

**IN THE COURT OF CLAIMS OF OHIO**

IN RE: SUBIN BASTOLA

LOKNATH SANGRAULA  
SUDARSHAN BASTOLA  
BIMALA BASTOLA  
SUSMITA BASTOLA

Applicants

Case No. 2022-00722VI

Magistrate Daniel R. Borchert

DECISION OF THE MAGISTRATE

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{¶1} On October 25, 2021, applicants, Loknath Sangraula<sup>1</sup>, Sudarshan Bastola, Bimala Bastola, and Susmita Bastola, filed a compensation application as the result of the death of Subin Bastola (“decedent”) on March 18, 2021.

{¶2} On February 22, 2022, the Attorney General (“the AG”) issued a finding of fact and decision finding that Subin Bastola was the victim of criminally injurious conduct but that the applicants did not prove dependents economic loss and that funeral expenses could not be awarded because there was a readily available collateral source.

{¶3} On February 28, 2022, applicants filed a request for reconsideration stating that the wrongful death proceeds can not be counted as a collateral source and that Subin’s income paid for half of the household expenses.

{¶4} On September 23, 2022, the AG rendered a Final Decision finding that there was no evidence that the wrongful death money was not available to pay funeral expenses and that dependency was not established between decedent and the applicants.

{¶5} On October 10, 2022, applicants filed a notice of appeal from the September 23, 2022, Final Decision of the AG. Applicants argued that cultural differences made it

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<sup>1</sup> Based on the testimony at the hearing, the magistrate finds that Loknath Sangraula is not claiming dependency for himself but rather was helping the family of Subin Bastola with their application. When referring to “applicants” throughout this decision, the magistrate is referring to Sudarshan, Bimala, and Susmita Bastola.

so that Subin was the family earner and thus they should be awarded money for dependents economic loss.

{¶6} Hence, a hearing was held before this magistrate on April 13, 2023, at 10:00 a.m. Assistant Attorney General Megan Hanke appeared on behalf of the State of Ohio. Applicants were represented by Michael Falleur.

{¶7} In their opening, applicants stated that their family member, decedent, was killed in a car accident involving an impaired driver when he was twenty-four years old. Applicants are decedent's sister, mother, and father. Applicants stated that they lived with decedent permanently and that decedent contributed to the family income. Applicants stated that they are from Nepal and have different customs than the majority of families in the United States, namely, that they have a vertical family structure—where many generations of the family live in one house—rather than a horizontal family structure—where the children move away at the age of majority. Applicants stated that decedent was the backbone of the family because decedent's mother and father struggle with a major language barrier. Applicants stated that the victims of crime compensation statutes are remedial legislation and should be broadly interpreted to the benefit of applicants. Applicants argued that the prior case law dealing with dependency as it relates to parents being dependent upon their children does not apply in this case because of the cultural differences.

{¶8} In opening, the AG stated that it does not contest the fact that the decedent was a victim of criminally injurious conduct. The AG asserted that the applicants were unable to prove economic dependency and thus, the Final Decision should stand.

{¶9} Applicants called Bhuwan Pyakurel as their first witness. Pyakurel testified that he is a forty-three-year-old who was born in Bhutan and lived in Nepal in a refugee camp for eighteen years. He has lived in the United States since 2009; in Denver, Colorado from 2009 to 2014 when he moved to Columbus, Ohio due to his father's health problems. Pyakurel stated that he did not know the Bastola family before decedent was killed. Pyakurel stated that the Bastola family came to the United States after an earthquake in Nepal. Pyakurel stated that the cultural differences between a typical family in the United States and a family from Nepal or Bhutan are shared by his family and the applicants. Pyakurel stated that the main cultural difference he has experienced is that

families like his tend to stay together in one household while typically, families from the United States separate when the children reach majority or shortly thereafter. There was no cross examination of Pyakurel.

{¶10} Applicants called Loknath Sangraula as their second witness. Sangraula testified that he moved to Seattle, Washington in 2009 and then moved to the Columbus area in 2016. Sangraula stated that he moved to Ohio because of his family. Sangraula currently lives with his wife, two children, parents, and brother. Sangraula's wife is related to the applicants; he has known applicants and decedent since approximately 2013. Sangraula stated that he works at Amazon. Sangraula testified that since 2019, he has been very connected to applicants and decedent. Sangraula stated that, to his knowledge, decedent was a coborrower on the mortgage; decedent paid about half of the monthly payment and contributed to other household expenses. Sangraula testified that decedent spoke English and often helped applicants by speaking with their doctors, pharmacists, and others who did not speak their native language. Sangraula stated that decedent provided transportation for at least one of the applicants. Sangraula asserted that decedent was the backbone of the family because of the support he provided outside of economic support. Sangraula averred that decedent was the leader of the family and would have stayed with the family had he not been killed. On cross examination, Sangraula testified that all the members of the Bastola family contributed to household expenses. Sangraula stated that all the members of the family worked prior to decedent passing; decedent worked thirty-two to sixty hours a week prior. Sangraula stated that he is currently helping the family with tasks that Subin used to do but that he does not provide financial support. Sangraula testified that he believes the house is just in the father's name now. Applicants rested their case.

