SITI AJAR MAT ZAIN v. CINDY TEOH & ANOR.
HIGH COURT MALAYA, PULAU PINANG
ABDUL HAMID MOHAMAD J
CIVIL APPEAL NO: 12-60-96
31 DECEMBER 1996
[1997] 2 CLJ SUPP 282; [1997] 2 BLJ 282

***DAMAGES**: Fatal Accident - Loss of support - Claim by parent - Multiplicand - Whether to consider deceased's last drawn income - Or whether to consider amount deceased gave for parent's personal support - Civil Law Act 1956, s. 7(3) - Chan Chin Min & Anor. v. Lim Yok Eng[1994]3CLJ687*

***DAMAGES**: Fatal Accident - Loss of support - Claim by parent - Multiplier - Civil Law Act 1956, s. 7(3)(iv)(d) - 16 years' purchase - Whether mandatory - Whether to consider possibility of deceased being married had he lived and whether his contribution to parent might diminish or cease - Whether to reduce multiplier*

This was an appeal by the deceased's mother ('the appellant') against the decision of the Sessions Judge in respect of her claim for loss of support.

The deceased had died following a fatal accident involving himself and the respondents on 5 March 1993.

The deceased's monthly income up to until February 1993 was RM1,100.

As of 1 March 1993, there was a change in the nature of his job and his proposed monthly income as from March 1993 was RM800.

In determining the multiplicand, the Sessions Judge accepted that the deceased had contributed RM500 per month to the appellant when he was earning RM1,100 per month.

However, the Sessions Judge took into account the deceased's reduced income as from March 1993 and, accordingly, determined the amount that the deceased might have contributed to the appellant at RM380 per month.

From this figure of RM380, the Sessions Judge further deducted the sum of RM135 - being the monthly instalment payment for the deceased's motorcycle which was being paid out by the appellant from the RM500 monthly contribution she had been receiving from the deceased.

In the result, the Sessions Judge determined the final figure at RM245 per month.

In respect of the multiplier, the Sessions Judge used the figure of ten years, although this seemed to contradict s. 7(3)(iv)(d) of the Act which provides that the number of years'

purchase shall be 16.1 OF 9

Held:

[1] Multiplicand.

[1a] It was clear that the amount to be considered was **not** the "last drawn income" of the deceased but the amount that the deceased had given to the appellant for **her** personal support.

This was consistent with the Supreme Court's interpretation of s. 7(3) of the Civil Law Act 1956 ('the Act') in *Chan Chin Min & Anor. v. Lim Yok Eng[1994]3CLJ687*.

[1b] The Sessions Judge was right in determining the amount that the deceased might have contributed to the appellant at RM380 per month instead of RM500 per month.

This was reasonable because the deceased's monthly income had been reduced from RM1,100 to RM800 as from 1 March 1993.

[1c] The Sessions Judge was also right in deducting the sum of RM135 (being the monthly instalment payment sum for the deceased's motorcycle) from the figure of RM380.

[2] Multiplier.

[2a] Although s. 7(3)(iv)(d) of the Act appeared to be mandatory, the instant Court was **bound** to follow the **majority** decision of the Supreme Court in *Chan Chin Min & Anor. v. Lim Yok Eng[1994]3CLJ687* which held that in a claim for loss of support by a parent of a deceased, the Court was **not** bound to apply the multiplier stipulated in s. 7(3)(iv)(d) of the Act**but** should take into consideration the fact that the deceased might get married later had he lived and, as a result, his contribution to the parent might diminish or cease.

[2b] In the circumstances, the Sessions Judge's use of ten years as the multiplier was reasonable and should not be disturbed. *[Appeal dismissed; each party to bear own costs.]*

Case(s) referred to:

Chan Chin Min & Anor. v. Lim Yok Eng [1994] 3 CLJ 687 ***(foll)***

Dirkje Peiternella Halma v. Mohd Noor. bin Baharom & Ors. [1990] 2 CLJ 167 ***(dist)***

Noor Famiza & Anor. v. Awang bin Muda & Anor. [1994] 2 CLJ 418 ***(dist)***

Ang Lit Yiang & Ors. v. Teoh Hing Yew & Anor. [1996] 4 CLJ 451 ***(refd)***

Legislation referred to:

Civil Law Act 1956, ss. 7, 7(3), (iv)(a), (d)24A(2)(d)(i)

[Appeal from Sessions Court at Butterworth, Civil Case No. 53-330-93]

Counsel:

For the appellant - D.P. Rajah; M/s. Rajah & Co.

