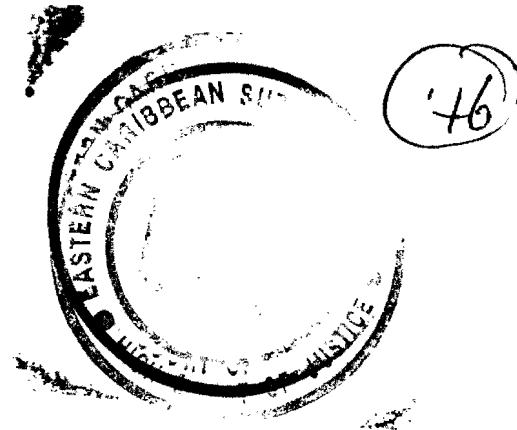


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 504 of 1992
505 of 1992



BETWEEN:

NOREEN STAPLETON
(Administratrix of the Estate of
Cammie Stapleton, deceased)

1ST PLAINTIFF

ERMINE STAPLETON
(Administratrix of the Estate of
Hugh Stapleton, deceased)

2ND PLAINTIFF

V

RALPH WALKER
RUDOLPH CHARLES

1ST DEFENDANT
2ND DEFENDANT

A Williams Esq for the Plaintiffs
SE Commissiong Esq for the Defendants

Mitchell J

JUDGMENT

These are two fatal accident cases arising out of an accident between a motorcycle and a truck. Both cases arise out of the same accident. They were ordered consolidated on the first day of trial under the provisions of Order 4, Rule 4 of the Rules of the Supreme Court. The claims are for damages for the loss of the normal expectation of life and for compensation for their estates and dependants. Cammie Stapleton, the son of the 1st Plaintiff (hereinafter Cammie), was the owner and driver of the motorcycle involved in the accident. Hugh Stapleton, the son of the 2nd Plaintiff, (hereinafter Hugh) was the pillion rider. The 2 deceased young men were 1st cousins. The 1st Defendant was the owner and the 2nd Defendant the driver of the truck in question.

By the 2 Statements of Claim, endorsed on the 2 writs of summons issued out of the Supreme Court of St Vincent and the Grenadines on 30th December 1992, the Plaintiffs claim that they are the mothers and Administratrixes of the Cammie and Hugh. The collision occurred on 28th October, 1992, on the public main road at Buccament Bay. The Plaintiffs claim that the accident was due to the 2nd Defendant failing to keep a proper look out, driving too fast, driving on the wrong side of the road, failing to give warning of his approach, and failing to apply his brakes. The Plaintiffs claim special damages of the cost of the motor cycle, and the funeral expenses. The further claim is for loss of expectation of life and the support of their families and dependants.

By the Defence filed on the 4th November 1993 the Defendants plead that the motor-cycle was being driven by Cammie at a speed in excess of 50 mph, and travelling on the wrong side of the road. The Defence is that the truck was travelling much more slowly, and on its correct side of the road. The 2nd Defendant to avoid the accident slowed the speed of his vehicle. But, the motor-cycle it is claimed was by then completely out of control, and never reduced its speed. It slammed into the right front side of the truck, causing the deaths of the driver and his pillion rider.

The trial began on 7th May, 1997. The court heard evidence from the 2 mothers of the deceased young men, and from other witnesses. The trial resumed on 27 June to take the evidence of Inspector Walker who had taken the measurements, and an eye witness, Calvin Franklyn. When the case for the Defendant was to have begun on 28 July, counsel for the Defendants indicated that he had no witnesses as the truck driver no longer lived in St Vincent, and his witness had passed away.

At the close of final addresses, counsel for the Plaintiffs applied to amend both Statements of Claim to include the words that the claims were brought "by virtue of the provisions of the Compensation for Injuries Act, Cap 83". He applied to add these words at the end of paragraph 1 of suit 504 and at the end of paragraph 2 of suit 505. Counsel for the Defendants objected. I consider that the amendments are appropriate to permit me to deal properly with the claims, and I grant the amendments.

The facts as I find them are as follows. On 28th October 1992 Cammie Stapleton was a 23 year old subsistence farmer who worked about half of an 8 acre piece of land of the family at Rose Hall. He had a one and a half year old son. He lived with his mother and assisted financially in the upkeep of the home and of his mother. His mother took care of his baby, and helped with the selling in the market of the produce of the farming activity. His cousin Hugh was 26 years old and also farmer at Rose Hall. He similarly lived at home with his mother and contributed to the upkeep of her home. He had not yet started a family of his own. On the day in question Cammie owned a motorcycle P5283. He was driving it in the afternoon along the island main road from the direction of Kingstown in the area of Buccament. His cousin Hugh was riding pillion. Coming in the opposite direction was the truck T4231 owned by the 1st Defendant and driven by the 2nd Defendant. The truck was travelling at speed. At the turn off the Buccament the truck turned towards its right across the road just as Cammie and Hugh were approaching on the motorcycle. The motorcycle and the truck collided over on the truck's right hand side of the highway, and the two motorcyclists were killed instantly. The eyewitness testimony and the police measurements indicate the truck was right over on the motor cycle's side of the road at the time of the accident. There was no serious question of the liability of the Defendants. This would appear to have been one case where the motorcyclist was completely blameless in causing the accident. The real issue in this case is the amount of compensation that is due to be paid by

the Defendants. The court must decide what is a fair and reasonable amount of damages to award to the estates and dependants in these two consolidated cases.

Counsel have referred the court to several authorities that have greatly assisted in advising the court in assessing the factors that should be taken into account. In particular, the cases of Davies v. Powell Duffryn Associated Collieries (No 2) [1942] 1 All ER 657, Rattray v. Muir and others (1966) 15 WIR 87, Mykoo v. Katee (1972) 20 WIR 509, Cookson v. Knowles [1978] 2 All ER 604, Mallett v. McMonagle [1969] 2 All ER 178. Also useful was Daly on Damages, pages 304 to 315. Additionally, the court has considered the provisions of the Compensation for Injuries Act Cap 83. This Act combines the provisions normally found in the Fatal Accidents Acts and some of the provisions of the Workmen's Compensation Acts. Section 7 provides that every action in respect of injuries resulting in death shall be for the benefit of the spouse, parent and child of the deceased only. So that, in St Vincent not all dependants are entitled to compensation in the case of a wrongful death, only the relatives mentioned above. Section 9 provides that in every such action the court shall apportion the damages amongst the entitled persons in such shares as the court shall find and direct.

First the claim in 504/92 made on behalf of Cammie. Cammie was a subsistence farmer in St Vincent. The amount of his gross income, far less his net profit from his farming, is unknown. He paid no taxes and kept no records. I am satisfied that in some areas of St Vincent up to one half of the rural population is completely illiterate. Education is not compulsory, and during school hours the streets and roads of the island are, as a matter of course, clogged up with out of school children of all ages. I do not know that Cammie was illiterate, but he was a subsistence rural farmer. Such folk have no need for written records. Most records in such cases are retained in the memory, and paper documents are not made nor retained. In these circumstances, the court must do what it can with the evidence before it. The court will not expect of rural farming folk the same standard of documentary evidence as commercial cases coming out of the City of London appear to treat as normal. On the other hand, the court must treat very cautiously figures of money casually thrown out in evidence by interested parties. Cammie's mother said he was earning about \$2000.00 per month. I consider that at the very least in 1992 Cammie's net earnings were \$12,000.00 per annum on average. This excludes all his expenses, personal and otherwise. He would expect to have worked until at least the age of 60. His income would naturally have increased, but so would his expenses. The vagaries of the agricultural business are notorious. Cammie planted tomatoes, cabbage, carrots, beans, cucumbers, potatoes, and tannias on the land he worked. One cannot plant intensively in St Vincent in the dry season, and the dry season can last for up to 6 months. The market can be affected by insects and storm. But I am satisfied that hard working farmers in St Vincent can earn good money.

