

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV 0001/2006

BETWEEN:

CALIXTUS HENRY

Claimant

and

(1) MARIE ANN MITCHEL
(2) THERESA HENRY

Defendants

Appearances :

Mr. C. Foster for Claimant

Mr. A. Alcide for Defendant

2007: April 24;
May 1,

JUDGMENT

- [1] **COTTLE J.:** The Claimant brought the present action seeking 2 declaration that he is entitled to an undivided half share in Block 0029B Parcel 23.
- [2] The Claimant brought suit against the Defendants who were the drivers of the respective buses. The first Defendant denied liability. The second Defendant suffered judgment in default of defence to be entered against him, the Claimant thereupon discontinued the action against the first Defendant and now seeks to have the damages for her loss assessed against the second Defendant.

- [3] In support of the assessment of damages the Claimant filed two Affidavits. No evidence was led on behalf of the Defendant. The Claimant was not cross examined by the Defendant. This unsatisfactory state of affairs arose from the failure of Counsel for the Defendant to file any Affidavits on his behalf. Indeed it does not appear that any instructions were ever taken from the Defendant in this regard.
- [4] At the trial in open Court which had been adjourned at the request of Counsel for the Defendant Counsel did not attend. Mr. Jeannot Walters appeared holding papers for Mr. M.P. Foster. Mr. Walters had no file. He had no instructions. He could only ask the Court to adjourn the matter again to permit Mr. Foster to attend. This application was not granted as no reason was advanced to explain the absence of Mr. Foster. There was then no one able to cross examine the Claimant. The Defendant said he had never even seen the Affidavits in support filed by the Claimant.
- [5] The Court was thus left with the uncontroverted evidence of the Claimant upon which to act.
- [6] Mr. A. George for the Claimant also filed helpful skeleton submissions with authority in support. No response was forthcoming from Mr. Foster for the defendant despite an order by Edwards J. that he do so by 12th January 2007.

Special Damages

- [7] The Claimant seeks to recover \$20,165.00 as special damages. It is accepted that special damages must be pleaded, particularized and proven before they can be awarded.
- [8] In her Affidavit the Claimant sets out that the funeral expenses amounted to \$10,800.00. Receipts evidencing payment of this amount were exhibited. I accept

this item. The Claimant also sought to recover the cost of the destroyed motor cycle, the cost of the clothing the deceased was wearing, the value of a gold chain which she says he wore when he left home the value of a bag and the cost of a pair of sunglasses.

- [9] No supporting evidence was led to substantiate these sums. I do not feel satisfied and thus I do not award the amounts claimed as special damages in regard of these items. The total award for special damages is thus \$10,800.00.

General Damages

- [10] Article 988 of the St. Lucia Civil Code permits an action to be brought for the benefit of the wife, husband, parent or child of the person whose death has been caused. In the instant case the deceased is survived by his mother, the Claimant, and 6 minor children.

- [11] To calculate the award to be made under this head the value of the dependency, the amount provided by the deceased to his dependants, must first be ascertained and multiply this by the period of the dependency.

- [12] The evidence of the earnings of the Claimant is very unsatisfactory. He was a seaman and part-time Disk Jockey. The Claimant says he earned \$6,000 - \$7,000 per month as a seaman from November – March. During the rest of the year he cleaned, polished and varnished yachts earning \$500 – \$1500 monthly. His earnings as a D.J. were in the order of \$600 weekly. When these amounts are aggregated, I arrive at an annual figure of approximately \$60,800.00 or an average of about \$5,000 per month.

- [13] The Claimant says he gave her \$200 monthly and paid house hold expenses of \$775.00.

[14] At the time of his death, the deceased was 36 years old. He maintained his children in the sum of \$100 per child per month. I thus accept that he paid \$600 monthly as maintenance. The Claimant says he also contributed by buying food stuff. Because of the State of the evidence it was not possible to precisely quantify the value of the dependency. I am thus forced to take a broad view. I am content to adopt the approach as in the case of Monica Plummer v Conway Ltd (942/2000 St. Lucia) and put the value of the dependency at the rate of 2/3 of the annual salary that is $2/3$ of \$60,000 = \$40,000.

The Multiplier

[15] The deceased in the Monica Plummer case was age 37. Shanks J used a multiplier of 10. I am content to do likewise. The resulting award would be \$40,000 x 10 = \$400,000.

[16] Under Article 609 of the Civil Code the Claimant can recover damages from the Defendant for the benefit of the estate of the deceased.

Loss of expectation of life

[17] This is usually a modest conventional award. I award the Claimant \$3,000 under this head.

Loss of future earnings

[18] The deceased was aged 36 and is indicated above earned \$60,000 per year. Mr. George for the Claimants suggests that some discounting of the annual income must be made to reflect provision for taxes and national insurance. There is also no clear evidence of what sum the deceased would have spent on himself.

The multiplier

- [19] For this healthy 36 year old having regard to the cases cited by Counsel for the Claimant, I am persuaded that a multiplier of 14 is apt.
- [20] The award of $14 \times \$60,000 = \$840,000$. I then discount by 33.3% to reflect what the deceased would have spent on himself = \$560,000.00. To take into account the effect of income tax payments, I deduct again one third of this sum = \$373,333.33.
- [21] Thus the award of damages under Article 988 is roughly equal to that under Article 609 of the Civil Code.
- [22] It is accepted that it would be wrong to award damages under both articles to the Claimant. I would therefore award the Claimant the larger of the two amounts that is the sum of \$400,000 as general damages. But the matter does not end there. I must also take account of the fact that the Claimant now gets a lump sum, monies which would otherwise have been earned over time. I will thus reduce the award of general damages by a further 10% to reflect this.

The award

- [23] The outcome of the arithmetic is that I award the Claimant special damages in the amount of \$10,800.00 and general damages of \$363,800.00.

Interest

- [24] Interest is awarded on the special damages at the rate of 3% from the date of filing of claim until judgment. Interest is awarded on the global sum at the rate of 6% from judgment until payment.

Costs

[25] I award the Claimant costs at the prescribed rate. The award here is at 60% of the costs on a full trial as this represents a default judgment with assessment of costs. The amount works out to be \$35,280.00.

BRIAN S. COTTLE
HIGH COURT JUDGE