly on its near side; that it never crossed the white line; that the driver was dazzled because the Plaintiff's driver had not dipped his headlights; that the Peugeot drove into his vehicle, the point of impact being on the north side of the white line. Therefore, while denying their negligence, the defence allege Plaintiff's driver
40 was driving too fast on the wrong side of the road; failed to keep proper look out; drove without dipping his lights, and that the Peugeot was over-crowded so that the driver had no proper control and that the Peugeot driver failed to brake in time.

50 The Plaintiff's advocate began to prove her case by calling the Plaintiff herself. She was in the back of the van saying her prayers. She frankly said: "I did not see the cause of the accident. We collided with another vehicle and I was knocked unconscious" The rest

In the High
Court of Uganda

No.7

Judgment as
to Liability
23rd September
1960
continued

of her evidence was concerned with her deceased father's health, and similar matters with which I am not now concerned, because counsel have requested me to find first which party is liable if any.

Mr. Wilkinson then produced some excellent photographs which were admitted as Exs.2 - 8 inclusive; and then he called the driver of the Peugeot. Except that it was dark, visibility was good, and the road was dry. It is main macadam road with approximately 3 ft. of murrum on each side. In the front there were three men, including the driver. That van would normally carry two in the front. The hand brake and the gear lever attached to the steering wheel are on the left. The hand brake might have been difficult to reach with the middle passenger sitting as he was, but in the circumstances of the collision, which is admitted by both parties, the driver would not use the hand brake. He could, in my opinion, steer quite properly, and he could use the foot brake, and therefore I do not think there is anything in Mr. Mehta's point that the Peugeot's driver was obstructed.

10

20

The important passage in the driver's evidence is as follows: "I was doing about 30 m.p.h. in top. I saw a vehicle's lights coming down the hill. Ex.2. shows the scene. I know the road well. I would be bearing to my right. I was on my nearside. There was a white line. I was on my extreme left, close to the grass. The other vehicle had two headlights on but very dim. I did not see sidelights. I saw him come over the brow. I had on two head lights in front in good condition. I dipped the head lights. I don't remember if the sidelights were on. I never put the headlights up againI was hit by the other vehicle while still on my nearside of the road. I did not swerved to the right. The other vehicle hit my right mudguard and then right side of cab and knocked off the right rear mudguard. I was slightly injured. It was hit and was forced to cross road and go into the grass and fall over on its near side." If that evidence is believed it seems to me the Plaintiff would succeed. So it is necessary

In the High
Court of Uganda

No.7

Judgment as
to Liability
23rd September
1960
continued

to look for corroboration of that testimony. Mr. Wilkinson's case all along has been that the lorry driver, not having proper control of his lorry, swerved to his right just before the collision, and hit the Peugeot just behind the cab, at a time when the Peugeot was a few feet on the south side of the white line. That version of the collision is, in my opinion, very strongly confirmed by Photograph 7, because the framework of the Peugeot van just behind the cab is completely smashed in, and the rear offside mudguard was also completely smashed, as shown in Photograph 8. On the other hand in Photograph 8, although it is true the offside front lamp glass is broken, and the offside front wheel is smooth and burst; there is no damage to the bumper on the offside, and indeed the mudguard is only bent. It must be remembered in this case that neither vehicles continued for a considerable distance, the Peugeot carrying on to the north side of the road probably rolling over; at any rate, it came to rest in the position shown in the Photographs, but facing back towards Kampala. I think the damage just behind the Peugeot's cab on the offside is remarkable corroboration of the Plaintiff's testimony and of Mr. Wilkinson's assertion as to how the collision occurred. After some evidence with regard to the Plaintiff's deceased father's means Mr. Wilkinson closed his case.

The first witness called by Mr. Mehta was the lorry driver. He had testified in a district court prosecution when the Peugeot driver had been charged with certain offences in connection with the collision in the instant case. Although I am not concerned with the result of that prosecution, I did allow Mr. Wilkinson to make use of the district court record for the purpose of cross-examining the lorry driver, Kigozi. That African driver was a most remarkable liar. The record of the district court prosecution was admitted in the instant case, with Mr. Mehta's consent, and I have considered that driver's evidence which he gave in the lower court and also his evidence here, particularly under cross-examination. He kept contradicting himself in both courts except as to his speed down the hill. He testified in both courts that his speed then was 15 m.p.h. There is clear evidence, that of Police Officer Mr. Smith, that on the

In the High
Court of Uganda

No.7

Judgment as
to Liability
23rd September
1960
continued

sketch plan Ex.12, the skid marks of the lorry began at point "E" and continued for some considerable distance; and yet, before he left the road, the lorry driver went 89 ft. The evidence that he was doing 15 m.p.h. is incredible, and I reject it. He testified, inter alia, that the Peugeot van drove into him on his offside, at an angle of about 45°. That, in my opinion, is disproved by the photographs of the damage sustained. After much hesitation and argument this witness finally agreed that he had told the magistrate that he had spoken to the Peugeot driver after the collision at the Police Station, and had mentioned that his battery was low. His final answer to Mr.Wilkinson on that was :

10

"Q. Did you say in the other court:
'I do not remember saying anything about my battery. I am not sure if I told the accused that my battery was low.' ?

20

"A. Yes."

Then another contradiction: "My lights were very bright. I dipped my lights 3 or 4 times."

He next tried to make out that he was dazzled by the lights of the Peugeot. As it is clear that neither vehicle had rounded the bend at the time when the driver says he was dazzled, that evidence must be rejected. All that one can gather from that unsatisfactory witness's evidence is that he admits at one stage he swerved to his left and then to his right; and that last admission, I say again, is strongly confirmed by the damage to the Peugeot.

30

I am left with the main contest in the whole case, and that is the point of impact. On this Mr.Mehta was in a position to call a Police Officer. Mr.D.T.Smith, whose evidence as to what he saw and found at the site is not contested by Mr.Wilkinson, except for one measurement, which is not of great importance. It is the conclusions which he drew which Mr. Wilkinson contests, particularly as to the point of impact. His conclusions were that the point of impact - which is itself a rather vague term - was at 'M' on Ex.12, which Mr. Smith testified is 17" on the north side of the

40

10 white line along the middle of the road, the
line which can be faintly seen on Photographs
2 and 3. Mr. Smith swore that at the point
'M' there was one small pile of murrum. He
also swore that from 'H' to 'G' there was
scattered about debris in the form of broken
glass and broken wood. The broken wood be-
tween 'H' and 'G' was from the Peugeot, as
Mr. Smith admitted: and some of the glass at
20 any rate, between 'H' and 'G', was glass from
the Peugeot. I do not propose to go in de-
tail into the elaborate reasons Mr. Smith gave
for his opinion that 'M' was the point of im-
pact, nor Mr. Wilkinson's skilful arguments as
to how murrum knocked off the top of a mud-
guard would reach the ground, except that I am
aware that if the vehicle was moving it would
not drop directly to the ground at an angle of
90°; the illustration of throwing a cigarette
30 from a moving car is relevant; similarly,
the murrum travelled a certain distance for-
ward.

After very carefully considering all the
evidence again, I am not only not satisfied
that 'M' was the point of impact, but I am sat-
isfied that the point of impact was well on the
south side of the white line. That there was
one pile of murrum 17" on the north side is not
conclusive. If the impact had been on the
30 north side one would have expected more than
one pile of murrum. If that murrum came from
either of the vehicles involved in this colli-
sion, which I do not think is conclusively
proved, then it came from the offside rear
mudguard of the lorry, and at that time, if
there was to be a collision at all, the lorry
must have turned at about 45° towards the South
side.

40 Another reason why I am satisfied that the
collision took place on the south side is that
I cannot envisage how the Peugeot collided with
the lorry at 'M' and then somehow got back on
to the line 'H' 'G' 'I' 'J' 'K', and so on to
'A'. That seems to be impossible and, further
all the debris between the line 'H' 'G' and on
to 'I' appears to me to show that the impact
was on the south side. In those circumstances
I find it safe to accept the evidence of the

In the High Court of Uganda

No.7

Judgment as to Liability
23rd September 1960
continued

Peugeot driver. The Plaintiff has satisfied me that in the circumstances of the case the lorry driver was going too fast, and too fast to stop before the collision, too fast to stop within the range of his view. I am satisfied his headlights were dim, that he drove on the wrong side of the road without any sufficient lighting and failed to apply his brakes sufficiently or in time to avoid the collision. On the other hand I am satisfied that the Peugeot driver was not driving too fast, or too fast to stop within the range of his view. I find he was driving on his near side of the road and that he did dip his headlights and that he was not negligent in failing to avoid the collision.

10

I am satisfied this lorry, fully loaded, was coming down the hill much too fast and was not under proper control. It was on its wrong side of the road some little time before the collision, swerved to its left first and then to its right, into the Peugeot car at the place shown in the photograph.

20

In these circumstances judgment will be entered for the Plaintiff; but counsel have kindly said they will attempt to arrive at an agreed quantum of damages; and if they fail, I will hear them on a date to be fixed.

(Sgd) M. D. LYON
Judge

23. 9. 60.

30

H.M. HIGH COURT OF UGANDA
Fees paid Shs.23/- Uncert.copy
Receipt No.366771. 4/11/60
Cashier

No.8
 NOTES OF EVIDENCE AND PROCEEDINGS
 AS TO DAMAGES

In the High
 Court of Uganda

No.8

28. 9.60: Wilkinson
 D'Silva
 Mehta
 J. C. Patel

Notes of
 Evidence and
 Proceedings
 as to Damages
 28th September
 1960

P.5. BHAICHAND NAGJI SHAH. a/f: (From Short-
 hand Notes) --

10 I am a Bachelor of Commerce and practise
 in Kampala as an Accountant and Auditor.

From the 31st May, 1956, I have made up
 accounts for Rajabali Kassam. I made up a
 statement of affairs for several years. I kept
 the accounts from 1956 to the end of 1958. I
 brought up statement to the end of August. His
 income from his business as a shopkeeper during
 these years averaged £744 as follows:-

	1955	£750	}	
20	1956	£640	}	
	1957	£995	}	Average for
	1958	£527	}	the five
	1959 (up to 31st August was £600, and at this rate, if he had lived to the end of the year, would have been £900			} years is £744.
))	

30 The assets of deceased up to the time of
 his death consisted of a fixed deposit in the
 Diamond Jubilee Investment Trust Ltd. amount-
 ing 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.14,533/-.

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

In the High
Court of Uganda

No.8

Notes of
Evidence and
Proceedings
as to Damages
28th September
1960
continued

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).

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. 10

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

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. 20

Xxn. Mehta -

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

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.? 30

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.16,725/- less contribution from children. That means he himself 40

drew Shs.11,916/25. Is that it?

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.

Court:

10

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:

20

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.

Xxn: Mehta:

Q. The boycott started in March 1959?

A. Yes.

Wilkinson:

30

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 - £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.

Mehta : I call no evidence.

In the High
Court of Uganda

No.8

Notes of
Evidence and
Proceedings
as to Damages
28th September
1960

continued

In the High
Court of Uganda

No.8

Notes of
Evidence and
Proceedings
as to Damages
28th September
1960
continued

Wilkinson to Court :

To the figures which we have given Your Lordship as being nett profits should be added a further benefit which the family received - in other words, the salaries which were debited to these parties. Strictly speaking, my learned friend should address the Court first.

(End of Transcription)

Mehta : 1957 E.A.C.A. 3(b) 748 and 749.
Chunibhai Patel v. Haves & Coys.

10

Ages of children

1958 E.A.C.A. Pt.II. 268

Deceased aged 51.

Shop run by children and still running.

Two sons in business.

Two daughters - to be married.

Profits vary.

Asian trade ruined.

Premiums.

Wilkinson : Financial loss suffered by
deceased.

20

Saving money.

Probabilities. Savings for children.
Would have accumulated savings for 15 years.

{ H.M. HIGH COURT OF UGANDA
Fees paid Shs.72/- Uncert. copy
Receipt No.366761. 4/11/60
Sd. Cashier. }

NO.8 (A) ACCOUNT OF ASSETS AND LIABILITIES OF
RAJABALI KASSAM Deceased

No.8 A

THE LATE MR. RAJABALI KASSAM KABANI. c/o P.O.BOX 634 KAMPALA

List of Assets and Liabilities as at 31st August, 1959 (the date of his death).

