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July 1960

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IN THE PRIVY COUNCIL

No. 1 of 1959

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

B E T W E E N:

RADHAKRISHNAN M. KHEMANEY (Defendant) Appellant

- and -

LACHABAI MURLIDHAR (Plaintiff) Respondent

RECORD OF PROCEEDINGS

WALTONS & CO.,
101, Leadenhall Street,
London, E.C.3.

Solicitors for the Appellant.

KNAPP-FISHERS & BLAKE & REDDEN,
31, Great Peter Street,
Westminster,
London, S.W.1.

Solicitors for the Respondent.

IN THE PRIVY COUNCILNo.1 of 1959

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

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

B E T W E E N

RADHAKRISHN M. KHEMANEY (Defendant) Appellant

- and -

MRS. LACHABAI MURLIDHAR (Plaintiff) Respondent

50396

RECORD OF PROCEEDINGS

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1st Witness - Patrick Lawrence Ozzard	29th May 1957
3rd Witness - John Douglas McCririck	29th May 1957

Description of Document	Date
4th Witness - Gordon Roy Grant Smith <u>Defendant's Witnesses</u>	30th May 1957
Defendant - Radhakrishen Motiram Khemaney	30th May 1957
1st Witness - Kenneth George Warrilow	30th May 1957
3rd Witness - Robert Ross	30th May 1957

IN THE PRIVY COUNCIL

No. 1 of 1959

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

B E T W E E N:

RADHAKRISHN M. KHEMANEY (Defendant) Appellant

- and -

LACHABAI MURLIDHAR (Plaintiff) Respondent

RECORD OF PROCEEDINGS

10

No. 1.

In the Supreme
Court of Kenya.

PLAINT

IN HER MAJESTY'S SUPREME COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.940 OF 1956

No. 1.

Plaint.

15th August,
1956.

MRS. LACHABAI MURLIDHAR Plaintiff

versus

RADHAKRISHN M. KHEMANEY Defendant

PLAINT

20

1. The Plaintiff is the widow of one Murlidhar Doulatram Mahbubani deceased and now resides at Nairobi in the Colony of Kenya and her address for service for the purposes of this suit is care of Messrs. Khetani & Winayak, Advocates, Duke House, Duke Street, Nairobi.

2. The Defendant is an Indian Merchant residing and carrying on his business at Mombasa and the service of the Summons in this case will be affected by the Plaintiffs' Advocates through their agents in Mombasa.

30

3. On or about the 1st day of July 1956, at about 4 p.m. one Murlidhar Doulatram Mahbubani (deceased) was being carried as a passenger in Ford Consul Model 1956 Registration No. KAJ 227 driven and owned by the Defendant along the Road from Mariakani to

In the Supreme
Court of Kenya.

Voi known as Mombasa Road when the Defendant so negligently drove the said car that it overturned twice.

No. 1.
Plaint.
15th August,
1956
- continued.

(a) PARTICULARS OF NEGLIGENCE

The Defendant was negligent in that he :-

- (i) Drove at an excessive speed;
- (ii) Drove too fast to be able to stop in the event of any emergency;
- (iii) Failed to keep any proper look-out;
- (iv) Applied his brakes so suddenly that the said car was thrown out of control and overturned twice. 10
- (v) Failed to keep the steering sufficiently under control or failed to manoeuvre the steering sufficiently so as to avoid overturning of the car.

4. By reason of the foregoing the said Murlidhar Doulatram Mahbubani was killed and the Plaintiff and the other Dependents of the deceased have been put to expense and have suffered damage. 20

(b) PARTICULARS OF SPECIAL DAMAGE:

	Shs.	Cts.
(i) Damage to clothing	1,000.	00
(ii) Damage to Diamond ring	5,700.	00
(iii) Funeral expenses	<u>7,500.</u>	<u>00</u>
	Total Shs.	<u>14,200. 00</u>

(c) PARTICULARS PURSUANT TO SECTION 7 OF THE FATAL ACCIDENTS ORDINANCE (Chapter 9 Volume I OF LAWS OF KENYA, 1948).

The action is brought by the Plaintiff on behalf of herself as widow and on behalf of the following Dependents - 30

- (1) Arjan aged 9½ years son of the said Murlidhar Doulatram Mahbubani deceased;
- (2) Usha Devi aged 8½ years daughter of the said Murlidhar Doulatram Mahbubani deceased;
- (3) Hiro aged 6½ years son of the said Murlidhar Doulatram Mahbubani deceased;

- (4) Ashok aged 1½ years son of the said Murlidhar Doulatram Mahbubani deceased;
- (5) Radhibhai Doulatram aged 57 years approximately mother of the said Murlidhar Doulatram Mahbubani deceased;
- (6) Doulatram Boolchand aged 60 years approximately father of the said Murlidhar Doulatram Mahbubani
- 10 (7) Boolchand Rochiram aged 80 years approximately grandfather of the said Murlidhar Doulatram Mahbubani deceased.

In the Supreme Court of Kenya.

No. 1.

Plaint.

15th August, 1956

- continued.

5. The said deceased was immediately prior to the said accident aged 38 years and was employed by B. Choitram at their Mombasa Branch as a Manager at an average yearly emolument of Shs. 60,000/-. He was the sole support of the Plaintiff and the aforesaid Dependents who by his death have lost his support.

20 6. Notwithstanding the Plaintiff's written demand to the Defendant to admit liability, the Defendant fails and/or neglects to do so.

WHEREFORE the Plaintiff claims :-

- (a) Shs.14,200/- as per paragraph 4(B) hereof;
- (b) General damages for herself and other Dependents aforesaid;
- (c) Interest at Court rates;
- (d) Costs of this suit;
- (e) Such other relief as may be just and expedient.

30 DATED at Nairobi this 15th day of August, 1956.

Sgd. J.K. Winayak

for KHETANI & WINAYAK

ADVOCATES FOR THE PLAINTIFF.

Drawn and filed by :-

Messrs. Khetani & Winayak,
Advocates,
Duke House, Duke Street,
P.O. Box 2658, Nairobi.

In the Supreme
Court of Kenya

No. 2.

DEFENCE

No. 2.
Defence.

IN HER MAJESTY'S SUPREME COURT OF KENYA
AT NAIROBI
CIVIL CASE NO. 940 of 1956

Mrs. Lachabai Murlidhar Plaintiff
versus
Radhakrishen M. Khemaney Defendant

DEFENCE

- (1) The Defendant admits paragraph 1 of the Plaint 10
save that he does not admit the Plaintiff is the
widow of one Murlidhar Doulatram Mahbubani.
- (2) The Defendant admits paragraph 2 of the Plaint.
- (3) The Defendant denies paragraph 3 of the Plaint.
- (4) The Defendant admits that on or about 1st July
1956 at about 4 p.m. the said Murlidhar Doulatram
Mahbubani deceased was being carried as a passen-
ger in a Ford Consul, KAJ 227, driven and owned by
the Defendant along the road from Mariakani to Voi
and that the said car overturned but the Defendant 20
denies that he was negligent as alleged and will
put the Plaintiff to strict proof of the act or
acts of negligence alleged.
- (5) The Defendant denies paragraph 4 save and ex-
cept that the said Murlidhar Doulatram Mahbubani
sustained injuries as a result of the said over-
turning of the said motor vehicle from which he
died; the Defendant denies the special damage al-
leged and will put the Plaintiff to strict proof
thereof. The Defendant denies that the persons 30
specified in paragraph 4 of the Plaint were related
to the deceased as alleged or at all and will put
the Plaintiff to strict proof thereof.
- (6) The Defendant does not admit paragraph 5 and
will put the Plaintiff to strict proof thereof.
- (7) The Defendant admits that he has refused to
admit liability in connection with the claims made

by the Plaintiff in respect of the said accident.

In the Supreme
Court of Kenya

No. 2.

Defence
- continued.

(8) In the alternative the Defendant will allege that the Deceased's death was not a direct consequence of the said accident and the said overturning of the said vehicle but was due to the fact that the Dec'd. voluntarily while the said motor car was in motion attempted to get out of the same by opening the door thereof and was thus trapped beneath the car when the said car overturned.

10 (9) In the further alternative the Defendant will allege that if he was negligent which is denied the Deceased's death was contributed to by negligence of the Deceased particulars of which contributory negligence are set out as under :-

Particulars of Contributory Negligence

20 The Deceased being a passenger in the said motor vehicle driven by the Defendant attempted while the said motor vehicle was still in motion to get out of the same and in so doing opened a door of the said motor vehicle and in consequence thereof when the said motor vehicle overturned the said Deceased was trapped beneath the overturning car and the road.

(10) The Defendant will allege that the Plaintiff discloses no cause of action.

WHEREFORE the Defendant prays that the Plaintiff's claim be dismissed with costs.

DATED at Nairobi this day of
1956.

30

ROBSON AND HARRIS
Advocates for the Defendant.

Drawn and filed by :-

Messrs. Robson & Harris,
Advocates,
Lullington House, NAIROBI.

In the Supreme
Court of Kenya

No. 3.

EVIDENCE OF MRS. LACHABAI MURLIDHAR
TAKEN ON COMMISSION

No. 3.

Evidence on
Commission of
Plaintiff,
Mrs. L. Murlidhar.

28.5.57.

NAIROBI.

Re: S.C.C.C. No. 940 of 1956

28th May, 1957.

MRS. LACHABAI MURLIDHAR

Plaintiff

versus

RADHAKRISHEN M. KERMANEY

Defendant

Evidence taken by me, A.E. Hunter, on Commission this 28th day of May, 1957, pursuant to the Order made by the Supreme Court at Mombasa on 18.3.57, the Advocates for both parties having agreed that I should be the Commissioner as per their letter of 23.5.57 attached hereto marked "A".

10

O'Donovan & Winayak for Plaintiff.

Cleasby for Defendant.

Govindram Sahijsingh Advani, interpreter, duly sworn (no objection by either side).

O'Donovan calls.

1. Mrs. Lachabai Murlidhar, duly sworn on the Gita.

20

I am the widow of Murlidhar Doulatram Mahbubani deceased - my husband at the time of his death was manager of Messrs. B. Choitram at Mombasa - I married my late husband at Hyderabad, India, about 17 years ago in accordance with rights of my religion - Hindu - since my marriage - to my husband's death, he was my only means of support - he was killed in a road accident near Mombasa on 1st July 1956 - he was about 37 years old at date of his death - I am 35-36 years old.

30

The children of the marriage are 4 :-

i.e. Arjan aged $9\frac{1}{2}$ years at time of filing suit

Usha Devi aged $8\frac{1}{2}$ years

Hiro aged $6\frac{1}{2}$ years

Ashok aged $1\frac{1}{2}$ years

In addition to us, my husband supported his parents i.e. Doulatram and Radhibhai (father and mother) - his father was not working.

He also supported his grandfather, Boolchand Rochiram.

The age of Doulatram was 60 years at time of filing Plaintiff - Radhibahi (mother) was 57 - Boolchand (grandfather) was 80.

10 My husband was a healthy man - I came to Kenya with him 12-13 years ago - ever since then he has worked in firm of Messrs. B. Choitram - he started in Nairobi branch - transferred to Dar es Salaam in 1947 approximately - and back as manager to Nairobi in 1951 - from 1955 to time of his death he was manager of Mombasa branch.

20 In 1955 his salary was 4,000/- per month - increased to 5,000/- per month in 1956 - we were also provided with quarters - a furnished flat - free - worth about 300/- per month - this was provided free by his employers.

My husband gave me 3,500/- per month for household expenses - out of that I paid for our living expenses, clothes for children, tuition fees - sometimes I was able to save 100/- per month, sometimes nil - 3 children were at school at time of husband's death.

My husband sent to his parents and grandfather in India about 500/- per month.

30 He kept 1,000/- per month for his own expenses - entertaining guests - he was a generous man to me.

He did not spend much of his time at clubs or drinking.

40 Of the 3,500/- per month I received, I bought food - I did not buy or pay for my husband's clothes - I paid for food eaten by him and all of us - we were 4 children, myself and my husband out of the 3,500/- I received, I think about 400/- to 500/- would be my husband's share - that would be the amount I would save if he had not been there.

Cross-examined by Cleasby.

In 1953 or 1954 my husband's salary was 750/-

In the Supreme Court of Kenya

No. 3.

Evidence on Commission of Plaintiff, Mrs.L.Murlidhar.

28th May, 1957

- continued.

In the Supreme
Court of Kenya

No.3.

Evidence on
Commission of
Plaintiff,
Mrs.L.Murlidhar.

28th May, 1957
- continued.

per month - in 1954 there were 3 children plus myself and my husband - in 1954 were living in Nairobi - in 1954 we were living in a flat provided by Choitrams - there were 2 rooms in the Nairobi flat as compared with the 4 rooms we now have in Mombasa.

In 1954 my husband gave me 500/- per month and 250/- he kept himself - in 1954 his parents were being paid by Bombay Office - B. Choitram's Office.

