

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 6 OF 1998

BETWEEN:

TRIPPLE GENERAL CONTRACTING COMPANY LTD.

Plaintiff/Appellant

and

HERMINA SPENCER

[Administratrix of the Estate of Augustus Spencer deceased]

Defendant/Respondent

Before:

The Hon. Mr. Satrohan Singh Justice of Appeal

The Hon. Mr. Albert Redhead Justice of Appeal

The Hon. Mr. Albert N. J. Matthew Justice of Appeal [Ag.]

Appearances:

Mr. S. Commissiong and Miss M. Commissiong for
Plaintiff/Appellant

Mr. A. Williams for Defendant/Respondent

1999: March 23 and 24;
April 12.

JUDGMENT

MATTHEW J.A. (Ag.)

The Appellant Company is based in Trinidad and was contracted to carry out electrical work in Saint Vincent by Saint Vincent Electricity Services Ltd. The business of the Appellant in Saint Vincent involved the installation of electric poles and electric lines from 11,000 volts to 132,000 volts. Augustus Spencer aged 25 came to his death on October 31, 1988 whilst in the employment of the Appellant Company as a linesman 2. On the day in question one of his colleagues, Walter Wallace, who was working a distance of one pole away from Augustus heard an explosion from the pole that Augustus was on and then saw him sliding down the pole with his safety belt on. Wallace formed the view that Augustus had received an electrical shock. Wallace rushed to Augustus' assistance together with Basdeo, the supervisor on the job. The belt was still around the pole and around Augustus' waist. They soon took him to Vermont Clinic about 2,000 to 3,000 feet away and from there to the Kingstown General Hospital where according to Basdeo he died five to ten minutes later. The evidence of Wallace is that Spencer died at Vermont on a bed in his hands.

Hermina Spencer, mother of the deceased, obtained Letters of Administration on December 23, 1988. On January 14 1992 she filed a statement of claim and brought an action by virtue of the **Compensation for Injuries Act, Cap. 83** of the Laws of Saint Vincent and the Grenadines, against the Appellant alleging negligence. The action was heard in December 1997 and judgment was given in favour of the Respondent by Baptiste J. on April 7, 1998 in the sum of \$120,450.00 and costs to be taxed if not agreed.

On May 18th, 1998 the Appellant filed six grounds of appeal. Based on those grounds of appeal learned Counsel for the Appellant made submissions under three heads before this Court. Briefly they related to:

- [1.] The cause of death which corresponds so ground three of the notice of appeal
- [2.] Liability of the Appellant which corresponds to grounds one and two of the notice of appeal
- [3.] Damages which corresponds to grounds five and six of the notice of appeal.

Learned Counsel did not pursue ground four which touches on absence of notice stipulated by section 6 of the Compensation for Injuries Act.

Let me deal briefly with the submissions under the three heads.

CAUSATION

Learned Counsel for the Appellant submitted under this head that the learned Judge was wrong to come to the conclusion that the Deceased was electrocuted seeing that he himself had lamented the fact that there was an absence of medical evidence. The learned Judge said on that issue:

" Although I lament the absence of medical evidence in this case the only reasonable inference to be drawn is that Spencer met his death that day as a result of being electrocuted while working on the pole."

The learned Judge accepted the evidence of Wallace that there was an explosion from the pole that Augustus was working on and Augustus was seen sliding down at the same time with his belt on. Basdeo heard what he described as "people noise" and Ovil Lee heard "screams." The Judge inferred that the people noise and screams described by the two witnesses who gave evidence at the

trial for the Appellant were triggered by the explosion. There is evidence that when the explosion occurred current was cut off from the area. Wallace and Basdeo rushed to the assistance of Spencer and took him to Vermont Clinic and shortly thereafter to the General Hospital. Wallace said Spencer died at Vermont but Basdeo said he died within five to ten minutes of arriving at the hospital, in any case not long after the incident.

In *HAYNES v QUALCAST (WOLVERHAMPTON), LTD 1958 21 All.E.R.441* the English Court of Appeal had to consider the case of a plaintiff who was employed at the defendant's foundry as a moulder and who had received injuries to his left foot. The Court in the course of their judgment held that causation was a question of fact. I would not fault the learned Judge for drawing the inference that Augustus Spencer met his death that day as a result of being electrocuted while at work.