Account of Assets
and Liabilities
of Rajabali Kassam
deceased as at
31st August 1959

		<u>D E B I T</u>	<u>C R E D I T</u>
	Shop Furniture (Bal.31.12.1958)	2700.00	
	Boxybody Car UFN 887 (met within accident, third party insurance only)	Nil	
	Temporary Buildings at Bamunanika (Books value 31st December, 1958).	10000.00	
10	Fixed Deposit Diamond J. I. T. Limited (in own name).	111000.00	
	Fixed Deposit Diamond J. I. T. Limited (in the name of the late Mrs. Rahematbai Rajabali Kassam	23000.00	
	Deposit with Uganda Electricity Board K'la	80.00	
	Shares of D.J.I. T. Limited (150 shares of Shs.20/- each) Bal.31.12.1958	3000.00	
	Shares of D.J.I.T. Limited :-		
20	50 Shares Mrs. Rajabali Kassam	1175.00	
	50 " Miss Dolatkhanu	1175.00	
	50 " Miss Gulabanu	1175.00	
	50 " Miss Zarina	1175.00	
	50 " Miss Shahsultan	1175.00	
	50 " Badrudin Rajabali	1175.00	
	50 " Sadrudin Rajabali	1175.00	
	350 Shares of Shs.28/50 each at cost 1958	8225.00	
	Barclays Bank, K'la Savings a/c (Old Bal.)	120.95	
30	Stock on hand 31/8/1959 as per list	14583.15	
	Debtors (2 months rent July, Aug.)	230.00	
	Cash on hand 31/8/59 (Shs.200/- found in his coat included)	670.00	
	Jubilee Insurance Co.Ltd. (excess on Life Insurance Premium)	80.00	
	Medical Department (Misc.Gulbani's Hospital Bill)		320.00
	B.N. Shah (1958 Accountancy fees)		900.00
	Miss Dolatkhanu Rajabali (Bal. 31.12.1958)		26400.00
	Jagjivan Mulji & Brothers Limited		13.50
	Balance 31.12.1958	17300.00	
	1958 8 months salary	2000.00	
	less Food expenses etc.	1000.00	
	Sadrudin Rajabali:		
	Balance 31.12.1958	4505.00	
	1959 8 months salary	2600.00	
	Less: Food expenses etc.	1400.00	
	Badrudin Rajabali:		
	1958 8 months salary	2600.00	
	Less: Food expenses etc.	1200.00	
	Rajabali Kassam Capital A/C (difference of assets over Liabilities		120650.00
		<u>173689.10</u>	<u>173689.10</u>

H.M. HIGH COURT
Exhb.No.10
Put in by Pltf.
In H.C.C.C.
No.133/60
20/9/60
Sd.M D Lyon

NOTE:

Mrs. Rahematbai Rajabali Kassam also died by the accident.
For Estate Duty her fixed Deposit Shs.23000/- should be treated separate.

Miss Dolatkhanu Rajabali Kassam also died by the same accident. Her
credit balance Shs.26400/- should be treated as per personal asset for Estate Duty.

NO.8 (B) TRADING ACCOUNT OF RAJABALI KASSAM, Deceased.

RAJABALI KASSAM KABANI, P.O. BOX 634, KAMPALA.

(Trading at Bamunanika, 36 miles from Kampala)

Trading and Profit and Loss Account for the year ended 31st December, 1958

To Stock on hand 1. 1.1958	24756.60	By Sales	148836.20
" Purchases	127200.34	" Stock on hand 31.12.1958	31713.10
" Gross Profit	<u>28592.36</u>		
	<u>180549.30</u>		<u>180549.30</u>

Profit and Loss Account for the year ended 31st December, 1958.

To Trading Licence	45.--	By Gross Profit	28592.36
" Salary and wages to staff:		" Profit on sale of U.T.C. Ltd. shares	1118.80
Sadrudin Rajabali	3900.00	" Rent from Temporary buildings at Bamunanika	1380.--
Miss Dolatkhanu Rajabali	2900.00		
Miss Gulbanu Raja- bali	2900.00		
African wages	<u>4165.00</u>		
To Machine Repairing	78.30		
" Ground Rent to African Landlord	600.00		
" Light Fitting and connection charges	586.--		
" Light charges	9.--		
" Legal (vacating plot)	42.--		
" Accountancy	1100.--		
" Car Running	2742.42		
" Depreciation: Furniture	740/-		
Motor Car UFN887	<u>1000/-</u>		
" Net profit for the year	<u>10283.44</u>		
	31091.16		<u>31091.16</u>

Details of drawings for the year 1958:-

210.--	Poll Tax and Education Tax
25.--	Income Tax
2792.70	Life Insurance premiums
384.--	Education
32.45	Light charges
980.--	Houseboy
37.--	Ration material
6255.--	Cash for house expenses
6000.00	Additional expenses incl. goods from shop
<u>16716.15</u>	

Less:

1800.00	Sadrudin Rajabali	1671.6
1500.00	Miss Dolakhanu Rajabali	<u>279.2</u>
4800.--	1500.00 Miss Gulabanu Rajabali	1392.4

Shs.11916.15 Total

9100

23.5
1368.9

Stock last produced	
Case No.133/60	
17	1111
	<u>4</u>
	4444

(H. M. HIGH COURT
 Exh. No.17
 Put in by Pltf.
 In H.C.C.C. No.133/60)

28/9/60

Sd. M. D. Lyon
Judge

£684

No. 8B

Trading Account
of Rajabali Kassam
deceased for year
ended 31st December
1958

NO.8"C" BALANCE SHEET OF RAJABALI KASSAM, Deceased

RAJABALI KASSAM KABANI, P.O. BOX 634, KAMPALA.
(Trading at Bamunanika, 36 miles from Kampala)

BALANCE SHEET AS AT 31st DECEMBER, 1958

No. 8C

Balance Sheet of
Rajabali Kassam
deceased as at
31st December 1958

<u>LIABILITIES</u>		<u>ASSETS</u>	
<u>RAJABALI KASSAM KABANI, CAPITAL ACCOUNT.</u>			
Balance as at 31/12/1957	107896.47	Balance as at 31.12.1957	875.--
Interest from D.J.I.T.Ltd.	4560.--	Additions	<u>2565.--</u>
Net Profit for the year	<u>10283.44</u>		3440.--
	122739.91	Less Depreciation	740.--
Less Drawings	11916.15		2700.--
	110823.76	<u>BOXBODY CAR UFN.887</u>	
		Balance as at 31.12.57	4500.--
		Less Depreciation	1000.--
			3500.--
<u>CREDITORS:-</u>			
Sadrudin Rajabali	4505.--	<u>TEMPORARY BUILDINGS AT BAMUNANIKA.</u>	
Miss Dolatkhanu Rajabali	26400.--	Balance as at 31.12.57	10000.--
Miss Gulbani Rajabali	17300.--		
Other Creditors	<u>21497.57</u>	<u>FIXED DEPOSIT WITH DIAMOND J.I. TRUST LTD.</u>	
	69702.57	Balance as at 31.12.1957	114000.00
		<u>DEPOSIT - UGANDA ELECTRICITY BOARD, KAMPALA.</u>	80.00
		<u>INVESTMENT IN SHARES.</u>	
		Diamond Jubilee I. Trust Ltd.	3000.--
		Uganda Transport Co.Ltd. Sale price	3468.80
		Less balance 31/12/1957	<u>2350.00</u>
			<u>1118.80</u>
		Transferred P. & L A/C	<u>1118.80</u>
		<u>BARCLAYS BANK (D.C. & O) KAMPALA SAVINGS, ACCOUNT.</u>	120.95
		<u>STOCK IN HAND</u>	31713.10
		<u>DEBTORS</u>	460.--
		<u>CASH ON HAND</u>	<u>14952.28</u>
	<u>180526.33</u>		180526.33

Compiled from books written by a member of my staff as per advice information and instructions received from Mr. Rajabali Kassam Kabani. He has certified his sales, purchases expenses and drawings as correct. The stock is also certified as true and correct by him.

(B.N.Shah, B. Com.)
Accountant & Auditor.

The stock on hand has been taken and valued at cost or market price whichever be lower and is certified as true & correct. Certified that above accounts represent a true and correct position of my income and expenditure and the Assets and Liabilities.

RAJABALI KASSAM KABANI,
Sales, purchases, expenses and drawings are certified as true and correct.

No.9

FURTHER JUDGMENT AS TO ASSESSMENT
OF DAMAGE

In the High
Court of Uganda

No.9

IN HER MAJESTY'S HIGH COURT OF UGANDA AT
KAMPALA

CIVIL CASE NO.133 OF 1960

Further Judgment
as to Assessment
of Damage
30th September
1960

GULBANU RAJABALI KASSAM Plaintiff.

versus

KAMPALA AERATED WATER COMPANY
LIMITED Defendant.

10

Before - The Honourable Mr. Justice LYON

Wilkinson

D'Silva

Mehta

J U D G M E N T

20

On 23rd September, 1960, the Plaintiff obtained judgment in an action based on negligence against the Defendant Company. I undertook, however, to hear Counsel on the quantum of damages. I heard Counsel on 28th September, 1960, and have reached the following conclusions :

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.

Making use of the actuarial table to which

In the High
Court of Uganda

No.9

Further Judgment
as to Assessment
of Damage
30th September
1960
continued

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.

This has been a heavy case. Certificates for two Counsel on each side are therefore granted.

(Sgd) M. D. LYON
Judge
30. 9. 60.

10

No.10

Formal Order
30th September
1960

No.10

FORMAL ORDER

IN HER MAJESTY'S HIGH COURT OF UGANDA
AT KAMPALA

CIVIL CASE NO.133 OF 1960

GULABANU RAJABALI KASSAM Plaintiff
versus
KAMPALA AERATED WATER COMPANY LTD. Defendant

20

DECREE IN ORIGINAL SUIT
(O.XVIII, rr. 6, 7)

Claim for General and Special Damages. This suit coming on this day for final disposal before The Honourable Mr. Justice Lyon in the presence of P.J. Wilkinson Esq., Q.C., and B. E. D'Silva Esq., Advocates for the Plaintiff and of N.B. Mehta Esq., Advocate for the Defendant it is ordered and decreed that Defendant do pay to the Plaintiff the sum of Shs.120,000/- damages with interest thereon at 6% p.a. from this date until the date of realisation and that the costs of this suit be taxed and paid by the Defendant to the Plaintiff with interest thereon at the rate of 6% per annum from this date to date of realisation.

30

GIVEN under my hand and the Seal of the Court this 30th day of September, 1960.

40

SGD. M. D. LYON
Judge.

No.11

LETTER CHAND & MEHTA TO REGISTRARIn the High
Court of Uganda

No.11

CHAND & MEHTA
ADVOCATES
KAMPALA.Letter Chand
and Mehta to
Registrar
6th December 1960

Ref. No. 2037/

6th December, 1960.

The Registrar,
H.M.High Court,
KAMPALA.

10

Sir,

Re: H.C.C.C.No.133 of 1960
Gulbanu Rajabali Kassam
vs.
Kampala Aerated Water Co.Ltd.

On going through the copy of the proceedings in the above case received by me from the Court, I find that some important points relating to the case are missing therefrom.

20

The missing points are :-

- (1) The fact agreed to my Mr. Wilkinson, the Counsel for the Plaintiff, that Rajabali Kassam - the deceased - died intestate and that his children who claim to be his dependants would be getting the benefit of his estate.
- (2) The statement by Mr. Wilkinson that in his opinion the estate would be distributed among the deceased's children in accordance with Uganda Succession Ordinance.
- (3) Withdrawal by Mr. Wilkinson of the claim of Shs.3500/- being alleged value of the Peugeot Van registered No. UFN. 887.
- (4) Agreed amounts of special damages:

30

In the High
Court of Uganda

Shs.600/- funeral expenses
Shs.320 medical expenses.

No.11

Letter Chand
and Mehta to
Registrar
6th December
1960
continued

(5) Shs.1000/- agreed upon as general damages for injuries, shock, pain and suffering, etc., suffered by the Plaintiff herself.

(6) Admission by Gulbanu Rajabali Kassam (P.1) that she as well as her sister Zarina was going to be married in about a month's time.

10

(7) My objection to Mr.Wilkinson's statement to the Court which is recorded on P.23 of the proceedings as follows:-

"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".

20

I objected to the statement saying that there was no evidence to support it.

I shall be grateful if this is immediately referred to Mr.Justice Lyon for doing the needful in the matter.

I have the honour to be,

Sir,

Your obedient servant

30

Sd. N.B.Mehta

(N.B.MEHTA)

Copy to:

P.J.Wilkinson, Esq.,
Advocate,
Kampala.

No.12
MEMORANDUM OF APPEAL BY KAMPALA
 AERATED WATER COMPANY LIMITED

In the Court
 of Appeal for
 Eastern Africa

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
 AFRICA AT KAMPALA

No.12

CIVIL APPEAL NO. OF 1960

B E T W E E N
 KAMPALA AERATED WATER COMPANY
 LIMITED Appellant
 AND
 GULBANU RAJABALI KASSAM Respondent
 (appeal from a judgment and decree of the
 High Court of Uganda at Kampala (Mr.
 Justice M.D.Lyon) dated the 30th day of
 September, 1960 in

Memorandum of
 Appeal by Kampala
 Aerated Water
 Company Limited
 12th December
 1960

CIVIL CASE NO.133 OF 1960

B E T W E E N
 GULBANU RAJABALI KASSAM Plaintiff
 AND
 KAMPALA AERATED WATER COMPANY
 LIMITED Defendant).

