ST LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 375 OF 1993

BETWEEN: AGATHA HENRY

Plaintiff

and

EAGLE AIR SERVICES LTD.

Defendant

CIVIL SUIT NO. 411 OF 1993

BETWEEN:

FELICIA ANDRINA GEORGE

Plaintiff

and

EAGLE AIR SERVICES LTD.

Defendant

Appearances:

Mr. Kenneth Monplaisir QC. with Miss Gail Phillip for the Plaintiffs
Mr. Oswald Wilkinson Larcher for the Defendant

December 11th, 2001

JUDGEMENT

[1] d'AUVERGNE J: At the trial, learned Counsel for the two Plaintiffs applied for the consolidation of the actions and having found the requirements for consolidation were satisfied, I granted the application.

[2] These consolidated cases are clothed in antiquity. The matters first came up for trial on the 2nd of May, 1996 and for one reason or another the proceedings were aborted and adjournments were granted.

[3] The attitude displayed by the Plaintiff, Felicia Andrina George, in suit 411 of 1993, left much to be desired; she was very rude to Counsel who was appeared on her behalf; she informed the court that he would no longer be representing her; and at the final hearing she became very abusive to Counsel for of the Defendant when he objected to Learned Counsel for the Plaintiffs making reference to an aircraft accident report which had not been exhibited.

[4] The Plaintiffs' Claim is for damages. Both actions were brought under Articles 609 of the Civil Code claiming damages for the estate of the deceased, Hughes Williams, and under Article 988 of said code for damages on behalf of the dependants.

Agreed Facts

[5] The Plaintiff in suit 375/93 is the mother of Hughes Williams (herein after called the Deceased) while the Plaintiff in suit 411/93, was the common law wife and the mother of his five minor children, the last child having been born posthumously.

[6] The Deceased, a thirty eight (38) year old man, was employed by the Defendant at a monthly salary of $2,500; that on the 12th of July, 1990 he boarded the Defendant's nine (9) seater Islander Aircraft No. J6 – SLU on a journey from Vigie Airport Castries, St. Lucia to Union Island Airport in the Grenadines, when Pilot Adam Clavier, who was employed by the Defendant's company and who was in control of the said aircraft. crashed almost 200 meters from the runway in Union Island. Both occupants in the Aircraft died instantly.

Plaintiffs Case

[7] The Plaintiffs' case is that the Deceased was employed as an Aircraft Maintenance Engineer and that when he boarded the said aircraft he did so in the course of his said

employment and moreover, since the pilot was a servant of the Defendant the latter would be liable for the acts of the servant done in performance of work for which he was employed.

[8] Learned Counsel quoted Articles 985 and 986 of the Civil Code of St. Lucia.

Article 985 states:

> "every person capable of discerning right from wrong is responsible for damage caused, either by his act, imprudence, neglect or want of skill and he is not relievable from obligations thus arising."

Article 986 states:

> "He is responsible for damage caused not only by himself, but by persons under his control, and by things under his care."

[9] He contended that not only was the pilot negligent but he was imprudent, which means, "rash", "unwise;" that due to his rashness and negligence he was responsible for his own death and the death of the other occupant, the Deceased.

[10] Plaintiff, Agatha Henry, gave evidence of the financial support given by her son to her, an amount of EC$200.00 a month.

[11] Plaintiff, Felicia Andrina George, told the court that she was self-employed as a street vendor and that she received from the Deceased monthly the following:-

$200.00	Per weekly groceries - $800.00 monthly
$150.00	Fees for 3 children attending preparatory school at $50.00 each
$200.00	For her personal use
$100.00	Water Bill
$ 50.00	Lessons for first child, Germain Larry Williams
$140.00	Phone Bill
$ 60.00	Electricity
$325.00	House rent
$106.00	Monthly payment on fridge
$500.00	"Extras in case the children needed other things"
$2631.00	

She told the court that the amount given to her, monthly, by the Deceased was $2,631.00.

[12] She further told the court that the Deceased augmented his income by private work from repairs to motorcars.

[13] Learned Counsel submitted that the issues to be considered in determining liability were:

(a) Was the Pilot, Mr. Clavier, negligent?
(b) Was the Deceased in the plane in the course of his employment?
(c) If he was not, would the Defendant be liable?
(d) The quantum of damages, if any, to be awarded.

