

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

GRENADA

CLAIM NO.GDAHCV2005/0391

BETWEEN:

YVONNE THOMAS
(Administratrix of the Estate of Roy Thomas, Deceased)

Claimant

AND

JAMES MITCHELL
AUDLYN MITCHELL

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mr. Nazim Burke for the Claimant
Ms Karen Samuel for the Defendants

On written representations

2007: October 3rd, 4th

ASSESSMENT OF DAMAGES

- [1] **MATHURIN, M:** On the 4th November 2002, Roy Thomas, the deceased, was a passenger in the 1st defendant's vehicle which was at the material time being driven by the 2nd defendant. There was an accident and the vehicle crashed into a lamp post causing the deceased injuries which he died from 10 days later. The issue of liability was determined by a judgment in default of appearance in favor of the estate of the deceased which was instituted by the claimant in this action, Yvonne Thomas who is the administratrix of the estate of Roy Thomas, wife of the deceased. The parties have filed evidence and submissions to assist the court on the issue of quantum of damages.

[2] The parties agree as to special damages in the sum of \$6,467.00, damages for pain and suffering in the sum of \$22,000.00 and \$7,000.00 for loss of expectation of life. The sole outstanding issue is that of loss of earnings in the lost years. The parties agreed to rest on their written representations on the issue.

[3] The parties have submitted the following authorities on the issue.

Anna Modeste and Anr v Glen Jacobs and Anr Claim number GDAHCV2000/0583
Pickett v British rail Engineering Ltd (1980) AC 136
Gammel v Wilson (1982) AC 27
Alphonso v Ramnauth (1997) 56 WIR 183

[4] The principles in calculating the award for loss of earnings was stated as follows in the Pickett case as follows;

" The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at the time of death would suggest he was reasonably likely to achieve."

Additionally, the court must make the best estimate based on the known facts and prospects at the time of death.

[5] The evidence of Yvonne Thomas is that that the deceased earned approximately US\$2,500.00 per month of which he remitted US\$2,000.00 per month to assist with the mortgage on their house, household bills and maintenance of herself and her children. In this regard she has submitted receipts evidencing various amounts of money between US\$1,000.00 and US\$2,000.00 sent by the deceased over a period of time. She has also submitted a letter from his employer verifying that *"Mr. Roy Thomas was employed by Norwegian Cruise Line from December 1997 to October 28th 2001."* The letter dated the 21st September 2002 also states that Mr Thomas's salary was US\$895.00 and with tips, it averaged US\$2,852.00 per month.

[6] I accept that Mr. Thomas remitted monies to the claimant during that period and also accept that there is no evidence to refute that he was not employed at the time of his death. I also considered the fact that the letter did not indicate that he was employed with the cruise line between the period of October 2001 and August 2002 when the accident occurred. I take this into account as this would obviously impact on his career prospects at the time of his death. However, that having been said, it is not conclusive that Mr. Thomas would not have worked at some point and continued his responsibilities to his family.

[7] I also take into consideration the age of his children and recognize that eventually his contribution towards his childrens' maintenance would have eventually abated or ceased. The children were both of an age where their independence was imminent, the older having left school and the younger Denroy, at the TA Marryshow Community College.

[8] Mr. Thomas's salary was US\$785.00 per month which is equivalent to approximately EC\$2,132.76 when converted at the rate of 2.7169, which is the conversion rate offered by the claimant. The bulk of what he received was buttressed by tips which raised it to US\$2,852.00 (EC\$7,748.00). The claimant alleges that he sent US\$2,000.00 (EC\$5433.80) per month but the documentation in support of this does not suggest that this was a norm.

[9] The issue of whether the deceased would have earned a salary comparable to that he earned on the Norwegian Cruise Line is one of speculation. Indeed the fact that there is no indication of employment of the deceased between October 2001 and August 2002 would suggest otherwise in my opinion. I would venture, in the circumstances for the purpose of calculating the lost years, a monthly salary of EC\$3,500.00.

[10] The judgment of Benjamin J. in the **Anna Modeste** case addressed in detail the manner in which the court determines the annual salary which is the multiplicand used for calculating the lost earnings. He referred to Lord Scarman in **Gammel v Wilson** who confirmed the approach taken by Lord Wilberforce in **Pickett's** case;

"the amount to be recovered in respect of earnings in the "lost years" should be after deduction of an estimated sum to represent the victim's probable living expenses during those years. I think that this is right because the basis, in principle, for recovery lies in the interest which he has in making provision for dependents and others, and this he would do out of his surplus."

[11] Benjamin J also referred to Connor LJ in the unanimous Court of Appeal judgment in **Harris v Empress Motors Ltd** (1983) 3 All ER 561

"However, where the deceased expended the whole or part of his net earnings on living expenses (such as rent, mortgage, interest, rates, heating, electricity, gas, telephone etc and the cost of running a car) for the joint benefit of himself and his dependents, a proportion of that expenditure (the exact proportion being dependent on the number of dependents) should be treated as expenditure exclusively attributable to his living expenses and thus deductible from his net earnings in making the assessment under the 1934 Act; for example, where the only dependent is the deceased's wife one-half of the expenditure for their joint benefit should be deducted from his net earnings, but where there is a wife and two dependent children, one quarter of the expenditure for the family's benefit should be deducted from his net earnings."

[12] The value of Mr. Thomas's living expenses are calculated at one third of his net earnings amounting to EC\$1,166.66 for the period of two years when his son finishes college and thereafter at one half of his net earning in the sum of EC1,750.00.

[13] The deceased was 49 at the time of death and considering the authorities presented to the court of **Alphonso v Ramnath** where a multiplier of 12 was allowed for a 45 year old, I would venture that a multiplier of 8 is reasonable in the circumstances. Given that the

amount would be awarded in a lump sum and catering for the vicissitudes of life, the figure should be discounted by 10% as was done by Singh in Ramnath's case.

[14] The award is calculated as follows;

EC\$2,333.34 x 24 months = \$56,000.16
EC\$1,750.00 x 72 months = \$126,000.00

Total		-----	\$182,000.16
Less 10%	=		\$163,800.14

[15] In summary, the total award is as follows;

Special damages	\$	6,467.00
General damages		22,000.00
Loss of expectation of life		7,000.00
Lost of earnings in the lost years		163,800.14

	\$	199,267.14

[16] Interest is awarded on special damages and damages for pain and suffering at 3% from the service of the claim form until the 3rd October 2007. Interest is awarded at the statutory rate on the entire judgment sum from 3rd October 2007 until payment.

[17] Prescribed costs are to be paid to the claimant in the sum of \$23,334.00 which represents the percentage of costs allowed up to default judgment and including assessment of damages.

**CHERYL MATHURIN
MASTER**