There was a big increase in our standard of living between 1954 and 1955. 10

In 1954 Choitram was giving us free groceries - about 2,000/- worth would be cost of living - hence 1,500/- worth was what the groceries given by Choitram.

Groceries were:- Ghee (40 packets of 1 lb. each per month) - Rice (36 lbs. per month) - Flour (36 lbs. - 40 lbs. per month) - Vegetables (8/- to 10/- per day) including meat - without meat 7/- per day approximately - namely potatoes, tomatoes, peas and others - meat was approximately 3/- per day - Choitram gave us daily money for meat - they did not supply the meat - milk would be 6 pints per day - materials were also supplied by shops for myself and children - for clothes. 20

The increase in standard of living between 1954 and 1955 due to going to Mombasa - baby born there - expenses increased - 200/- to 300/- per month due to the baby apart from baby there were no particular increases in expenses.

I spent 3,500/- per month on rations, clothing, school fees, doctors and other things - in Mombasa similar amount approximately spent on groceries - about 1,500/- per month - apart from baby. 30

No rent paid by us - school fees were 100/- per month for 3 children in all - 200/- for private fees - 2 went to Government School (Mombasa) - 1 to Aga Khan School in Government School I paid 30/- per month - 30/- each - 45/- per month for Aga Khan School - for private tuition I paid 200/- per month to teach all 3 children. 40

Clothes for children and myself 300/- - 400/- per month was what I spent for material.

When my husband died he had no savings - no estate left.

In the Supreme Court of Kenya

He wore a diamond ring - given to him at time of marriage - do not know value - he was certainly wearing it at time of accident.

No. 3.

He was wearing bush-shirt, ordinary shirt - long trousers, pants shoes at time of accident - I say these were worth 1,000/- approximately.

Evidence on Commission of Plaintiff Mrs.L.Murlidhar.

28th May, 1957
- continued.

10 In 1955 my husband gave me 500/- per month - he was earning 4,000/- per month when he went to Mombasa - I cannot remember date -

At Mombasa in 1955 when my husband was earning 4,000/- per month he gave me 2,500/- per month - at that time he sent 500/- per month to India.

He kept 1,000/- for himself - I do not know how he paid his income tax - do not know if income tax practically amounted to that.

He did not have a car.

I did not keep household accounts.

20 His father was retired - he served in foreign countries before.

My husband was the only child - he had no brothers.

I do not know how money was remitted to my husband's parents in Dombay by Choitrams.

In 1953 my husband was saving no money - when his salary was 5,000/- per month he was still saving no money - all money went on household expenses.

Re-examined by O'Donovan.

30 My husband also had a share in the profits of the firm in addition to 750/- per month.

In Nairobi we had 2 rooms free - I supplied all food - I value it at 1,500/- per month - also clothing for myself and children - also given 500/- per month by my husband - the clothing we got free I value at 400/- - 500/- per month - total apart from free quarters was 2,400/- to 2,500/- per month.

In the Supreme Court of Kenya

In Mombasa we had additional expenses of another child and tuition fees.

No. 3.

Evidence on Commission of Plaintiff Mrs.L.Murlidhar. 28th May, 1957 - continued.

When I say standard of living had gone up when we went to Mombasa, this due to 4 rooms instead of 2 rooms, two servants which I had to pay there whereas in Nairobi Choitram paid for them.

A. E. Hunter 28.5.57.

Evidence concluded.

Advocates for both parties agree to dispense with necessity of having evidence read back to witness (0.17 r.6).

10

A. E. Hunter 28.5.57.

No. 4.

Proceedings before Hearing. 25th August, 1956.

No. 4.

PROCEEDINGS BEFORE HEARING

IN HER MAJESTY'S SUPREME COURT OF KENYA AT MOMBASA DISTRICT REGISTRY CIVIL CASE NO. 492 of 1956

MRS. LACHABAI MURLIDHAR Plaintiff versus RADHAKRISHEN M. KHEMANEY Defendant

20

25.8.56 Defendant appears by Messrs. Robson, Harris & Co., Advocates, Nairobi. Sd. (?) Dy. Reg.

27.8.56 Affidavit of Service of Summons filed by Messrs. Khetani & Winayak, Advocates, Nairobi. Sd. (?) Dy. Reg.

15.9.56 Defence filed by Messrs. Robson, Harris & Co., Advocates Sd. (?) Dy. Reg.

24.9.56 Winayak. Plaintiff Lawrence for Robson & Harris (Defendant).

30

By consent: Hearing fixed for 21 & 22 January 1957 10.30. Sd. (?) Dy. Reg.

3/12/56 Harris Applicant
Winayak for Respondent.

In the Supreme
Court of Kenya

Harris: We have agreed suit be transferred to Mombasa and case taken out of list in Nairobi 21 & 22/1/57. Hearing date to be fixed in Mombasa for a date in March 1957 subject to convenience of Court. Costs of Application costs in cause.

Winayak: I agree.

Order by Court accordingly. (G. Rudd J.)

10

Nairobi S.C.C.C. No.940/56
Mombasa S.C.C.C. No.492/56

12.2.1957. Mr. Anjarwalla for Messrs. Khetani & Winayak for Plaintiff.

At the request of the Advocates for the Plaintiff, suit listed for hearing in Court on 20th and 21st and 22nd days of March, 1957 at 9.15 a.m.

Hearing notice to issue on the Advocates for the Defendant on application and payment of Court fees by the Advocates for the Plaintiff.

20

C. V. Boyle,
Ag. Dy. Reg.

18.3.57. Hassan for Applicant (Defendant) with him Hira Anjarwalla for Respondent (Plaintiff)

Hassan: Have come prepared to argue in support of adjournment but understand from Anjarwalla that his instructing Advocates in Nairobi have been in touch with Cleasby the Advocate for Defendant on file - and come to an arrangement re consent order.

ORDER BY CONSENT

30

(1) Case taken out of list for 21st and 22nd March and relisted 29th May, 30th May, 31st May.
(2) Evidence of Plaintiff to be taken de bene esse in Nairobi:
(3) Costs in cause.

HENRY MAYERS, J.

No. 4.
Proceedings
before Hearing.
25th August,
1956
- continued.

In the Supreme
Court of Kenya

No. 5.

PROCEEDINGS AT HEARING

No. 5.
Proceedings
at Hearing.
29th May, 1957.

29.5.57. O'Donovan for Plaintiff with him Winayak
Cleasby with him Thakkar for Defence.

O'Donovan: Action arises out of death of Plaintiff's husband arising out of motor accident. Action under Fatal Accidents Ordinance. Accident occurred on main Mombasa/Nairobi Road 6 miles from Makwezi. Date of accident 1st July. Defendant driving an almost new Consul. Deceased passenger. Defendant was negotiating left hand bend at 40 m.p.h. Vehicle got out of control, overturned twice, as a result deceased died. On subsequent examination of vehicle nothing wrong with brakes or steering - tyres good. 10

Plaintiff's case based entirely on res ipsa loquitur.

Motor cars in new condition don't overturn if carefully driven. Deceased's salary was £250 per month.

Apply for evidence de bene esse to be read.

Cleasby willing to dispense with formal reading. 20

Order by consent Evidence de bene esse to be taken as read.

HENRY MAYERS, J.

Plaintiff's
Evidence.

No. 6.

EVIDENCE OF DOULATRAM BHAROOMAR.

No. 6.
Doulatram
Bharoomar.

DOULATRAM BHAROOMAR Sworn -

Partner in B. Choitram - firm of merchants in piece goods, jewellery, etc. We have branches in various towns in Kenya and Tanganyika. I am brother of Plaintiff. Plaintiff's husband, the deceased worked in our firm. He came to East Africa in 1945. He entered employment of our firm in the same year. He worked first in Nairobi. Apart from his salary deceased was a partner in our Nakuru shop to extent of 25% and salary of S.4,500/- per year. That was in 1945. 30

In 1947 he was transferred to Dar es Salaam as Branch Manager there. Then he was a partner - his salary was S.9,000 per year, his share in that business was 16%. He also received board lodging and medicine free for himself and his family. In 1951 he was re-transferred to Nairobi as manager. Then he received salary of S.9,000 per year. That continued to 1955, March. In Nairobi deceased and his family stayed with me. I provided 2 rooms for them. I provided their living expenses. I charged nothing for doing so because he was my brother-in-law. Deceased continued to have 25% share in Nakuru business up to 31st December 1955. Then his partnership agreement expired and his interest in Nakuru business ceased. He had 16% in Dar es Salaam business. He was still the owner of that share at time of his death.

In the Supreme Court of Kenya

Plaintiff's Evidence.

No. 6.

Doulatram Bharoomar.

29th May, 1957
- continued.

10

20

Deceased commenced working at Mombasa shop on 1st April 1955 at salary of S.4,000 per month. He had no share of profits elsewhere than in Nakuru and Dar es Salaam. When working at Nairobi he had share in Nakuru and Dar es Salaam profits but not in those of our other shops. When working at Nairobi he used to work at Nakuru 2 days per week.

30

After coming to Mombasa deceased's salary was increased. At date of death he received salary of S.5,000 per month. That increase took effect from 1st January 1956. I have audited balance sheets of our firm for years 1954, 1955 and 1956. The total of actual drawings by deceased in 1954 was S.96,863 Cts. 63.

At end of December 1954 the deceased's account in our books was in debit. He had overdrawn S.43,355.

40

In 1955 he drew S.75,119. His account at end of 1955 he was overdrawn in our books to amount of S.8,013/-. That includes balance carried forward from previous years. When he died in July 1956 he was S.74,000 overdrawn. These debit balances arise after crediting him with his salary. I have recorded income tax returns for years 1954 and 1955 on the foregoing figures. Deceased paid income tax up to 1955. His liability for '55 and '56 is still outstanding.

I produce balance sheet for 1954. Tendered Exhibit 1. It is signed by our auditors Brice and

In the Supreme
Court of Kenya

Plaintiff's
Evidence.

No. 6.

Doulatram
Bharoomar.

29th May, 1957
- continued.

Gill. Also produce balance sheet for 1955 - simi-
larly signed - tendered Exhibit 2.

Our accounts for 1956 not yet audited.

Exhibits 1 and 2 - relate to Choitram business
at Nairobi, Nakuru, Kisumu, Eldoret and Mombasa.
They don't relate to Dar es Salaam. Deceased's
capital interest in business at Dar es Salaam was
at date of death S.75,000. He had drawn interest
on that amount for year prior to his death - those
are shown in his income tax returns. Deceased up
to date of his death had to credit at Dar es Salaam
in respect of profits for 1956 up to 1st June
S.10,389. Cts.44. 10

He had no other property in Dar Es Salaam.
His estate has not yet been assessed for death
duties. If he is credited with what is due to him
from Dar es Salaam and debited with what is due
from him to Kenya shops and taking into account his
income tax liability I don't expect that his estate
will be in credit. 20

Deceased behaved like a lord; he spent like a
lord.

He was in good health up to his death. He had
very good prospects and was well respected in our
firm.

Cross-Examined. At date of death deceased was in
debt to firm extent of approximately 74,000.

At end of 1955 he was in debt to firm in sum
over S.8,000 and in 1954 to extent of S.43,355.

In 1954 and 1955 he drew sums amounting in
aggregate to £8,600. 30

I don't know what he did with that £8,600.

I don't know what he allowed his wife. I don't
know that in evidence his wife said he allowed her
£25 per month. I don't know what he did with the
rest of his money.

In 1954 he lived with me. I don't know how he
spent £4,500 in that year. He didn't acquire any
assets with it. None of money shown as drawings
by deceased was paid back to other partners. 40

I can't say how in 1955 he spent £3,000 odd.

In my personal family there are 7 children, my wife and myself. I spend approximately S.2,000 - 2,500 per month for normal housekeeping - only 2 of my children are in Kenya. S.2,000 - 2,500 includes rent of S.300 per month. My children in Kenya are 6 and 2 years old.

In the Supreme Court of Kenya

Plaintiff's Evidence.

No. 6.

Doulatram Bharoomar.

29th May, 1957
- continued.

10

I have a partnership deed governing our partnership. It is with my advocate in Dar es Salaam. Provisions in deed re death of a partner are that the heirs of deceased will continue in the partnership. When the deceased died his share devolved on his heirs.

At date of death deceased had in Mombasa partnership no share.

At date of his death deceased had no share in Nairobi partnership.

At date of death deceased had a 16% share in Dar es Salaam partnership.

20

He had no share in Nakuru partnership at date of death.

Balance sheets for Dar es Salaam partnership are with my advocate. The approximate earnings of Dar es Salaam partnership for 1956 was £9,000. In 1955 they were £6,000.

The Nairobi partnership was not related in any way to Dar es Salaam.

I agree that according to Exhibit 2 at 31st March 1955 Nairobi was indebted to Dar es Salaam in sum of S.208,265. Cts.73.