MEMORANDUM OF APPEAL

KAMPALA AERATED WATER COMPANY LIMITED, the
 Appellant above named, appeals to Her Majesty's
 Court of Appeal for Eastern Africa against the
 whole of the decision above mentioned on the
 following grounds, namely:-

1. The learned trial Judge erred in holding, as
 is implicit in his judgment, that the Respon-
 dent (original Plaintiff) had proved that any
 financial loss had been sustained by any of
 the alleged dependents consequent upon the
 death of their father, Rajabali Kassam.
2. The learned trial Judge erred in holding
 that there was sufficient or any proof of the
 extent to which each or any of the alleged
 dependants had suffered loss consequent upon
 the death of Rajabali Kassam.
3. The learned trial Judge erred in not holding
 that upon the death of the said Rajabali Kas-
 sam his dependants received or were entitled
 to financial benefits from his estate which
 ought to be set off against financial losses,
 if any, sustained by his dependants collec-
 tively and/or individually. Such financial
 benefits were, inter alia, :-

In the Court
of Appeal for
Eastern Africa

No.12

Memorandum of
Appeal by Kampala
Aerated Water
Company Limited
12th December
1960
continued

- (a) The approximate sum of Shs.120,000/- accepted by the learned trial Judge as the value of the said Rajabali Kassam's estate.
- (b) Alternative to (a), the sum of Shs. 120,650 Cts 60 as computed by the deceased's auditor as being the value of his estate.
- (c) A sum which ought to be assessed as the amount to be paid for the loss of expectation of life of the deceased. 10
- (d) The value of the damage caused to the deceased's motor vehicle which occurred at the time of the deceased's death.
4. The learned trial Judge erred in failing to hold there would, or might, accrue to the estate of the said Rajabali Kassam sums of money as compensation for his loss of expectation of life and as compensation for the damage sustained to his motor vehicle both of which should have been assessed and taken into account in assessing damages due to the dependants. 20
5. The learned trial Judge erred in not deciding what, in any, financial loss had been suffered by each of the alleged dependants and/or in failing to apportion between them the damages which should properly be awarded. 30
6. The learned trial Judge erred in holding that the sums of Shs.3,900/-, 2,900/- and 2,900/- had not been paid or credited or otherwise accounted for to Sadrudin, Badrudin and the Respondent such finding being contrary to balance sheet figures or accounts which were accepted by the learned trial Judge as the basis on which he made his assessment of damages.
7. The learned trial Judge erred in not holding that the Respondent (original Plaintiff) and her two brothers, Sadrudin and Badrudin, suffered no financial loss which is recoverable at law by reason of the death of their 40

father, in that :-

(a) Each of them was employed by their father at the time of his death.

(b) Each of them was earning a salary in excess of the value of their respective living expenses which were deducted from their respective salaries.

In the Court
of Appeal for
Eastern Africa

No.12

Memorandum of
Appeal by Kampala
Aerated Water
Company Limited
12th December
1960

continued

10

8. The learned trial Judge erred in not taking into account as relevant in assessing damages the fact that the Respondent and her sister, Zarina, were to be married shortly after the hearing of the suit, and on their respective marriages would have ceased to be dependants of their father if he were then living.

20

9. The learned trial Judge erred in assessing damages on the basis of £10 per week over a period of 15 years, both of which are excessive and in particular did not take into account, inter alia, all or any one or more of the following matters:-

30

(a) The chances and vicissitudes of life applicable to Rajabali Kassam, if he had lived, or to any of the dependants.

(b) The chances of any of the female dependants marrying within the period of 15 years.

(c) The expected working life of Rajabali Kassam.

(d) The ages and expectations of life, or expectations of dependant life, of the several dependants.

(e) The diminution of education expenses to be incurred by Rajabali Kassam in respect of his various infant children as their education terminated.

40

(f) The amount expended by the said Rajabali Kassam on taxes, life insurance and other matters not being living expenses, out of his income, which

In the Court
of Appeal for
Eastern Africa

No.12

Memorandum of
Appeal by Kampala
Aerated Water
Company Limited
12th December
1960
continued

approximated to one quarter of his
income.

(g) The living expenses of Rajabali Kassam
aforesaid incurred for himself.

(h) The accelerated payment of the sum
left by Rajabali Kassam as a result
of his premature death.

(i) The sums which Rajabali Kassam would
have had to expend as living expenses
for his wife and daughter, Daulatk-
hanu, which ceased to be payable due
to their deaths in the same accident
as that in which Rajabali Kassam died.

10

10. The learned trial Judge erred in holding
that Rajabali Kassam expended or would have
expended a sum of £12 or £10 per week on
his family.

11. The sum of £6000 awarded by the learned
trial Judge as a globular award of general
and special damages exceeds the actual sum
of £5,496, which, if the learned trial
Judge's assessment of general damages for
the dependants is correct, which is not
admitted, should have been assessed; name-
ly, Shs.108,000 or £5,400 general damages
for dependants, Shs.600/- agreed funeral
expenses, Shs.320/- agreed hospital charges
and Shs.1,000/- agreed general damages to
the Respondent for personal injuries.

20

12. The learned trial Judge's assessment of
damages was excessive and he erred in law
and in fact and applied wrong principles
in assessing damages.

30

WHEREFORE Your Appellant prays:-

(1) That his appeal be allowed and that
the Respondent's claims for damages
for herself and all other dependants
be dismissed.

(2) Alternative to (1) that the damages
awarded be reduced and apportioned
between the dependants as to the
Court shall seem fit.

40

(3) In the further alternative that a retrial on the assessment and apportionment of damages be ordered.

In the Court
of Appeal for
Eastern Africa

(4) That the Respondent be ordered to pay the costs of this appeal and in the Court below, or alternatively that the Court make such other order as to costs as to the Court shall seem just.

No.12

Memorandum of
Appeal by Kampala
Aerated Water
Company Limited
12th December
1960
continued

10

DATED at Kampala this 12th day of December, 1960.

Sd.

ADVOCATES FOR THE APPELLANT.

To/

The Honourable The Judges of
Her Majesty's Court of Appeal
for Eastern Africa.

and To/

20

Messrs. Willinson & Hunt
Kampala
Advocates for the Respondent.

The Address for Service of the Appellant is:-

c/o Messrs. Chand & Mehta,
Advocates,
Central Building,
32 Kampala Road,
P.O.Box 730,
Kampala.

30

Filed the
Kampala.

day of December, 1960 at

DEPUTY REGISTRAR OF
THE COURT OF APPEAL.

In the Court
of Appeal for
Eastern Africa

No.13
NOTES OF COURT PROCEEDINGS
BY FORBES V-P.

No.13

Notes of Court
Proceedings by
Forbes V-P.
22nd March 1961

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT KAMPALA

CIVIL APPEAL NO.103 OF 1960

BETWEEN:

KAMPALA AERATED WATER COMPANY
LIMITED Appellant

and

GULBANU RAJABALI KASSAM Respondent

10

NOTES OF ARGUMENTS BY
FORBES V-P.

22.3.61 Coram: Forbes V-P.
Gould J.A.
Corries Ag. J.A.

Ivor Lean Q.C., Chand with him, for
Appellant.

Wilkinson, Q.C., de Silva with him,
for Respondent.

20

LEAN OPENS:-

Appeal against quantum of damages awarded.
Accept that Appellant is responsible for
accident. That part of judgment not disputed.

Memo of Appeal (amd)

Ground 8: Both were married on 26.9.60.
Case arose out of accident in which Rajabali
Kassam, his wife and one daughter killed.
Action brought under equivalent of Lord Camp-
bell's Act.

30

Children enumerated at page 8 of Record.
Zarina now married. Page 52 of record.

Wilkinson prepared to agree that Rajabali died intestate and children share in estate equally.

In the Court
of Appeal for
Eastern Africa

(Wilkinson: That is my opinion).

No.13

Also agrees to paras. 3, 4, 5 and 6 of that letter.

Notes of Court
Proceedings by
Forbes V-P.
22nd March 1961
continued

Wilkinson does not agree with para.7 but

(Wilkinson: Only last sentence does not appear in evidence)

10 I accept that fact children have started a new business is not relevant to damages, so do not rely on that paragraph.

Refer Uganda Succession Ordinance Cap.34 in 1954 Laws (P.613 of Vol.I) - S.28; S.29; S.30. Mrs.Rajabali killed. No doubt surviving children are entitled to estate in equal shares. Judgment P Page 48. No mention that Judge satisfied the children suffered any damage except award of damages.

20 Throughout record except for statement by Respondent herself at page 12 line 8. Only evidence that children dependent. Not disputing that infant children dependent. No evidence to show what loss they suffered. No attempt by Judge to apportion award between children.

30 Children range from 3 to 20, - intervening marriage - damages should be apportioned: either agreed, reported to court and accepted, or court should make its own direction. Para.3 of Mem.

S-para (a): P.48 of Record line 26. No attempt to make any deduction for £6,000 odd. On evidence slightly more - £32.10.0. more, but not important.

Principles decided by this Court.

Chunibhai Patel Haynes (1957) E.A. 748.

268 Radhakrishen M. K. v. Murlidhar (1958) E.A. Principle well settled. Loss suffered must be put right. If no loss nothing to put right.

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

If estate goes to dependants, that must be deducted. Kemp & Kemp Vol.2 Quantum of Damages. Page 125. Method of assessment adopted there.

In principle similar to globular award and deduction of capital sum coming to estate judge has ignored 120,000/- which would exactly outweigh the award. If accountants value of estate taken, estate more than covers the general award made to dependants.

Para 3(c) & (d): If one assesses £300 to £400 for expectation of life, that is awarded under Law Reform and is taken away under Lord Campbell's Act. 10

Value of car - Inst. no action brought - that a notional amount which must be deducted from estate - even if finding. Court should make an estimate of value of asset.

Para.4: Covered in Paras.3(c) and (d).

Para.5: Converse of Para.2

Para.6: Page 48 line 18. 20

But it was the evidence of the Respondent's own witness. Appellant called no evidence as to damages. Page 37 of Record line 40. Page 38 of Record line 10; line 42.

Presumably living expenses. Difficult to understand conclusion that sums never paid. Sums were certainly credited. My contention is two boys receiving wages and were employees. Cannot claim damages for loss of employment unless actual dependency. 30

Submit if judge going to ignore those figures, he must ignore them for all purposes and estate would be increased accordingly. Or balance sheet must be rejected. I submit those figures must be accepted. In which case figures have little or no materiality except as to my contention that these children self-supporting.

Para.7 of Memo.

Burgess v Nightingale Hosp. (1955) 1 All E.R. 511 at p.514. Best v. Fox & Co. (1952) 2 All E.R.394. 40

Submit principles there enunciated show that if son and daughters were working for parent and earning salary and keep, then they are really sui juris. Merely incidental that they were working for father. Therefore three eldest children were in effect not dependants.

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

10 Balance sheet figures show cash salary earned was in excess of living expenses deducted. 1958 figures; Salaries paid to children are given free of deductions for living expenses. Not result was these children being paid at figure higher than living expenses. Submit those 3 children were not dependants of their father.

Para.8 of Memo:

Evidence of Plaintiff at page 12 line 28. They were married on 25.9.60. No evidence to show dependency continued beyond marriage. Submit on marriage they ceased to be dependants.

Para.9 of Memo:

20 Deceased was in early 40's. I accept a normal working life of 15 years as far as deceased concerned. £10 per week. Assessment based on average figure of £744 per annum. $\frac{3}{4}$ of that figure is £558 per annum. Think judge had this in mind. This leaves $\frac{1}{4}$ income for deceased's own benefit.

30 P.38: details of drawings: Total Shs.11,916/15. Those drawings include poll tax, income tax, life insurance. Education expenses - very low.

Cash from house & "additional expenses". Must bear in mind that £600, includes life insurance etc. and deceased's living expenses and living expenses of his wife and daughter who were killed, i.e. 3 people whose living expenses cease out of £600 drawing for that year.

Judge has not taken into account figures accruing to deceased himself or his wife and dead child.

40 Also where accelerated payment to estate, some credit must be given for acceleration. Judge

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

has not done so but has increased award.

Para.8 of Memo: Part of case as to amount
expended on dependants.

Para.9: Chances and vicissitudes of life of de-
ceased ought to have been taken into account.
Usual to do so.

Also chances of marriage. All children would be
18 within 15 years. Boys - not conceivable
they would continue dependent for 15 years.

Para.9(c): Accept 15 years. 10

9(e): Little spent on education. As they
grew up they would cease to require
education.

Para.11 of Memo.

Globular figure exceeds assessment of
£5,400. P.48 of Record: I make £10 p.w. for
15 years more, but that is judge's figure.

Submit judges assessment of damages is
wholly erroneous. If globular figures taken,
they cancel. If system in case in Kemp taken,
figure would be very different. 20

Factors not taken into account. Deductions
which ought to have been made not made. Assess-
ment contrary to that laid down.

Ask:

(a) That globular figures cancel: Or
Acc's figures show excess of estate
over damages. Apportionment should
be made.

(b) Or case must be sent back for retrial
on issue of damages. 30

(J.A.2: Page 35 line 2?)

That is less than judge's figure of £10 per week.
Supports my contention. Submit that figure
would have to be substantially reduced for re-
maining dependants. That is after deduction
for tax etc.

WILKINSON:

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

10 Sum of £6,000 - said beyond sum of £5,400. That includes £50 and damages to Plaintiff, and special damages agreed. Actual figure therefore about £5,850. Judge says he accepts. deceased was applying £10 to £12 per week. At £12 per week the sum he should have awarded was £6,485 - + agreed damages. Judge therefore merely taking an average figure. True a lot more if £10 p.w. taken. But have to take accelerated value of that. Those figures worked out by actuaries. No objection taken to tables I submitted and they were accepted by judge. Figures appear in an Australian case.

Hayes case: learned judge struck a figure which seemed reasonable. Judge has accepted figure based on £10 per week.

20 Submit principle put forward by Appellant is wrong. Court does not say "What has each appellant lost individually". Court says "What has family as a whole lost?"

Total loss must be ascertained and that apportioned. That clearly set out in Law Reform (Misc.Prov.) Ordinance 1953 (23 of 1953), S.8. Only start apportioning when total damages ascertained. Manner of apportionment cannot constitute a ground of appeal.

(1951) 2 All E.R. 655 Bifert v Holt's Transport Coy.Ltd.

30 No concern of Appellant in this case how sum apportioned. Judge did not apportion and may have to be application to court. What court has to decide is what is financial loss that family has suffered. Submit larger sum than that awarded can be justified. Even if judge arrived at figure in wrong manner, is it shown that sum is wrong. Therefore necessary to look at what judge ought to have held was financial loss. Refer to estate of deceased.

40 Submit judge and Appellant have not taken correct figure. P.37: Assets clearly a list of assets of family. Taken for purposes of estate duty.

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

4th Item: Fixed deposit in name of widow.
Not part of deceased's estate. Then shares
amounting to 8225/- held by wife and children.
Not part of estate of deceased. Those figures
must be deducted. Leaves estate at £4,471.

Item 3: Book value.

Shah in evidence stated that building now de-
serted: Only worth scrap iron prices. But
will ignore that in working my figures.

Para.1 of Memo:

10

Submit not for judge to assess individual
loss, but to assess family loss. Usual find-
ing that say $\frac{3}{4}$ spent on family. If one member
marries, then standard of others goes up.

Kemp & Kemp P.123 (Vol.2).

Submit judge correct in assessing total
loss and immaterial that 2 children now
married.

That also covers paragraph 2 of Memorandum.

Short adjournment taken.

20

Sgd. A.G.F.

ON RESUMPTION: BENCH & BAR AS BEFORE.

WILINSON CONTINUES

Next point: What was sum really devoted
to family by deceased.

Judge has used figure of £744 as average income
of deceased. That in fact not deceased's in-
come - only average net profits from the busi-
ness - p.33 L.12.

P.38. Net profit shown.

30

But deceased had other income.

P.39: Interest from Diamond Jubilee Trust Ltd.
Shs.4560/-. Not taken into account in
profit and loss account. 10,283/44 is
carried into statement at p.39.

Family obtained not only proportion 10,283/-
odd from business but 3 members obtained
£.485.

Those items clearly only book entries.
 Plaintiff says "father kept us all".
 Deceased was, presumably for taxation purposes
 charging salary, and crediting the amounts
 back.

In the Court
 of Appeal for
 Eastern Africa

No.13

Notes of Court
 Proceedings by
 Vorbes V-P
 22nd March 1961
 continued

Difference is accumulated - v. p.39 - Creditors.
 The 3 children appear.
 Shown at p.37 how those amounts arise.
 eg. Gulbano - balance of 17,300/- taken from
 1958 balance sheet.

Obviously merely making book entries.
 So this total sum paid to these three children
 was devoted to the benefit of family.
 What deceased was really making was:
 £527 (net profit for 1958) + £485 (book entries
 in favour of children) = £1012.
 In addition as income he had interest £228 from
 Jubilee Trust.

His income for 1958 (lowest year) therefore
 over £1200.

How far did family benefit.
 Submit drawing account valueless over period.
 Merely shows what he took out of business.
 Took 6000/- more than his net profit in 1958.
 Accumulates capital account which should appear
 in balance sheet v. p.39 first item.
 In good year may not spend all his profit.
 Next year may not draw out so much cash because
 he has balance of previous year.

Submit drawing account can give no reasonable
 answer to question what he spent on family.
 But Shah ev. (p.35) gives 8,889/0: That is
 figure of drawings.
 Shah goes on to say over 5 years he spent 3/4
 of earnings on family.
 Think Shah referring to income from shop.
 3/4 earnings + amounts credited to family =
 total spent on family.

Burgess case - (1955) 1 All. E.R. at p.518.
 Submit not in point here.

Primary relationship was f/ship.
 Here was that father supported them all.
 Made book entries and accumulated balance for
 them.
 Benefited by annual transfer of savings to
 children.
 Submit what they lost was 3/4 of net earnings +
 £485.

Whether children employed or not immaterial.
 Submit clear primary relationship here is the
 family relationship.

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

Children have lost future income by reason of death of deceased.
Submit true position is net profit + sums transferred to children.
If that so, the total income from business would in 1958 be £1012.
Average net profit is £744 + £485 = £1229 p.a.
Addition which he received from shares and which I am not taking into account.
3/4 of £1229 would be £900 odd. 10
£9725 would be present value of 15 years income at £900 per year.
That is present value of £900 spread over 15 years.
Submit that is measure of damage has proper deductions.
Value of estate: only in unusual cases can you deduct those.
Most that can be deducted is accelerated value. 20
Estate would be inherited after 15 years. Can be assumed here. No will. Money being transferred.
Only gain is advantage of receiving estate 15 years earlier.
That is, the interest earned by that money over 15 years - say 4 1/2% - normal rate of interest on trustee securities. Even at 5%, on Estate £4,471 for 15 years = £3,357.
Estate duty had been abolished at that time.
Statement for estate duty purposes still has to be put in tho' duty now nil. Must show property handed over during last five years. 30
Submit £3,357 is maximum that could be deducted. Submit in this case it should not be deducted.
If to be deducted, must also consider that he was saving money over the years.
Reasonable to assume he would have gone on saving.
Must calculate likelihood of further savings and set that off against deduction. 40
Reasonable to assume he would save another £3000 in 15 years - £1000 saved in 1959 (P.35).
May well be something should be added for probable savings. Submit should be balance on side of Respondent.
Submit Court need not deduct anything in respect of possibility of action for loss of expectation of life.
Agree that is normal procedure. But Judge has not done it here and submit not necessary. 50

May v Robert McAlpine (1938) 3 All. E.R.85.
Nothing awarded on subsequent suit. If we recover damages in this action for loss of expectation of life, we cannot recover.

Motor car: No evidence it is worth anything.

Withdrew pleading. Figure claimed not admitted.

No evidence: These should be ignored. Left to us to recover if necessary in another action.

(V.P.: Figure at p.39?)

10

Yes. Even if amount deducted, balance still in excess of £6000 awarded. That includes agreed figures of damages (v.p.52). £96 to be deducted from amount awarded by Judge: Balance £5940 awarded in respect of general damages.

Submit even if judge incorrect in way he arrived at figure awarded, he has not exceeded figure.

Court would award on correct principles. In fact it is loss.

Para.9 of Memo:

20

- (a) Deceased was healthy man. Allowed for in 15 years expectation of life. 15 years might have been enlarged to 20 years quite reasonably. Is for app. to show amount awarded is unreasonable.

No table of expectation of life recognised in Uganda.

I suggested 15 years as minimum expectancy.

In Eng. expectation would be over 28 years.

Here healthy man of 41

30

But no medical evidence of expectation of life.

- (b) Submit immaterial.
(c) Have said 15 years minimum.
(d) Submit immaterial.
(e) Not much spent on education: Might increase. But submit makes no difference.
(f) That taken into consideration.
(g) Have allowed by saying he spent 1/4 on himself + £228 p.a. from shares.
(h) Have dealt with this.
(i) Standard of living would have improved. Deaths of members of family not a relevant factor.

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

40

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

Submit nothing to be gained by new trial.
All available evidence is on record. Court
can look at record and make award. Submit
only waste of clients money to send back for
new trial.

Ask that appeal be dismissed.

LEAN:

Shah is Respondent's own witness. Can-
not regard entry as not what it appears to
represent. Cannot accept that it is an in-
come tax fiddle. Value of Estate based (P.38)
net profit figure Creditors shown at P.39.

10

Left with asset of £6,000 odd which has taken
account of three figures.
This is sum to which the children are entitled
now.

Agree that in effect Judge has awarded £5850
approx.as general damages.
Dispute assumption that in fact figures which
should be taken as annual income amount to
£1200 p.a.

20

Children are entitled to damages for which
they have lost.

If sums put aside to capital, their dependency
is smaller.

May have a capital loss later. But that loss
has been capitalised here and he is paying
maximum he can afford.

Future interest of £225 - Estate getting bene-
fit of that from moment of death. Submit £540
based on proved years figures is more than
generous.

30

See that figure is a tabular figure. But vicis-
situdes of life must be taken into account eg.
marriage often taken into account.

Daughter on marriage may cease to be dependent.
Method of computation: Loss to family as
whole.

Submit that merely one of two methods of com-
puting the loss. True it is commonly used.
But in similar case court adopted different
system. Muirhead case.

40

Have been occasions when court did not adopt
this system.

Kemp. P.123

If taken on basis of loss to whole family, that

In the Court
of Appeal for
Eastern Africa

No.13

Notes of Court
Proceedings by
Forbes V-P
22nd March 1961
continued

only one of 2 methods.
S.8 of Ord. (1953).
Cf. English wording: Burgess case at p.514.
Def. of "member of family". Includes persons
who may not be member of family group. Does
not follow that surviving member must benefit.
Agree that better for case not to be sent
back for re-trial. All available evidence on
record. We can adduce no further evidence.
10 Would ask Court to come to its own assessment
rather than order a retrial.
But submit present assessment cannot stand.
Certain assets said to belong to children and
Mrs.Rajabali and those should belong to separ-
ate estates.
Cannot quarrel with that.
But still left with net figure of £4,400 which
has gone direct to children and submit that
must be deducted, either on basis of lump sum
or annual income.
20 5% figure: No evidence on it.
Suggest on government bonds would work out at
6%.

Burgess case. Agree outcome was that could
only claim for losses arising from marital re-
lationship.
But reasoning is applicable and that is what I
rely on.
If children employees, one only concerned with
30 loss they have suffered qua, father and son -
not qua employee.
Submit must apply here.
Submit whole of whatever devolves to estate of
father must be brought into assessment of
damages.
Submit £10 per week is grossly excessive.
Submit these children have suffered very little
or nothing.
Ask that assessment be materially reduced.
40 Ask costs of two counsel.

WILKINSON: No objection as to costs of 2
counsel.

C. A. V.

A. G. FORBES

C.P.

22.3.1961.

In the Court
of Appeal for
Eastern Africa

No.14

NOTES OF COURT PROCEEDINGS BY GOULD J.

No.14

IN HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA
AT KAMPALA.

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961

CIVIL APPEAL NO.103 OF 1960

B E T W E E N

KAMPALA AERATED WATER COMPANY
LIMITED

Appellant

and

GULBANU RAJABALI KASSAM

Respondent

10

NOTES OF ARGUMENTS BY THE HON. JUSTICE
OF APPEAL - MR. JUSTICE GOULD.

22.3.61. Coram: Forbes V-P.
Gould, J.A.
Corrie, Ag. J.A.

Ivor Lean, Q.C. Chand with him, for Appellant.
Wilkinson, Q.C. de Silva with him, for Respondent.

Lean opens:

Appeal v. quantum of damages. Accepted
that Appellant is responsible.

20

Reads memorandum of appeal.

Para.8. I have since learned that they were
both married Sept.1960.

Rajabali Kassam, his wife and 1 daughter
were killed.

Action is brought for damages under Lord
Campbell's Act equivalent, for Plaintiff and
other children.

p.7-8 of record. Details of children.

30

2 sons, both over majority.

Zarina - married now.

(d) is a daughter.

(e) and (f) are sons.

(g) is a daughter.

Record p.52. Letter. I have spoken to learned friend. He is prepared to agree that Rajabali died intestate and that the law is that the surviving children share in the estate equally.

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

10

Wilkinson: That is my opinion.

Lean: I understand Wilkinson agrees with 4, 5 and 6 of the letter. He does not agree with para.7.

Wilkinson: The only part of it which does not appear in evidence is the last sentence.

Lean: I accept it and submit that if they have started a new business it is not really relevant to question of damages. I don't rely on that.

On question of divisibility of the estate.

20

Succession Ord. Cap.34 Vol.1 (1951) at page 630. Sect.28 et seq.

Mrs. Rajabali was killed same accident. Surviving children equally entitled.

Judgment p.48. Judge does not say he is satisfied that the children suffered damage.

Through whole record; except for a statement by the Respondent at p.12, line 9, there is no evidence of dependency or what was in effect suffered as damage.

30

Through whole record, except for a statement by the Respondent at p.12, line 9, there is no evidence of dependency or what was in effect suffered as damage.

No attempt by judge to apportion the damages between the children.

Though in ordinary way a lump sum is paid into

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

court - if it goes to trial it ought to be ap-
portioned. Apportionments can be agreed, re-
ported to court and accepted, a court should
make its own apportionment.

Memorandum of Appeal. Para.3.

P.48. No deduction from the £6,000. The
actual accountants figures by accountant are
about £32.10.0. more.

Chunibhai Patel v. Haynes [1957] E.A.748.

Radhakrishen M. Khemaney v. Mrs.Lachabai
Murlidhar (1958) E.A.268.

10

The assets must be deducted. Kemp & Kemp
Vol.2, p.125. Case not reported. 2 daughters
left. 24 and 12. At first altered. instance
held no loss on married daughter; £500 Court
of App./Estate was (net) £4,300 to each child.
Court of Appeal treated it as invested at $3\frac{1}{8}\%$ =
£150 per year. The 12 years old estimated
£500 p.a. - £150 = 350. Capitalized.

The other method is to deduct the globular
estate from the globular award. In this case
the estate would outweigh the globular award.

20

Memo. of Appeal. paras.3 (c) and (d).

(c) Perhaps £300 to £400 under Law Reform
Ord. Taken away by Lord Campbell's Act.

(d) Car. That also is notionally due to
estate. Understand no action brought.

4. No further reference needed.

5. " " " "

6. Three sums.

30

P.48, line 18. It was the evidence of the
Respondent's own witness.

pp.37 and 38. Accounts.

p.37, line 40.

Take 1958 figures which are at p.38.

Salary and wages to staff.

Line 42.

Can't see how judge finds these sums not paid - whether paid or not they were credited. Show they were receiving wages - they were employees. You can't claim for damages for employees being killed - unless there is actual dependency.

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

10 If he ignores them - he must do so for all purposes and the estate would accordingly be increased. If actually paid or credited, it does not affect the actual damage figure at all as matter of accounts.

