

## COMPENSATION FOR LOST SERVICES IN A DEPENDENCY CLAIM

---

Where a dependant<sup>1</sup> of a deceased person brings an action<sup>2</sup> under section 7(1) of the Civil Law Act 1956 he may claim, not only for the pecuniary or money benefit lost as a result of the deceased's death, but also the money value of the services, if any, which were rendered by the deceased to the dependant during the deceased's life-time. Speaking of the dependant's damages Lord Wright explained in the House of Lords in *Davies v Powell Duffryn Associated Collieries Ltd*,<sup>3</sup>

The damages are to be based on the reasonable expectation of pecuniary benefit or *benefit reducible to money value* ...<sup>4</sup>

In *Berry v Humm*<sup>5</sup> Scrutton J said,<sup>6</sup>

I can see no reason in principle why such pecuniary loss should be limited to the value of money lost, or the money value of things lost, as contributions of food or clothing, and why I should be bound to exclude the monetary loss incurred by replacing services rendered gratuitously by a relative, if there was a reasonable prospect of their being rendered freely in the future but for the death.

---

1 The term "dependant" is defined in section 7(2) and section 7(11) of the Civil Law Act 1956.

2 The action is commonly called a "dependency claim".

3 [1942] AC 601.

4 *Ibid* at 611. (Italics are mine).

5 [1915] 1 KB 627.

6 *Ibid* at 631.

The dependency claim as found in section 7(1) of our Civil Law Act 1956 is a creature of statute, having its genesis in England in Lord Campbell's Act of 1846, the Fatal Accidents Act, 1846. From early times English courts have made awards for lost services<sup>7</sup> provided that the services were provided as a result of a family relationship and not as a result of a commercial arrangement or a contractual obligation.<sup>8</sup>

### I. SERVICES OF A WIFE OR MOTHER

One of the earliest reported cases involving a claim for lost services is *Franklin v S.E.Ry*<sup>9</sup> where a father was awarded damages for the loss of his son's voluntary services. In recent times most of the cases involving lost services were concerned with deceased wives or mothers. Wives or mothers perform almost all of the chores of a household. The courts have always recognised the immense value of their services, such as housekeeping and looking after children. It is pertinent for the purpose of this note to take a brief look at the position at Common Law (as illustrated by English and Malaysian cases) and to see how they were affected by the unpopular Civil Law (Amendment) Act 1984.

In *Berry v Humm*<sup>10</sup> the gratuitous service of a wife in the home was treated as a pecuniary benefit which was claimable by her dependants.

In *Chong Ptk Sing & Anor v Ng Mun Bee*<sup>11</sup> the (Malaysian) Supreme Court, in allowing a dependency claim by a husband and the children of a deceased woman, assessed the alleged lost services of the deceased as a wife and mother ("marketing, cooking and taking care of the children")<sup>12</sup> to be worth RM500 a month. Seah SCJ emphasised that the loss of the dependants "need not be a monetary loss; a loss of services rendered by the wife and capable of being valued, in pecuniary terms will suffice, such as housekeeping".<sup>13</sup>

---

7 *Franklin v S. E. Ry* (1858) 3 H & N 211 is an example of the early cases.

8 In *Sykes v North Eastern Ry Co* (1875) 44 LJ CP 191 a father's claim for the lost services of his son failed because the son was paid full wages for the services by the father. Brett J said, "The son was of full age and worked for fair wages, the arrangement between father and son being purely matters of contract."

9 *Supra* n 7.

10 *Supra* n 5.

11 [1985] 1 MLJ 433.

12 *Ibid* at 436.

13 *Ibid* at 435.

The importance of a wife or mother's services was emphasised by Watkins J in *Regan v Williamson*,<sup>14</sup> a case which involved a deceased mother of four young children. Speaking of the tendency of the cases to relegate the wife or mother to the position of the housekeeper, his Lordship said,<sup>15</sup>

[I]am, with due respect to the other judges to whom I have been referred, of the view that the word 'services' has been too narrowly construed. It should, at least, include an acknowledgment that a wife and mother does not work to set hours and, still less, to rule. She is in constant attendance, save for those hours when she is, if that is the fact, at work. During some of those hours she may well give the children instruction on essential matters to do with their upbringing and, possibly, with such things as their home-work. This sort of attention seems to be as much of a service, and probably more valuable to them, than the other kinds of service conventionally so regarded.

A significant case was *Mehmet v Perry*<sup>16</sup> where the husband of a deceased wife had given up his full-time employment to look after the children. The court found that it was reasonable for him to do so as two of the children suffered from a rare blood disease and needed constant attention, emotional security and support. The court awarded the husband's loss of wages and not the lower cost of employing a house-keeper.