30

The relevant entry on Exhibit 2 is marked with a star in blue pencil. Deceased owned no motor car. He owned no jewellery. He had a diamond ring worth in 1956 S.6,800. Don't know if it was damaged as result of accident. Total value of deceased's wearing apparel at time of death was approximately S.800 - 1,000/-.

He had 2 lots of clothing.

In 1954 deceased and family lived with me at Nairobi.

40

When Plaintiff said that she was receiving free groceries from Choitram she must think I was paying the bills.

Re-Examined: Deceased had no bank account.

In the Supreme Court of Kenya

No. 7.

EVIDENCE OF MORGHANBHAI DAYABHAI PATEL

Defendant's Evidence.

MORGHANBHAI DAYABHAI PATEL Sworn -

Manager of M.D. Patel & Co. We carry on business of rations, provisions, etc. Am fairly conversant with price of ghee, rice etc. I don't remember price of 1 lb. of ghee in 1955. It is now S.165 for 36 lbs. In 1955 ghee was less in price than now. In 1955 rice was S.34 for 36 lbs.

No. 7.
Morghanbhai Dayabhai Patel.
30th May, 1957.

Don't know price in 1955 flour; its present price is S.18/80 for 36 lbs. In 1955 it would have been less. In 1955 price of 1 pint bottle of milk was 50 cents.

10

No Cross-Examination.

Court adjourns 3.55.

31.5.57. Appearances as before.

No. 8.

No. 8.

Judge's Notes of Defendant's Arguments at Hearing of Case.

JUDGE'S NOTES OF DEFENDANT'S ARGUMENTS AT HEARING OF CASE

30th May, 1957.

Cleasby: In view of Ross's evidence, Defendant now admits -

20

- (a) that he was negligent.
- (b) that that negligence was sole cause of accident. Only question is that of damages.

C A S E

Cleasby: Address only on question of damages.

Refer to Kemp v. Kemp - Quantum of damages. Vol.11 1956. Edition P.18 Wright v. Paul Duffy Collins.

Bishop v. Cunard 1950 p.248.

Onus of proof of damage is on Defendants.

30

Choitram's evidence shows

Actual drawings in 1954	4,843
1955	<u>3,750</u>
Totalling:	8,593

These are drawings, not earnings.

Widow's evidence is in 1954 she was allowed £25 per month.
 1955 £125 per month, also account
 1956 £170 per month

In the Supreme Court of Kenya

No. 8. (sic)

Judge's Notes of Defendant's Arguments at Hearing of Case.

30th May, 1957
 - continued.

In 2 years 1954 - 1955 he gave wife total of £1,500.
 In addition in 1954 when she was receiving £25 per month widow's brother kept family in Nairobi.

10 From these figures over £700 of deceased's drawings is not accounted for.

In view of high personal expenditure widow had no reasonable expectation of getting anything from his estate.

Widow has not proved that she received £125 per month in 1955 or £175 in 1956.

(sic)

Deceased had 16% share in Dar es Salaam partnership.
 Average value of this is £1,200.

Undisputed evidence that this share devolved on his heirs.

20 No evidence of special law under which heirs will be other persons than children and dependents.

This £1,200 must be deducted from amount awarded to heirs.

No. 9.

JUDGE'S NOTES OF PLAINTIFF'S ARGUMENTS
 AT HEARING OF CASE

No. 9.

Judge's Notes of Plaintiff's Arguments at Hearing of Case.

30th May, 1957.

30 O'Donovan: No special damage due.

Action on behalf of parents as well as widow and children. Remitting moneys to India for support of them both. He was 37, in good health, regular employment - good prospects. Reasonable anticipation that he would earn more. His drawings in excess of income do not support argument that he was incapable of maintaining family without getting into debt.

Loss in cessation of income as employee.

Boucher v. Rly Extensions - Kemp & Kemp 87.

No evidence widow now has £1,200 from Dar es Salaam partnership. Powis v. Harvey 23 K.L.R. pt.2 - 23.

C. A. V.

In the Supreme
Court of Kenya

No. 10.

JUDGMENT

No.10.

IN HER MAJESTY'S SUPREME COURT OF KENYA

Judgment.

AT MOMBASA

30th July, 1957.

CIVIL CASE NO.492 of 1956

MRS. LACHABAI MURLIDHAR

Plaintiff

versus

RADHAKRISHN M. KHEMANEY

Defendant

JUDGMENT

In this suit the Plaintiff who is the widow of Murlidhar Doulatram Mahbubani, hereinafter referred to as the deceased, seeks on behalf of herself and of the grandfather and father and mother of the deceased and her children by him, to recover damages under the Fatal Accidents Ordinance (Cap.9 Laws of Kenya) hereinafter referred to as the Ordinance, in respect of the death of the deceased consequent upon injuries received by him when a motor car owned and driven by the Defendant, in which the deceased was travelling as a passenger, overturned.

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Although initially the Plaintiff's allegation that the overturning of the car was due to the negligent driving of the Defendant was denied, during the course of the evidence, Mr. Cleasby who appeared for the Defendant, admitted the Defendant's liability and therefore it is only necessary now to consider the quantum of damages, if any, to which the Plaintiff and the other persons on whose behalf the suit is brought, are entitled.

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Although Mr. O'Donovan who appeared for the Plaintiff in his closing address did not deal with the question of special damage, and if I understood him aright abandoned the claim therefor, in view of the legal principles involved, it is desirable to say something upon that subject. Special damage is claimed under three heads -

- (a) Damage to clothing - £50
- (b) Damage to a diamond ring worn by the deceased at the time of the accident - Shs. 5,700/-
and
- (c) Funeral expenses - Shs. 7,500/-.

40

Sub-section (1) of Section 4 of the Ordinance, so far as is material, is in the following terms :-

In the Supreme
Court of Kenya

No.10.

Judgment.

30th July, 1957
- continued.

"..... and in every such action (under the Ordinance) the Court may award such damages as it may think proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit such action is brought"

10 Injury sustained by the clothing and jewellery of a person who dies as a result of a motor accident seems to me to be injury resulting from the accident, not injury resulting from the death of the deceased, and as Bowen, L.J. said in Brunsdon v. Humphrey 1884 14 Q.B. Division 141 at page 151 -

20 "It certainly would appear unsatisfactory to hold that the damage done in a carriage accident to a man's portmanteau was the same injury as the damage done to his spine, or that an action under Lord Campbell's Act by the widow and children of a person who has been killed in a railway collision is barred by proof that the deceased recovered in his lifetime for the damage done to his luggage"

As regards the claim in respect of funeral expenses, the material provisions are those of Section 5 of the Ordinance which are as follows :-

30 "In an action brought by virtue of the provisions of this Ordinance the Court may award, in addition to any damages awarded under the provisions of sub-section (1) of Section 4 of this Ordinance, damages in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whom and for whose benefit the action is brought.."

40 There was no evidence at all as to the sum in fact expended upon the funeral of the deceased, nor that any sum so expended was incurred either by the Plaintiff or by any of the deceased's dependents. In the absence of such evidence this claim too seems to me not to be within the provisions of S.5.

I turn next to the consideration of the sum, if any, to which the Plaintiff and the dependents specified in the Plaint are entitled under the provisions of s.s.(1) of S.4 of the Ordinance. The

In the Supreme
Court of Kenya

No.10.

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30th July, 1957
- continued.

principles to be applied in assessing damage under the Ordinance appear to be that the Court is first to endeavour to determine the annual sum expended by the deceased upon the maintenance of or for the benefit of his dependents. This sum should then be capitalised by multiplying it by a number representative of the number of years during which, having regard to all the circumstances of the case, the Court considers that the deceased might reasonably have been expected to continue to make such provision. From the capital sum thus arrived at a deduction must be made in respect of any benefit accruing to the dependents consequent upon the death of the deceased, exclusive of benefits so accruing from sources which are required by s.s. (2) of S.4. of the Ordinance not to be taken into account, those sources being contracts of assurance or insurance or pensions or allowances payable under contributory schemes approved by the Governor-in-Council. Furthermore, from this capital sum a deduction must be made in respect of the benefit accruing to the dependents consequent upon the acceleration of the death of the deceased that is in respect of the advantage which the dependents derive from the receipt of an immediate lump sum payment rather than a series of payments over a period of years. Thus far the computation of the damages proper to be awarded cannot be regarded as a matter of any great inherent difficulty as it will in most cases be capable of being established with a considerable degree of accuracy by evidence of a factual or actuarial nature. 10 20 30

In addition to the foregoing factors, however, in determining the appropriate capital sum, regard must also be had to a number of other factors of a nature virtually incapable of accurate assessment. Thus, in the case of a claim by a widow some deduction must be made in respect of the possibility of re-marriage - a matter which although in large measure dependent upon her age, may also be considerably affected by other considerations incapable of forming the basis of a mathematical or actuarial calculation including in a multi-racial community such as Kenya the extent to which any particular Plaintiff may regard herself as bound by any customary or religious restrictions upon re-marriage generally observed by the racial group to which she belongs - a matter as to which no evidence at all was tendered before me. 40

10 So too regard must be had to the possibility that had the deceased not in fact died, there might at some future time have been a considerable variation in his income whether upwards or downwards. In this connection it may be worth while to observe that although in general the wages of a manual worker or of a purely clerical employee may at least after he has attained a certain status in his occupation, be regarded as likely to be fairly static throughout his working life, unless of course he has the misfortune to suffer some impairment of his earning capacity consequent upon ill-health, the same cannot be said of either a professional man or to an even greater extent of anyone engaged in trade.

20 In addition to the foregoing factors, it is necessary to consider in the instant case another factor which, so far as I am aware has never had to be considered previously. That factor is that the evidence revealed that the deceased had for some considerable time been living so substantially in excess of his income that unless either his income had been increased by at least 50 per cent or he had effected considerable retrenchments in the amount that he was expending for the benefit of his dependents or for his own purposes, there would inevitably have come a time when he would have been hopelessly insolvent.

30 The deceased entered the employ of Choitrams at Nairobi in 1945 at a salary of Shs.4,500 per year plus 25 per cent of the profits from the Nakuru Branch of which he was a partner. In 1947 he was transferred to Dar es Salaam as Branch Manager at a salary of S.9,000/- per year and became a partner in that branch to the extent of 16 per cent of the profits, while retaining his interest in the Nakuru Branch. While at Dar es Salaam he also received free board and lodging for himself and his family. In 1951 he was transferred to Nairobi as Manager at a salary of S.9,000/- per year but continued to enjoy the benefit of his shares in the Nakuru business until the 31st December 1955, and his 16% interest in the Dar es Salaam business, and was also provided with free board and lodging for himself and his family by his brother-in-law who would appear to be the senior partner in Choitrams. In April 1955 he was transferred to Mombasa at a salary of S.48,000/- per year in addition to which he continued to draw his 16% share

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Judgment.

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- continued.

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Court of Kenya

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- continued.

in the Dar esSalaam profits and was given a free flat, the rental of which was estimated by the Plaintiff at about 300/- per month. In 1956 his salary was increased to S.60,000/- per year and his income from his interest in the Dar es Salaam partnership was approximately £1,200 per annum.

In my view little attention need be paid to the earnings of the deceased prior to 1956 inasmuch as it seems to me that the starting point for the computation of the quantum of damages in action of this nature must be the provision in fact made by the deceased for his dependents prior to his death. This general statement must of course be read subject to qualification in the light of the facts of any particular case. Thus if at the time of his death a deceased in respect of whose death an action was brought under the Ordinance had been temporarily unemployed and therefore unable to contribute at all to the support of his dependants or only so to contribute at a greatly reduced rate out of his savings, regard would properly be had to his normal contributions, when employed, to their support. The history of his career is, however, not wholly to be disregarded as it affords an indication that he was well thought of by his employers and was therefore by no means unlikely to receive further advancement in their service. According to the evidence of the Plaintiff given de bene esse but which was not sought to be contravened by the defendant, immediately prior to the death of the deceased he allowed her S.3,500/- per month for household expenses inclusive of food, servants wages, the education of their children and clothing and medical expenses for all members of the family. To this sum in determining the domestic expenditure of the deceased there must of course be added the value of his free flat, but from it there must be made a deduction in relation to the extent to which the deceased himself benefited from the use of the free flat, the food which he consumed there - the value of which was assessed by the Plaintiff at from 400/- to 500/- per month, and the servants' wages. Moreover, according to the Plaintiff's evidence which likewise I accept, he contributed approximately 500/- per month to the support of his parents and aged grandfather in India. Having regard to the foregoing factors I consider that the basic figure expended by the deceased exclusively upon his dependents was in the order of £2,150 per annum.

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In Roughend v. The Railway Executive 1949 65 L.T.R. Humphreys, J. after referring to the former practice of judges to treat 10 years as the appropriate period to be taken to capitalise the annual provision made by a deceased for his dependants, as the basis upon which, after the making of appropriate adjustments in relation to the various matters hereinbefore referred to, the quantum of damages to be awarded should be assessed, went on to observe that in view of the number of persons who now, consequent upon the incidence of taxation are obliged to work longer than was formerly the case, in the case then before him which related to a deceased aged 43, he thought 15 years would be a reasonable period. So too in Zinovieff v. The British Transport Commission Lord Chief Justice Goddard treated 16 years as the appropriate period to be taken in relation to a deceased aged 46. No evidence was tendered before me as to any difference between the expectation of life of an Englishman living in England and an Asian living in Kenya. I think that I am entitled to take judicial notice of the fact that the incidence of taxation in Kenya is not as heavy as that of taxation in England, but on the other hand, the deceased in the instant case was neither 43 nor 46, but only 37 years old, and I therefore adopt the multiplying factor in the instant case a period of 15 years. Hence the basic capitalisation of the benefit lost by the dependents of the deceased consequent upon his death would appear to be £32,250.

The evidence revealed that at the time of his death his only assets were two trunks full of clothes, a capital account in his favour in the books of the Dar es Salaam branch in the sum of Shs.75,000/-, the amount of Shs.10,789/44 in those books in respect of his share of the profits of that branch up to the 1st day of June 1956, and his partnership interest in that branch which upon his death devolved upon his heirs. As, however, his account with his employers was overdrawn by the amount of approximately Shs.74,000/- and his income tax for the years 1955 and 1956 has not yet been paid, it appears to me that the only asset from which his dependents are likely to benefit in his interest in the Dar es Salaam partnership. In the year 1955 the Dar es Salaam partnership earned approximately £6,000. His income from that source in the year 1955 would therefore have been approximately £960. In the year 1956, however, the earnings

In the Supreme Court of Kenya

No.10.

Judgment.

30th July, 1957
- continued.

In the Supreme
Court of Kenya

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Judgment.

30th July, 1957
- continued.

of that partnership were approximately £9,000 and his income from that source would therefore in that year have been £1,440. Taking these figures, which are the only figures available to me it would therefore appear that his average annual income from the Dar es Salaam partnership was round about £1,200. The capital value of this income must in accordance with the principles already set out, be deducted from the capital sum which would otherwise form the basis of the computation of damages. It seems to me not unreasonable to take 15 years purchase as representative of the capital value of an annual income from this source, the more especially having regard to the wide fluctuation which is shown between the year 1955 and the year 1956. On this basis the basic capital of £32,250 must be reduced to £14,250. This sum is, however, subject to a further deduction in respect of the benefit which the dependents will receive from having a lump sum rather than an annual income. In this connection it is necessary to bear in mind that a lump sum is, unlike an annual income, not subject to income tax, and also to bear in mind that having regard to the number of dependants amongst whom such lump sum will have to be distributed, the income tax payable by them upon the income derived from the investment of such lump sum will undoubtedly be far lower than it would have been had the lump sum been vested in a single person. In these circumstances it seems to me that a figure of approximately 7 per cent represents a not unreasonable deduction to be made in respect of the benefit consequent upon receipt of a lump sum payment. I therefore deduct from the sum of £14,250 £1,000, leaving £13,250.

It remains only to determine the extent to which, if at all a further deduction must be made consequent upon the fact that the deceased was living at a rate greatly in excess of his income. It is of course no part of the function of the Court to penalise the dependents of the deceased by reducing the damages to which otherwise they would have been entitled by reason of his having been extravagant. It seems to me that his extravagance can only be material if and in so far as it may be regarded as affecting the likelihood of his having been able, had he survived, to continue to provide for his dependents, or the scale upon which he would have so continued to provide. If it were shown in the course of proceedings under the Ordinance that a deceased, although believed by his

employers, his relatives, and possibly himself to be a completely healthy man with a normal expectation of life, was suffering from some disease which would inevitably have occasioned his death within a year or two, it would clearly be wrong to attempt to assess damages upon the basis that he would in fact have continued to survive for 10 years or more. So too, it seems to me that if it can be shown in proceedings under the Ordinance that the financial condition of the deceased was such that in the immediate future there would inevitably have been a substantial and permanent reduction in his ability to provide for his dependents, it would be wholly unrealistic to assess damages upon the basis that he would have been able to continue for a protracted period to provide for them upon the former scale.

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The Plaintiff's brother-in-law in cross-examination said that during the years 1954 and 1955 the deceased's aggregate drawings from the firm were £8,600, an amount very considerably in excess of his earnings, and his profits from the firm, although in the absence of evidence as to the profits made by the Nakuru Branch during those years, it is impossible for me accurately to compute the amount by which the deceased's drawings exceeded his income in those years. Between 1954 and the date of his death his indebtedness to the firm increased by some Shs.31,000/- and therefore it would seem that his expenditure exceeded his income by somewhere about £1,500 per annum. Apart from the evidence that he "lived like a lord and spent like a lord", there was no material before me at all to indicate what the deceased had done with these very considerable sums of money, as he had no car and according to his widow did not spend a lot upon drink or clubs, and according to his brother-in-law had neither a bank account nor investments of any description other than his interest in the firm.

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Mr. Cleasby contends in the light of these figures there is no justification in assuming that the deceased would have been able to continue to make any provisions for his dependents as much of the provision which he was in fact so making must be regarded as made from borrowed monies. Undoubtedly had the deceased continued to overspend at anything like the same rate he would inevitably have become bankrupt. It should not, however be lost to sight that during the first six months of

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Court of Kenya

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- continued.

In the Supreme
Court of Kenya

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- continued.

1956 his indebtedness to the firm was reduced by approximately £250 - a fact, which, while it may be capable of other explanation, is at least also capable of bearing the inference that he had begun to curb his personal expenditure. Even a bankrupt, if young, healthy and experienced in business, is during the period of his bankruptcy seldom wholly incapable of earning money. Such a bankrupt who is related to members of a firm which has branches, as appears from the Balance Sheet which was tendered in evidence, in Kenya, Tanganyika and India and who has prior to his bankruptcy been regarded by at least one of the partners in that firm as a man of great ability, will in my view almost certainly have greater opportunities for rehabilitating his financial position than would a bankrupt who had no such connections. Weighing these factors against each other, it appears to me that although had the deceased survived and continued to live at the same rate he would have become bankrupt in the comparatively near future, and thereafter for some years at least his ability to provide for his dependents would have been very considerably impaired, none-the-less even if he never again attained to the same affluence as that which he enjoyed before his bankruptcy there would have been a very real prospect that he would in due course have regained a substantial position in the commercial world. I therefore assess the appropriate deduction to be made from the capital sum, as already determined, consequent upon the probable effects of the deceased's extravagance upon his future ability to provide for his dependents at 50 per cent. I therefore award as damages in this suit the sum of £6,625 and that sum will be apportioned among the dependents as follows :-

To the grandfather of the deceased	...	£	125	
To the father of the deceased	...	£	250	
To the mother of the deceased	...	£	250	
To the widow of the deceased				40
Mrs.Lachabai Murlidhar (Plaintiff)	...	£3,500		
To Arjan, son of deceased	...	£	625	
To Usha Devi, daughter of the deceased		£	625	
To Hiro, son of the deceased	...	£	625	
To Ashok, son of the deceased	...	£	625	

The Plaintiff will of course have her costs.

Delivered in open Court this 30th day of July, 1957 in the presence of Anjarwalla for Plaintiff and Wynn Jones for Thakkar for Defendant.

In the Supreme Court of Kenya

HENRY MAYERS,
30.7.57.

No.10.

Judgment.

30th July, 1957
- continued.

Anjarwalla: Plaintiff obliged to employ 2 Counsel.
Instruct to ask for the costs of 2 Counsel.

10 Wynn Jones: Oppose: Refer to decision of this Court in C.C. 326 of 1956 as to position re two Counsel. No law involved here. No volume of work.

O R D E R

20 I do not think that this suit presented any unusual difficulty and therefore in view of my decision in the Kenya Garage case referred to by Mr. Wynn Jones I would have had to refuse this application for a certificate for a second Counsel but for the provisions of the Remuneration of Advocates Order, 1955. Para. 25 of that order was not brought to my attention in that case and that paragraph clearly provides that the amount recovered by a Plaintiff should be a ground for certifying for two Counsel. I therefore certify that this is a proper case for the employment of two Counsel.

HENRY MAYERS,
30.7.1957.

No. 11.

DECREE.

No.11.

Decree.

30 IN HER MAJESTY'S SUPREME COURT OF KENYA

30th July, 1957.

AT MOMBASA DISTRICT REGISTRY

CIVIL CASE NO.492 of 1956

MRS. LACHABAI NURLIDHAR

Plaintiff

versus

RADHAKRISHN M. KHEMANEY

Defendant

D E C R E E

CLAIM FOR:- (a) Shs. 14,200/- Special Damages

In the Supreme
Court of Kenya

No.11.

Decree.

30th July, 1957
- continued.

- (b) General Damages
- (c) Interest at Court Rates
- (d) Costs
- (e) Such other relief as may be just and expedient.

WHEREAS this suit came on 29th day of May 1957 for hearing before The Honourable Justice T.H. Mayers, Q.C., in the presence of Mr. B.O'Donovan with Mr. J.K. Winayak, for the Plaintiff and Mr. Richard P. Cleasby and Mr. K.C. Thakkar for the Defendant and it again came on the 30th day of July 1957 for delivery of judgment in the presence of Mr. S.K. Anjarwalla for the Plaintiff and Mr. A. Wynn Jones for the Defendant AND WHEREAS judgment was entered for the Plaintiff in the sum of Shillings One Hundred Thirty Two Thousand Five Hundred (Shs.132,500/-) to be apportioned among the dependents of Liladhar deceased as follows :-

(a) to the grandfather of Liladhar Murlidhar, deceased	Shs. 2,500.00	20
(b) to the father of Liladhar Murlidhar, deceased	5,000.00	
(c) to the mother of Liladhar Murlidhar, deceased	5,000.00	
(d) to the widow of Liladhar Murlidhar, deceased Mrs. Lachabai Murlidhar (Plaintiff)	75,000.00	
(e) to Arjan, son of Liladhar Murlidhar, deceased	12,500.00	
(f) to Usha Devi daughter of Lilhadar Murlidhar, deceased	12,500.00	30
(g) to Hiro son of Liladhar Murlidhar, deceased	12,500.00	
(h) to Ashok son of Liladhar Murlidhar, deceased	<u>12,500.00</u>	
Total Shs.132,500.00		

NOW THEREFORE THIS COURT DOTH ORDER THAT the Defendant do pay to the Plaintiff the sum of Shillings One Hundred Thirty Two Thousand Five Hundred (Shs.132,500/-) only to be apportioned among the dependents of Liladhar Murlidhar, deceased as above mentioned and the Defendant do pay to the Plaintiff the taxed costs of this suit.

GIVEN under my hand and the Seal of the Court this 30th day of July 1957.

Sgd. C.V. BOYLE
Ag. Deputy Registrar,
H.M. Supreme Court of Kenya
Mombasa.

No. 12.

NOTICE OF APPEAL.

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

CIVIL APPEAL NO.78 of 1957

(In the matter of an intended appeal)

BETWEEN: RADHAKRISHNEN M. KHEMANEY Appellant

- and -

MRS. LACHABAI MURLIDHAR Respondent

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.12.

Notice of
Appeal.

12th October,
1957.

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(Appeal from a judgment of the Supreme Court
of Kenya at Mombasa (Mr. Justice H. Mayers)
dated the 30th July, 1957, in Civil Case No.
492 of 1956).

BETWEEN: MRS. LACHABAI MURLIDHAR Plaintiff

- and -

RADHAKRISHNEN M. KHEMANEY Defendant

MEMORANDUM OF APPEAL

20

Radhakrishnen M. Khemaney, the Appellant above-
named, that is the Defendant in the Court below,
appeals to Her Majesty's Court of Appeal for East-
ern Africa against the whole of the decision above-
mentioned on the following grounds, namely :-

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1. The damages awarded to the Respondent herein
are excessive.
2. The Learned Judge in Calculating the said
damages adopted an incorrect principle of law:
3. The Learned Judge erred in holding that the
deceased, husband of the Respondent, would in
all probability have continued to make an al-
lowance to his mother, father and grandfather
for a further fifteen years from the date of
his death:
4. The Learned Judge erred in law in not appre-
ciating that the allowance alleged to be made
by the deceased to the Respondent herein and
her children was on the evidence a lavish
allowance and could only be maintained by the
deceased grossly overspending his income and
that in all probability the allowance would
soon have been reduced to an amount not in

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In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.12.

Notice of
Appeal.

12th October,
1957

- continued.

excess of £1,200 per annum being the value of the deceased's share in the Dar es Salaam partnership which share vested in the Respondent and her children:

5. The Learned Judge erred in holding that little attention need be paid to earnings prior to 1956 and failed to appreciate that the allowance actually made by the deceased to the Respondent and her children had been paid for a relatively short period of time before the deceased's death. 10

W H E R E F O R E the Appellant humbly prays that the judgment of Mr. Justice Mayers with reference to damages may be set aside in toto or alternatively that the damages awarded be reduced as this Honourable Court shall deem fit and that the Appellant be awarded costs before this Honourable Court and before the Court below or for such further and other relief as this Court may deem fit.