Cammie's mother and Administratrix says he lived at home and supported her. He had no wife and family, other than his one and a half year old child living with Cammie and Cammie's

mother and father and siblings. I believe her. She says he gave her on average \$500.00 per month. Some of it was to cover the expenses of his child. The remainder was for the support of his mother and the household. The mother says none of the \$500.00 was for her, as she spent all the \$500.00 on the shopping. I understand her to mean that none of it was for her exclusively, eg, to save and put aside. She spent all the money Cammie gave her on household expenses. I am satisfied that an amount of \$6,000.00 was the annual value of the dependency.

Counsel for the Plaintiffs has suggested that a figure for compensation in the region of \$180,000.00 for Cammie, and two thirds that figure for Hugh would be appropriate. Counsel for the Defendants has suggested \$16,200.00 (\$1,200.00 per year for 13.5 years) for the child and \$8,400.00 (\$1,200.00 per year for 7 years) for the mother. For Hugh, counsel suggests a multiplier of 4 on a base of \$1,200.00, or \$4,800.00 would be appropriate. These suggested figures place too low a value on the contributions made by these sons and father to the support of their parents and child. I have decided not to award an amount of compensation for the loss of expectation of life, as the sums so awarded would have to have been deducted from the other amounts of compensation, resulting in no further money to the relatives and an unwanted complication to the awards.

In arriving at a fair level of compensation to Cammie's estate I consider it appropriate to proceed as follows. If this were a case of injury, the basis I would use is the amount that Cammie would have earned in the future and that he has been prevented from earning by the injury. But this is not a personal injury case, this is a fatal accident case. The court calculates the amount of compensation differently in a fatal accident case. In a fatal accident case the basis of the calculation is an estimate of the annual value of the dependency. His estate and dependants are entitled to a hard matter of dollars and cents. The starting point is the net annual figure of \$6,000.00, or \$500.00 per month. This is the basic figure for Cammie. The next step is to settle on a figure to multiply the basic figure by. At the time of the accident Cammie was over 23 and could be expected to retire at the age of about 60, or some 36 years later. But his mother would not necessarily be alive at that time, and his child might have long ceased to be his dependent. I must also take into account the fact that I am about to award a lump sum, and the usual imponderables. In the circumstances, a multiplier of one third Cammie's remaining productive life, or 12 years, would seem fair and appropriate. The result of multiplying the basic figure by this multiplier is \$72,000.00. Cammie's infant child Keran lives with Cammie's mother. I do not consider it appropriate or proper to apportion any part of this sum to the infant separately. But, if I had to I would consider that one half of that sum belonged to the child and one half to the mother. Additionally, I am satisfied that the funeral expenses were \$1,600.00, and the most that I can award on the value of the bike is \$4,000.00.

In dealing with Hugh's estate's compensation I proceed in the same way. He was a similar farmer, with no children or other dependants we know of except his mother. Hugh's net earnings

in 1992 were similarly \$1,000.00 per month or \$12,000.00 per year. He was about 26 years old, and could have expected to have retired some 33 years later. I am satisfied that he contributed a monthly average of \$400.00 or an annual sum of \$4,800.00 in support of his aged and dependent mother. Applying the principles found in the cases and the formula above, I consider a multiplier of one third of 33, or 11 years, to be appropriate for calculating the amount of compensation to be paid in relation to Hugh's death. The result of the multiplication produces a figure of \$52,800.00. Additionally, the costs of his funeral expenses were \$1,600.00

I therefore give judgment for the Plaintiffs as follows:

To Noreen Stapleton as Administratrix of the Estate of Cammie Stapleton

- (a) \$72,000.00
- (b) \$5,600.00 special damages
- (c) her costs to be taxed if not agreed.

To Ermine Stapleton as Administratrix of the Estate of Hugh Stapleton

- (a) \$52,800.00
- (b) \$1,600.00 special damages
- (c) her costs to be taxed if not agreed.



ID Mitchell QC

High Court Judge (Ag)

31 July 1997