Para.7. The children being shown as recipients of a salary - this point fully discussed in House of Lords.

Burgess v. Florence Nightingale Hospital
(1955) 1 All E.R.511, quotes (1952) 2 All E.R.
398. Married couple - professional dancers.
Partners in business undertaking and that formed no part of the loss.

20 P.513

30 Principle clear that if son and daughters were in fact working for parent - earning wages - keep deducted: they are sui juris - not dependant - incidental that works for father or any other employer. They (3) were not dependants. But still figures show salary was in excess of the living expenses deducted. In the 1958 figures, the salaries paid to the children are given free of deductions for living expenses. Details of drawings have deductions. Net result is that they were being paid higher than their living expenses.

Para.8 of Memorandum of Appeal.

Plaintiff's evidence - p.12, line 28.

Engaged. Zerina will be married in a month too. Both in fact married 23/9. No evidence to show dependancy continued beyond marriage.

Para.9 of memorandum of Appeal.

40 The deceased was in early 40's. I accept the 15 years normal working life. But as to the £10

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

per week, judge bases this on average of £744 per annum over past 4 or 5 years. In fact if you take $\frac{3}{4}$ of that it is £558 p.a. That leaves one quarter of total for deceased's own benefit. Look at details of drawings for 1958.

p.38. About £600.

Include life insurance premiums 2792/60.
Education very small.

Cash and house expenses. Out of that drawing of £600 must bear in mind include life insurance premiums and own living expenses, his wife, deceased girl. Those are 3 people whose living expenses cease. Judge did not take into account these items - living expenses etc. It is always accepted that where item is an accelerated payment some credit must be given for it - a difficult credit to assess. Judge did not give anything.

10

Para.10 of Memorandum of Appeal. Is part and parcel of amount should have been assessed as expended on dependent.

20

Para.9(c). Chances etc. Is always taken into account. Chances of female dependants marrying within 15 years. All at least 18 years old then.

Shah - would have been marriageable in 2 or 3 years.

The 2 boys of 12 and 10: scarcely conceivable that they would have continued dependent for 15 years.

30

Para.9(e) Figure of 384/- shown shows he was not going to throw money away on education.

Para.11. Speaks for self. The Shs. 108,000/-. See judgment p.43-9. £5400.

Submit assessment wholly erroneous.
Roughead and Railway Executive (K. & K.)

No dependency for 3. 2 marriages. No deduction for accelerated judgments. Chances and vicissitudes of life in deceased and dependants.

40

I ask that court holds that the £6000 is cancelled out by the estate.

If there should be an apportionment based on dependency youngest will have the greater.

Alternatively case must be sent back for retrial on assessment of damages.

Corrie: Refer top p.35. Shs.8,889/- for wife and family.

10 Lean: Would have to be substantially reduced for the remaining dependant.

WILKINSON: The sum of £6,000, as being beyond the total of others. It includes £50 agreed damages to plaintiff.... and the special damages. General damages really about £5850.

Judge accepted £10 - £12 went for benefit of children. At the latter £12 it should be £6480 general - according to the tables.

20 All judge is saying is the minimum is £10 - he takes a figure somewhere between.

That figure over 15 years of course allows for present value. Worked out by actuaries. No objection was taken to the figures I gave. If acceptable court can strike a figure considered a reasonable sum - Hayes case.

30 Submit a wrong principle has been urged. Court does not look at each dependant and say what each dependant has lost. Question is what has the family as a whole lost by death of deceased. If a man has 5 children he can't give them as much as if two.

You arrive at a figure - then you apportion it.

Law Reform (L.P.) Ord. 1953. sect.8.

You only start apportioning after arriving at the total sum.

Been held manner of apportionment can't be made a ground of appeal.

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

Eifert v. Holt's (1951) 2 All E.R.655.

No concern of Defendant how the total sum was apportioned. Judge should have apportioned it at time - or application had to be made to have that done and for direction re investment.

What is the financial loss which the family as a whole suffered. Learned friend must satisfy court judge arrived at figure in incorrect manner - or grossly excessive.

What was loss. What part of income was devoted to his family. Then what damages. 10

Estate of deceased. The list of assets and liabilities. p.37 is a list of the family assets -- not of deceased. Apparently for estate duty purposes.

Item 4. 23,000/- widow's Not part of deceased's estate.

Share in Diamond Jubilee I.T. Not his estate - they are holding that benefit 8225/-. Leaves estate £4471. 20

Item 3. "Book value". Shah in evidence said deserted no rent - 20-25 years old - only worth scrapiron prices. I will ignore that and take it as £4471.

Memorandum of Appeal. Para.1.

Not for judge to look at each individually. (If one daughter gets married standard of the others will increase).
Kemp & Kemp. p.123 Vol.2.

General rule. 30

If not cut down - would save more. Submit right to assess a total sum - immaterial that 2 girls now married.

Para.2. Covered.

Adj. 10 mins.

On resumption: Bench and Bar as before.

Wilkinson continues:

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

Next point. What really was the sum devoted to the family by deceased. Judge said £744 was the income averaged. But this in fact was not his income - only his average net profits from shop business.

p.33, line 12.

But he had other income.

10 p.139. Balance sheet. Interest from D.J. I.T. £228. That is not in the P. & L. account.

3 members of the family obtained £485. 3900 + 2900. These are clearly only book entries. Gulabani clearly said father kept us all. He was obviously (perhaps for taxation) charging salaries and then crediting himself back with a proportion. The differences are cumulation. p.39. The 3 of them appear as creditors.

20 P.37 shows how they were accumulated. Balance brought forward.

So devoted to his family benefit was the £485 paid to the 2 boys and 1 girl.

30 But looking at realities rather than the artificial net profit find he was making 10,283/- (527) plus £485 in respect of what he made book entries in respect of his children. Additionally he had his interest. Total income over £1200 - in his lowest year. What was spent. Submit the drawing account is valueless to ascertain that. It simply shows what he took in cash and goods during period of that account. He took 1,000/- more than the net profit. Drawing need not be related to net profit. He has capital account. Item 1 on balance sheet. Drawing account can't give any reasonable answer to average spending on family. What is reliable in Shah's evidence p.34. It is a figure given from drawings in 1958 only. But p.35. Over 5 years $\frac{1}{2}$ of earnings. I think he referred to income from shop rather than include interest etc.

40

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

Family got $\frac{3}{4}$ of average earnings plus the amounts credited to children from year to year. Dancing partner case is not in point. Not a loss due to relationship.

Burgess v. Florence Nightingale Hospital
(1955) 1 All E.R. No services by wife etc. attributed to relationship of husband and wife. Here we have Plaintiff's evidence that father in fact supported them all. Accumulated for children in books balances. He was transferring his savings to them in that way.

10

I submit that the primary relationship was parent and child. Not employer and employee. Submit nothing in nature of employment. Must look at real benefit last.

In a case where a man inherits money and lives on the income - when he dies it goes to wife - she gets it all and has never lost anything. In such cases you can deduct the value of the estate. Not in case like this - was what he spent on them worth nothing.

20

If I am right, total income £1012 for 1958. Or taking the average net profit of £744 to which add £485. In addition the £228 from shares. I assume family got no benefit from that.

Or Shah's $\frac{3}{4}$ - that is £900 p.a. odd. over 15 years present value of that is £9720.

Only in unusual cases can you deduct the whole estate. The most you can deduct is the accelerated value if it is reasonable to assume that Plaintiffs would inherit after the 15 years. In this case strong assumption that they would have done so. No will. Have transferred some already to wife and family. Reasonable to assume it. That is all that is necessary.

30

Further interest would be earned on that money over the 15 years - say $4\frac{1}{2}\%$ p.a. True slump now and can get $5\frac{1}{2}\%$.

40

There is no question of estate duty. Though must still put in a statement - duty

has been reduced to nil. Show property handed over during the previous 5 years. 5% on £4470 odd = £3357. That is the maximum. But should not in the present case I submit as, if you are going to deduct, you must also consider he was saving over the years. He would have continued to do so. Add the likelihood to set off one against the other - as family would have had the benefit and have lost his saving power for 15 years. Reasonable to assume £3,000. He put away £1,000 in 1959. p.35 line 26. Did not save at all in 1959. But he was saving. He was 41. The more he saved the more his income from investments would increase. More than probable that what he would have saved exceeds the acceleration value.

10

20

If we have to allow for a claim for loss of expectation say £300 or £400. Submit court does not have to make the deduction. It may, on the bare possibility. But if we filed action now, judge would say we couldn't get it twice.

May v. McAlpine & Sons (1938) 3 All E.R.85. Separate action. Fatal accidents first. Car. We withdrew claim for this. Figure we pleaded for value was not admitted. If we sued, it would have to be considered that its value should have been added to the deceased's estate.

30

Car was shown as asset at p.39. We used that value in claim. Suppose you deduct both items from the total balance would still be much over £6,000 which includes agreed figure of £50 for damages. 600/- . 320/- p.52. £96 in all.

Even if judge incorrect in his method of assessing of the general damages, he has not exceeded the proper award on correct principles. In fact it is less.

Memorandum of Appeal. para.9.

40

(a) allowed for in giving only 15 years of expectancy. Might be 20 years. Only then 60. Would increase the damages by about £5,000. It is for learned judge to show amount awarded unreasonable.

I have no table of expectation of life recognised in Uganda. In England it is over 28 years

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

In the Court
of Appeal for
Eastern Africa

No.14

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

at 41. All he had was slight malaria occasion-
ally. Never been in hospital in life. Healthy.
Even if deduct the whole estate it could still
have been right to award £6,000.

- (b) Say immaterial.
- (c) Was considered.
- (d) Immaterial.
- (e) Small expense. No practical
difference.
- (f) Suggest has been considered in my
figures. 10
- (g) We say spent $\frac{1}{4}$ on self and had the
interest on investments also.
- (h) Contra - saving power argument.
- (i) Not a factor to be considered.

Lean:

Learned friend attacks the evidence of his
own witness. Shah's balance sheet. Court ask-
ed to take this as mere income tax fiddle.
Can't get away from fact that this £485 is the 20
figure on which the value of the estate is
based. See pp.37 and 39. They are shown as
present debts to the 3 children - payment
could be demanded.

I agree award £5,850 has been made as
general damages.

I dispute the assumption that in fact the
figures of annual income are about £1200 p.a.

The children are entitled to damages for
what they have lost. If father chooses to put 30
aside money the dependency is smaller. If he
only spent £100 p.a. on them that is their
damage.

Future interest. The estate is getting the
benefit of that from moment of death. £545 -
based on fact 5 years figures is more than
generous.

Vicissitudes of life. Possibility of a
widow remarrying. Often recognised. Or of a 40
child marrying - if a girl she ceases to be
dependant. If a son is killed - the chances of
his marrying are considered as showing proba-
bility of lesser contribution to parents.

Loss to family as a whole. That is one of 2 methods - common - and convenient. But circumstances might arise, as in Muirhead case, in which loss to individual child must be considered. Very similar.

In the Court
of Appeal for
Eastern Africa

No.14

Kemp. p.123 "On occasion, however.....

Sect. 8 of the L.R. (M.P.) Ord.

The English wording is quoted in the Burgess case at p.514.

Notes of Court
Proceedings by
Gould J.A.
22nd March 1961
continued

10 It does not follow that because the number of dependants lessen, the others will get an increased benefit.

I agree that if possible the case should not be sent back for retrial. We can adduce no further evidence ourselves. I ask court to come to own assessment if possible. Submit present assessment can't stand.

20 Suggested that certain assets belong to the children and the wife: I can't quarrel with that. But if one takes them off there is still £4400 odd in the estate - a very substantial deduction. Either on basis of lump sum deducted or on the basis of the annual income which each child could expect. No evidence of proper rate. Learned friend says 5%. Last week I bought bonds at 69/-. Only 3%, but accretion makes it about 6%.

30 Burgess case. Reasoning clearly shows the whole general principle and tenor. If the children were employees one is only concerned with the hard facts of £.s.d. Even though the employer - a relationship would not have arisen except for the parental relation - can't have claim on that loss.

£10 per week is grossly excessive. The children have suffered financially very little or nothing.

C.A.V.

T.J. Gould. 22.3.61.

40 Lean: Ask costs 2 counsel even if sent back for retrial.

Wilkinson: No comment on that.

T. J. G.

In the Court
of Appeal for
Eastern Africa

No.15
NOTES OF COURT PROCEEDINGS BY
CORRIE AG. J.A.

No.15
Notes of Court
Proceedings by
Corrie Ag.J.A.
22nd March
1961

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA
AT KAMPALA
CIVIL APPEAL NO.103 OF 1960

B E T W E E N

KAMPALA AERATED WATER CO.LTD. Appellant

and

GULBANU RAJABALI KASSAM Respondent

10

NOTES OF ARGUMENTS BY CORRIE AG. J.A.

22.3.61 Coram: Forbes V-P
Gould J.A.
Corrie Ag. J.A.

Ivor Lean Q.C., Chand with him, for Appellant.

Wilkinson, Q.C., de Silva with him, for
Respondent.

LEAN OPENS: Appellants liability is not disputed.
Appeal is against quantum of damages.
Respondent herself and sister both
married in Sept. Memo of Appeal read.

20

p.8 Particulars as to children.
p.52 Rajabali died intestate and estate is
to be distributed equally between
children.

paragraphs 3, 4, 5, 6 agreed.
paragraph 7 I agree.

Uganda Succession Ordinance 1951 Vol.I
p.631. Sections 28, 29, 30.

