THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CASE NUMBER 2003/0483

BETWEEN:

MARY AUGUATINE JALLIM

Claimant

AND

JOSEPH GHIRAWOO

Defendant

Appearances:

Mrs. Kim St. Rose for Claimant
Mr. Dexter Theodore for Defendant

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2005: February 8, 17

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JUDGMENT

Introduction

1. The Claimant's son, Collins Jallim, who was born in 1954, was run down by a mini bus driven by the Defendant on 3 October 2002 while he was crossing the main road at Bexon. He died two days later in hospital as a result of his injuries. She claims damages from the Defendant (a) in her own right for the trauma she says she suffered as a result of hearing the accident and seeing the aftermath (b) under Art 988 of the Code for her losses flowing from the death of her son and (c) under Art 609 on behalf of his succession. Collins was her only child and he had no wife or children of his own

so she is the only person interested in his succession but she has not obtained letters of administration.

2. The issues I must decide are:

   (1) whether the Defendant was legally responsible for the accident;

   (2) whether there was any contributory negligence on the part of Collins;

   (3) whether the claim for the Claimant's own trauma is valid and, if so, what damages she should receive for that claim;

   (4) whether the claim under Art 988 is maintainable given that she has not obtained letters of administration;

   (5) if so, what level of damages she should recover under Art 988;

   (6) whether the claim under Art 609 is maintainable in the absence of letters of administration;

   (7) **if so, what damages the succession is entitled to.**

3. I have been greatly assisted in doing so by the helpful written submissions put in by Mr Theodore and Ms St Rose after the hearing.

Issue (1)

4. I heard evidence relevant to this issue from two young girls who witnessed the accident, Melissa Jallim (the Claimant's niece) and her friend Sharel Louisy, from Peter Jallim (the Claimant's brother) who came to the scene shortly afterwards and from the Defendant himself.

5. Sharel and Melissa were sitting next to each other on a stationary bus facing south in the direction of Vieux Fort outside the Claimant's mother's house at the time of the accident. They said they saw Collins come out of the house and cross the road behind that bus carrying some bags (it is not disputed that he was taking some garbage to a bin on the other side of the road). They then saw the Defendant's bus come at speed from behind the stationary bus and begin to overtake it and then veer to the right and hit Collins by the right hand edge of the road and throw him to the entrance of the

garage which is further towards Vieux Fort on the right side of the road. Sharel also said that the Defendant's bus did not stop until it reached a plantation somewhat further down the road and that she heard the Defendant talking to the driver of the stationary bus after the accident asking if he thought he would be blamed for the accident and heard the driver say that he would cover for the Defendant.

6. Peter Jallim was the owner of the garage as well as the uncle of Collins. When he came onto the scene a few minutes later he found Collins lying in the entrance to his garage. He noted debris on the road and when the police came he insisted that this was the point of impact and all parties ultimately agreed that it was indeed: this point was on the right side of the road looking south about 4 feet from the side of the road, 10 feet from the rubbish bin and 19 feet from where Collins ended up. He also noted that the Defendant's bus was stopped outside the plantation about 90 feet from the point of impact. He took a photo of the Defendant's bus which was damaged on the right hand edge of the front. It was common ground that the road was 25 feet wide and that the buses were about 6 feet wide.

7. The Defendant said that he was travelling towards Vieux Fort with an empty bus. He was going at a reasonable speed of 30 mph and eased over to the right to overtake the stationary bus. As he overtook, Collins suddenly jumped out from the front of the stationary bus and he could not avoid hitting him. He stopped within a few feet and then moved his bus and parked by the plantation. He said that later when he visited Collins in hospital Collins accepted in the presence of his mother that the accident was his own fault. This was denied by the Claimant. The Defendant agreed in cross-examination that the accident happened in a built up area where there is always a danger of pedestrians and that one should not overtake at this point.

8. Notwithstanding Mr Theodore's characteristically thorough cross-examination and the undoubted small discrepancies which emerged, I have no hesitation in preferring the evidence of the girls to that of the Defendant as to how the accident happened and how fast he was going. Sharel in particular seemed to me a reliable and honest witness. Taking account of this and the physical evidence as to where the accident happened and how far Collins was thrown I am satisfied that Collins did not jump out from behind the front of the stationary bus but that he went behind it and was already

over to the right hand side of the road when the Defendant, who was driving too fast, ran into him. In those circumstances I am satisfied that the accident was caused by the Defendant's negligence and that he is legally responsible for it. I should also say that I accept the Claimant's evidence that she did not hear any conversation where Collins accepted responsibility for the accident and I am not satisfied that any such conversation took place.

Issue (2)

9. There was some suggestion that Collins, who was suffered from schizophrenia, may not have taken his medication and may have been behaving erratically that morning. There was really no basis for this suggestion. Given that I have rejected the Defendant's account of the accident and that the point of impact was well over to the right of the road there is no basis left in my view for a finding of contributory negligence on the part of Collins. I therefore find that the Defendant is 100% liable for any damages to which the Claimant is entitled.

Issue (3)

10. The requirements for a claim like the one brought by the Claimant personally are correctly summarised by Mr Theodore at paragraph 9 of his written submissions. There is no dispute that the Claimant had a sufficiently close relationship with Collins and that she was present at the immediate aftermath of the accident. Nor I think can it be seriously disputed that a psychiatric injury would be a reasonably foreseeable consequence of her exposure to the immediate aftermath of the accident. The issues are whether she suffered a psychiatric injury and whether it was caused by a direct perception of the accident and its aftermath.

11. The Claimant's evidence (which I accept) was that she heard the impact outside her house and that she knew instinctively that it was her son who had been hit. She went out and found him lying by the garage. He was bleeding from the nose. She was shocked and scared and screamed and cried. Since the death of her son her health has deteriorated. She also relives the incident several times a day because of the

sound of the vehicles passing the house and she has terrible dreams about the way he died, although she has not had any since December 2004.

12. The only medical evidence put before the court was in the form of a short report from Dr. Poddar dated 14 May 2003 (see p42) which states that she had been complaining of sleeplessness, distressing dreams and upsetting memories, which "points to Post Traumatic Stress Disorder along with a degree of Anxiety". As to her health in general it was clear from her cross-examination that she had been suffering from hypertension, sinus problems and gas in her stomach for many years before the accident.

13. This evidence is not as strong as it might have been in relation to the question whether the dreams, sleeplessness and upsetting memories amounted to psychiatric damage and as to whether they were in fact caused by a sudden assault on the Claimant's mind. However, having seen the Claimant give evidence and formed the view that she is a person of reasonable fortitude I am satisfied on the balance of probabilities that these symptoms were the result of real psychiatric damage (post traumatic stress disorder) which was itself the result of the trauma of hearing the accident and witnessing the aftermath rather than being the result of general feelings of grief. It is clear, however, that the Claimant's general deterioration in health is not something for which the Defendant can be liable and that any post traumatic stress disorder is relatively mild. In those circumstances I propose to award the Claimant the modest sum of $6,000 under this head.

Issue (4)

14. Mr Theodore says that the claim under Art 988 must fail because the Claimant has never obtained letters of administration. This point was only formally raised by Mr Theodore at the end of the trial although it had apparently been mooted at the case management stage. Ms St Rose made the practical point in response to it that Collins's succession was of no value save for this claim and the only person who would benefit from it was the Claimant so that she took the view that applying for letters of administration would not be worth the trouble and expense. I have considerable sympathy with that position, but if Mr Theodore is right that this claim is a nullity in the absence of letters of administration then I must of course reject the claim.

15. Mr Theodore relies on a case decided by Edwards J called *Stephenson v James-Soomer* (2003/138) 19.4.04 and a decision of the English Court of Appeal called *Ingall v Moran* [1944] KB 160 cited therein. With respect to Edwards J, it seems to me that the full terms of Art 988(4) may have been overlooked in the *Stephenson* case. Art 988(4) expressly provides that the action is to be brought by the administrator of the deceased but that, if there is none, it can be brought by any of the persons for whose benefit the action is given (which, by Art 988(3), includes a mother). This provision seems to me to be a clear and complete answer to Mr Theodore's point in relation to the Art 988 claim. I note for the sake of completeness that the *Ingall* case related to a claim under the English equivalent of Art 609 and not Art 988. The other cases referred to by Edwards J (*Finwegan v Cementation* [1953] 1 AllER 1130 and *Burns v Campbell* [1951] 2 AllER 965: neither of them were produced for me) were apparently decisions under the Fatal Accidents Act 1846, which appears to have been differently worded in this respect (see paragraph 22 of Edwards J's decision which recites that section 2 of the 1846 Act simply says that the action "shall be brought by and in the name of the executor or administrator of the person deceased").