For the respondents - Hashimah Ismail; M/s. Lim Kean Siew & Co.

JUDGMENT

Abdul Hamid Mohamad J:

Plaintiff/appellant is the mother of the deceased.

The deceased had died in a road accident on 5 March 1993.

He was then riding a motorcycle.

Two other vehicles involved were a motor car and a motor lorry driven by the first and second defendants/respondents respectively.

Plaintiff claimed for loss of support by her deceased son.

Two issues were argued before me. They were, first the multiplicand and, secondly, the multiplier. ***Multiplicand***

It is not disputed that the income of the deceased for the month of February 1993 was RM1,100.

However, beginning from l March 1993 there was a change in the nature of his job.

His proposed income for March 1993 was RM800.

He had not received his March pay because he died on 5 March 1993.

However, the plaintiff only claimed for RM500 per month.

The learned Sessions Court Judge accepted RM800 as the deceased's last earning prior to his death.

He also accepted that when the deceased was earning RM1,100 a month, he contributed RM500 to his mother, the plaintiff/ appellant.

However, he took into account the deceased's reduced earning for March 1993.

Based on the reduced income, he fixed the amount of contribution by the deceased to the

plaintiff/appellant, had he not died, at RM380.

Further, from that amount he deducted RM135.

This amount represented the monthly instalment for the deceased's motorcycle.

It was not disputed that out of the RM500 the deceased gave the plaintiff/appellant prior to his death, she paid RM135 for her son's (deceased's) motorcycle monthly instalment.

So, the final amount fixed by the learned Sessions Court Judge was RM245 per month.

Learned Counsel for the plaintiff/appellant argued that as a matter of law, after the 1984 amendment of s. 7(3) proviso (iv)(a) of the Civil Law Act 1956, the amount that should be taken into consideration was the deceased's "last drawn income." But it did not really matter in this case whether the amount was RM1,100 or RM800 because the plaintiff was only asking for RM500 per month, he said3 OF 9.

Now 1 shall consider the law.

Section 7, *inter alia*, provides:

7. (1)...
(2)...
(3) The damages which the party who shall be liable under sub-s. (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under sub-s. (1):

Provided that -
(i)...
(ii)...
(iii)...
(iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall:
(a) take into account that where the person deceased has attained the age of fifty five years at the time of his death, his loss of earnings for any period after his death shall not be taken into consideration; and in the case of any other person deceased, his loss of earnings for any period after his death shall be taken into consideration if it is proved or admitted that the person deceased was in good health but for the injury that caused his death and was receiving earnings by his own labour or other gainful activity prior to his death;
(b)...
(c)...
(d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

For the purpose of the present discussion, the relevant provision is paragraph (a). Learned Counsel for the plaintiff/appellant argued that where, as in this case the deceased had not attained the age of fifty five years, the amount to be taken into consideration was his "last drawn income". That, he said, was the effect of the amendment.

The leading case is *Chan Chin Min & Anor. v. Lim Yok Eng [1994] 3 CLJ 687; [1994] 3 AMR 39, 1991*. That is a judgment of the Supreme Court and a post-amendment case.

It should be noted that even though Edgar Joseph Jr. SCJ disagreed with the majority on the issue of multiplier, he agreed with them on the issue of multiplicand, now under discussion.

In other words the Supreme Court was unanimous on the issue of multiplicand.

It should be noted that the deceased's earning per month in that case was RM1,500.

He used to give his mother RM750 per month of which she spent half on herself and half on her three schoolgoing children.

The learned trial Judge in that case took the amount of RM750 per month as the multiplicand.

The Supreme Court, however reduced it by half.

On this point Edgar Joseph said (CLJ at p. 689) at p. 2008:

In my view, the plain, ordinary and grammatical meaning of the expression "any loss of support suffered" appearing in s. 7(3), must refer to the loss of support suffered by "the party for whom and for whose benefit the action is brought". In other words, the loss suffered must be personal to the class of dependants specified in s. 7(2) so that a loss suffered by any other person not falling within that class must be excluded.

Having regard to the mother's admission aforesaid, the loss of support suffered by her was RM375 p.m. only.

For the Court to increase the value of the loss of support to RM750 p.m., by adding the sum that was spent by the mother on the three schoolgoing children, to the sum she had spent on herself, would amount to departing from the plain, ordinary, and grammatical meaning of the statutory language of s. 7(2).

Two paragraphs from the judgment written by Peh Swee Chin SJ are also worth quoting (CLJ at p. 694):

However, under s. 7 of the Civil Law Act 1956, the persons entitled to claim such loss of support in respect of a deceased person are wife, husband, parent and child, only, not including a brother or sister.

The only person entitled to claim in the instant appeal would therefore be the surviving parent, i.e. the said mother, unlike England, where the class of persons entitled to claim under corresponding legislation expressly includes a brother and sister.

Therefore, it would assist nobody to say that the said mother was bound by law to support her

other minor children5 OF 9.

Further, in our opinion, loss of support is for all practical purposes translated into financial loss sustained by a dependant.

Having regard to the class of persons entitled as stated above, it is a logical conclusion to say that a plaintiff can only claim in such a case for financial loss which he sustains as a dependant and not in any other way.

It is clear to me that the amount to be considered is not the "last drawn income" of the deceased as submitted by the learned Counsel for the plaintiff/ appellant.

It is the amount that the deceased gave her for **her** support, not even what she spent on her other children.

That judgment of the Supreme Court is binding on me.

The next question is whether the learned Sessions Court Judge should have accepted the amount of RM500 which the plaintiff/appellant said the deceased used to give her or take another lesser amount which he thought was reasonable?

What the learned Sessions Court Judge had done here was to fix an amount of RM380 per month as the amount the deceased might contribute to his mother had he not died.

This is because, as from 1st March 1993 his income had reduced to RM800 per month compared to RM1,100 per month he received the previous month.

He thought with lesser income the deceased would contribute less.

I think that is a very reasonable thing to do. In my experience in this type of cases, I notice that more often than not, the amount of contribution by a son, etc. who died in road accidents tend to be exaggerated for obvious reasons.

And it is almost impossible for the defendants to disprove it. Indeed, if we were to believe all the evidence adduced in Court by parents of deceased sons as to how generous they were to their parents, it appears that only exceptionally good sons die in road accidents.

Was the learned Sessions Court Judge right when he reduced RM135 from the figure RM380? The plaintiff/appellant admitted that out of the RM500 the deceased used to give her, she paid RM135 for the deceased's motorcycle instalment.

He treated that amount as some kind of refund to the deceased or the deceased's "living expenses" which should be deducted.

Again I agree with the learned Sessions Court Judge.

It was the deceased's motorcycle.

He had to pay the instalments, whether directly or, as in this case, through his mother.

Multiplier

The deceased was 19 years old when he died.

The learned Sessions Court Judge used 10 years as the multiplier.

The learned Counsel for the plaintiff/ appellant submitted that the multiplier should be 16.

The relevant provision of the statute is s. 7(3) proviso (iv)(d) of the Civil Law Act 1956 which *inter alia* provides:

(d) take into account that in the case of a person who was of the age of 30 years and below at the time of his death, the number of years' purchase shall be 16;

That provision appears to me, as submitted by learned Counsel for the plaintiff/ appellant, to be mandatory.

However there appears to be conflicting opinions on it. I will only refer to post-amendment cases.

Here again the leading case is *Chan Chin Min's* case.

In that case the deceased was 25 years old.

The learned Judge of the High Court took 16 years as the multiplier, the learned Counsel for the appellant having conceded the point.

However by a majority of 2 to 1, the Federal Court reduced it to seven.

Peh Swee Chin SCJ (Dzaiddin SCJ agreed with him) considered the fact that the loss of support would have reduced or ceased if the deceased's son had married if he had lived.

On the other hand, Edgar Joseph Jr. SCJ was of the view that the provision of s. 7(3) proviso (iv)(d) was mandatory and as the deceased was below 30 years of age, he applied the 16-year multiplier.

I will not comment on the reasons given by the learned Judges. I am bound by the majority decision.

But that does not mean that in all cases the multiplier must always be seven.

It depends on the facts of each case, especially the age of the deceased.

