

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2009/0825

BETWEEN:

OWEN WILLIAMS

Claimant

AND

KENYAN FREDERICK

Defendant

Appearances:

Ms. Antonia Auguste for the Claimant
The Defendant in person

2014: February 21st

2013: May 20th

DECISION ON ASSESSMENT OF DAMAGES

Background facts

- [1] **TAYLOR-ALEXANDER M:** On the 29th of October 2006, the deceased, Shederick Nelton, a taxi driver by profession met his untimely death when a vehicle driven by the defendant and registered as T3150, travelling in the opposite direction along the La Caye Dennerly Highway, lost control due to its excessive speed and collided with the vehicle that the deceased was driving. A default judgment entered on the

20th September 2010 puts it beyond dispute that the accident was as a result of the negligence of the defendant who at the time was the driver of T3150.

- [2] Owen Williams the son and personal representative of the estate of the deceased has brought these proceedings under Article 609 for the benefit of the estate of the deceased and under Article 988(3) of the Civil Code of the Revised Laws of Saint Lucia 1957, for the benefit of the wife of the deceased whom it is alleged was wholly dependent on him. Both of those provisions were amended by Act of Parliament No 34 of 1956, the effect of which was to have brought these provisions in line with the English common law, which can now be relied on for the interpretation and understanding of these provisions.
- [3] The application for assessment was supported by documents filed in the proceedings and exhibited to the affidavit in support of assessment filed by Owen Williams on the 1st of March 2012 and 10th October 2012.
- [4] On the day of assessment the defendant who at all times, was represented by Mr Marius Wilson appeared unassisted. The defendant requested time to retain new counsel on the basis that he did not wish to face the assessment unaided, and had been trying for some time, unsuccessfully, to get his file from his counsel in order to retain new counsel. I denied his request. This matter had been scheduled for assessment over a year and a half ago, and had been adjourned on many occasions in the main to accommodate the defendant and his counsel. The defendant's difficulties with his current counsel were not new and he had had ample opportunity to retain new or other counsel. I nevertheless stood the matter down for two hours to allow the defendant to find his or other counsel. Mr George Charlemagne who had a familiar relationship with the defendant appeared at a point during the proceedings but acknowledged his own limitations, he being pressed for time to be elsewhere.

Claim for the Benefit of the Estate

- [5] Article 609 (1) and (2) of the Civil Code of the Revised Laws of Saint Lucia 1957 provides that *“On the death of any person after the commencement of this chapter, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his succession.... (2) Where a cause of action survives as aforesaid for the benefit of the succession of the deceased person the damages recoverable for the benefit of the succession of that person—(a)...*
(b)...
(c)where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his succession consequent on his death, except that a sum in respect of funeral expenses may be included.

Loss of expectation of life

- [7] In **Veronica Auguste v Tyrone Maynard et al** SLUHCV1984/0440 recently deceased Matthew J helpfully explained that while damages under this head had traditionally been limited to a small conventional award for loss of expectation of life, the current approach adopted by our courts following the landmark decisions of **Pickett v British Rail Engineering Limited** 1979 1 AER 774 and **Gammell v Wilson** 1980 2 AER 557 is to allow recovery for future earnings for the “lost years”. Although legislation in the form of the Administration of Justice Act did away with the claim for lost income during the lost years in the United Kingdom, the cases of Pickett and Gammell have historically been adopted as binding authority in our jurisdiction. This was recently affirmed by the Court of Appeal in **Cyril Mathurin v Anthony Augustin et al** HCVAP2007/041
- [8] The claimant submits that our courts have almost standardized the award, but that in more recent cases accommodation has been made for inflation. He relies on the

cases of **George Jolly et al v Vallen Francois et al** GDAHCV2010/0302 and has submitted the sum of 10,000.00 as an appropriate award under this head. In **Plummer et al v Conway Bay Ltd** SLUHCV2000/1041 the high court of Saint Lucia this jurisdiction awarded the sum of \$3000.00 under this head, and although Georges J in **Bertha Compton** rationalized that the Court of Appeal was prepared to accept this figure being increased to \$3500.00, this was an obiter indication¹. For myself I can find no justification for departure from the awards of the high court of this jurisdiction and I award the sum of \$3000.00 under this head.

Funeral Expenses

[9] I have allowed the following pleaded and proved funeral expenses

1. Announcement of death on Radio St.Lucia	\$100.00
2. Burial fees paid to the Methodist Church	\$595.00
3. Burial fees paid to Rambally's Funeral Services	\$10,167.00
4. Costs of Burial spot at Forestierre	\$4000.00

Loss of earnings for the lost years

[10] Shanks J in **Plummer et al v Conway Bay Ltd** SLUHCV2000/ 1041 explained this award as being a notional surplus representing the difference between the deceased estimated net earnings during the lost years of life under one hand and the cost of maintaining himself during the period of the other.

[11] The claimant submits that 9 is an appropriate multiplier to be utilized in this case. Counsel for the claimant further submitted that I should not be restricted in my deliberations to the normal retirement age. She relied on the authority of **Mario's Pizzeria Limited v Hard Ramjit** Civil App No 146 2003 a decision of the Court of Appeal of Trinidad and Tobago where Kangaloo JA delivering the decision of the

¹ Jallim v Ghirawoo SLUHCV2003/0483

court concluded that taxi drivers do not ordinarily have a retirement age and are known to work well beyond the age of 60.

[12] The multiplier is used by the courts to assess loss of earning and to arrive at an amount that the claimant has been prevented, but for his death from earning. The calculation of the multiplier must also account for other risks and vicissitudes that would have naturally occurred in the deceased's life. I am inclined to a multiplier of 7. Given the age of the deceased, his employment as a taxi driver, the representation in the claim that he was a healthy 57 year old who enjoyed a happy vigorous life.

