

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NUMBER: SVGHCV2011/0170

BETWEEN

ALETHA HAZELL

CLAIMANT

AND

MATTHEW GREGG

DEFENDANT

Before: MASTER Ermin Moise

Appearances

Mr. Ronald Marks holding for Mrs. Patricia Marks-Minors of Counsel for the Claimant

Ms. Samantha Robertson of Counsel for the Defendant

2018: November 1

2019: June 18

JUDGMENT

[1] MOISE, M.: This is an application for an assessment of damages. On 14th June, 2018 the defendant was found to be liable in negligence for a road traffic accident which occurred on 5th December, 2009. As a result of that accident Mr. John Hazell unfortunately lost his life and this action is brought by his widow, Mrs. Aletha Hazell. This action was brought pursuant to the Compensation For Injuries Act¹. The claimant, having obtained letters of administration in her late **husband's estate now seeks compensation on behalf of his dependents** as well as special and general damages for **the beneficiaries of Mr. Hazell's estate**. The facts of the case are not generally in dispute and I will not repeat them in any detail, except where it is necessary to do so.

¹ CAP83 of the Revised Laws of Saint Vincent and the Grenadines, 2009

Special Damages

- [2] The claimant claims the sum of \$5,165.00 in funeral expenses. These are recoverable pursuant to section 12 of the Act and the defendant raises no issue with this amount being awarded to the claimant. I would therefore award the sum of \$5,165.00 to the claimant in funeral expenses.
- [3] The claimant also seeks to recover the cost of obtaining the grant of letters of administration prior to the commencement of legal proceedings. She has presented an invoice outlining legal and other associated fees amounting to \$18,659.00 in addition to the sum of \$600.00 incurred in obtaining a property valuation. As it relates to this valuation, the claimant has not exhibited a receipt. Counsel for the claimant invites the court to consider the case of ***Greer v. Alston's Engineering***² where it was held that the court is empowered to grant an award of special damages where the evidence is not available but the circumstances of the case so warrants it.
- [4] The defendant however, argues against the damages claimed for the grant of letters of administration. In her legal submissions, it is pointed out that the claimant relies on an invoice and not a receipt and that she has provided no evidence that she has actually made any payments towards this invoice. As it relates to the sum claimed for the cost of obtaining a valuation, the defendant does not object to the court relying on the principles outlined in ***Greer v. Alston's Engineering*** in granting this award.
- [5] For my part, I have some reservation regarding the extent to which the entire cost of obtaining a grant of letters of administration is recoverable in a case such as the present. I accept the fact that a grant would not have been necessary **at this stage in the claimant's life** had the accident not occurred. However, in my view, the process of administering an estate would encompass much more than the liability incurred by the defendant. For example, the property valuation in and of itself would have been obtained so as to indicate the value of the estate at the time. This would include issues which the claimant would now have to consider which are entirely out of the ambit of these current proceedings. Further, the invoice presented gives no breakdown whatsoever regarding the manner in which the figure of \$18,659.19 was arrived at. It simply states that this was charged by the attorneys for the preparation and lodging of estate documents, preparation of deeds of assent

² (2003) 63 WIR 388

and disbursements. Special damages must be specifically pleaded and in some circumstances must be justified by more than the mere presentation of an invoice. The amount claimed appears to me to be exorbitant and I am not satisfied that there is sufficient information presented to enable the court to grant such an award. I do however accept that the grant of letters of administration was necessary to pursue this action and that some amount must be recoverable. I would grant the claimant the sum of \$5,000.00 as a nominal award for the cost of obtaining a grant of letters of administration. This is to include the cost of the property valuation.

General Damages – Loss of Expectation of Life

[6] The parties have both relied on the case of *Sandra Ann Marie George v. Nigel Don-Juan Glasgow*³ and agree that the sum of \$5,000.00 EC is a reasonable award to be granted for the loss of expectation of life. I accept these submissions and would grant this award for the sum requested by the claimant.

General Damages – Pain and Suffering

[7] The claimant seeks the sum of \$4,000.00 in general damages for pain and suffering of Mr. Hazell. There is an obvious challenge in a claim for pain and suffering where the victim has died, as it is difficult to determine the level of pain and suffering he may have endured. The evidence in that regard is very limited. What is established is that Mr. Hazell was a pedestrian when the defendant's vehicle collided with him. As a result of the impact he was thrown into the air and over a wall. The only witness who gave evidence about the claimant's suffering was Shurnice Ollivierre, who is his daughter. She states that she saw him in the hospital after the accident and that "he was groaning but could not speak." According to the death certificate Mr. Hazell died on the very day of the accident.