[14] Learned Counsel conceded to the fact that no one gave evidence of how the accident occurred but made reference to an official report by the Directorate of Civil Aviation, which he said was full enough to determine whether the Pilot was negligent or not. (I pause here to state that this argument will be considered and determined later in this judgment). He argued that the Deceased was on the said plane in the course of his duty; that there was no evidence submitted to the contrary and that there was no written contract to prove that the Deceased's work was merely confined to working only on the ground in St. Lucia. He quoted Clerk and Lindsell on Torts, Fifteenth Edition, Chapter 3, Liability of master for torts of servants 3-19:

> "Course of Employment. The question whether a wrongful act is within the course of a servant's employment, or, as it is sometimes put, whether it is within the scope of his authority, is ultimately a question of fact, and no simple test is appropriate to cover all cases. That most frequently adopted is given by Salmond, namely, that a wrongful act is deemed to be done in the course of the employment, "if it is either (1) a wrongful act authorized by the master, or (2) a wrongful and unauthorized mode of doing some act authorized by the master."
>
> "Effect of Prohibition. Whether instructions given by the master to his servant which prohibit certain acts will prevent those acts from being within the course of the servant's employment depends upon whether they merely prohibit a particular mode of carrying out the employment, or whether they restrict the class of acts which the servant is employed to perform, the question being approached broadly and without dissecting the servant's task into its component activities."

[15] He further quoted the case of L.C.C. v. Cattermoles (Garages) Ltd., 1953 1 WLR 997. In that case a garage hand was forbidden to drive vehicles, but his duties did involve moving vehicles by manhandling. His employers were held liable for damage caused by his

negligence while driving a vehicle when instructed to move it to stop it obstructing access to the Defendants' petrol pumps. He was still doing the job which he was employed to do; all that was prohibited was the particular mode of moving the vehicle.

[16] Learned Counsel submitted that on the admission of the Managing Director of the Defendant's Company, that pilot Clavier was in control of the plane and was carrying out the work he was employed to do; and that the accident occurred in the course of the Pilot's employment, therefore, the Defendant is liable for injury sustained by the Deceased and consequently has the responsibility to pay damages to the Deceased's estate and dependants.

[17] Learned Counsel quoted Article 988 (3), which provides that a dependency action shall be for the benefit of the children and parent, which means that Plaintiff, Felicia Andrina George, cannot claim for the $200.00 per month given to her for her own use, but only on behalf of the children, which meant that the amount claimed by her should be $2,431.00 instead of the $2631.00 stated earlier.

[18] Learned Counsel quoted the principles and cases to substantiate what was meant by dependency and how the multiplier and multiplicand should be applied. He did the same with regard to survival action and quantified the amount of monies which the court should order the Defendant to pay to the Plaintiffs.

Defendant's Case

[19] The case for the defence is that the Defendant did not owe the Deceased any duty of care, for, at the time when he suffered the unfortunate demise he was on a gratuitous ride, a "joy" ride which was never sanctioned or authorized by the Defendant, was never part of his duties and, in any event, outside the scope of his employment.

[20] Mr. Ewart Hinkson, Managing Director of the Defendant company, told the court that the Deceased was employed as a mechanic and was responsible for maintaining the aeroplanes, he could rectify any malfunction or replace any unserviceable part prior to the

aircraft departing on a flight. *"Mr. Hughes Williams performed duties at SLBGA, St Lucia Banana Groovers Association Hanger. We rented hanger space from there while he, Mr. Hughes, was employed with me his duties did not take him outside of St. Lucia…….. Mr. Williams was required to check the oil, supervise the fueling and attend to any malfunctioning that the aircraft might have experienced en route to St. Lucia. "I have never sent Mr. Hughes to any island in the Caribbean to do work for me." that Hughes Williams' duties took him nowhere else but St. Lucia at Vigie Airport…… "During the period Hughes Williams worked with me he has never left the state to perform any duties outside of St. Lucia."*

[21] Under cross-examination the witness, Hinkson, said he had one engineer, Mr. John Lord, who was stationed in Antigua and worked for LIAT. He was employed because "*he had the necessary qualifications to sign the aircraft log* " and that "*from time to time he gave Mr. Hughes Williams instructions*." Mr. Hinkson also said that in his (22) twenty-two years experience as a pilot he had only known of one occasion when an engineer came aboard to test the tuning on a flight test. He agreed, however, that on the larger planes an engineer is present to monitor the power plants (the engines). He told the court that the Deceased did not like flying and also explained and gave reasons for the only occasion when the Deceased was to accompany him to Georgia, in the United States of America but which did not materialize.