[13] A letter from holiday taxi, a taxi association with which the deceased was affiliated, offers \$5000 as the approximate monthly salary of the deceased.

[14] In **Auguste v Maynard** Matthew J in calculating the multiplicand and relying on the authority of **White and Another v London Transport Executive** (1982 1 AER 410) said thus:—

"I bear in mind that in arriving at the deceased's notional surplus earning on which the award is to be based, no deduction is to be made from his net earnings on account of money he would have spent on his dependents. The loss is therefore to be measured by the difference between the deceased's estimated net earnings and the estimated costs of his maintenance and of providing for himself the facilities of a reasonably satisfying and enjoyable life"

[15] The claimant submits that he spent approximately 25% of his earnings on himself. The pleadings and evidence bear out that the deceased was a family man with a wife and children. His children were not represented as his dependents. I am also cognizant of the fact that he was a taxi driver, a profession where personal grooming is of particular importance. I find that no less than 30% of the

deceased's earnings would be spent on himself, for an award of \$ 60,000.00 x 7 x 70% = \$294,000.00.

Other Pecuniary Losses

[16] The following have been identified as the other quantifiable loss suffered. Those damages have been pleaded, particularised and proved and are :—

(i) Police Report	\$200.00
(ii) Tyrone Engine Repair and wrecker service	\$450.00

(iii) Loss of Vehicle: The salvage value of the vehicle was represented to be \$12,000.00 by Freddy's Garage, but the salvage was sold to the deceased's son for \$9000.00. Upon my inquiry as to why the vehicle did not fetch the salvage value the claimant indicated that as the vehicle had belonged to his father the insurance allowed them to have it at a discount.

In my view the friendly discount offered to the claimant ought not to operate to prejudice the defendant such that the pre accident value of the vehicle should be discounted by \$12,000.00, for a total loss on the vehicle of \$27,300.00, the sum that I now allow.

The Dependency Claim

[17] Article 988(2) and (3) of the Civil Code provides:—

"Where the death of a person is caused by a wrongful act, neglect or default, which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his injury thereby, 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, and although the death was caused under such circumstances as amount in law to felony.

Every such action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused, but notwithstanding anything contained in this code with regards to prescription, no such action shall be commenced at any time later than three years after the death of such deceased person"

- [18] Although the deceased had children, the claimant's evidence is that they were all above the age of majority. There was no evidence to suggest that any of them were dependents of the deceased. The deceased left his lawful wife who at the time of the accident was 51 years old. There is no dispute that she qualifies under Article 988 (3) of The Civil Code she being of the category of the persons listed thereunder, for whose benefit the action is given.
- [19] The evidence of Owen Williams in his affidavit of the 1st March 2012 is that the deceased had a dependent wife. Nothing further is offered in clarification of her dependency, her name was not provided nor was a marriage certificate exhibited in support of the averment. It is pleaded at paragraph 6 of the statement of claim that the deceased had a wife whom he gave the sum of \$1500.00 per month from his earnings, it was also pleaded that he assisted by doing chores and maintenance around the home.
- [20] Despite these obvious limitations I must proceed to determine the value of her dependency. I however hold that any sums found due under Article 988 are only payable upon proof by marriage certificate and evidence of the life of the wife of the deceased, to be filed in the proceedings.

[21] No evidence is given as to the age of the wife of the deceased or the state of her health, which compounds my difficulty. Given the deceased was age 57, I will arbitrarily assume that his wife was in her mid-fifties at the time of his death. I am reminded that the dependency is not only limited to money but extends to the benefit of goods and services rendered.

[22] Counsel for the claimant urges me to apply a multiplier identical to the one arrived at by Matthew J in **Auguste v Maynard**. It is reasoning with which I find merit. Justice Matthew who was similarly challenged by the dearth of evidence in that case was forced into an assumption on the age and state of health on the dependent. He arrived at a multiplier of 12 based on an assumption of her age as being in her mid-fifties and on the basis that no evidence was offered of poor health. He also considered the fact that award will allow for an upfront lump sum payment, and also considered the general contingencies of life. I have also considered that the dependency would have continued while the marriage subsisted or until the deceased was no longer capable.

[23] The pleading on the value of dependency was unchallenged. The claimant urges an award commensurate with the value of the non-monetary contribution made by the deceased to his home. Despite counsel's submissions that the sum of \$500.00 would be an appropriate award, I have difficulty so concluding based on the limited evidence available and award instead the sum of \$200.00 as a token figure representing the value of that contribution making his total monthly contribution the sum of \$1800.00, for a total dependency award of $1700 \times 144 = \$244,800.00$.

Discount of the award

[24] There is overlap between the dependency claim and the claim for the lost years, and in reliance on the authority of **Gammell v Wilson [1982] AC 27** I do not consider that is appropriate to make a separate award for the dependency action. In consequence I make the following total award:—

- (a) Loss of expectation of life \$3000.00
- (b) Funeral Expenses \$14,862.00
- (c) Interest on \$14,862.00 @3% to date of judgment
- (d) Loss of earnings in the lost years \$294,000.00
- (e) Interest @3% to date of judgment
- (f) Other pecuniary loss \$650.00
- (g) Interest on \$14,862.00 @3% to date of judgment
- (h) Loss of the vehicle \$27,300.00
- (i) Interest on \$14,862.00 @3% to date of judgment

[25] Interest is applied from the date of judgment to payment in full on the total award of \$ at the rate of 6% per annum.

[26] Costs are to be prescribed costs at the rate of 60% of the full prescribed costs on the sum of \$58,279.00 being \$5245.11, the matter being concluded on assessment following default judgment.

V. Georgis Taylor-Alexander
High Court Master