

**IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO. 01(f) – 2 – 01/2018 (W)**

**BETWEEN**

- 1. KOPERAL ZAINAL BIN MOHD ALI**
- 2. KOPERAL PILOT LANYE**
- 3. INSP MAHEZAL B. MD NOH**
- 4. INSP MOHD SAIDON BIN SHAARI**
- 5. SAC MOHAN SINGH A/L TARA SINGH**
- 6. KETUA POLIS NEGARA  
(TAN SRI ISMAIL OMAR PADA MASA MATERIAL)**
- 7. KERAJAAN MALAYSIA ... APPELLANTS**

**AND**

- 1. SELVI A/P NARAYAN  
(NO. K/P: 700430-10-5118)  
(PENTADBIR BERSAMA ESTATE DAN TANGGUNGAN  
CHANDRAN A/L PERUMAL, SI MATI)**
- 2. RITA A/P CHANDRAN  
(NO. K/P: 930504-01-6198)  
(PENTADBIR BERSAMA ESTATE DAN TANGGUNGAN  
CHANDRAN A/L PERUMAL, SI MATI) ... RESPONDENTS**

**Coram: ROHANA BINTI YUSUF, PCA  
ABANG ISKANDAR BIN ABANG HASHIM, CJSS  
NALLINI PATHMANATHAN, FCJ  
ABDUL RAHMAN BIN SEBLI, FCJ  
ZABARIAH BINTI MOHD. YUSOF, FCJ  
HASNAH BINTI DATO' MOHAMMED HASHIM, FCJ  
RHODZARIAH BINTI BUJANG, FCJ**

## SUMMARY OF DECISION

[1] This is a summary of my grounds of judgment , the draft of which my learned sister and brother Judges, Justice Rohana binti Yusof, PCA, Justice Abang Iskandar bin Abang Hashim, CJSS, Federal Court Justices Abdul Rahman bin Sebli, Zabariah binti Mohd. Yusof and Hasnah binti Dato' Mohammed Hashim, have agreed with.

[2] The sole question posed for our determination in this appeal is this: *“Whether section 8(2) of the Civil Law Act 1956 [Act 67] is an absolute bar to the award of exemplary damages in an estate claim?”* That question is answered in the affirmative for the following reasons:

- (i) In discharging our interpretative task in respect of section 8 (2) of the Civil Law Act 1956, we have applied the legal principle that the court must give effect to the natural and ordinary meaning of the words of the said section and as decided by this Court in **Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oil Sdn Bhd** [2005] 3 MLJ 97, we must not do so in a way which would produce a result opposite to the legislative intention as that would constitute an unauthorized judicial legislation and a breach of the doctrine of separation of powers.

(ii) Since the Civil Law Act 1956 is a pre – Merdeka legislation, it attracts the application of Article 162(7) which allows us to apply the said Act with such modifications as may be necessary to bring it into accord with the provisions of the Federal Constitution. In order to make such a modification, it is clear from the words “*bring it into accord with the provisions of this Constitution*” in the said Article pre-supposes a conflict between the pre Merdeka law and that of the Constitution. We are of the view that no such conflict exist here because, firstly, as laid out in **Rookes v Barnard & Others** [1964] AC 1129, in order to be entitled to exemplary damages, the plaintiff himself must be the victim of the punishable behavior for its object is not to compensate him but to punish the defendant and to deter him and others in the same shoe or similiar position from committing such wrong. Secondly, there is nothing in the Federal Constitution that provides in any direct or vague way the right of a deceased’s estate to exemplary damages and in this regard the decision in **Assa Singh v Menteri Besar Johor** [1969] 2 MLJ 30 and **Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors** [2005] 6 MLJ 289 are distinguishable on their facts.

[3] Nevertheless, inspite of the above conclusion, we are not minded to set aside the quantum of damages awarded by the learned High Court Judge for in our view, as held in **Rookes’s** case (supra), both aggravated

and exemplary damages are intertwined and since the respondents have pleaded for aggravated damages in their statement of claim but which was not granted, we have decided to set aside the quantum for exemplary damages ordered by the learned High Court Judge and substitute the same with that under aggravated damages. That quantum is more than justified and is reflective of this court's abhorrence against the negligent conduct of the appellants which had resulted in the death of the deceased, even though the degree of its seriousness is not on the same footing as the infliction of physical abuse on some other detainees by their custodians which brought about their demise. Factoring such feeling of the court is permissible as held by Lord Hailsham in **Broome v Cassell & Co.** [1972] AC 1027 at page 1073:

*"In awarding "aggravated" damages the natural indignation of the court at the injury inflicted on the plaintiff is a perfectly legitimate motive in making a generous rather than a more moderate award to provide an adequate solatium. But that is because the injury to the plaintiff is actually greater and, as the result of the conduct exciting the indignation, demands a more generous solatium."*

[4] Thus, the appeal is allowed but in furtherance of the same abhorrence mentioned above, we make no order on the cost of this appeal.

**(RHODZARIAH BINTI BUJANG)**  
**Judge, Federal Court of Malaysia**  
**Putrajaya**

Date: 22 March 2021