30

p.48 Judgment
line 9 "He kept us all."
There must be apportionment between
children.

p.48

Judgment.
Chunibhai Patel v Hayes.
R.M. Khemanev v Murlidhar (1958) E.A.
 268.

In the Court
 of Appeal for
 Eastern Africa

No.15

The loss suffered has to be put right.

Kemp & Kemp Vo.2 p.125.
Muirhead v Railway Executive 1951 C.A.
 178.

Notes of Court
 Proceedings by
 Corrie Ag.J.A.
 22nd March
 1961
 continued

Court calculated income from capital
 left.

10

Para.3(c) sum payable in respect of de-
 ceased's loss of expectation of life.

Motor car: damages must be deducted.

Para.6 Payments to children.

p.37 line 40 et seq.) These sums were either
 p.38 line 10 and line 43) paid or payable.

These children were employees.
 If these sums were not paid they must
 be paid, or the Balance Sheet ignored.

20

Para.7 Salaries to children.

Burgess v Florence Nightingale Hospital
 (1955) V.1 A.E.R.511 at 513 L.I.

Best v Samuel Fox & Co. 2 A.E.R. p.398.

If the children are working for the
 parents they are no longer dependent on
 him. Hence the 3 eldest children were
 not dependants.

p. Salaries earned were in excess of living
 expenses. 1958 salaries paid free of
 deductions for living expenses.

30

p:58 Balance sheet.

Para.8 of Mem. p.12 line 28. Marriages
 of daughters.

No evidence that dependency continued
 after marriage.

Para.9 Deceased was in early 40's.

We accept a working life of 15 years. £10
 a week = £520 p.a. £744 p.a. average in-
 come. $\frac{1}{4}$ = £558 p.a.

In the Court
of Appeal for
Eastern Africa

No.15

Notes of Court
Proceedings by
Corrie Ag. J.A.
22nd March
1961
continued

p.38 Leaving $\frac{1}{4}$ of income for deceased him-
self. These were also the living
expenses of wife and daughter now dead.
Accelerated payment: credit must be
given. All children reach age of 18
within 15 years.

Para.11.

Muirhead v Rly Executive (supra)

No dependency as to 3 eldest children.
Accelerated payments. Father's expect-
tation of life. 10

The figure of 8889/- would have to be
reduced for surviving dependents.

WILKINSON:

£50 agreed damages.
At £12 a week, £6480 - £50
£10 - -

Court should calculate what family as
a whole has lost and then apportion.

Law Reform (Misc. Provisions) Ordinance 20
1953 s.8(2). (1951) 2 A.E.R.655.
Eifert v Holts. Transport Co.

No concern of Defendants how damages
were apportioned.

Estate of deceased.

P.37 Item 5 23000/- property of wife.
31225/- must be deducted.
£4471 would be the amount left.
Building at B. not producing rent.

Memo of Appeal para.1.

Court first estimates total loss by
family then apportions. 30

Kemp & K. Ch.10 p.123.

It is immaterial that 2 daughters have
since married.

Adjourned.

Resumed.

p.33 line 12. Actually was only average net pro-
fit from shop. 40

In the Court
of Appeal for
Eastern Africa

No.15

Notes of Court
Proceedings by
Corrie Ag. J.A.
22nd March
1961
continued

p.39 Deceased had other income 4560/- from Diamond Jubilee I.T.
3 children received £485 in wages. R. says "father kept us all". Deceased charged these items and then paid himself back for their keep.
Creditors

10 Deceased really made net profit £527
Book entries in favour of children 485
£1012
He had also £228 from Diamond J. I. Trust Ltd. 228
1240

Drawing acct. is valueless: 6000/- more than net profit.

20 p.39 Drawings exceeded net profit.
p.35 The figure 8889/- is for that year only.
744 Spent nearly $\frac{3}{4}$ of earnings on family
186
558

30 Burgess (dancing partner) (supra).
No loss can be taken into account except as relations.
Year by year amounts were credited to children in accounts.
I submit that the children lost $\frac{3}{4}$ of net earnings plus £485
Otherwise annual profit, 744
amount credited to children 485
£1229

1229
307
922

$\frac{5}{4} = £922.$ 10 years 9220
5 - -4610
13830

£9720 would be P.V. of £922 p.a. for 15 years.

40 All that can be deducted is the accelerated value of the estate taken into possession 15 years earlier.
At 5% the interest on 4476 = £223.55

In the Court
of Appeal for
Eastern Africa

2235
1117
3352

Father could have gone on saving, he had saved over £7,000 and might well have saved £3,000 in another 15 years.

No.15

Notes of Court
Proceedings by
Corrie Ag. J.A.
22nd March
1961
continued

Law Reform (Mis.Pro.) Ordinance.
£400 need not be deducted: if action filed under that Act and got £400.

May v Sir R. McAlpine (1938) 3 A.T.R. 85.

Claim for damages to motor car. No evidence that car was of any value. If worth £150, that should be added to value of deceased's estate.

10

Cr. (see page 39. 3500/-).

p.52 Agreed damages:

(3)	600/-	Special damages
	<u>320/-</u>	
	920/-	
(4)	1000/-	General
	<u>1920/-</u>	= 96£

Memo. of Appeal para.9.

20

15 years is a minimum expectation of life. Deceased was a healthy man. Chance of daughters marrying is immaterial.

Loss of employment)
Difference in education expenses)

If daughters married, father could save more.

New trial not necessary. All evidence and before the Court.

30

LEAN IN REPLY:-

Balance sheet is part of evidence of R's own witness.
The deduction of £485, is the figure on which the value of the estate is based.

p.38

Profit and Loss account.	
13865	10920
<u>2945</u>	<u>4165</u>
10920	6755

40

Method of computing loss.

Frequently loss to whole family can be taken as basis (Muirhead).

But there are other occasions in which a different method adopted: and damages must be assessed for each child separately.

Burgess case p.514.

It does not follow that other children will benefit if one child ceases to be dependent. Hope court will not order re-trial.

Wife's 23,000/-.

Children's investments.

If deducted we are left with £4400/- of estate coming to children.

Burgess case, I agree that claim can only be for relations (blood).

Costs - 2 Counsel.

22.3.60

C.A.V.

No.16 (a)

JUDGMENT.

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT KAMPALA

CIVIL APPEAL NO.103 OF 1960

B E T W E E N

KAMPALA AERATED WATER CO.LTD. Appellant

and

GULBANU RAJABALI KASSAM Respondent

(Appeal from a judgment and decree of the High Court of Uganda at Kampala (Mr. Justice Lyon) dated the 30th September, 1960 in

Civil Case No.133 of 1960

Between

Gulbanu Rajabali Kassam Plaintiff

and

Kampala Aerated Water Co.Ltd. Defendant)

JUDGMENT OF GOULD J.A.

On the night of the 31st August, 1959, on

In the Court
of Appeal for
Eastern Africa

No.15

Notes of Court
Proceedings by
Corrie Ag. J.A.
22nd March
1961
continued

No.16 (a)

Judgment of
Gould J.A.
8th May 1961

In the Court
of Appeal for
Eastern Africa

No.16 (a)

Judgment of
Gould J.A.
8th May 1961
continued

the Kampala-Bombo Road there was a violent collision between a motor vehicle driven by a driver employed by one Rajabali Kassam (hereinafter referred to as "the deceased") and a motor vehicle driven by a servant of the Appellant Company. The accident resulted in the death of the deceased, his wife, Rahematbai Rajabali Kassam and one of his daughters, Dolatkhanu Rajabali. The Respondent, who is another daughter of the deceased, suffered some injury. The Respondent brought an action for damages in the High Court of Uganda against the Appellant Company on her own behalf and, under the provisions of Part II of the Law Reform (Miscellaneous Provisions) Ordinance, 1953 (No.23 of 1953) on behalf of the other surviving children of the deceased. The learned judge held that the Appellant Company's driver was negligent and wholly to blame for the collision and awarded damages in the sum of £6,000, which included a comparatively small amount in respect of agreed special damages. There has been no challenge to the learned judge's finding on the question of negligence but the Appellant Company now appeals to this court against the quantum of damages awarded.

10

20

For some years before and up to the date of his death the deceased was the proprietor of a shop at Bamunanika in Uganda. He died intestate and left an estate, the value of which will be discussed later. Counsel for both parties were agreed that, under the intestacy, the surviving children of the deceased are entitled to the estate in equal shares. Counsel for the Respondent also submitted and Counsel for the Appellant Company did not dispute that, in the circumstances of the case, the surviving children, if their father had not been killed in the accident, could have expected to receive some benefit from his estate when he ultimately died - the amount of the benefit is necessarily very speculative. The surviving children, for whose benefit the action was brought are :-

30

40

1. The Respondent - a daughter - aged 23 years.
2. Sadrudin Rajabali Kassam - a son - aged 20 years

3. Badrudin Rajabali Kassam - a son - aged 19 years
4. Zarina Rajabali Kassam - a daughter - aged 17 years.
5. Shah Sultan Rajabali Kassam - a daughter - aged 15 years.
6. Amirali Rajabali Kassam - a son - aged 12 years.
7. Roshanali Rajabali Kassam - a son - aged 10 years.
8. Nazma Rajabali Kassam - a daughter - aged 3 years.

In the Court
of Appeal for
Eastern Africa

No.16 (a)

Judgment of
Gould J.A.
8th May 1961
continued

10

The two eldest daughters, viz. The Respondent and Zarina were engaged to be married at the time of the hearing in the High Court, and Counsel for the Appellant Company stated to this court (I understand it to be common ground) that both were in fact married very soon thereafter.

20

The learned judge's conclusions on the subject of damages were briefly expressed and I will set out in full the relevant passage from his judgment :-

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.

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".

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

It will be observed that the learned judge makes no reference to the receipt by the surviving children of a benefit from the estate of the deceased, a matter which has been the subject of one of the main arguments before this court. The actual award of £6,000 includes £50 agreed damages to the Respondent personally for the injury she suffered, £30 funeral expenses and £16 medical expenses: the award of general damages was therefore the sum of £5,904.

10

The submissions of counsel before this court revealed two basic differences in what they urged as the correct approach to the question of assessment of damages in the present case. The first difference related to the matter of the extent to which the award should be reduced by reason of the benefit receivable or received by the surviving children from the estate of the deceased. The second related to the method to be adopted in assessing the value of the dependencies. I will take these in order.

20

Counsel for the Appellant Company argued that the whole value of the estate ought to have been deducted, which would, in his submission, have very substantially reduced, if not extinguished the damages altogether. He relied upon a passage in the judgment of O'Connor, C.J. (as he then was) in the Supreme Court of Kenya in P.F. Hayes v. Chunibhai J. Patel, quoted in the report of the appeal to this Court from that judgment, in Chunibhai J. Patel v. P.F. Hayes (1957) E.A.748 at 749. The passage reads :-

30

"The court should find the age and expectation of working life of the deceased, and consider the ages and expectations of life of his dependants, the net earning power of the deceased (i.e. his income less tax) and the proportion of his net income which he would have made available for his dependants. From this it should be possible to arrive at the annual value of the dependency, which must then be capitalized by multiplying by a figure representing so many years' purchase. The multiplier will bear a relation to the expectation of earning life of the deceased and the expectation

40

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

10

of life and dependency of the widow and children. The capital sum so reached should be discounted to allow for the possibility or probability of the remarriage of the widow and, in certain cases, of the acceleration of the receipt by the widow of what her husband left her, as a result of his premature death. A deduction must be made for the value of the estate of the deceased because the dependants will get the benefit of that. The resulting sum (which must depend upon a number of estimates and imponderables) will be the lump sum the court should apportion among the various dependants."

20

In that case this court found that the method of assessment adopted by the learned Chief Justice was correct, and the same passage was applied by this court in the case of Radhakrishnan M.Khemaney v. Mrs.Lachabai Murlidhar (1958) E.A.268. Although in Hayes' case (supra) the capital value of the estate does appear to have been deducted from the damages (the estate was not large) I would not regard the sentence in the passage above quoted, "A deduction must be made for the value of the estate of the deceased because the dependants will get the benefit of that", as being intended to mean that in every case the full capital value of the estate will be deducted. The phraseology is that of Lord Goddard C.J. in Zinovieff v. British Transport Commission (1954) (unreported) as set out in The Quantum of Damages, Vol.2 by Kemp and Kemp (1956) at p.81, 84, and in that case also it would appear that Lord Goddard deducted the full amount of the estate. Nevertheless it has been recognised that where a dependant would in any event have received a benefit from the estate later, had the deceased not been killed in an accident, the financial benefit accruing to the dependant is not the full capital value but may have relation to the value of receiving at present what he would later have received - the accelerated value.

30

40

Thus in Roughhead v. Railway Executive (1949) 65 T.L.R. 435 a deduction was made, by consent of counsel for all parties, in respect of the acceleration of the benefits received from the estate.

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

Humphreys J., who made the order, did so with some reluctance (following the Privy Council decision in Grand Trunk Railway Company of Canada v. Jennings (1888) A.C.800) and would apparently have preferred to make no deduction at all. He said, at pp.435-6:

"In my humble opinion it is a grisly way of looking at things to say that a widow benefits by her husband's premature death because she receives what he proposed to leave her - and in the present case it is everything he had - earlier than she otherwise would have done. Nor am I in the least satisfied that it is a universal rule which could possibly be applied to all cases. I only say by way of precaution, lest my observation should at any time be repeated by anyone else, that I am very doubtful whether in this case it is right that that sum or money should be deducted; but, fortunately, I have not to consider the matter, because counsel on both sides agreed that I should make that deduction, and I am glad not to have to give any considered judgment on the matter. I merely observe for the consideration of others that it is obviously right to deduct such a sum where what is left to a widow is, for instance, the result of a policy of assurance - say for £1,000. The widow no doubt benefits pecuniarily by receiving from the insurance company her £1,000 today instead of getting the same amount - assuming it is a policy without profits in perhaps 10 or 20 years' time.