{¶11} The AG called John Martin as its only witness. Martin stated that he has been a with the AG's Crime Victims Services section for approximately twenty-three years; he is currently a claims investigator supervisor. Martin testified that he has worked on cases before where he had to determine whether an applicant suffered dependent's economic loss; he stated that he worked to do that on this case as well. Martin testified that he received decedent's tax returns and information about the mortgage on applicants' house as part of his investigation. Martin stated that he usually looks to tax returns to

help determine whether a decedent had dependents; Martin stated that the decedent in this case did not have any dependents on his tax returns. Martin testified that decedent's tax return for the last full year prior to his death showed an income of \$19,535. Martin averred that the monthly payment for the mortgage on applicants' house was \$2,395.51. Martin stated that based on the mortgage information and the tax returns, decedent did not have any dependents at the time of his death, so a dependency calculation could not be performed. On cross-examination, Martin testified that buying furniture, being obligated on and paying a mortgage, and paying for household items are things of economic value. On redirect, Martin stated that based on the financial information that was submitted, decedent was not supporting the household and that decedent derived a benefit from the economic contributions he made to the household. The AG rested its case.

{¶12} In closing, applicants stated that they are not seeking Dependent's Replacement Services Loss ("DRSL") or a calculation of dependency from the court. Applicants argued that the fact that decedent was the backbone of the family and that he was obligated on the mortgage demonstrated that applicants were dependent on him. Applicants admitted that decedent was not the sole financial provider of the family but stated that he was the main provider because of his non-economic contributions to the family. Applicants stated that because this family moved to the United States, they were reliant on decedent to participate in daily activities. Applicants asserted that because their culture relies on a vertical family structure, they are distinguished from past cases.

{¶13} The AG argued, in closing, that the burden of proof is on the applicants to show that they were dependents in fact. The AG stated that applicants do not qualify as dependents base on case law interpretations of R.C. 2743.51(D) and (I) including *In re Rider*, V79-3081sc (June 16, 1991), *In re Girtz*, V77-0353jud (December 22, 1978), *In re McKinney*, V81-57440sc (May 19, 1982), and *In re Hubbell*, V80-37356sc (May 8, 1981). The AG asserted that in all of these cases, dependency was not found because the facts of the case showed an exchange of consideration rather than gratuitous support from the adult child living with their parents. The AG stated that those cases are similar to applicants' case because decedent was receiving a benefit from living with his parents.

Finally, the AG asserted that it was not the legislator's intent to provide dependency loss in living situations similar to roommate situations.

{¶14} R.C. 2743.51(D) states:

“‘Dependent’ means an individual wholly or partially dependent upon the victim for are and support, and includes a child of the victim born after the victim’s death.”

{¶15} R.C. 2743.51(I) states:

“(I) ‘Dependent’s economic loss’ means loss after a victim’s death of contributions of things of economic value to the victim’s dependents, not including services they would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death. If a minor child of a victim is adopted after the victim’s death, the minor child continues after the adoption to incur a dependent’s economic loss as a result of the victim’s death. If the surviving spouse of a victim remarries, the surviving spouse continues after the remarriage to incur a dependent’s economic loss as a result of the victim’s death.”

{¶16} In *In re Rider*, V79-3081sc (6-13-81), it was established that where a decedent victim received a benefit because of their financial contributions to an applicant, the applicant is not a dependent and cannot receive dependent’s economic loss.

{¶17} In this case, decedent secured his own housing and other necessities by contributing to the family expenses. Therefore, I recommend that applicants are not dependents as defined in R.C. 2743.51(D). Accordingly, I recommend that the Attorney General’s decision of September 23, 2022, be affirmed.

{¶18} *A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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SUSMITA BASTOLA  
LOKNATH SANGRAULA  
SUDARSHAN BASTOLA  
BIMALA BASTOLA

Applicants

Case No. 2022-00722VI

Judge Lisa L. Sadler

ORDER

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DANIEL R. BORCHERT  
Magistrate

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to:

Filed 5/31/23  
Sent to S.C. Reporter 9/20/233

**IN THE COURT OF CLAIMS OF OHIO**

{¶19} On April 13, 2023, a hearing was held in this matter before a Magistrate of this court. On May 31, 2023, the Magistrate issued a Decision wherein he found that applicants were not dependents as defined in R.C. 2743.51(D). Therefore, the Magistrate recommended that the Attorney General's decision of September 23, 2022 be affirmed.

{¶20} Civ.R. 53(D)(3)(b)(i) states, in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." No objections were filed.

{¶21} Upon review of the claim file, and the Magistrate's Decision, it is the Court's finding that the Magistrate was correct in his analysis of the issues and application of the law. Accordingly, this court adopts the Magistrate's Decision and recommendation as its own.

{¶22} IT IS HEREBY ORDERED THAT

{¶23} The May 31, 2023 Decision of the Magistrate is ADOPTED;

{¶24} This claim is DENIED and judgment entered for state of Ohio;

{¶25} Costs assumed by the reparations fund.

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LISA L. SADLER  
Judge

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Licking County Prosecuting Attorney and to: