Privy Council Appeal No. 99 *of* 1921.

The Royal Trust Company - - - - - - *Appellants*

v.

The Canadian Pacific Railway Company - - - - *Respondents*

FROM

THE SUPREME COURT OF ALBERTA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST JULY, 1922.

Present at the Hearing:
VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD PARMOOR.
MR. JUSTICE DUFF.

[*Delivered by* LORD PARMOOR.]

The appellant is the administrator of the estate of the late William John Chambers, who was killed in a railway accident on the line of the respondents. The respondents do not dispute their liability for damages under the Ordinance C.48 of C.O. 1898, which gives compensation to families of persons killed by accidents, and which, so far as is material, corresponds to the Fatal Accidents Act, 1846 (9 & 10 Vic., c. 93), ordinarily known as Lord Campbell's Act. The only question at issue in the appeal is the amount of compensation payable for the benefit of the widow and son of the late William John Chambers. On the trial before Mr. Justice Hyndman the amount of compensation was fixed at the sum of $80,000, apportioned in the sum of $65,000 to the widow and $15,000 to the child. On appeal to the Appellate Division of the Supreme Court of Alberta, the judgment in the Court below was varied, and the amount awarded was reduced to $40,000, $25,000 being apportioned to the widow and $15,000 to the son. In both the Courts, therefore, the same amount was

apportioned to the son, and no further question arises under this head; but in the opinion of their Lordships it is advisable in cases of this kind to proceed on the principle adopted before the trial Judge, namely, to assess the total amount in the first instance, and then to apportion it.

The material facts can be shortly stated. William John Chambers was an eye, ear and throat specialist, thoroughly competent and reliable in his professional work. He is said to have been one of the best men in his profession at Calgary. He was in good physical condition at the time of his death. He was forty-six years old, and his expectation of life, calculated on an actuarial basis, was, at the time of his death, twenty-three years. During the two years immediately preceding his death his net annual professional earnings had amounted to $12,862·83 and $18,056·95 respectively. He left an estate which was producing at the time an annual income of $1,830. It is not, however, necessary further to consider this item, or the items of accident or life assurance, until the question arises as to the deductions which should be made from the total sum which, but for such deductions, would be payable as compensation or damage. He left his whole estate to his wife, the appellant, whose expectation of life was then thirty-five years.

When a claim for compensation to families of persons killed through negligence is made, the right to recover is restricted to the amount of actual pecuniary benefit which the family might reasonably have expected to enjoy had the deceased not been killed. It is not competent for a Court or a jury to make in addition a compassionate allowance. The principle, as stated by Lord Watson in *G.T. Ry. Co.* v. *Jennings* (13 A.C. 800), is applicable in cases where the loss, in respect of which compensation is claimed, is based on the cessation of an income derived from professional skill :—

> "It then becomes necessary to consider what, but for the accident which terminated his existence, would have been the reasonable prospects of life, work and remuneration; and also how far these, if realised, would have conduced to the benefit of the individual claiming compensation."

The difficulty arises not in the statement of the principle, but in its application to a case in which the extent of the actual pecuniary loss is largely a matter of estimate, founded on probabilities, of which no accurate forecast is possible.

In the present case it appears to be the duty of the Court, following the lines laid down in the above and other cases, first to estimate as nearly as possible the capitalised value to the widow and child of the share which they would have enjoyed in the future earnings and probable savings of the deceased, and then to deduct from the sum so ascertained the amount received for accident insurance, with proper allowances in respect of the life policies and in respect of the acceleration, by reason of the death, of the benefits coming to the dependents under the will of the deceased. Both Courts appear to have acted on this principle, but with different results. The differences are

accounted for partly by a difference in the estimates formed by the learned Judges as to the future earnings of the deceased, and partly by a difference in the value which they severally put upon his actual and anticipated savings; and their Lordships find themselves unable to agree with the decision of either Court as to the sum to be allowed. In these circumstances, it becomes the duty of their Lordships on this appeal to fix a sum; and, acting on the above principles and forming the best estimate they can, they have arrived at the sum of $57,000 as the amount proper to be allowed by way of compensation, such sum to be apportioned as to $42,000 to the widow and as to $15,000 to the infant son.

Their Lordships will humbly advise His Majesty that the judgment of the Appellate Court should be varied by substituting the said sum of $57,000 for $40,000, to be apportioned as follows:—

To Olive Watson Chambers, widow of William John Chambers, $42,000;

To Ewan Buchanan Chambers, son of William John Chambers, $15,000;

and that the respondents do pay to the appellants two-thirds of their costs of the appeal, but that no alteration be made in respect of the orders as to the costs in the Courts below.

In the Privy Council.

THE ROYAL TRUST COMPANY

v.

THE CANADIAN PACIFIC RAILWAY COMPANY.

DELIVERED BY LORD PARMOOR.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1922.