Where, however, as in this case, the plaintiff obtains a sum very substantially less than she would have received if the deceased had lived for several years and everything points to that fact - I think it is extremely doubtful whether it can be said that she benefits pecuniarily by having £5,000 paid to her now as the result of his estate being distributed, instead of £X which she would have received in 15 or 20 years' time."

10

20

30

40

In Kemp and Kemp (supra) the opinion is expressed (at p.11) that each case must be determined upon its particular facts and that the deduction to be made is the amount, if any, by which the dependant has on balance received a benefit from the estate. The text book suggests a number of examples. If an elderly parent received money from his deceased child's estate the full amount should be deducted, for, in the normal course, the parent would have pre-deceased the child and received nothing. On the other hand if the elderly husband of a young wife is killed she might well have received the same amount from her husband's estate, say in five years time, in which event her net gain would be merely the value of the acceleration of the payment.

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

Support for this approach is to be derived from what was said by their Lordships of the Privy Council. In Nance v. British Columbia Electric Railway Co. Ltd. (1951) A.C.601 at p.615 :-

"Supposing, by this method, an estimated annual sum of $\$$ is arrived at as the sum which would have been applied for the benefit of the Plaintiff for x more years, the sum to be awarded is not simply $\$$ multiplied by x, because that sum is a sum spread over a period of years and must be discounted so as to arrive at its equivalent in the form of a lump sum payable at his death as damages. Then a deduction must further be made for the benefit accruing to the widow from the acceleration of her interest in his estate on his death intestate in 1949 (she came into $\$6,500$, one third of his estate, x years sooner than she would otherwise have done) and of her interest in sums payable on a policy of $\$1,000$ on his life, and a further allowance must be made for a possibility which might have been realized if he had not been killed but had embarked on his allotted span of x years, namely the possibility that the wife might have died before he did. And there is a further possibility to be allowed for - though in most cases it is incapable of evaluation - namely, the possibility that, in the events which have actually happened, the widow might remarry, in circumstances which would improve her financial position."

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

In Muirhead v. Railway Executive (1951 C.A. No.178 -- unreported) as set out in Kemp and Kemp (supra) at p.125 et. seq. a different approach was adopted. The anticipated income from the shares of the two dependants in the estate was deducted from the annual sums of which the dependants could have expected to have had the benefit from their parent during their dependency. The annual difference was multiplied by ten and the result was diminished on the score of acceleration (as I understand the judgment) in respect of the period between the end of the estimated dependency and the end of the expectancy of life of the parent. Singleton L.J. said, at page 135 of the text book :-

10

"I find great difficulty in knowing how one has to deal with a benefit to a wife or to a child through a portion of the deceased's man's estate being received by the wife or child sooner than it otherwise would have been. There is acceleration and that may be a benefit, but it is not always so, I prefer to look upon the matter by saying that it is something which ought to be borne in mind in assessing pecuniary loss."

20

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.

30

40

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

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

about to terminate at the time of the accident
by reason of their approaching marriages and
that there was some evidence that the Respond-
ent, 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 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 (coun-
sel 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.

Undoubtedly the method of calculation urged
by counsel for the Respondent is usually adopted,
and in favour of his argument is the following
passage from the judgment of Lord Goddard C.J.
in Zinovieff v. British Transport Commission
(supra) which appears at p.82 of Kemp and Kemp.

"In these actions, which are brought under
the terms of the Fatal Accidents Act, the
Plaintiffs are the personal representatives,
and in assessing the amount that they would
be awarded I do not have to consider the
different claims of different people; I
have to award a lump sum for what I consider
those persons who were dependent upon him
have lost by his death, and when that sum has
been ascertained the court has to proceed, in
the absence of agreement, to apportion the
amount between the various dependants."

Nevertheless, I am confident that when this
method is adopted and the final figure is ascer-
tained by multiplying the annual value of the
dependency by a number of years, allowance must
be made in fixing that number for the anticipated
or possible termination of the various individual
dependencies, and if they will terminate after
different intervals some sort of average must be
struck; then when the apportionment is made the

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

adjustment between the various dependants can be made. This, I think, underlies what was said by O'Connor C.J. (in the passage of his judgment above set out in Chunibhai J. Patel v. P.F.Hayes (supra)) when he said :-

"The multiplier will bear a relation to the expectation of earning life of the deceased and the expectation of life and dependency of the widow and children."

There is ample authority for saying that what must eventually be ascertained in these actions (so far as it is possible to do so) is the pecuniary loss of each individual entitled to sue. In Davies v Powell Duffryn Associated Collieries, Ltd. (1942) 1 All E.R. 657 Lord Russell of Killowen said, at p.658 :-

10

"Under those Acts, the balance of loss and gain to a dependant by the death must be ascertained, the position of each dependant being considered separately"

20

Lord Wright, at p.662 said:-

"Sec. 2 of the 1846 Act provides that the action is to be for the benefit of the wife or other member of the family and the jury (or judge) are to give such damages as may be thought proportioned to the injury resulting to such parties from the death. The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which may be legitimately pleaded in diminution of the damages must be considered (Grand Trunk Ry Co. of Canada v. Jennings, at p.304). The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death."

30

40

Lord Porter said, at p.665 :-

"Under the Fatal Accidents Act, 1846, the

question for decision is what damage is proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit the action is brought. The wording itself is sufficient to show that each individual must be considered separately, and Pym v. Great Northern Ry Co. so decides."

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

10 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. That was done in Muirhead v. Railway Executive (supra) in which Singleton L.J. said (p.133 of Kemp and Kemp):

20 "I am taking these two cases separately because that is the more convenient way of considering them, rather than dealing with joint dependency and then dividing up."

Another case exemplifying the individual approach is Lloyds Bank, Ltd. and Mellows v. Railway Executive (unreported at first instance - Kemp and Kemp, p.136).

30 Whatever the method of calculation adopted it is clear that the expected length of the individual dependencies is a relevant factor. That is why the possibility of the re-marriage of a widow is taken into account and if she remarries, her dependency may cease entirely, as was the case in Mead v. Clarke Chapman & Co. Ltd. (1956) 1 W.L. R.76. In Phipps v. Cunard White Star Co. Ltd. (1951) 1 T.L.R. 359 the dependencies of infant children were estimated to terminate at sixteen years as, in the particular station of life of the parties, it could not have been expected that the deceased would have continued to support the children after that age. 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.

40

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

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. 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.

10

The first question is whether the Respondent and all the other children upon whose behalf the action was brought, were dependent upon the deceased, whether they were dependent fully or only partially, and what was the probable duration of their dependency. The evidence from the family itself on this topic consisted of no more than two sentences from the Respondent. She said "All living with deceased. He kept us all." She was not cross-examined upon this. Evidence was given by Mr.B.N.Shah, Accountant, who had kept the accounts of the deceased from the year 1956, and who produced (a) Trading and Profit and Loss Account for the year ended the 31st December, 1958, (b) a Balance Sheet as at the 31st December, 1958 and (c) a List of Assets and Liabilities as at the 31st August, 1959, the date of death. There are indications in the last mentioned document that it was prepared for the purposes of estates duty - the court was informed from the bar that the filing of such accounts was still required though the rate of estate duty in Uganda had been reduced to "Nil". The deceased was apparently a careful man with due thought for his family. He seems to have insured his life quite substantially but the proceeds of the insurance are not included in the assets to be considered in relation to this action. He had placed a number of shares in the name of his wife and six of his children; there was also a fixed deposit in the name of his wife.

20

30

40

The relevance of the statements of account to the question now under consideration lies in

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

10 certain entries relating to the employment in
the business of his daughters Dolatkhanu (now
deceased) and the Respondent, and his sons
Sadrudin and Badrudin. The first three (judg-
ing from the balances brought forward in their
names) had been employed for varying periods
and the last mentioned apparently was employed
from the 1st January, 1959. The sons were
credited with salary at the rate of Shs.3,900/-
p.a. and the daughters at Shs.2,900/- p.a. The
List of Assets and Liabilities shows a credit
balance of Shs.26,400/- in the account of Dolat-
khanu, which is the same amount as appears to
her credit in the Balance Sheet as at the 31st
December, 1958. She received no credit after
that date, though it can be assumed that she
did not cease to work as she was with her father
in the car when they were both killed and Mr.
20 Shah said that all the children were living with
the deceased at the time of his death. In the
cases of the Respondent and Sadrudin the List of
Assets and Liabilities showed credit balances as
at the 31st December, 1958, salary was added for
the intervening eight months and then a round
sum was deducted for "Food expenses etc." In a
breakdown of the drawings of the deceased for
1958, subjoined to the Trading and Profit and
Loss Account there are deductions of proportion-
ate round sums in respect of Dolatkhanu, the
30 Respondent and Sadrudin.

40 It seems obvious that these accounts were
not operated on by the various children concern-
ed. They did not "draw" on them: if they had,
Dolatkhanu's balance would not have remained un-
altered for the eight months prior to her death.
The deductions were obviously artificial - for
example, those in respect of the two daughters
for 1958 were exactly Shs.1,500/- each. The
accountant Mr. Shah, who prepared these state-
ments, gave in evidence that according to the
books (in 1958) three children were drawing a
small salary of Shs.90/- presumably per month.
He was not asked to explain why the accounts
which he prepared showed something else.

Upon this unpromising and unworthy material
the court is asked to find whether these particu-
lar children were dependants. If the statements
of account are true representations of the legal

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

relationships between the children and the deceased then the deceased was crediting them with substantial salaries and charging them smaller amounts for food and other expenses. That would indicate that they were not dependent upon him (except as an employer) or would at least reduce the amount of their dependency to a minimum. Counsel for the Respondent submitted that the accounts did not represent legal relations but were probably for taxation purposes. Counsel for the appellant company, on the other hand, invited the court to accept the entries in the accounts as showing what they purported to show - that the children concerned were genuinely employed at the wages shown. I think that I must accept this submission. The accounts were put forward on behalf of the Respondent and though she might not be completely bound by them, to any extent that she proposed to ask the court to disregard them, it was for her to call evidence to support her contention. As it was, although the Respondent, the two sons Sadrudin and Badrudin, and the deceased's accountant Mr. Shah, all gave evidence in the court below, not one of them was asked any question to throw light on these entries in the accounts. This is a matter which ought not to have been left to speculation and I must therefore hold that the Respondent, Sadrudin and Badrudin, were not dependants but were gainfully employed at remuneration exceeding the cost of their maintenance. The death of the deceased does not affect the matter as there is evidence that Sadrudin and Badrudin have since operated a shop, and the Respondent has since married. If it might be thought that in spite of their employment there was some small residual dependency in the case of these children it would in any event be less than the benefit receivable by them from the estate of the deceased, which is discussed below. Finally on this topic, it would appear most unlikely that the family as a whole would have derived much benefit if the submission of counsel for the Respondent had been accepted; in that case the liabilities to the children, including Dolatkhanu, shown in the Statement of Assets and Liabilities, totalling Shs.51,805/-, must have been regarded as fictitious and the value of the estate as correspondingly increased.

10

20

30

40

50

That of course would decrease the amount of damages to be awarded.

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

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.

The annual value of the total dependency must next be looked at. The learned judge took the sum of £744 as the net average earnings of the business over five years, and then said he was satisfied that the deceased would have continued to pay out between £10 and £12 per week for the benefit of the children. Counsel for the Respondent pointed out that there was also over £200 interest derived from a fixed deposit with the Diamond Jubilee Investment Trust Ltd., which was not brought into the Profit and Loss Account. Counsel submitted that the most reliable guide to what was spent on the family was an answer given by Mr. Shah to the court:-

"Q. Having looked after his books for nearly

In the Court
of Appeal for
Eastern Africa

5 years would you say he spent nearly
three-quarters of his earnings on his
family?

A. Yes."

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

The reference, in Counsel's submission, was to the income from the shop - not the interest - but, as I understood him, he suggested that the nominal salaries of £485, which were credited but not actually paid to the children, should have been added to the average net profit for the purpose of calculation. There is nothing to show that this is what Mr. Shah meant. Counsel also submitted that the breakdown of drawings was no guide as it had no necessary relation to profits. I agree on the point of relationship to profits, but nevertheless consider that the breakdown for 1958 which is before the court is not to be neglected as a partial check on the learned judge's figure. Items, under the following heads, "Education, Light Charges, House boy Ration Material, Cash for House Expenses and Additional Expenses including goods from the shop", totalled £684 - I disregard the sums purportedly deducted for the food and expenses of the three children who worked in the shop. It is too speculative to attempt a varying apportionment of this sum of £684 between the parents and children; the deceased had income outside the shop profit and may or may not have used part of it for personal expenses. Therefore, if the amount is divided per capita 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.

10

20

30

40

The evidence as to the value of the estate is to be found in the List of Assets and Liabilities as at the 31st August, 1959. That shows an excess of assets over liabilities of Shs.120,650/60 but Counsel for the Appellant Company in his reply said that he could not quarrel with the submission that a

fixed deposit of Shs.23,000/- in the name of Mrs.Kassam, and shares valued at Shs.8,225/- in the names of members of the family, should be excluded from the estate. That leaves a balance of Shs.89,425/60.