Issue (5)

16. The damages to be awarded under Art 988 are designed to compensate for the injury resulting to the beneficiary from the death (see Art 988(5)) and they may include funeral expenses if incurred by the beneficiary (see Art 988(10)).

17. `The Claimant's witness statement makes a case that she would travel to England each year on holiday for six months and would stay rent free at Collins's council flat, thereby saving a total of $3,840 each year which she will now have to meet. I accept Ms St Rose's submission that the loss compensated under Art 988 does not necessarily have to be a direct financial loss and that it can include the value of state benefits to which the deceased was entitled. However, in my view this claim is simply too remote and unforeseeable to be recoverable; further, I am not satisfied that following the death of her son the Claimant will be visiting England for the same periods each year in any event. I make no award under this head.

18. The Claimant also produced receipts for various items connected with Collins's funeral which total $12,785 (see paragraph 2.5 of Ms St Rose's written submissions, taking out the cost of the reports, which are recoverable as costs if at all, and the hospital charges, which are not the result of the death of Collins but of his injuries before death). I accept that she incurred these expenses. I agree with Mr Theodore that the amounts claimed seem on their face somewhat extravagant but, having seen the Claimant give evidence and heard her answer the point by saying that Collins was all she had and she wished to give him the best burial she could, I simply cannot say she has behaved unreasonably in incurring these expenses. I therefore propose to award her $12,785 under Article 988.

Issue (6)

19. A similar point about the failure to obtain letters of administration arises in relation to the claim under Art 609 but in my view the result is quite different. The claim under Art 609 is brought not for the benefit of dependants but for the benefit of the succession in respect of causes of action vested in the deceased at the time of his death. As Mr Theodore points out, such causes of action vest, until administration is granted, in the Chief Justice and the puisne judges severally (see Art 586(2)). The Claimant therefore had no title to sue on behalf of the succession at the time she purported to start the Art 609 claim (or at any time thereafter). There is no equivalent to Art 988(4) in Art 609 and I cannot see any way of avoiding the conclusion reached in *Ingall's* case that in such circumstances the claim is a nullity and that nothing can be done to save it. The fact that the point was not taken until the end of the trial can nevertheless be reflected in the costs order I make in relation to this claim (see *Ingall's* case per Goddard LJ at page 173).

Issue (7)

20. Assuming I was wrong that the claim under Art 609 was a nullity the damages to which the succession would have been entitled would be damages for the pain and suffering endured by Collins in the last two days of his life and a sum for loss of expectation of life. Collins suffered multiple injuries in the accident (they are set out at paragraph 5 of the statement of claim) but he was able to feel and communicate while in hospital. I

would have awarded $7,500 in respect of this. I would also have awarded his succession the medical expenses to which I have referred which amounted to $750. Counsel were not able to assist much in relation to the current conventional award for loss of expectation of life: Mr Theodore referred to a number of cases started in the 1980's where $1,500 were awarded. Ms St Rose referred to a case decided in 1998 where the award was $2,000. I would have thought that in 2005 the time had come to uprate the conventional award to $3,500 and this is the sum I would have awarded, making a total of $11,750.

Result

The total damages to which the Claimant is entitled are therefore be $18,785 (12,785 + 6,000). I will award interest on that sum at 6% from the date of the accident, which gives $2,592 (18,785 x 6% x 2.3). There will therefore be judgment for $21,377. I will hear the parties on costs: at the moment I would intend to award the Claimant her costs on the prescribed basis as if she had succeeded on a claim for $ 21,377 plus the $11,750 she would have recovered under Art 609 if she had gone to the trouble of obtaining letters of administration which works out at $33,127 and gives a figure for costs of $9,782 (9,000 + 3,127 x 25%).

JUSTICE MURRAY SHANKS

High Court Judge (Acting)