DATED this 12th day of October One thousand nine hundred and fifty seven at Mombasa. 20

Sgd, Richard P. Cleasby
ATKINSON, CLEASBY & COMPANY,
Advocates for the Appellant.

Filed by:

Atkinson, Cleasby & Company,
Advocates,
Fort Jesus Road,
Mombasa.

To: The Hon. the Judges of Her Majesty's Court of Appeal for Eastern Africa. 30

To: J.K. Winayak, Esq.,
Advocate,
Choitram Building, Government Road,
P.O. Box 3840, Nairobi.

Filed this 12th day of October One thousand nine hundred and fifty seven, at Mombasa.

Sd. S.F. Nunes.

31.

No. 13.

NOTICE OF CROSS-APPEAL
IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
SESSIONS HOLDEN AT MOMBASA
CIVIL APPEAL NO. 78 of 1957

RADHAKRISHNEN M. KHEMANEY Appellant

versus

MRS. LACHABAI MURLIDHAR Respondent

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.13.

Notice of
Cross-Appeal.

19th August,
1957.

10 (Appeal from a judgment of Her Majesty's Supreme
Court of Kenya at Mombasa - (The Honourable Mr.
Justice Mayers) delivered on the 30th day of July,
1957, and decree drawn in pursuance thereof dated
30th July, 1957).

in

Civil Case No. 492 of 1956

Between: Mrs. Lachabai Murlidhar Plaintiff

- and -

Radhakrishnen M. Khemaney Defendant

NOTICE OF CROSS-APPEAL

20 TAKE NOTICE that on the hearing of this ap-
peal, Mrs. Lachabai Murlidhar, the Respondent above-
named will contend that the decision above-mentioned
ought to be varied to the extent and in the manner
and on the grounds hereinafter stated namely :-

1. That the Learned Judge's estimate of the dam-
ages was wholly erroneous and ought to be
increased;
2. That the Learned Judge followed wrong princi-
ples of Law in reducing the damages to £6,625.
- 30 3. That the damages awarded by the Learned Judge
are wholly substantially and grossly inade-
quate.

DATED this 19th day of August 1957.

J.K.WINAYAK,
ADVOCATE FOR THE RESPONDENT.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

To: The Honourable The Judges of Her Majesty's
Court of Appeal for Eastern Africa
and

Messrs. Atkinson Cleasby & Co.,
Advocates for the Appellant,
P.O. Box 29, Mombasa.

No.13.

Notice of
Cross-Appeal.

19th August,
1957

- continued.

The address for service of the Respondent
above-mentioned is care of J.K.Winayak, Esq.,
Advocate, Choitram Buildings, Government Road,
P.O. Box 3840, Nairobi.

10

Filed this 22nd day of August, 1957.

Sd. George Waddle,

DEPUTY REGISTRAR,
HER MAJESTY'S COURT OF APPEAL FOR
EASTERN AFRICA, MOMBASA.

No.14.

President and
Judge's Notes.
F.A. Briggs,
Vice-President.

23rd April,
1958.

No. 14.

PRESIDENT AND JUDGE'S NOTES
F.A. BRIGGS - VICE PRESIDENT

IN HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA

20

CIVIL APPEAL NO.78 of 1957

BETWEEN: RADHAKRISHN M. KHEMANEY Appellant

- and -

MRS. LACHABAI MURLIDHAR Respondent

(Appeal from a judgment of the Supreme Court
of Kenya at Mombasa (Mr. Justice H. Mayers)
dated the 30th July, 1957, Civil Case No.
492 of 1956)

BETWEEN: MRS. LACHABAI MURLIDHAR Plaintiff

- and -

RADHAKRISHN M. KHEMANEY Defendant

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23.4.58 Coram: Briggs, V-P.
Forbes, J.A.
Corrie, J.A.

Cleasby for Appellant.

O'Donovan, Winayak with him for Respondent.

Cleasby: Appeal and cross appeal on question of damages only. I concede that trial Judge has wide discretion, but here assessed on wrong principle.

In 1955 and 1956

Deceased made substantial allowance to Respondent and his other dependents. We accept Court's figure of £2,150 p.a. This was admitted to be lavish.

But also admitted that to do so he was spending twice his income.

- 10 Deficit of £5,654 in drawings over income in two years. Not invested, but "blewed".

Court held must presume that the allowance of £2,150 might not have been continued.

No estimate of future was possible at all.

After death widow had income of £1,200 p.a. from Dar es Salaam partnership.

In 1955 gross £1,912 = allowance £1,200 to wife,
" £ 225 to parents
Self £ 450.

- 20 In 1956 $\frac{1}{2}$ year £1,500 = allowance £1,050 to wife,
(Dar firm: £ 150 to parents
Self £ 300

"Self" had to cover income tax.

Clearly his mode of life must have changed radically or he would have gone bankrupt.

At time of death gross income at rate of £4,400 approximately. Taxation on this say £1,000.
= nett £3,400.

Court: On this was then £2,150 so high?

- 30 Cleasby: High in relation to his excess expenditure.

50. 1. Right

Question is what deduction.

52. 50% is made.

But that should have been allowed at a different stage of the calculation, from the capitalized allowance before deducting value of the Dar share.

If this had been done there would have been no damages at all.

- 40 Court: But would the divisor of 50% then have been applied?

In the Court of Appeal for Eastern Africa at Mombasa.

No.14.

President and Judge's Notes.
F.A. Briggs,
Vice-President.

23rd April,
1958

- continued.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.14.

President and
Judge's Notes.
F.A. Briggs,
Vice-President.

23rd April,
1958

- continued.

Cleasby: Suerley v. Cunard White Star 1940 2 A.E.R.
97. 101. Damages must be proved.

Davies v. Powell Duffryn (1942) A.C. 601.
617. It would have been wrong to take the
£32,000, deduct 25% and then deduct the
£18,000.

No material to arrive at the percentage.
Why not 50%.

The test is normal allowance to be made
by a typical man of this kind to his fam- 10
ily.

The £1,850 might rightly be taken at 15
years.

The £300 could not be taken at that.

Joint allowance to parents and grandfather.
If grandfather died might be redeemed
(might not).

This has the effect of swelling the widow's
share.

O'Donovan: Must show both errors of reasoning and 20
also that awards are unreasonably high.

Sums to parents and grandparent not too
high.

Fallacies: I. That it was necessary to overdraw in
order to pay the family allowance.

1954 - £4,853 drawings.

1955 - £3,750 "

1956 - £1,200 "

Rate of spending diminished towards his death.
After 1954 spent little more than he earned, if 30
anything. Extravagance is only shown in 1954 when
his income was relatively low. In any case over-
drawings were related to his capital share in the
Dar firm. No other debts (except Income Tax).
Capital asset.

No inference of impending insolvency.

Good business man: not reckless spend-
thrift.

Doubtful whether any deduction for this
was justified. No reason to suppose he either 40
would have to, or would, reduce allowance.

If deduction had been made earlier, the percentage would have been less.

Cross Appeal:

Deduction for value of Dar partnership.

16, 17, 18. - It is presumed that widow for 15 years would on an investment of £3,750 earn on average £1,200 p.a.

In the absence of other evidence the partnership must be deemed terminable at will.

10 Trading risks should be valued on a different basis. Certainly not 15 years purchase. One would hardly pay 2 or 3 years purchase for goodwill.

Profits of widow's trading should not be taken into account.

Patel v. Hayes C.A. 37/57

No capital value of estate. Nothing went to the beneficiaries. Only sum which should be deducted is not value of assets which go to claimants.

20 The partnership share should not be assumed to have higher than its stated value. No deduction made for liabilities.

Evidence at 12 top, 17 & 18.

No deduction for future trading.

2.30 p.m. Bench and Bar as before.

Cleasby in reply:

Benefit from estate.

Overdrawings equivalent to capital estate.

17. Shs. 75,000 at capital account. That might be extinguished but the share remains untouched.

30 The 15 year basis of capitalization would remain correct.

Reason to assume successful continuation
6½ - 7½% basis reasonable (No!)

No one knows where the Shs. 75,000 came from.
Possibly a present.

O'Donovan: (In reply on cross-appeal)

40 Partnership - its nature obscure - one would expect that either capital or skill would be contributed. Here only capital. Would cease if capital withdrawn.

In the Court
of Appeal for
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at Mombasa.

No.14.

President and
Judge's Notes.
F.A. Briggs,
Vice-President.

23rd April,
1958

- continued.

In the Court
of Appeal for
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at Mombasa.

Value of estate negligible.

C.A.V.

F.A. Briggs,
V-P.

No.14.

23.5.58: Coram: Briggs, V-P.
Corrie, J.A.

President and
Judge's Notes.
F.A. Briggs,
Vice-President.

Hunter holds Cleasby's brief for Appellant
O'Donovan and Winayak for the Respondent.

23rd April,
1958
- continued.

Judgments read. Case remitted for re-trial.
No order made as to costs of appeal. Order for
costs of the original trial to stand.

10

F.A. Briggs,
V-P.

Judge's Notes.
A.G. Forbes,
Judge of Appeal.
23rd April,
1958.

JUDGE'S NOTES. A.G. FORBES, JUDGE OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL

FOR EASTERN AFRICA

CIVIL APPEAL NO. 78 of 1957

BETWEEN: RADHAKRISHEN M. KHEMANEY Appellant

- and -

MRS. LACHABAI MURLIDHAR Respondent 20

(Appeal from a judgment of the Supreme Court of
Kenya at Mombasa (Mr. Justice H. Mayers) dated
the 30th July, 1957, Civil Case No.492 of 1956)

BETWEEN: LACHABAI MURLIDHAR Plaintiff

- and -

RADHAKRISHEN E. KHEMANEY Defendant

23.4.58: Coram: Briggs, V-P.
Forbes, J.A.
Corrie, J.A.

Cleasby for Appellant.

30

O'Donovan, Winayak with him, for Respondent.

Cleasby: Informed cross-appeal filed.

(Cross-appeal not filed on Court File. -
Mistake appears to be Registry mistake at
Mombasa.

Cleasby willing to proceed with cross-appeal. Appeal and cross-appeal to be heard accordingly).

Only matter is quantum of damages.

Concede Judge has a great deal of discretion vested in him.

Not alleging that damages so high as to be wrong in law.

10 Alleging that in logical application of facts found the Judge erred.

Submit that no order of damages should be made at all.

Proved facts:

1955 and 1956. Deceased did make to Respondent and other dependents a very substantial allowance. £2,150 p.a. Not disputing that. Finding that that allowance a lavish one.

20 Crucial fact that in order to make allowance deceased was in fact drawing almost twice his annual income. Deficit over 2 years of £5,254. He had no assets at all. Excess above income spent solely in lavish living.

Judge therefore held at £2,150 allowance was unlikely to have continued. Submit judge erred in that on facts it was impossible to find that any allowance would have continued in the future.

30 Widow had income of £1,200 p.a. from partnership which descended to heirs. Concede that if allowance made to wife shown to be a normal allowance in relation to his income, then although he may have been shown to overspend, open to judge to find allowance would have continued.

In 1955 - gross earnings £1,912.

Allowance to wife of £1,200

" " dependents £250

1956 - Earnings 1/1 to 1/7 £1,500

Allowance to wife of £1,050

All dependents £ 150

40 Lavish allowance - overspending - conclusion that he would become bankrupt. No evidence led to show deceased had reason to believe his income would increase in future. Not an inference open to Court.

In the Court of Appeal for Eastern Africa at Mombasa.

No.14.

Judge's Notes.
A.G. Forbes,
Judge of Appeal.

23rd April,
1958

- continued.

In the Court
of Appeal for
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No.14.

Judge's Notes.
A.G. Forbes,
Judge of Appeal.
23rd April,
1958
- continued.

Income at date of death £3,000 p.a. + approx.
£1,200 p.a. Income tax probably would not exceed
£1,000 p.a.

Submit that if his net income £3,000 p.a. allowance
£2,100 unreasonable in view of proved overspending.
Not known what he spent excess on.

Submit Judge right in making allowance in respect
of living in excess of income.

p.49 l.10/20 - agree with this so far.

p.51. L.15 - deduction assessed at 50%

If that accepted, appeal must succeed.

Submit Judge erred in logical application of facts.

50% should have been deducted from full capitalised
figure of allowance before allowance made for
£1,200 p.a. from partnership.

(V-P: We do not know whether if Judge had calcula-
ted in that way he would still have adopted
figure of 50%. Boils down to this - on all
evidence could Judge say that in future widow
would have been in receipt of allowance of
more than £1,200 p.a.

No evidence as to what allowance a normal man
in his circumstances would make to his wife.

p.18. L.25 -

p.10. L.27: p.18. L.7.

Only conclusion that he was lavish.

Refer Surley & Co., v. Cunard (1940) 2 A.E.R. 97
at p.101. No facts proved on which damage
could be estimated - damages cannot be esti-
mated on guesswork.

Davis & Another v. Powell Duffryn Coll (1942)
A.C. 601 at 617.

Deceased spent on himself over 2½ years over £6000.

Can you assume he would suddenly stop overspending
on himself or some other object.

Only presumption is that he will continue to over-
spend.

Submit Judge correct in finding that £2,100 allow-
ance should be reduced.

No evidence on which to assess by what amount. Noth-
ing to show it should not be reduced to less than

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£1,200 p.a. At least not unreasonable to reduce it by 50% of £2,100 15 years purchase - not applicable to grandparent.

(V-P: Dependents always taken as a group in these cases) £1,850 allowance to wife should have been capitalised at 15 years.

£300 should have been capitalised at shorter period.

10 Concede it seemed to have been a joint allowance to parents and grandparent. But if grandfather, logical that it should be reduced. Submit obvious widow's amount wrongly increased, but leave it to Court.

Submit: (a) Appeal should be allowed,

(b) Figure of 50% correct common denominator and should be taken off whole capitalized sum.

O'Donovan: Appellant must show -

(a) wrong assessment basis.

(b) Figure arrived at unreasonable.

20 With regard to grandfather - not shown that £125 unreasonable.

Raises argument - 3 fallacies.

(a) That it was necessary to draw twice income to make allowance.

(b) That he was drawing twice his income.

In 1954 he drew £4,843

1955 he drew £3,750

1956 he drew £1,200 up to date of death.

30 Greatest overdrawn $1\frac{1}{2}$ years prior to death.

Last 18 months overdrawings lower. Style of living not greatly in excess during those months of his income at death.

No reason to assume he would have to continue to draw over net £3,000. Apparent overdrawings related to period when his income very much less than at the date of his death.

What he was allowed to overdraw rather less than capital interest at Dar es Salaam.

40 p.17. L.30.

Evidence here of acquisition of a capital asset

In the Court of Appeal for Eastern Africa at Mombasa.

No.14.

Judge's Notes.
A.G. Forbes,
Judge of Appeal.

23rd April,
1958

- continued.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.14.

Judge's Notes.
A.G. Forbes,
Judge of Appeal.

23rd April,
1958
- continued.

valued at 75,000/-. Would appear that what he had overdrawn was well within his means. Capitalised at £18,000 by Judge.

No evidence to support inference he was over-spending. Evidence not that deceased was a reckless spendthrift - related only to standard of living he kept up.

? Whether deduction made by trial judge was justified, and submit it was not.

Nothing in evidence to justify inference he would go bankrupt or be compelled to reduce allowance. 10

(c) Attribution to judge of any illogicality in deduction of 50%. Submit harsh and not justified, but certainly not inadvertent. Clear 50% intended to relate to capital sum arrived at at that stage.

Submit Court should disallow deduction and restore original capital sum.

Capital in Dar partnership:

p.16. L.19.

p.18. L.29.

20

In some personal difficulty as recollect something added as to term of partnership.

Partnership deed could be produced.

But amount standing to account in Dar es Salaam, Shs. 75,000.

Respondent object to deduction in respect of Dar partnership. Deduction is that widow will continue to earn for 15 years more than she could earn in any other investment i.e. 24,000/- yearly on capital of 75,000/-. 30

Partnership must be treated as determinable at will. S.253 of Indian Contract Act. Continuation in partnership as partner very different from mere annuity. Involves trading risks, etc. Analogy of goodwill. Could one be expected to pay more than 2 or 3 years purchase.

Submit capitalisation at 15 years purchase wholly indefensible. Capital of about £6,500 at 6% would realise about same amount. 40

Submit matter really concluded in Civ. App. of 37 of 1957

Patel & Another v. Hayes.

Matter of trading risks, etc.

p.18 - Heirs have in fact not obtained benefit from estate.

p.12. L.4. Evidence the deceased left nothing. Submit only sum to be deducted is net value of assets left by deceased to claimants. Amount here is nil. Therefore submit quite fallacious to say widow in receipt of assured income for rest of her life of £1,200 a year.

10 That is second ground on which I challenge correctness of assessment at 15 years purchase.

Ask adjustment on that account.

Say Judge should have arrived at annual value - accept £2,150 at 15 years. Deduct for acceleration - possibly debatable in case of business man.

But submit nothing should be deducted in respect of future trading or in respect of alleged extravagance.

Adjourned to 2.30 p.m.

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A.G.F.

2.30 p.m. Bench and Bar as before.

Cleasby in reply:

Contention that widow obtained no benefit from Dar partnership. (V-P. Question is value of estate)

First was Judge correct in holding that £1,200 p.a. would go to widow. If so must be capitalised.

Judge accepted estate would be of no value but found heirs would have continuing interest in Dar partnership.

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p.17. L.29: p.18: p.19.

No co-relation between value in share of a partnership and amount standing to credit in partnership's books.

Interest on capital + 16% of profits payable.

15 years purchase correct method of assessment.

Share in partnership devolved on heirs. Any likelihood of that coming to end before end of deceased's expectation of life. i.e. 15 years. Every probability of partnership continuing for probable expectation of life of deceased.

40

Acquisition of capital asset - but see evidence at

In the Court
of Appeal for
Eastern Africa
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No.14.

Judge's Notes.
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Judge of Appeal.

23rd April,
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- continued.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.14.

Judge's Notes.
A.G. Forbes,
Judge of Appeal.
23rd April,
1958
- continued.

p.18 - can't presume it was savings out of his income or out of excess drawings. Income such that deceased could make allowance to wife. But see figures of income and expenditure. No capital assets required. Evidence showed he was spending thousands a year on himself.

Grossly overspending. Inference is that he would be likely to reduce allowance.

O'Donovan: (on cross-appeal)

Partnership if partnership in ordinary sense would require capital in some form. Prima facie entitlement to share would be dependent on provision of capital sum and withdrawal of sum would almost inevitably lead to end of partnership.

10

C.A.V.

A.G. Forbes, J.A.
23/4/58.

Judge's Notes.
Corrie
Judge of Appeal.
23rd April, 1958.

JUDGE'S NOTES - CORRIE - JUDGE OF APPEAL.
IN HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA
CIVIL APPEAL NO.78 of 1957

20

BETWEEN: RADHAKRISHEN M. KHEMANEY Appellant
- and -
MRS. LACHABAI MURLIDHAR Respondent

(Appeal from a judgment of the Supreme Court of Kenya at Mombasa (Mr. Justice H. Mayers) dated the 30th July, 1957, Civil Case No. 492 of 1956)

BETWEEN: MRS. LACHABAI MURLIDHAR Plaintiff
- and -
RADHAKRISHEN M. KHEMANEY Defendant

30

23.4.58: Coram: Briggs, V-P.
Forbes, J.A.
Corrie, J.A.

Cleasby for Appellant.

O'Donovan for Respondent - Winayak with him.

Cleasby: Appeal and cross-appeal.

In 1955-6 deceased did make substantial allowances: very lavish. Deceased was spending twice his income. £5,654 over-drawn: no assets except a little jewellery. Could not have kept up allowance of £2,150 a year (Income £3,000 + £1,200 = £4,200 p.a.).

He must have reduced his mode of life. Income tax approximately £1,000.

Last half year's earning 1,500 + 720 = 2,220 making £4,440 p.a.

i.e. after paying tax £3,440.

p.49. L.10 to L.19
 p.51. L.14 to L.18.
 p.2. p.18 - L.25 and L.7.
 p.10 L.27.

(1940) 2 A.E.R. 97 Surley v. Cunard
 (1942) A.C. 601. 617. Id. Wright's judgment.

2. Allowance to grandfather and parents is excessive: was included in the capitalization.

For widow and children £1,850 should have been capitalized.

O'Donovan:

1. Grandfather £125 not excessive.
2. Not necessary to draw twice income in order to pay allowance 1954, £4,843 drawings.

p.35 - 1955 - £3,750.

p.17. L.30 Dar es Salaam.

p. 3 Cross-appeal.

p.16. L.4 et seq.

p.18. L.29 30-35.

Capital 75,000/- in Dar es Salaam.

Indian Contract Act must be determinable at will.

Goodwill should be capitalized at 2-3 years purchase.

Civil Appeal 37 of 1957

p.12. L.4. Share not worth 15 years purchase.

15 x 2150
 deduct £1,000 as p. value.

In the Court of Appeal for Eastern Africa at Mombasa.

No.14.

Judge's Notes.
 Corrie
 Judge of Appeal.
 23rd April, 1958
 - continued.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No deduction for future trading - alleged
extravagance.

2.30 p.m. Bench and Bar as before.

Cleasby in reply:

No.14.
Judge's Notes.
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Judge of Appeal.
23rd April, 1958
- continued.

p.17. L.30.

p.19. L.1.

p.4. O'Donovan on cross-appeal.

Dar es Salaam partnership would require some
contribution.

23.5.58. Coram: Briggs, V-P.
Corrie, J.A.

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Hunter holds Cleasby's brief for Appellant.

O'Donovan and Winayak for the Respondent.

Judgments read. Case remitted for re-trial. No
order made as to costs of appeal. Order for costs
of the original trial to stand.

J.A.

No.15.

Judgment -
Corrie, J.A.
23rd May, 1958.

No. 15.

JUDGMENT. CORRIE - JUDGE OF APPEAL

IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA
SESSIONS HOLDEN AT NAIROBI

20

CIVIL APPEAL NO.78 of 1957

BETWEEN: RADHAKRISHNEN M. KHEMANEY Appellant

- and -

MRS. LACHABAI MURLIDHAR Respondent

(Appeal from a Judgment and Decree of the Supreme
Court of Kenya, at Mombasa (Mr. Justice Mayers)
dated the 30th July, 1957, in the Supreme Court

Civil Case No.492 of 1956

BETWEEN: MRS. LACHABAI MURLIDHAR Plaintiff

30

- and -

RADHAKRISHNEN M. KHEMANEY Defendant)

JUDGMENT OF CORRIE, J.A.

This appeal and cross-appeal arise out of a

judgment delivered on the 30th July, 1957, by Mr. Justice Mayers in the Supreme Court of Kenya sitting at Mombasa, in an action in which the present Respondent and cross-Appellant was the Plaintiff and the present Appellant was the Defendant. The action was brought by the Respondent, the widow of Murlidhar Doulatram Mahbubani, on behalf of herself and the other dependents of her deceased husband against the Appellant under the Fatal Accidents Ordinance, alleging that the death of the Respondent's husband was due to the Appellant's negligence. The Supreme Court awarded the Respondent the sum of £6,625, that is to say Shs.132,500/- in respect of general damages. It is against this award that both parties are now appealing.

In the Court of Appeal for Eastern Africa at Mombasa.

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No.15.

Judgment -
Corrie, J.A.

23rd May, 1958
- continued.

The Appellant bases his appeal on the following grounds:

That the learned Judge in calculating damages adopted an incorrect principle of law:

20 That he erred in holding that the Respondent's deceased husband would in all probability have continued to make an allowance to his mother, father and grandfather for a further fifteen years from the date of his death:

30 That he erred in law in not appreciating that the allowance alleged to be made by the deceased to the Respondent and her children was on the evidence a lavish allowance and could only be maintained by the deceased grossly over-spending his income and that in all probability the allowance would soon have to be reduced to an amount not exceeding £1,200 per annum being the value of the deceased's share in the Dar es Salaam partnership which share vested in the Respondent and her children and

40 Finally that the learned Judge erred in holding that little attention need be paid to earnings prior to 1956 and failed to appreciate that the allowance actually made by the deceased to the Respondent and her children had been paid for a relatively short period of time before the deceased's death.

By her cross-appeal the Respondent maintains that the learned Judge's estimate of the damages was wholly erroneous and ought to be increased: that he followed wrong principles in reducing the

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.15.

Judgment -
Corrie, J.A.
23rd May, 1958
- continued.

damages to £6,625 and that the damages awarded are wholly, substantially and grossly inadequate.

I have no doubt as to the principles which are to be applied to this appeal.

In Civil Case No.173 of 1956, delivered on the 26th March, 1957, in the Supreme Court of Kenya in an action brought by PEGGY FRANCES HAYES AND OTHERS against CHUNIBHAI J. PATEL AND ANOTHER, the principles applied by the learned Chief Justice, as he then was, were as follows:-

"The court should find the age and expectation of working life of the deceased, and consider the ages and expectations of the deceased (i.e. his income less tax) and the proportion of his net income which he would have made available for his dependents. 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 year's purchase. 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. The capital sum so reached should be discounted to allow for the possibility or probability of the re-marriage 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 dependents 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 dependents".