[8] Counsel for the claimant relies on the case of *Sandra Ann Marie George v. Nigel Don-Juan Glasgow* where the court awarded the sum of \$4,000.00 for pain, suffering and loss of amenities. Counsel also asks that the court consider the fact that Mr. Hazell was conscious when he would have noticed the vehicle coming towards him. He would have also been conscious when he was

³ SVGHCV2011/0465

thrown into the air. The defendant on the other hand argues that the victim in the case of *Sandra Ann Marie George v. Nigel Don-Juan Glasgow* died the following morning and not on the very date of the accident. There would have obviously been a period of suffering in between. Counsel therefore argues that an award of \$1,500.00 would be sufficient given the nature of the evidence available in this case.

- [9] As I indicated earlier, the evidence of pain and suffering is very limited. It does not appear that Mr. **Hezell's death was instantaneous. However, there is little to** assist in determining how much he may have suffered prior to his death. I would award the sum of \$3,000.00 under this head of damages.

Loss of Earnings – The Lost Years

- [10] In the case of *Cookes v. Knowles*⁴, Lord Diplock noted that a two stage approach ought to be taken in determining loss of earnings in cases such as the present. He states that:

“... as a general rule, in fatal accident cases the damages should be assessed in two parts, the first and the less speculative component being an estimate of the loss sustained up to the date of trial, and the second component being an estimate of the loss to be sustained thereafter.”

- [11] In the first of these two stages, the claimant submits that Mr. Hazell earned approximately \$2,680.00 per month prior to his death. In her witness statement she presented documentary evidence to establish that Mr. Hazell earned \$600.00 monthly from his employment with Le Petit Jardin. She also presented evidence to suggest that Mr. Hazell earned \$90.00 per day as a painter and \$70.00 per day as a carpenter. It was submitted therefore that Mr. Hazell earned \$600.00 monthly from his maintenance job, \$1,800.00 monthly from his painting work and \$280 from his carpentry work. The claimant was cross examined extensively on this issue and I do have doubts as to the accuracy of her evidence. It would seem that she was suggesting that he worked fulltime at his maintenance job and as a painter. I do not accept this evidence as being accurate. In any event, it is doubtful that the claimant would have worked continuously as a painter in the manner described by the claimant. I do accept that he did some extra work outside of his job with Le Petit

⁴ (1979) AC 556

Jardin, but not as described by the claimant. I would therefore accept his earnings of \$600.00 monthly and would include an additional sum of \$1,000.00 given the nature of the evidence provided. Therefore I find that Mr. Hazel would earn on average \$1,600.00 monthly prior to his death.

[12] A period of 9 years has elapsed since the date of the accident and both parties have agreed that this should be adopted as the multiplier. I would therefore award the sum of \$19,200.00 per year for a period of 9 years amounting to \$172,800.00 in loss of earnings for the lost years.

[13] I must now consider an appropriate multiplier for future loss of earnings in the lost years. I am assisted by the fact that both parties have agreed that a multiplier of 2 is appropriate, given that Mr. Hazell was 64 years of age at the time of his death. I would therefore award the sum of \$38,400.00 for loss of future earnings in the lost years.

The Dependency Claim

[14] Counsel for the claimant has also submitted that she was dependent on Mr. Hazel during his lifetime. She states that she received \$1,000.00 monthly from him for her own maintenance. She **claims damages as the sole dependent, given that all Mr. Hazel's children are now adults.** However, the dependency claim must be considered with due regard to the damages already claimed in loss of income for the lost years. In my view, Mr. Hazel would have maintained his wife out of his income. Given that the estate has claimed this loss of income there would inevitably be an overlap if the court were to grant compensation in the dependency claim as put forward by counsel. The court would grant compensation in the dependency claim only if that exceeds the amount which would have been awarded in loss of income. The difference would have therefore been awarded. I do not find this to be the case in the present circumstances and would therefore decline to make such an award.

[15] I therefore make the following orders:

- (a) The defendant will pay the sum of \$10,165.00 in special damages to the claimant, representing the funeral expenses and the cost of obtaining the grant of letters of administration;

- (b) The defendant will pay interest on special damages at a rate of 3% per annum from the date of the filing of the claim to the date of judgment;
- (c) The defendant will pay the sum of \$3,000.00 in general damages for pain and suffering;
- (d) The defendant will pay the sum of \$5,000.00 in general damages for loss of expectation of life;
- (e) The defendant will pay the sum of \$172,800.00 for loss of income from the date of death to the date of judgment and \$38,400.00 for future loss of income;
- (f) Interest is awarded at a rate of 6% per annum from the date of judgment until the judgment debt is paid in full.
- (g) The defendant will pay prescribed costs in the sum of \$31,125.00.

Ermin Moise
Master

By the Court

Registrar