*Hay v Hughes*<sup>17</sup> established the important point that where a dependant was claiming for the services of a deceased the fact that another person had voluntarily taken over the services and may continue to provide the services voluntarily to the dependant is irrelevant and would not defeat the dependant's claim. In *Hay's* case the deceased was the mother of two children aged 4 $\frac{1}{2}$  and 2 $\frac{1}{2}$  years respectively. She was a full-time housewife who devoted her entire attention to caring for the family. After her death the two children were voluntarily taken in by their maternal grandmother. The grandmother had domestic responsibilities of her own. She did not give up any paid employment to look after the said two children. The Court of Appeal upheld the decision of the trial judge that the children were entitled to

---

14 [1976] 2 All ER 241.

15 *Ibid* at 244.

16 [1977] 2 All ER 529.

17 [1975] 1 All ER 257.

damages for the loss of their mother's services and that the grandmother's voluntary replacement of services should be ignored in calculating the financial loss sustained by the children as a result of the death of their mother.

On 1.10.1984 the Civil Law (Amendment) Act 1984 came into force and imposed significant and severe restrictions on the law as stated above.

## II. THE CIVIL LAW (AMENDMENT) ACT 1984

The Civil Law (Amendment) Act 1984 (A602) (hereinafter referred to as "the 1984 Act") made several significant and far-reaching changes to the law governing assessment of damages for personal injuries and causing death. These changes were achieved by amending existing provisions in the parent Act, the Civil Law Act 1956 (Act 67) and, also, by inserting new provisions into the parent Act. The 1984 Act was prompted, according to the explanatory statement to the Civil Law Amendment Bill, by "the vast variance of court awards for damages for personal injuries including those resulting in death." It was common knowledge that the considerable increase in the size of judicial awards for personal injuries and for causing death in the late 1970s and early 1980s caused some concern in the insurance industry. The general effect of the 1984 Act was to reduce damages in this area of the law<sup>18</sup> and its enactment must have pacified some of the fears of the insurance companies. However the 1984 Act has given rise to a myriad of issues, doubts and problems which have generated, and will continue to generate, perplexing questions for the judiciary.

One of the amendments directly affected the law relating to a claim by a dependant for the lost services of a deceased. The amendment was achieved by the 1984 Act inserting<sup>19</sup> a new section 7(3) which reads as follows:

---

18 Examples of cases which appear to have achieved this purpose are *Marappan v Siti Rahmah* [1990] 1 MLJ 99, *Tan bin Hairuddin v Bayeh* [1990] 2 CLJ 773 and *Tan Kim Chuan v Chandu Nair* [1991] 2 MLJ 42.

19 See section 2 of the Civil Law (Amendment) Act 1984.

(3) The damages which the party who shall be liable under subsection (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 subsection (1):

Provided that -

- (i) ...
- (ii) damages may be awarded in respect of the funeral expenses of the person deceased if such expenses have been incurred by the party for whose benefit the action is brought;
- (iii) no damages shall be awarded to a parent on the ground only of his having been deprived of the services of a child; and no damages shall be awarded to a husband on the ground only of his having been deprived of the services or society of his wife; ...

The significant provision is proviso (iii) to section 7(3) above and it merits a closer examination. Five significant points may be noted about proviso (iii). First, the proviso does not affect all services. It only debars a claim for the services of a "child" to a "parent" and the "services or society" of a wife to a husband. Secondly, the word, "child", is defined in section 7 of the parent Act to include a "son, daughter, grandson, granddaughter, stepson and stepdaughter". "Parent" is defined to include "father, mother, grandmother and grandfather". In this particular context the proviso regarding a child's services affects a wider spectrum of persons and is not confined to a son's or daughter's services to his father or mother. Thirdly, the proviso affects a child's services to his parent but not a parent's services to a child. Thus a child may still claim in respect of the lost services of his parent. Fourthly, in respect of spouses, the proviso only affects the "services and society" of a wife to her husband. It does not affect a husband's services to his wife. This is not significant as husbands are invariably breadwinners in full-time employment and rarely contribute by way of household services. The bulk of household services, are, in most cases, borne by the wife. Fifthly, the proviso also removes a claim for a wife's "society". "Society" or "consortium" refers to what Vincent Ng J recently described in *Hum Peng Sin @ Ham Lin Kin (Suami kepada Chiam Kao Kee @ Chean Kao Kee simati sebagai dependan) v Lim Lai Hoon & Anor*<sup>20</sup> as,