Upon an appeal against this judgment this Court held:

"That the method of assessment of damages adopted by the learned Chief Justice was correct"

In the instant appeal the Court was relieved of the necessity of considering one of the imponderables referred to by the learned Chief Justice in that it is not suggested that the Respondent may re-marry. On the other hand the Court had to take into account an imponderable which was not present in the HAYES case, namely, that the deceased had

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been living at an extravagant rate and it well might be that he would have been compelled in the future to reduce the allowance made by him to his wife and family.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.15.

Judgment -
Corrie, J.A.

23rd May, 1958
- continued.

10 On the evidence before him the learned Judge found that "the basic figure expended by the deceased exclusively upon his dependents was in the order of £2,150". In regard to this finding this Court has to take into account the Appellant's argument that the learned Judge erred in not taking sufficient account of the allowance made by the deceased to his relatives before the year 1956.

I do not think there is any substance in this objection.

20 It is clear from the evidence that the deceased's income was rapidly rising: In 1951 he was drawing Shs.9,000/- a year as salary, in April, 1955, he was transferred to Mombasa at a salary of Shs.48,000/- a year and was given a free flat, the rent of which was estimated by the Respondent at Shs. 300/- a month; and in 1956 his salary was increased to Shs. 60,000/- a year. Moreover, during the whole period, the deceased was also receiving an income in respect of his one-sixteenth interest in a business in Dar es Salaam which the learned Judge estimated at approximately £1,200 per annum.

30 It follows that, in my view, the learned Judge was entitled on the evidence before him to assess the amount allowed by the deceased to his relatives at £2,150. He proceeded to capitalize this sum at fifteen years purchase, to which no objection has been taken by either side, thus arriving at a "basic capital of £32,250".

I have next to consider the finding that the deceased would have been compelled to reduce his allowance to his relatives in order to live within his income.

With regard to this, the learned judge observes:

40 "In addition to the foregoing factors, it is necessary to consider in the instant case another factor which, so far as I am aware, has never had to be considered previously. That factor is that the evidence revealed that the deceased had for some considerable time been living so substantially in excess of his income that unless either his income had been

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.15.

Judgment -
Corrie, J.A.
23rd May, 1958
- continued.

increased by at least 50 per cent or he had effected considerable re-trenchments in the amount that he was expending for the benefits of his dependents or for his own purposes, there would inevitably have come a time when he would have been hopelessly insolvent".

The learned Judge, however, did not at that stage proceed to estimate the reduction that would have to be made in the deceased's allowance to his dependents and it was not until after he had dealt with all the other factors in the case that he said:

10

"I therefore assess the appropriate deduction to be made from the capital sum as already determined consequent upon the probable effects of the deceased's extravagance upon his future ability to provide for his dependents at 50 per cent".

I am clear that in adopting this procedure the learned Judge misdirected himself; and that the time when he should have taken into account the future effect of the deceased's extravagance was immediately after he had calculated the actual allowance to the dependents at £2,150.

20

On behalf of the Appellant Mr. Cleasby has argued the 50 per cent reduction found by the learned Judge, if taken into account at this stage, would give the dependents an income of only £1,075, which is less than the £1,200 a year at which the learned Judge estimated the income from the interest of the deceased's share in the Dar-es-Salaam partnership, and this, under the terms of the partnership, vests in the dependents. Accordingly Mr. Cleasby argued that they were not entitled to a future income of more than £1,200.

30

On the other hand Mr. O'Donovan has argued that the evidence before him did not justify the learned Judge in holding that a reduction in the allowance to the deceased's dependents was inevitable.

The latter argument I cannot accept. I am satisfied that on the evidence the learned Judge was entitled to hold that the deceased would have been compelled to make a reduction in his scale of living and that this would affect his allowance to his dependents.

40

At the same time, in view of the evidence that the deceased's income had been rising rapidly, I am not satisfied that the learned Judge's assessment of the deduction appropriate to the deceased's extravagance was entirely justifiable, nor am I satisfied that if the learned Judge had dealt with the question of the deceased's extravagance at the point at which I have held he should have done, he would have made so great a reduction as 50 per cent. I am therefore of opinion that this matter should go back for further consideration.

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—
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Corrie, J.A.

23rd May, 1958
- continued.

The learned Judge has made a deduction of £1,000 in respect of the benefit the dependents will obtain through receiving a lump sum instead of annual payments which would be subject to income tax. No objection has been made by either party to this figure.

Finally, there must be a deduction from the "basic capital" of the value of the deceased's estate. The learned Judge has deducted a sum equivalent to fifteen years' purchase of the £1,200 a year, which he estimated as the income the deceased was receiving from the Dar-es-Salaam partnership. Clearly this is incorrect.

It is open to the greatest doubt whether the deceased's dependents would continue to receive £1,200 a year from the partnership for any period at all. The evidence was that the capital value of the deceased's share, or the amount in his capital account, in the partnership was approximately equivalent to the amount of his debt to the firm of B. Choitram. This share in the partnership was the only substantial asset possessed by the deceased, and it is a not unreasonable conclusion that it would have to be realised in order to discharge the debt. If this were done it is difficult to see how any interest in the partnership could survive to the dependents. The evidence before the learned Judge was not satisfactory, partly because the partnership deed was not produced and partly because the administration of the deceased's estate was not complete. But the witness Doulatram Bharoomar, a partner in the firm of B. Choitram by which the deceased was employed, and brother of his widow, did say in evidence that he did not expect that the deceased's estate would be in credit. I am of opinion that the learned Judge erred in treating the share of the partnership

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.15.

Judgment -
Corrie, J.A.
23rd May, 1958
- continued.

separately from the remainder of the deceased's estate, and consider that he should have endeavoured to ascertain the value of the estate as a whole which would pass to the deceased's dependants after discharge of the deceased's liabilities. Certainly he was not justified in assuming that the dependants would continue indefinitely to receive £1,200 a year from the Dar-es-Salaam partnership. This matter also in my opinion must go back to the Supreme Court for further consideration. 10

I am accordingly of the opinion that the judgment should be set aside, and, in all the circumstances, I think the case should be remitted for re-trial. As I have already mentioned the evidence before the learned Judge on the first trial as to the value of the deceased's estate was unsatisfactory. It may be that the estate has now been fully administered, in which case its value would be an ascertained fact of which evidence could be led on the re-trial. 20

Finally, I would mention an objection by the Appellant that the learned Judge erred in holding that the Respondent's deceased husband would in all probability have continued to make an allowance to his mother, father and grandfather for a further fifteen years from the date of his death.

I see no substance in this objection. There was no evidence before the Court as to the actual amount of the allowances made by the deceased to his parents and grandfather; and under Section 4(1) of the Ordinance the amount recovered, after deducting the costs not recovered from the Defendant, is to be divided amongst the dependants "in such shares as the Court, by its judgment, shall find and direct". 30

I would therefore order that the judgment and decree of the Supreme Court, so far as it relates to the assessment of the total sum of general damages, be set aside; and that issue be re-tried. The dismissal of the claim for special damages should stand, and also the order for apportionment of general damages in the sense that, that whatever sum is awarded on the re-trial, should be divided in the same proportions and between the same persons as previously ordered. As regards costs, the order for costs of the original trial should stand. Both the appeal and the cross-appeal were partly 40

successful and partly unsuccessful, so I would make no order as to costs in this Court. The costs of the re-trial will, of course, be in the discretion of the Judge.

O.C.K. CORRIE,
Justice of Appeal.

JUDGMENT OF BRIGGS, V-P.

I agree and have nothing to add. An order will be made in the terms proposed.

F.A. BRIGGS,
Vice-President.

JUDGMENT OF FORBES, J.A.

I also agree.

A.G. FORBES,
Justice of Appeal.

NAIROBI,
23rd May, 1958.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No. 15.

Judgment -
Corrie, J.A.

23rd May, 1958
- continued.

10

No. 16.

ORDER.

In the Court
of Appeal for
Eastern Africa
at Nairobi.

20

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

CIVIL APPEAL NO. 78 of 1957

No. 16.

BETWEEN: RADHAKRISHN M. KHEMANEY

Appellant

- and -

MRS. LACHABAI MURLIDHAR

Respondent

(Appeal from a judgment of the Supreme
Court of Kenya at Mombasa (Mr. Justice Mayers)
dated the 30th July, 1957 in

Court of
dated the

Civil Case No. 492 of 1956

30

BETWEEN: MRS. LACHABAI MURLIDHAR

Plaintiff

- and -

RADHAKRISHN M. KHEMANEY

Defendant

In Court the 23rd day of May, 1958.

Before the Honourable the Vice-President (Mr. Justice Briggs), the Honourable Mr. Justice Forbes, a

Order.

23rd May, 1958.

In the Court
of Appeal for
Eastern Africa
at Nairobi.

No.16.

Order.

23rd May, 1958
- continued.

Justice of Appeal and the Honourable Sir Owen
Corrie a Justice of Appeal.

This appeal and cross-appeal coming on for
hearing on the 23rd day of April, 1958, AND UPON
HEARING Richard P. Cleasby Esq., of Counsel for
the Appellant and B.O'Donovan, Esq., and J.K.
Winayak, Esq., of Counsel for the Respondent IT
WAS ORDERED that the appeal and the cross-appeal
do stand for judgment and upon the same coming for
judgment this day IT IS ORDERED:

- (i) that the judgment and decree of the Supreme
Court so far as it relates to the assessment
of the total sum of general damages be and is
hereby set aside and that that issue be re-
tried;
- (ii) that the dismissal of the claim for special
damages and the order for apportionment of
general damages in the sense that whatever sum
is awarded on the re-trial should be divided
in the same proportions and between the same
persons as previously ordered shall stand;
- (iii) that the order for the costs of the original
trial shall stand;
- (iv) that there shall be no order as to costs be-
fore this Honourable Court;
- (v) that the costs of the re-trial shall be in
the discretion of the Judge.

GIVEN under my hand and the seal of the Court at
Nairobi, this 23rd day of May, 1958.

F. MARLAND,
Registrar.

Issued this 7th day of July, 1958.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.17.

Order granting
Conditional
Leave to Appeal.

22nd August,
1958.

No. 17.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL
IN HER MAJESTY'S COURT OF APPEAL FOR EASTERN
AFRICA AT MOMBASA

CIVIL APPLICATION NO. 8 of 1958 (P.C.)

(In the Matter of an Intended Appeal to Privy
Council.

BETWEEN: RADHAKRISHN M. KHEMANEY

Applicant

- and -

MRS. LACHABAI MURLIDHAR

Respondent

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(Intended Appeal from the final judgment and the formal Order of the Court of Appeal for Eastern Africa holden at Nairobi dated the 23rd May 1958 in Civil Appeal No.78 of 1957).

In the Court
of Appeal for
Eastern Africa
at Mombasa.

in

Civil Appeal Number 78 of 1957

BETWEEN: RADHAKRISHNEN M. KHEMANEY Appellant

- and -

MRS. LACHABAI MURLIDHAR Respondent

No.17.

Order granting
Conditional
Leave to Appeal.

22nd August,
1958.

- continued.

10 In Court: the 22nd day of August 1958.
Before The Honourable E.A.J. Edmonds.

O R D E R

UPON application made to this Court by Counsel for the above-named Applicant on the 22nd day of August 1958 for conditional leave to appeal to Her Majesty in Council as a matter of right under subsection (a) of Section 3 of the East African (Appeals to Privy Council) Order in Council 1951 AND UPON HEARING Counsel for the Applicant and for the Respondents THIS COURT DOETH ORDER that the Applicant do have leave to appeal as a matter of right to Her Majesty in Council from the judgment and Order above-mentioned subject to the following conditions:-

(1) That the Applicant do within ninety days from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court, in the sum of Shillings, Ten thousand (Shs.10,000/-) in the form of a Banker's Bond (a) for the due prosecution of the appeal (b) for payment of all costs becoming payable to the Respondent, in the event of (i) the Applicant not obtaining an Order granting him final leave to appeal or (ii) the appeal being dismissed for non-prosecution or (iii) the Privy Council ordering the Applicant to pay the Respondent's costs of the appeal;

(2) That the Applicant shall apply as soon as practicable to the Registrar of this Court, for an appointment to settle the record and the 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;

(3) That the Registrar, when settling the record shall state whether the Applicant or the Registrar shall prepare the record, and if the Registrar

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.17.

Order granting
Conditional
Leave to Appeal.

22nd August,
1958

- continued.

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 Applicant in such time as not to prejudice the Applicant in the matter of the preparation of the record within ninety days from the date hereof;

(4) That if the record is prepared by the Applicant, the Registrar of this Court shall at the time of the settling of 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 Applicant in the matter of the preparation of the record within the said ninety days;

10

(5) That the 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;

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

20

(7) That the Applicant shall lodge his application for final leave to appeal within fourteen days from the date of the Registrar's Certificate above-mentioned;

(8) That the Applicant, if so required by the Registrar of this Court, shall engage to the satisfaction of the said Registrar, to pay for a typewritten copy of the record (if prepared by the Registrar) or for its verification by the Registrar, and for the costs 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,

30

AND IT IS ALSO ORDERED that the costs of and incidental to this application be costs in the cause.

DATED at Mombasa this 22nd day of August 1958.

R.J. Quin

40

Ag. Deputy Registrar

H.M.Court of Appeal for Eastern Africa.

Issued this 22nd day of August. 1958.

No. 18.

ORDER GRANTING FINAL LEAVE TO APPEAL

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

Civil Application No.8 of 1958

In the matter of an intended appeal

BETWEEN: RADHAKRISHNEN M. KHEMANEY Applicant

- and -

MRS. LACHABAI MURLIDHAR Respondent

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.18.

Order Granting
Final Leave to
Appeal.

15th December,
1958.

10 (Application for final leave to appeal to Her
Majesty in Council from the final judgment and
formal order of Her Majesty's Court of Appeal
for Eastern Africa at Nairobi, dated the 23rd
day of May, 1958 in

Civil Appeal No. 78 of 1957

BETWEEN: RADHAKRISHNEN M. KHEMANEY Appellant

- and -

MRS. LACHABAI MURLIDHAR Respondent

In Court this 15th day of December, 1958.

20 Before The Hon. Mr. Justice Edmonds at Mombasa.

O R D E R

UPON the application presented to this Court on the
First day of December, 1958, by the applicant
above-named for final leave to appeal to Her Maj-
esty in Council:

AND UPON READING the Affidavit of Richard Penrith
Cleasby, Esquire, Advocate for the said applicant,
sworn on the 1st day of December, 1958, in support
of the said application:

30 AND UPON HEARING Counsel for the Applicant and
Counsel for the Respondent:

This Court doth order

1. That the said application be and is hereby granted.
2. That costs of the said application be costs in the Privy Council.

In the Court
of Appeal for
Eastern Africa
at Mombasa.

No.18.
Order Granting
Final Leave to
Appeal.
15th December,
1958
- continued.

3. That the record of the material papers as settled by the Acting Deputy Registrar of the Court on the 15th day of November, 1958, be despatched to England within 14 days from the date of this order.

GIVEN under my hand and the Seal of the Court,
this 15th day of December, 1958.

Issued this 20th day of December, 1958.

Sgd.

Acting Deputy Registrar.

EXHIBIT - BALANCE SHEET DATED 16th AUGUST, 1956.

Exhibits
Balance Sheet
dated 16th
August, 1956.

		B. CHOITRAM - NAIROBI			
1953 Shs.		Shs. Cts.	Shs. Cts.	1953 Shs.	
	<u>PARTNERS' CAPITAL ACCOUNTS</u>				<u>FIXED ASSETS</u>
	Mrs. Bulibai Bheroomal	147,363.34			Furniture & Fixtures
	Ramchand Bheroomal	147,363.33			as at 31.12.53
442,090	Doulatram Bheroomal	147,363.33	442,090.00	895	Less Depreciation @ 7½%
	<u>CHARITY RESERVE</u>				895.00
	Balance at 31.12.53	39,098.95			70.00
	Mombasa & Kisumu	732.64			825.00
39,099	Nakuru	147.00	39,978.59		<u>MOTOR CAR</u>
	<u>PARTNERS' CURRENT ACCOUNTS</u>				As at 31.12.53
	Mrs. Kalabai d/o Bheroomal			5,475	Less Depreciation @ 25%
	Balance at 31.12.53	61,699.12			5,475.00
	Add Share of Profits, Nairobi, Mombasa, Kisumu, Eldoret	15,956.70			1,375.00
		77,655.82			4,100.00
61,699	Less Drawings	1,484.00	76,171.82		<u>CURRENT ASSETS</u>
	Murlidhar Doulatram			759,741	Stocks as certified
	Balance at 31.12.53	41,304.68			by Manager
	Add Share of Profits, Nakuru	3,203.50		2,770	Goods in transit
	Salary from Nakuru	9,000.00		55,983	Staff Accounts as
		53,508.18		298,430	per Schedule
	Less Drawings	96,863.63		548,526	Sundry Debtors as
41,305	Contra	43,355.45			per Schedule
	<u>PARTNERS' RENT ACCOUNT</u>				Deposit Accounts as
	Balance at 31.12.53	108,178.21			per Schedule
	Add Rent from business	21,600.00		64,403	Cash on hand
	Rent from Tenants	10,394.29	140,172.50	259,004	23,040.22
108,178				548,526	1,218,062.26
	<u>MARRIAGE ACCOUNT RESERVED FOR MISS PADMANIBAI D/O DOULATRAM</u>				<u>AFFILIATED OFFICES</u>
	Balance at 31.12.53	72,100.00			Bombay No.1 Account
	Add Interest for Year	6,490.00	78,590.00		Lourenco Marques
72,100					Choitram's Silk Mills, Bombay
	<u>RESERVE FOR BAD DEBTS, 1948</u>				1,500.00
	Kisumu	1,390.03			822,668.78
	Mombasa	2,334.35			<u>BRANCHES CURRENT ACCOUNTS</u>
	Eldoret	1,887.22			Mombasa
6,595	Nakuru	983.51	6,595.11		Nakuru
	<u>AFFILIATED OFFICES</u>				Eldoret
	Bombay No.2 Account	740,169.48			Kisumu
	Hyderabad	699,219.83			312,666.97
	Dar es Salaam	214,426.98	1,653,816.29		1,090,961.41
740,169					<u>PARTNERS' CURRENT ACCOUNTS</u>
699,220					Bulibai Bheroomal
116,332					Balance at 31.12.53
					Less Share of Profit
					Nakuru
					3785.96
					" Share of Profit
					Nairobi
					Kisumu
					Mombasa
					18857.92
					22,643.88
					59,909.48
					<u>DECEASED PARTNERS' ESTATE</u>
					Tanoomal Hakumatrai
					62,795.18
2,326,787			2,437,414.31	3,431,168	3,259,322.11

Exhibits

Balance Sheet
dated 16th
August, 1956
- continued.

EXHIBIT - BALANCE SHEET DATED 16th AUGUST, 1956

(Continued)

B. CHOITRAM - NAIROBI

1953 <u>Shs.</u>		<u>Shs.Cts.</u>	<u>Shs.Cts.</u>	1953 <u>Shs.</u>		<u>Shs. Cts.</u>	<u>Shs. Cts.</u>
2,326,787	Brought forward		2,437,414.31	3,431,168	Brought forward		3,259,322.11
	<u>CURRENT LIABILITIES</u>				<u>Ramchand Bheroomal</u>		
	Staff Accounts as per Schedule	4,853.07			Balance at 31.12.53	28,534.04	
	Sundry Loans as per Schedule	740,223.17			Add Drawings	9,915.60	
	Sundry Creditors as per Schedule	207,333.18			Less Share of Profit	38,449.64	
1,383,812	Overdraft at Barclay's Bank D.C.O.	175,841.15	1,128,250.57		Nakuru 3785.96		
	<u>DAR ES SALAAM PROPERTY</u>				Share of Profit		
	<u>RENT ACCOUNT</u>				Nairobi		
	Balance at 31.12.53	4,174.00			Kisumu		
	Rent for 13 months ended 31.12.54	7,507.50			Mombasa		
		11,681.50			Eldoret 18857.92	22,643.88	15,805.76
4,174	Less Tax	2,358.15	9,323.35		<u>Doulatram Bheroomal</u>		
					Balance at 31.12.53	255,071.29	
					Add Drawings	30,827.50	
					Less Share of Profits	285,898.79	
				28,534	Nakuru 3785.96		
					Share of Profit		
					Nairobi		
					Kisumu		
					Mombasa		
					Eldoret 18857.92		
				255,071	Salary 6750.00	29,393.88	256,504.91
					<u>Murlidhar Doulatram</u>		
					Balance as per Contra		43,355.45
<u>3,714,773</u>			<u>3,574,988.23</u>	<u>3,714,773</u>			<u>3,574,988.23</u>

B. CHOITRAM.
Sd. Doulatram Bheroomal.

We have audited the Books of B. Choitram, Nairobi and prepared the above Balance Sheet and Accounts. We have obtained all the information and explanations we have required. In our opinion the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the business as at 31st December 1954 according to the best of our information and as shown by the Books of the Firm.

NAIROBI
16th August, 1956.

Brice & Gill.
BRICE & GILL.

EXHIBIT - BALANCE SHEET 14th MARCH, 1957.

B. CHOITRAM - NAIROBI

Exhibit
Balance Sheet
14th March,
1957.

1954 Shs. Cts.	Shs. Cts.	Shs. Cts.	1954 Shs. Cts.	Shs. Cts.	Shs. Cts.
442,090.00	442,090.00				FIXED ASSETS
					Furniture & Fixtures
					As at 31.12.54 825.00
39,978.59	39,978.59	40,735.15	825.00	Less sold 7.50	
				Depreciation @ 7½% 60.00	67.50 757.50
					Motor Car
				As at 31.12.54	4,100.00
			4,100.00	Less Depreciation @ 25%	1,025.00 3,075.00
					CURRENT ASSETS
76,171.82	76,171.82	90,188.78	841,243.98	Stocks as certified by Manager	999,840.44
			20,166.66	Goods in Transit	-
			51,011.97	Staff Accounts as per Schedule	45,729.42
140,172.50	140,172.50	179,788.19	282,310.00	Sundry Debtors as per Schedule	192,107.56
			289.43	Deposit Accounts as per. Schedule	1,835.73
			23,040.22	Cash in Hand	40,156.57 1,279,669.72
					AFFILIATED OFFICES
78,590.00	78,590.00	85,665.00	278,748.54	Bombay No.1 Account	271,767.64
			542,420.24	Lourenco-Marques	577,960.27
6,595.11	6,595.11	6,595.11	1,500.00	Choitram's Silk Mills, Bombay	1,500.00 851,227.91
					BRANCHES CURRENT ACCOUNTS
740,169.48	740,169.48	1,647,655.04	357,038.54	Mombasa	428,884.78
699,219.83	699,219.83		252,927.14	Nakuru	209,592.34
214,426.98	208,265.73		168,328.76	Eldoret	153,913.14
			312,666.96	Kisumu	343,075.60 1,135,465.86
					PARTNERS' CURRENT ACCOUNTS
					Bulibai Bheroomal
1,128,250.57	1,018.12	1,177,929.72	59,909.48	Balance at 31.12.54	59,909.48
	665,223.17			Less Share of Profit:	
	321,688.43			Nankuru 2908.22	
	190,000.00			Less Share of Profit:	
				Nairobi, Kisumu,	
				Mombasa 16565.50	19,473.72 40,435.76
				59,909.48	
				DECEASED PARTNER'S ESTATE	
				Tanoomal Hakumatrai	62,795.18
				Ramchand Bheroomal	
				Balance at 31.12.54	15,805.76
				Add Drawings	-
				Less Share of Profit:	
				Nakuru 2908.22	
				Less Share of Profit:	
				Nairobi, Kisumu,	
				Mombasa 16565.50	19,473.72
				Contra Credit	3,667.96
				Doulatram Bheroomal	
				Balance at 31.12.54	256,504.91
				Add Drawings	5,768.60
<u>3,574,988.23</u>	<u>Total Carried forward</u>		<u>3,687,240.55</u>	<u>3,275,127.87</u>	<u>262,273.51 3,373,426.93</u>

Exhibit
Balance Sheet
14th March,
1957.
- continued

EXHIBIT - BALANCE SHEET 14th MARCH, 1957
(Continued)
B. CHOITRAM - NAIROBI

1954				1954			
<u>Shs.</u>	<u>Cts.</u>	<u>Shs.</u>	<u>Cts.</u>	<u>Shs.</u>	<u>Cts.</u>	<u>Shs.</u>	<u>Cts.</u>
3,574,988.23			Total brought forward	3,687,240.55	3,275,127.87	Total brought forward	262,253.51 3,373,426.93
						<u>Doulatram Bheroomal</u>	
						(Continued)	
						Less Share of Profit:	
						Nakuru 2908.22	
						Less Share of Profit,	
						Nairobi,	
						Kisumu	
						Mombasa 16565.50	
				26,504.91	Salary	9000.00	28,473.72 233,799.79
				43,355.45	<u>Murlidhar Doulatram</u>		
					Balance as per contra		43,355.45
					Add Drawings		75,119.18
							118,474.63
					Less Share of Profit		
					Nakuru 2460.80		
					" Salary 36000.00		38,460.80 80,013.83
<u>3,574,988.23</u>		<u>3,687,240.55</u>		<u>3,574,988.23</u>			<u>3,687,240.55</u>

B. CHOITRAM

Sd. Doulatram Bheroomal.

We have audited the Books of B.Choitram, Nairobi and prepared the above Balance Sheet and Accounts. We have obtained all the information and explanations we have required. In our opinion the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the Business as at 31st December, 1955, according to the best of our information and the explanations given to us and as shown by the Books of the Firm.

Brice & Gill,
Auditors.

NAIROBI,

14th March, 1957.