The other case is Dirkje Peiternella Halma v. Mohd. Noor bin Baharom & Ors.[1990] 2 CLJ 167; [1990] 3 MLJ 103. That is also a Supreme Court judgment.

In that case the appellant was about 25 years old at the time of the accident.

As she was below 30 years of age, applying the provisions of s. 28A(2)(d)(i) of the Act 16

years' purchase as the multiplier was used.

There appears to be no dispute regarding the multiplier.

However, it should be pointed out that that was a loss of earning case and not a loss of support case.

The majority judgment in *Chan Chin Min's* case drew a distinction between the two.

It appears to have also drawn a distinction between a claim for loss of support by a widow and children and a claim for loss of support by the parents of a deceased person.

At (CLJ at pp. 695-696) p. 2003, Peh Swee Chin SCJ said:7 OF 9

The distinctiveness of the loss of support from the loss of earnings is worth emphasising once more because it is an undisputable fact that the duration of loss of support sustained by a parent in respect of an unmarried child ordinarily and simply cannot be ever so long as the duration of the loss of support sustained by a widow and her children in respect of her husband, for example...

On the other hand, the state of the general system of law relating to a parents' claim as a dependant for loss of support in respect of an unmarried child before the enactment of sub-para (d) was that such loss of support would either cease or be reduced considerably on the almost invariable contingency of subsequent marriage of such unmarried child...

It is clear that the majority view was that in the case of loss of support by a parent of a deceased the Court is not bound to apply the multiplier provided in s. 7(3) proviso (iv)(d) but should take into consideration the fact that the deceased might get married later, had he lived, and, as a result of which his contribution to his parents might be less or cease completely.

In the circumstances, I do not think that Dirkje's case besides being an earlier decision of the Supreme Court, is an authority in fixing the multiplier in a case concerning the loss of support by a parent.

The other case relied heavily by learned Counsel for the plaintiff/appellant was *Noor Famiza & Anor. v. Awang bin Muda & Anor. [1994] 2 CLJ 418; [1994] 1 MLJ 599*. This is a High Court judgment.

From the judgment it appears that the first plaintiff was a passenger in a car driven by her husband (the deceased) which met with an accident with a military truck.

The plaintiffs, *inter alia*, claimed for the "deceased's loss of earnings". The deceased being 35 years of age when he died, the learned Judge applied the multiplier of 10 years as provided by s. 7(3) proviso (iv)(d).

It is to be noted that that case was decided prior to the decision of the Supreme Court in *Chan Chin Min's* case.

In any case I consider the majority view in *Chan Chin Min's* case to be binding on me.

A very recent decision of the Court of Appeal was also referred to me. That is the case of Ang Lit Yiang & Ors. v. Teoh Hing Yew & Anor. [1996] 4 CLJ 451. In that case the deceaseds were 20 years old and 16 years old respectively.

The claim was for loss of support by the parent of the deceaseds.

On the question of multiplier, it appears that the Sessions Court Judge had used the multiplier of 16. The learned Judicial Commissioner, on appeal reduced it to 8 and 10 respectively on his own motion.

The Court of Appeal reinstated 16 years as the multiplier.

But the reason given by the Court of Appeal was that the learned Judicial Commissioner should not have disturbed the multiplier as there was no appeal to the High Court on it.

I do not think that this case alters the position as far as this Court is concerned.

The majority decision in *Chan Chin Min's* case is still binding on this Court.

Perhaps, I should point out that as regards the ground given by the Court of Appeal in Ang Lit Yiang's case, the Supreme Court in *Chan Chin Min's* case held that it was not precluded from deciding on the multiplier even though the multiplier of 16 was conceded by the appellant in the High Court as it was a question of law.

In the circumstances, on the authority of the majority judgment of the Supreme Court in *Chan Chin Min's* case, which is binding on this Court, it is not the law that the multiplier on the facts of this case must be 16 and nothing else.

The Court should therefore consider the possibility of the deceased getting married resulting in his contribution to his mother being reduced or stopped completely.

The deceased was 19 years old when he died.

The learned Sessions Court Judge had taken 10 years as the multiplier. I see no reason why I should disturb it. I think it is reasonable.

For these reasons I dismissed the appeal.

However, so as not to unduly burden the plaintiff and in view of the apparent "uncertainty" of the law I order each party to pay his/her own costs.