The right of one spouse to the company, assistance, affection and companionship of the other, in other words, the myriad of other services - perhaps facetious of me to elaborate or define - provided gratis to the husband by a good wife has been expressed in felicitous language as the right to consortium.<sup>21</sup>

A statutory provision to debar a husband's claim for a wife's consortium appears unnecessary in view of the Supreme Court decision in *Chong Pik Sing & Anor v Ng Mun Bee & Anor*,<sup>22</sup> a case decided on the law that existed before the 1984 Act. In this case an award for loss of consortium by a trial judge was quashed because, as far as a dependency claim is concerned, such an award would appear contrary to the authorities at Common Law.<sup>23</sup>

### III. *NEO KIM SOON (ADMINISTRATOR OF THE ESTATE OF PHANNA MANNECHUANG, DECEASED) V SUBRAMANIAM*<sup>24</sup>

Until the Court of Appeal decision in 1995 in *Neo Kim Soon (Administrator of the Estate of Phanna Mannechuang, deceased)*<sup>25</sup> it was commonly believed that proviso (iii) to section 7(3) as substituted by the 1984 Act had removed all claims by a dependant for his wife's or mother's services.<sup>26</sup> In 1995, in *Neo's* case, the Court of Appeal turned on the spotlights on section 7(3) and its proviso (iii) and arrived at a bold, novel and just interpretation of the said provisions.

In that case, the deceased, a married woman, was killed in a road accident. The plaintiff, her husband and the administrator of her estate, brought a dependency claim under section 7 of the Civil Law Act 1956 on his own behalf and on behalf of his infant son. At the trial the plaintiff gave evidence that by reason of the deceased's death he had

---

21 *Ibid* at 1172.

22 *Supra* n 11.

23 May damages for loss of consortium be awarded in a *personal injury* case? For a Malaysian High Court decision where damages for loss of consortium was awarded to a husband of an injured wife in a *personal injury* case see *Bas Minti Muhibbah Sdn Bhd v Abdullah bin Salim* [1983] 2 MLJ 405.

24 [1995] 3 MLJ 435.

25 *Ibid*.

26 See for example *Hum Peng Sin @ Ham Lin Kiu (Suami kepada Chtam Kao Kee @ Chean Kao Kee suami sebagai dependan) v Lim Lat Hoon & Anor* [1996] 1 AMR 1166 at 1173.

to employ a housekeeper at a monthly wage of RM500 to look after his infant son. The learned Sessions Court judge made an award of RM250 per month for 11 $\frac{1}{2}$  years. On the defendant's appeal to the High Court the award was disallowed. The plaintiff appealed to the Court of Appeal.

Before the Court of Appeal, the defendant submitted that as a result of proviso (iii) to the substituted section 7(3), no award could be made for the deprivation of the services of a wife. It was argued that the money expended by the plaintiff for a housekeeper was really in lieu of the services which the wife had provided and therefore was irrecoverable. An award could only be made if the wife was making a financial contribution to the husband. The Court of Appeal disagreed and reinstated the judgment of the Sessions judge. Mahadev Shankar JCA, who delivered the judgment of the Court of Appeal, pointed out that in the instant case the plaintiff was not claiming for the equivalent monetary value of the wife's services. He was claiming for the actual monetary expense he had paid and would continue to pay to look after his son. His Lordship referred to section 7(3) and said,<sup>27</sup>

We agree ... that what has been done away with by the proviso (iii) is an award of damages, in this case to the deceased's husband, *only* on the ground that he has been deprived of the services or society of his wife. So far as a surviving husband is concerned, the proviso has abolished any award by way of general damages for loss of consortium. In other words, proof of the death of a wife, without more, will not entitle the surviving husband to an award in damages.

It is a different matter altogether where a husband has not only lost his wife, but has also been put to monetary loss which has been the direct result of the negligence. Such loss in our view continues to be recoverable.

We say this because s 7(3) as it is presently worded not only empowers the court to compensate the claimant for any 'loss of support' but also for 'any reasonable expenses incurred as a result of the wrongful act'. We cannot agree with the respondents' counsel that the word 'together' in s 7(3) must be read to mean that unless monetary loss is first shown by way of loss of support, the claim for reasonable expenses cannot be sustained.

---

27 [1995] 3 MLJ 435 at 439.