LIABILITY

Learned Counsel for the Appellant submitted under this head that the Appellant could not be liable when the Deceased went out of the designated work area where he met his death. This submission has the support of the evidence of Basdeo and Lee. Wallace who was working one pole apart from Augustus says nothing of the kind. It is passing strange that no where in the evidence it is recorded that Basdeo on October 31, 1988 ever remarked: "What was Augustus doing there?" or any words to that effect. It is observed that when the Appellant filed its defence on September 21, 1992 they said:

"On this particular occasion, the Deceased was told and was aware that there were live wires on the pole. He was told that he should not go beyond a certain point of the said pole because (1) it was unnecessary to do so; and (2) because the wires above were likely to be live. In breach of these and other express instructions the Deceased negligently climbed beyond the permitted point on the pole."
(See paragraph 5 of the defence).

I am not able to discern one bit of evidence so support that pleading. But more importantly there is no pleading that Deceased went out of the designated work area. The learned Judge who heard and saw the witnesses was in a good position to say whom he believed and he said at page 9 of the record on this aspect that the evidence of Basdeo and Lee lacked credibility. I think he was justified in coming to that conclusion.

As regards safety measures taken by the Appellant the learned Judge found that the Appellant issued safety equipment and they had a policy of disconnecting the power supply in the area designated for work. Besides, Basdeo would meet with the workers first thing in the morning to advise them of the plan for the day. So at page 8 of the record the Judge said:

"From the foregoing it would appear that one could not fault the safety standards of the Defendant Company."

He went on to find however that the safety regime was not full proof because he accepted the evidence of Wallace that the workers used to work with current on. According to Wallace sometimes they take it off, sometimes they leave it on. Basdeo lent support to that statement when under cross-examination he said:

"We work on poles with live wires not at all times. There are specific people to do that. Spencer was not one of the persons to work on poles with live wires."

The uncontroverted evidence in this case is that the pole on which Spencer was working on that fatal day had live wires. Lee under cross-examination is sure of that. And the pleading to which I referred earlier so indicated. Wallace said that he had been shocked and had seen Basdeo receive a shock. Basdeo admitted this. And Lee stated that one could get a shock when he is working on the line and the area should be isolated before working. So despite supplying equipment the Appellant had a duty to provide a safe place for the Deceased to work and to ensure that the area was isolated as Ovil Lee puts it.

The case of **Haynes** is also very instructive on liability. The Court of Appeal held that the defendants were in breach of duty to the plaintiff because, having regard to the nature of the hazard involved their obligation to their workmen to provide a safe system of work was not fulfilled merely by their protective clothing available if the workmen chose to obtain it. At page 444 of the judgment **Lord Evershed M.R.** referred to a case where **Lord Morton** of Henryton drew attention to the fact that the extent of the duty will depend in some degree on the gravity of the hazard which is involved and of the consequences which may ensue if damage is suffered. **Lord Evershed** also stated at page 446:

"it seems to me undoubtedly still the law that the question of causation is one of fact, to be considered in the light

of all the circumstances and probabilities."

I agree with the learned Judge's conclusion that the Appellant was negligent in the circumstances of this case.

DAMAGES

Under this head learned Counsel for the Appellant submitted as in ground 5 of the notice of appeal that the learned Judge erred in awarding a sum for the lost years. Counsel also challenged the multiplicand and the multiplier used by the Judge in the dependency claim.

It is trite law that when a person dies in such circumstances there are two possible causes of actions which may arise. These two actions have their origin from British Statutes. The **Law Reform (Miscellaneous Provisions) Act 1934** is the authority for the survival action and **The Fatal Accidents Acts 1846-1908** is the authority for the dependency action. The Caribbean has adopted these two actions sometimes calling the statutes by different names. In **RATTRAY v MUIR (1966) 15 W.I.R.87** upon the death of the husband action was brought to Recover damages on behalf of the widow and the five children under the Fatal Accidents Law of Jamaica and on behalf of the Estate under the Law Reform (M.P.) law of Jamaica. In Dominica there is the **Fatal Accidents Act Chapter 7:59** and the **Law Reform (Miscellaneous Provisions) Act Chapter 7:99**. In Saint Lucia the two causes of action arise under different provisions of the Civil Code. In Trinidad the survival action is found under the **Supreme Court of Judicature Act** and the dependency action under the **Compensation for Injuries Ordinance** - See **DEONARINE v NARINE (1969) 14 W.I.R.33**.

In this case the Respondent brought the action under the **Compensation for Injuries Act** of Saint Vincent and the Grenadines. The pleadings do not clearly set out the two forms of action and at first glance one would have thought that only the dependency action was being claimed. But learned Counsel for the Respondent submitted forcefully that a claim was being brought on behalf of the Estate as well and in reply to a question from me pointed to the grant of Letters of Administration.

On a perusal of Chapter 83 of the Laws of Saint Vincent and the Grenadines however it became clear that both causes of action are covered by the Act. The Act contains 13 sections. Most of the first twelve sections deal with the dependency action. Section 7 for example states that the action is for the benefit of relations and section 9 states how the damages recoverable is to be divided. Section 13 states in part that on the death of any

person on or after the 5th February, 1952, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. This is the typical provision to be found under the statutes authorizing the survival action. The provision is almost identical with section 13 of the *Law Reform (Miscellaneous Provisions) Act of Dominica* found under Part 111 of the Act - **SURVIVAL OF CAUSES OF ACTION**. I have therefore come to the conclusion that despite the inelegance of the pleadings the Respondent has claimed under both causes of action and the learned Judge was right to make an award for the lost years which really arises under the claim for the Estate. I will first deal with the quantum under the dependency action. In speaking of this kind of award *Wooding C.J.* in Deonarine's case referred to the often cited passage of *Lord Wright* in *DAVIES v POWELL DUFFRYN ASSOCIATED COLLIERIES, LTD. 1942 A.C.6021*:

"There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings, and pence, subject to the element of reasonable future probabilities."

In his computation of the damages under this head the learned Judge for the reasons he gave used a multiplier of 10. Learned Counsel for the Appellant suggested a multiplier of 7 or 8. After careful deliberation we have chosen the Judge's multiplier. As regards the multiplicand the Judge started with a dependency of \$100.00 for the Deceased's mother. Learned Counsel for the Appellant submitted that a deduction should be made for the Deceased was single, lived with his mother and he enjoyed a part of the \$100.00 that he gave. Learned Counsel for the Respondent submitted that there was no evidence that Deceased used from the \$100.00. We consider that the burden was on the Respondent to prove the dependency. We therefore deducted one-quarter of the figure to arrive at a weekly dependency of \$75.00. We arrived at an annual figure of \$3,900.00 and multiply by 10 to arrive at \$39,000.00.

I have stated above that the Respondent would have a claim for the Estate under the laws of Saint Vincent and the Grenadines. Comparatively recent legislation in England could not affect that. I would adopt the method of calculation of the lost years by the learned Judge except to substitute a twenty-five per cent deduction for the Deceased's living expenses instead of the ten per cent deducted. This means that from the figure of \$234,000.00, I would deduct \$58,500.00 instead of the \$23,400.00 deducted by the Judge. The remainder would be

\$175,500.00. The Respondent claimed for loss of expectation of life and the learned Judge awarded the usual conservative figure of \$2,000.00. Learned Counsel for the Appellant did not oppose this award except to submit that it must be deducted from the award under the Compensation for Injuries Act.

So I would add the sum of \$2,000.00 to damages for the lost years and arrive at the figure of \$177,500.00. Making a deduction of \$39,000.00 I arrive at the figure of \$138,500.00. It is usual practice to make a discount here as the Respondent is getting a lump sum payment which could be invested. I would follow the learned Judge and make a discount of twenty-five per cent and arrive at a total figure of \$103,875.00.

I therefore vary the award of the learned Judge and order the Appellant Company to pay the Respondent damages in the sum of \$103,875.00 and the Respondent's costs both here and in the Court below.

A.N.J. MATTHEW

Justice of Appeal [Ag.]

I concur.

SATROHAN SINGH

Justice of Appeal

I concur.

A.J. REDHEAD

Justice of Appeal