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

10

As I have indicated, the deceased was apparently a man who had proper concern for his family's interests and I think it proper to assume that the surviving children would have ultimately shared the estate of the deceased - in the absence of any guide I will assume that they would have done so in equal shares.

20

Allowance will have to be made for the fact that Dolatkhanu would have had a share but I do not think it necessary to take into account the possibility that Mrs.Kassam might have survived her husband. There is no evidence of her age, but she had already had nine children, the eldest of whom, Dolatkhanu, would now have been not less than 24 years of age, and the deceased, at the date of his death was still in early middle age. I propose therefore to approach the problem of the appropriate deduction to be made in respect of the estate upon the footing of accelerated receipt, rather than present value. It will be necessary to consider also the probability that in fifteen years' time the estate would have been increased by further savings, and also the element of the certainty of present receipt of the money as against the uncertainty of its future receipt, and the fact that a share would have gone to Dolatkhanu.

30

40

I have accepted the value of the estate as at the death of the deceased as Shs.89,425/60. It is not possible to make any accurate estimate of the extent to which that sum might have been increased by savings over a period of fifteen years. The List of Assets and Liabilities includes over £7,000 in fixed deposits and shares in the names of the deceased and members of his family, but except for the fact that Mr.Shah said these moneys were "accumulated over the years" there is no evidence to show how long the saving process had been going on. The deceased invested £1,000 on the 1st March, 1959 and apparently the business was a good one, as it prospered even during the year of the boycott of Indian traders. I think it reasonable to say

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

that a further £4,000 might well have been accumulated over the ensuing fifteen years. In Nance v. British Columbia Electric Co. Ltd. (Supra) the present value of the estimated savings was dealt with separately, as an addition to damages. The course I propose to take is to incorporate them into the calculation of the value of the acceleration of the receipt of the estate moneys, which I think is at least equally logical and has the same result. 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 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 Shs.20,000/- above mentioned the net result is Shs.76,814/-. The amount actually receivable from the estate being Shs.89,425/- the difference, or the value of the acceleration, is Shs.12,611/-.

10

20

30

There is another factor which must be considered in relation to the benefit derived by the surviving children from the death of the deceased. The present action has been brought under the equivalent in Uganda of the Fatal Accidents Act, 1846, i.e. Part II of the Law Reform (Miscellaneous Provisions) Ordinance, 1953. Under Part III of the same Ordinance it is still open to the personal representatives of the deceased to bring a further action for damages in respect of the loss by the deceased of his expectation of happy life and for damage to his motor vehicle. (This was common ground between counsel; claims for these items were actually incorporated in the plaint but were

40

apparently withdrawn, perhaps because the plaint was issued before Letters of Administration of the estate were granted.) Usually the two actions are combined and then no difficulty arises; any damages given under Part III of the Ordinance (in so far as they were receivable by the dependants) would have to be deducted from the damages awarded to the dependants under Part II. The difficulty which arises when no action has been brought under Part III was referred to by Lord Russell of Killowen in Davis v. Powell Duffryn (supra) at pp.658-9 :-

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

10

20

"It was suggested that a difficulty would arise if, at the time of assessing the damages under the Fatal Accidents Act, no proceedings had been taken under the Act of 1934, and it was unknown whether any such proceedings would ever be taken. I see no real difficulty here. The authority assessing the damages could always take into account the possibility of such proceedings and make allowances accordingly. A difficult matter no doubt, and quite incapable of accurate valuation;"

30

40

Damages for loss of expectation of a happy life are never very substantial and there appears to be a suggestion in May v. Sir Robert McAlpine & Sons (London) Ltd. (1938 2 All E.R.85) that the fact that damages have been recovered under the Fatal Accidents Act would have the effect of reducing them further; we were informed by counsel for the Respondent that the motor vehicle was worth very little - the claim originally made for it in this action but subsequently withdrawn, was for Shs.3,500/-. The costs of such an action payable by the personal representatives would probably exceed the costs recoverable from the Appellant if the action succeeded. Valuation of the possibility of the further action being brought and succeeding, is highly speculative but apparently must be attempted. I allot an additional benefit to the surviving children under this head of Shs.2,000/- which, with the Shs.12,611/- in relation to the value of the acceleration of the estate makes a total benefit of Shs.14.611/-.

I have accepted the estimate of the learned

In the Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

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 Rashanali and Nazma are entitled to general damages. In accordance with what I have said earlier I estimate their dependencies respectively as 10 years, 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 payable at death must be arrived at. For the purpose of this calculation I have referred to Whitaker's Almanac (1961) 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	" 8,778/-	Nazma	Shs.11,971/-

In addition to the general damages of

10

20

30

40

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 Court
of Appeal for
Eastern Africa

No.16(a)

Judgment of
Gould J.A.
8th May 1961
continued

10

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.

Dated at this .
day of 1961.

T. J. GOULD
JUSTICE OF APPEAL.

20

Delivered on 8/5/61.

JUDGMENT OF FORBES V.P.

No.16(b)

I concur and have nothing to add. The appeal will be allowed to the extent indicated in the judgment of the learned Justice of Appeal, and there will be orders in the terms proposed by him.

Judgment of
Forbes V.P.
8th May 1961

A. G. FORBES
VICE-PRESIDENT.

Delivered on 8/5/61

30

JUDGMENT OF CORRIE AG. J.A.

No.16(c)

I also agree.

Judgment of
Corrie Ag. J.A.
8th May 1961

O.C.K. CORRIE
AG. JUSTICE OF APPEAL

In the Court
of Appeal for
Eastern Africa

No.17

Formal Order
8th May 1960

No.17

FORMAL ORDER

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT KAMPALA
CIVIL APPEAL NO.103 OF 1960

B E T W E E N

KAMPALA AERATED WATER CO.LTD. Appellant
and
GULBANU RAJABALI KASSAM Respondent

(Appeal from a judgment and decree of the High Court of Uganda at Kampala (Mr.Justice Lyon) dated the 30th September, 1960 in Civil Case No.133 of 1960 10

Between
Gulbanu Rajabali Kassam Plaintiff
and
Kampala Aerated Water Co.Ltd. Defendant)

O R D E R

In Court before the Honourable Mr.Justice A.G. Forbes, Vice President, the Honourable Mr. Justice T.J.Gould, Justice of Appeal and the Honourable Mr. Justice O.C.K. Corrie, Justice of Appeal. 20

This Appeal coming up for hearing on Wednesday, 22nd March, 1961 in the presence of Mr.Ivor Lean Q.C., and Karam Chand, Counsel for the Appellant and Mr.P.J.Wilkinson Q.C. and B.E.De Silva, Counsel for the Respondent when the appeal standing for judgment this day IT IS ORDERED that this Appeal be allowed to the extent that the damages awarded by Her Majesty's High Court in Civil Case No.133 of 1960 be reduced from Shs.120,000/- to Shs.37,833/- and that the Decree of Her Majesty's High Court of Uganda in Civil Case No.133 of 1960 dated the 30th September 1960 be amended accordingly. IT IS FURTHER ORDERED that the Respondent DO pay three quarters of the Appellant's taxed costs for two Counsel of this Appeal but the order for costs in the Court below stands. 30

DATED this 8th day of May 1961.

J U D G E.

No.18

APPLICATION FOR CONDITIONAL LEAVE TO
APPEAL

In the Court
of Appeal for
Eastern Africa

No.18

Application
for conditional
leave to Appeal
to Her Majesty
in Council
8th September
1961

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT KAMPALA

CIVIL APPLICATION NO.13 of 1961

B E T W E E N

GULBANU RAJABALI KASSAM Appellant

and

10 KAMPALA AERATED WATER COMPANY
LTD. Respondent

(Application for conditional leave to appeal
to Her Majesty in Council from a judgment
and order of Her Majesty's Court of Appeal
for Eastern Africa at Kampala delivered on
8.5.1961 in Civil Appeal No.103 of 1960).

Between

Kampala Aerated Water Company
Ltd. Appellant

20 and

Gulbanu Rajabali Kassam Respondent

This day of 1961

Before.....

30 UPON application made to this court by
Counsel for the abovenamed Appellant on the 3rd
day of August 1961 for conditional leave to
appeal to Her Majesty in Council as a matter of
right under sub-section (a) of Section 3 of the
Eastern African (Appeals to Privy Council) Order
in Council 1951 and upon hearing Counsel for the
Appellant do have leave to appeal as a matter of
right to Her Majesty in Council from the Judg-
ment and Order abovementioned subject to the
following conditions:-

(1) that the Appellant do within ninety days

In the Court
of Appeal for
Eastern Africa

No.18

Application
for Conditional
leave to Appeal
to Her Majesty
in Council
8th September
1961
continued

from the date hereof enter into good and sufficient security, to the satisfaction of the Deputy Registrar, in the sum of Shillings 10,000/- (a) for the due prosecution of the Appeal (b) for payment of all costs becoming payable to the Respondents in the event of (i) the Appellant not obtaining an order granting them final leave to Appeal or (ii) the Appeal being dismissed for non-prosecution or (iii) the Privy Council ordering the Appellant to pay the Respondent's costs of the Appeal;

- (2) that the Appellant shall apply as soon as practicable to the Deputy Registrar of this Court, for an appointment to settle the record and the Deputy Registrar shall thereupon settle the record with all convenient speed, and that the said record shall be prepared and shall be certified as ready within ninety days from the date hereof; 10 20
- (3) that the Deputy Registrar, when settling the record shall state whether the Appellant or the Deputy Registrar shall prepare the record, and if the Deputy Registrar undertakes to prepare the same he shall do so accordingly, or if, having so undertaken, he finds he cannot do or complete it, he shall pass on the same to the Appellant in such time as not to prejudice the Appellant in the matter of the preparation of the record within ninety days from the date hereof; 30
- (4) that if the record is prepared by the Appellant, the Deputy Registrar of this Court shall at the time of the settling of the record state the minimum time required by him for examination and verification of the record, and shall later examine and verify the same so as not to prejudice the Appellant in the matter of the preparation of the record within the said ninety days; 40
- (5) that the Deputy Registrar of this Court shall certify (if such be the case) that

the record (other than the part of the record pertaining to final leave) is or was ready within the said period of ninety days;

In the Court of Appeal for Eastern Africa

(6) that the Appellant shall have liberty to apply for extension of the times aforesaid for just cause;

No.18

(7) that the Appellant shall lodge her application for final leave to appeal within fourteen days from the date of the Deputy Registrar's certificate above-mentioned;

Application for Conditional leave to Appeal to Her Majesty in Council 8th September 1961

continued

(8) that the Appellant, if so required by the Deputy Registrar of this Court, shall engage to the satisfaction of the said Deputy Registrar, to pay for a typewritten copy of the record (if prepared by the Deputy Registrar) or for its verification by the Deputy Registrar, and for the cost of postage payable on transmission of the typewritten copy of the record officially to England, and shall if so required deposit in Court the estimated amount of such charges.

And it is further ordered that the costs of and incidental to this application be costs in the intended appeal.

Dated at Kampala this 8th day of September 1961.

Sd. IVAN ST. CLAIR SEQUEIRA
DEPUTY REGISTRAR.

No.19

No.19

ORDER GRANTING LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL
IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA AT KAMPALA
CIVIL APPEAL NO.103 OF 1960.

Order Granting Leave to Appeal to Her Majesty in Council, 20th November 1961

B E T W E E N
KAMPALA AERATED WATER CO.LTD. Appellant
and
GULBANU RAJABALI KASSAM Respondent
(Appeal from a Judgment and decree of the High Court of Uganda at Kampala (Mr.Justice Lyon) dated the 30th September, 1960 in Civil Case No.133 of 1960

Between
Gulbanu Rajabali Kassam Plaintiff
and
Kampala Aerated Water Co.Ltd. Defendant)

O R D E R

UPON APPLICATION made to this Court by

In the Court
of Appeal for
Eastern Africa

No.19

Order Granting
Leave to Appeal
to Her Majesty
in Council,
20th November
1961
continued

Counsel for the abovenamed applicant on the 20th day of November 1961 for final leave to appeal to Her Majesty in Council after conditional leave to Appeal having been granted on the 7th August 1961 as a matter of right under subsection (a) of Section (3) of the East African (Appeal to Privy Council) Order in Council 1951 AND UPON HEARING Counsel for the Applicant and Counsel for the Respondent AND UPON being satisfied that all conditions subject to which conditional leave to appeal was granted have been complied with by the Applicant AND ALSO UPON being satisfied that Notice for final leave to appeal has been given to the Respondent as required under Section 12 (1) of the said order in council THIS COURT DOTH ORDER that the Applicant do have final leave to enter and prosecute her Appeal to Her Majesty in Council from the judgment and order abovementioned AND it is further ordered that the costs of and incidental to this application be costs in the intended appeal.

10

20

Dated at Kampala this 20th day of November One thousand nine hundred and sixty one.

J. McWHINNIE

Dy: Registrar
H.M. COURT OF APPEAL FOR
EASTERN AFRICA.

30

ON APPEAL FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

B E T W E E N

GULBANU RAJABALI KASSAM (Plaintiff) Appellant

- and -

KAMPALA AERATED WATER CO.
LTD. (Defendant) Respondent

RECORD OF PROCEEDINGS

KINGSFORD DORMAN & CO.,
13 Old Square,
Lincoln's Inn W.C.2.
Solicitors for the Appellant.

GARDINER & CO.,
18 St. Swithins Lane,
London, E.C.4.
Solicitors for the Respondent.