Neo's case is an outstanding decision which displays a bold and innovative approach. The Court of Appeal must be congratulated for its attempt to get around a most unpopular statutory provision. As a High Court judge remarked in a recent case,<sup>28</sup>

It was a sensible decision because it would be unfair and unjust to preclude a male spouse from claiming (under s 7 of the Act) the actual quantifiable loss and monetary expense that he has incurred and would have to continue to incur in terms of housekeeping as a direct result of the negligence of a wrongdoer.<sup>29</sup>

Neo's case is a courageous decision because it would have been much easier and less controversial for the Court of Appeal to have made the same award on an alternative ground namely, by basing its decision on a child's lost services of its mother. The deceased's infant son was a claimant in this case and a child's claim for the deprived services of his mother is unaffected by proviso (iii). As the award of RM250 could easily be taken as a reasonable cost of hiring a person to replace the deceased mother's services to the infant son, the court had this alternative ground or option to justify its decision. That the infant son was not precluded from claiming by proviso (iii) was noted by Mahadev Shankar JCA. His Lordship said,<sup>30</sup>

As a matter of interest, we observe that proviso (iii) does not preclude damages to a child for having been deprived of the services or society of his mother but we do not think that it is necessary for this appeal to say anything more about this, except that it follows from what we have said that wherever it can be shown whether by a parent, a surviving spouse or a child that actual quantifiable loss has been incurred in money or money's worth and will continue to be incurred as a direct result of the negligence of the wrongdoer, such loss will be recoverable even if there was no direct financial contribution made by the deceased to or on behalf of the person for whose benefit the action was brought.

---

28 Vincent Ng J in his analytical judgment in *Hum Peng Sin @ Ham Lin Kin v Lim Lat Hoon & Anor* [1996] 1 AMR 1166.

29 *Ibid* at 1174.

30 [1995] 3 MLJ 435 at 440.



Despite the praise that *Neo's* case justly deserves there appears one minor weakness in its foundation, namely in its reliance on the words "any reasonable expenses incurred as a result of the wrongful act" in section 7(3).<sup>31</sup> Do the words "expenses incurred" mean that only pre-trial loss is recoverable? Do the words debar a claim for post-trial loss? Be that as it may *Neo's* case is a landmark decision and will have a significant effect on future fatal accident claims involving the deprived services of a wife or a child. It is also pertinent to note that there was no appeal to the Federal Court in this case. Indeed the parties had no right of appeal by virtue of the new section 96 of the Courts of Judicature Act 1964 as recently inserted by Act A909.

#### IV. EFFECTS OF THE CASE

Although *Neo's* case involved a claim for a deceased wife's services, the case should also apply to a claim by a parent for the lost services of a deceased child because of the identical words used in proviso (iii) in relation to a child's services.

Secondly, although *Neo's* case outflanks the restrictive effect of proviso (iii) to section 7(3) it does not restore the old law regarding a wife's or child's services. *Neo's* case only applies where the dependant has been put to "monetary loss" as a result of the deprived services and such loss is the direct result of the wrongdoer's negligence.<sup>32</sup> The case only applies where "actual quantifiable loss" has been incurred in money or money's worth and will continue to be incurred as a direct result of the wrongdoer's negligence.<sup>33</sup> Thus *Neo's* case has no relevance where the dependant does not replace the deprived services or the dependant himself performs the services or some other person voluntarily takes over the services and performs them. Unless the dependant can prove "actual quantifiable loss" in the form, for instance, of wages paid and to be paid to a housekeeper or child minder or domestic help, he appears to have no basis for a claim.

---

31 See the thought provoking observations of Vincent Ng J in *Hum Peng Sin @ Ham Lin Kin (Suami kepada Chiam Kao Kee @ Chean Kao Kee simati sebagai dependan) v Lim Lat Hoon & Anor* [1996] 1 AMR 1166 at 1174-1175.

32 [1995] 3 MLJ 435 at 439.

33 *Ibid* at 440.

## V. CONCLUSION

Neo's case is another example of claimants and the courts grappling with some of the difficulties created by the 1984 Act. Once again it is necessary to call upon the legislature to reconsider the provisions of the 1984 Act with the view to mitigating some of its severity. For instance section 7(3) and its provisos, which were dealt with in this note, certainly need a careful and detailed study. In this context, a remark by Vincent Ng J in the recent case of *Hun Peng Sin @ Ham Lin Kin (Suami kepada Chiam Kao Kee @ Chean Kao Kee simati sebagai dependan) v Lim Lai Hoon & Anor*<sup>34</sup> is most pertinent. His Lordship said,<sup>35</sup>

With the Executive's recent curtailment and adjustment of agency commission and their intended reformative measures in the insurance industry, perhaps s 7(3) could be reviewed with the view to legislative correction to allow for more equitable awards based on the common law principles.

P Balan\*

\*Professor  
Faculty of Law  
University of Malaya.

---

34 [1996] 1 AMR 1166.

35 *Ibid* at 1178.