

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.138 OF 1994

BETWEEN:

ALFRED JACKSON
As Administrator of the Estate of
ENNIS JACKSON

Plaintiff

and

DAVID BALCOMBE

Defendant

Appearances:

Mr Arthur Williams for the Plaintiff
Defendant unrepresented

2000: June 6,9,13

JUDGMENT

[1] MITCHELL, J: This is what would be called a **Fatal Accidents Act** case. It was not much of a trial on the facts. The Defendant did not appear at the trial, nor was he represented by his solicitor of record or other counsel at the trial. The case is interesting only for the questions it raised about the requirements of the statute law of St Vincent when a deceased's estate is claiming damages for the wrongful death.

[2] The Plaintiff sues in his capacity as Administrator of the Estate of his deceased son, Ennis Jackson. The deceased was riding his motor-bike on 15 September 1991. He was just 22 years old at the time. He had a passenger riding pillion with him. These three circumstances might normally be causes for some suspicion. However, all the evidence indicates that the deceased was lawfully riding his bike

along the main road when the Defendant's passenger van came around the corner going in the opposite direction at great speed, and over on the wrong side of the road, and collided with the deceased's bike. The deceased was badly injured and was taken by his father by chartered air transport to the Queen Elizabeth Hospital in Barbados for treatment, but died from his head injuries 8 days later on 23 September 1991. The costs of transportation to and from Barbados, medical expenses, funeral expenses, and damages to the motor-bike amounted to a total of \$13,963.52.

[3] The deceased was employed at the Water and Sewage Authority as a meter reader at a monthly salary of about \$1,000.00 at the time of his death. He lived at home with his parents and contributed \$300.00 per month to his mother from his salary. He was the only one of his parents' 7 sons living at home. He had previously gone to secondary school, achieved a number of O-Levels, and was ambitious to succeed. Counsel submits that a proper award under this head, bearing in mind the obvious advanced age of the parents, would involve using a multiplier of 5. With an annual contribution paid to his mother of \$3,600.00 per year, this would produce a sum of \$18,000.00. However, it is more reasonable to assume that the major part if not all of the \$300.00 of his financial contribution made by the deceased to his mother was to cover the cost of his own board and lodging at his parents' home and not for the support of his parents. There is no evidence that his parents were indigent or otherwise depended on his contribution to assist with their own upkeep. I am not satisfied that the Plaintiff has made out a claim for compensation of a dependent in this case. This claim is subject to other problems as I explain below.

[4] The law in England governing the right of dependents of a person wrongfully killed to claim compensation for the financial loss they suffered, was codified in the **Fatal Accidents Act, 1846** and as subsequently amended. It allowed dependents to claim an amount that they could prove the deceased would have made for their needs out of his earnings during the "lost years." There were at common law no

damages awarded to the family of the deceased to compensate them for the wrongful death. The court did not presume to put a financial value to a human life. Additionally, at common law, until Parliament intervened, the estate of a deceased killed in an accident was not entitled to claim real damages against the wrongdoer. The rule was *actio personalis moritur cum persona*, or that a personal action dies with the deceased person. Unless an injured person had brought his action and obtained a judgment before he died, his claim for damages failed. It was the **Law Reform (Miscellaneous Provisions) Act 1934** that in England enabled the estate of a deceased to recover real damages against the person who had wrongfully caused his death in an accident under the 3 heads of: loss of earnings, pain and suffering, and loss of expectation of life.

- [5] In St Vincent there is the **Compensation for Injuries Act, Cap 83** of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines. That Act came into effect on 3 July 1884, and has subsequently been amended. Section 3 of the Act abolishes the common law rule that a personal action dies with the death of the deceased. It provides that the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured. Section 7 provides that every action shall be for the benefit of the wife, husband, parent and child of the deceased, and shall be brought in the name of the executor or administrator. Section 8 provides that the plaintiff on record is required to deliver with the claim full particulars of the persons for whom the action is brought. Section 9 provides that the damages awarded are to be apportioned among the parties for whom, and for whose benefit, the action was brought. Section 10 provides that every action for recovery of compensation under this Act shall be brought in the High Court. Section 13(1) provides that on the death of any person after 5 February 1952, all causes of action vested in him shall survive for the benefit of his estate. Section 13(6) provides that the rights conferred by the section are in addition to the rights conferred on the dependents by section 3 above. This Act, then, combines the remedies of the two UK Acts. Sections 3 and 13 appear to be taken from the **Law Reform (Miscellaneous Provisions) Act,**

while sections 7, 8 and 9 appear to be taken from the **Fatal Accidents Act**. The result is that in St Vincent a deceased's dependents are entitled to compensation from a wrongdoer who causes his death. Additionally, the estate of the deceased is entitled to compensation from the wrongdoer.