[22] Learned Counsel for the Defendant contended that it was not enough for the Plaintiff in his Statement of Claim to allege merely that the Defendant acted negligently and thereby caused damage to the Deceased, he must also show that the alleged negligence was a breach of the duty which the Defendant owed to the Deceased.

[23] Learned Counsel argued that under the heading "Particulars of Negligence," in suit 411 of 1993 the Plaintiff alleged that "*the pilot so mishandled the aircraft with the net result that the aircraft failed to recover from a stall and incipient spin to the right which occurred when trying to line up the aircraft on the final approach. The pilot failed to conduct a standard approach to the runway*"; yet no evidence was adduced to substantiate those serious and

technical allegations, that no expert witness was presented to the court, nor any document to verify or confirm the allegations made.

[24] Learned Counsel concluded his arguments by urging the court to dismiss both claims.

CONCLUSION

[25] Before embarking upon the determination of the case and the reasons why I arrived at my conclusion, I would like to make reference to the aircraft accident report which I alluded to earlier in this judgment.

[26] On the very first day of the trial, learned Counsel for the Plaintiffs attempted to tender into evidence, "report on the accident to Britten-Norman Islander BN–2A–8-J6-SLU at Union Island on the 12th July, 1990." The manner in which it was being put into evidence did not conform with the requirements pertaining to the tendering of documents and an objection was made by Learned Counsel for the Defendant and the objection was upheld. It was at that time that all hell broke loose with the Plaintiff, Felicia Andrina George, and an adjournment was sought and was granted. The matter was given a date at the next call-over list and the trial continued over a very long period of time.

[27] Eventually, on the day set for the hearing of the addresses Learned Counsel once more made reference to the above-mentioned report to which Learned Counsel for the Defendants objected and at that juncture, Plaintiff, Felicia Andrina George, abused Learned Counsel for the Defendant and an adjournment was the only answer.

[28] At the next day's sitting for the continuation of the hearing Learned Counsel for the Plaintiffs quoted Article 32 of the Code of Civil Procedure which provides:

> "The Court or Judge may enlargen the time allowed for doing any act or taking any proceedings, upon such terms as the justice of the case requires, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time allowed."

He also quoted from Halsbury Laws of England, Fourth Edition Volume 37, Paragraph 456 - Notice to produce and admit documents at trial.

> "……. at any stage in a cause or matter the court may order any person to attend any proceedings in the cause or matter and produce any document specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding, although no person may be compelled by such an order to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial."

[30] It is an old and oft repeated principle that the court requires the parties to an action to bring forward their whole case within the rules of procedure. To allow the Plaintiffs to put in that aircraft report at the end of the case during the addresses would mean starting the whole case over and would not be fair to the Defendant. I accordingly refused the application.

[31] The court did not hear any evidence either viva voce or in written form as to how the accident which caused the death of the Deceased, together with Pilot Clavier occurred. The report alluded to by Learned Counsel for the Plaintiffs does not form part of the evidence and therefore Article 985 of the Civil Code does not apply.

[32] I agree with Learned Counsel for the Defendant that the requirements for maintaining an action for negligence has not been satisfied, for the onus of proving that the result of the negligence was the effective cause of injury is upon the Plaintiffs who must show the facts upon which the duty was founded, what duty was owed to the Deceased, and to show the breach of which the Defendant is charged.

[33] I find, as a fact, that the Deceased was employed by the Defendant as a mechanic. No evidence was led to show that he had undergone aircraft engineering studies and could check and sign aircraft log books. His monthly salary is another issue which confirms my belief.

[34] As mentioned earlier, there was no evidence before me upon which a determination as to

whether the Defendant had breached his general duty of care owed to an employee. In the premises I should dismiss the two cases.

[35} I have considered the issue of costs for the successful party, but I have seen all the witnesses and it is my view that in the circumstances no order for costs can be met.

[36] My order is as follows:

(i) Suit No. 375 of 1993 and Suit No. 411 of 1993 are dismissed.

(ii) There will be no order as to costs.

Suzie d'Auvergne
High Court Judge