[6] When one examines the Statement of Claim endorsed on the writ in this case, one immediately notices that it does not invoke any statutory authority for the claim for general damages. Nor does it give any particulars of the dependents on whose behalf a claim is made. The Act requires at section 10 that the claim should have been brought "under this Act." I understand this to mean that the Plaintiff is required to specify in the Statement of Claim that the claim for damages is made "pursuant to the Compensation for Injuries Act, Cap 83 of the Laws of St Vincent." Failure to do so is in contravention of the Act, and is at best sloppy pleading. Section 8 of the Act says that the Plaintiff "shall be required" to deliver particulars of the dependent persons for whom the action is brought. That is a mandatory requirement. What is the effect of the Plaintiff not having complied? There are no legal authorities or text books easily available to me to consult to see if I can find any guidance on how to treat this default, and so I make a finding on this matter on general principles. Bearing in mind that this Defendant was unrepresented at the trial, it is incumbent on the court in fairness to insist that the mandatory requirements of the Act are carried out. Any claim of the parents under section 7 as dependents would fall away for failure to comply with this mandatory requirement. However, on the facts, as explained above, I find from the evidence that the parents were not dependents of the deceased, so that no damages would have been awarded in any event under section 7 even if there had been full compliance with the requirements of section 8.

[7] Concerning the claim for special damages (presumably on behalf of the estate though this is not stated), the position is different. I do not consider that the failure of the Plaintiff to specify the name of the Statute under which the claim for damages on behalf of the estate is brought is fatal. There are not in the Statute in

this regard the mandatory words "shall be required" to do so. Not that I wish to encourage loose and careless pleadings in matters of this sort. As an example of the haste in which the Statement of Claim was drafted, I might mention that there was originally no claim in the prayer for special damages. Fortunately, counsel at the trial observed this defect and corrected it before the case was closed. The amount of special damages pleaded and proved in the amount mentioned above are, therefore, awarded.

[8] Counsel asks the court to award general damages to the estate under 4 heads: loss of future earnings, pain and suffering, loss of expectation of life, and loss of amenities. Concerning the first, he asks the court to apply the principle in **Adsett v West [1983] 2 All ER 985** where in the case of a single young man the appropriate surplus was held to be properly 15% of his salary. This would, he submits, be \$1,800.00 in this case. He asks the court to follow the principle in **Howitt v Heads [1972] 1 All ER 491** and use a multiplier of 18. Using the above multiplicand and multiplier one arrives at a total figure of \$32,000.00 for loss of future earnings. This claim is not unreasonable. It is awarded.

[9] On the claim for pain and suffering, counsel asks for substantial damages as it is clear from the evidence, he submits, that the deceased suffered tremendous pain during the seven days before his death. Regrettably, I have no evidence that the deceased was conscious at any time after the accident and up to his death. His father never suggested that he was able to talk to his son while he was at the Queen Elizabeth Hospital or that he observed any suffering on the part of his son prior to the date of death. There is no medical certificate in evidence. The deceased suffered head injuries from which he eventually died, there was no suggestion that he had on a helmet at the time of the accident, and I consider it likely that he was unconscious from the time of the accident until his death. I make no award under this head. I observe, in parenthesis, that the day will come when in a similar case the amount of damages that a Plaintiff will prove will be substantially discounted in St Vincent because of the failure of the Plaintiff to take

the necessary precaution of wearing a safety helmet when indulging in such a dangerous occupation as riding a motor-bike, either as driver or as passenger. The same applies to a driver or his front seat passenger not wearing the seat belt provided.

- [10] In his submissions, counsel suggests that the heads of loss of expectation of life and loss of amenity should reflect only moderate awards. No authority or amount has been suggested to assist the court in finding any particular amount as reasonable or normal in St Vincent in these cases. In the circumstances, I make a nominal award of \$5,000.00 under each of these two heads of damages.
- [11] There will be judgment accordingly in the above amounts for the Plaintiff who is also entitled to his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge