

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
IN THE HIGH COURT OF JUSTICE
NEVIS CIRCUIT
A. D. 1992

Civil Suit No. 26 of 1990

BETWEEN:

CLARICE HULL	PLAINTIFF
AND	
CARLTON PALMESTE	
ROOPNARINE ROOPAL	
FENOX COMPANY LIMITED	DEFENDANTS
NATIONAL CARIBBEAN INSURANCE COMPANY LIMITED	THIRD PARTY

Appearances: Mrs. Claudette Jenkins for the Plaintiff
Dr. Henry Browne for the first named Defendant
Miss Myrna Walwyn for the second and third
named defendants
No appearance of or for the Third Party

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REASONS FOR DECISION

SATROHAN SINGH J.

Alpheus Hull died on August 11, 1990. The Plaintiff Clarice Hull is his widow. She brought this case on September 14th, 1990 alleging negligence on the part of the defendants resulting in the death of Alpheus Hull and claimed damages for herself and the deceased's estate. Appearances were entered for all the defendants and a defence was filed on behalf of the second and third named defendants. No defence was filed on behalf of the first named defendant who was the driver of the vehicle that was involved in the accident. The allegation against the second named defendant was that he was the registered and insured owner of the vehicle involved in the accident and that the first named defendant who was the driver of the vehicle at the time of the accident was his servant or agent. The allegation against the third named

defendant was that at the time of the accident the vehicle was being used pursuant to a contractual arrangement between the third named defendants and the first and second named defendants.

Judgment in default of defence was entered against the first named defendant on April 15, 1991 for damages to be assessed.

The matter was then heard on April 17, 1991 against the second and third named defendants and Judgment was entered for the plaintiff against them for damages to be assessed.

However, before all of this was done and more particularly, on November 8, 1990, leave was granted by this Court to the second named defendant to issue a third party notice against the National Insurance Company Limited of Basseterre, St. Kitts (hereinafter referred to as the third party). The second named defendant, by this notice claimed indemnity from the third party in respect of the whole of the plaintiff's claim on the basis of an insurance policy that covered the vehicle involved in this matter in respect of third party risks. An affidavit of Service sworn to by one Sonia Williams on April 15, 1991 and filed on that day shows that this third party notice was served on the third party on November 16, 1990. According to this affidavit the aforesaid notice was served at the registered office of the third party and that a Mrs. Sonia Pemberton of that office accepted such service. The third party never responded to that notice and at the hearing of the matter on April 17, 1991 was not present.

Immediately upon Judgment being entered for the plaintiff on April 17, 1991, she filed her application for assessment of damages.

That assessment took place on November 15, 1991 with the second and third named defendants being represented by their Solicitor Miss Myrna Walwyn who most ably assisted the Court in coming to the conclusion it did. Again, the third party chose not to appear despite assurances given to the Court by Miss Walwyn and Mrs. Jenkins that the third party knew of the hearing date of that assessment.

The Court at that assessment hearing awarded the plaintiff damages in the sum of \$139,800. The costs of the matter were then agreed to by Mrs. Jenkins, the Solicitor for the plaintiff and Miss Walwyn the Solicitor for the second and third named defendants at \$15,000.

The Court also at that hearing entered default Judgment on the third party notice in favour of the second named defendant, the third party not having responded to that notice.

It is pertinent to observe here that at no stage of the proceedings whether at the hearing of the action or at assessment was any objection taken to the form of the Statement of Claim and the Court observed that even though the Statement of Claim in its form did not fully comply with the rules it nevertheless disclosed that the plaintiff was making a claim on behalf of herself as a dependant and also on behalf of the estate of the deceased. Indeed, Miss Walwyn's role at the assessment greatly assisted the Court in quantifying the damages for the plaintiff and also for the estate.

That having been done and the aforesaid orders having been sealed and obviously served on the third party, Mr. Terence Byron, a Solicitor, then approached this Court by summons filed on December 11, 1991 on behalf of the Third Party for an order that the third party be at liberty to now enter an appearance to the Third Party notice. In that summons the third party submitted to be bound by the proceedings in the action and by the Judgment of April 17, 1991.

At the hearing of this application the plaintiff was represented by Mrs. Jenkins and Dr. Browne held for Miss Walwyn for the second and third named defendants. Both these lawyers opposed the application. Mr. Byron for the applicant agreed that the application sought the exercise of the Court's discretion.

This Court ordered that the application be struck out for the reason that there was no evidence by affidavit or otherwise upon which the Court could have exercised a discretion on it, and the application itself did not disclose any ground to give the Court an idea as to its purpose. It was a bare summons and Mr. Byron in his wisdom, at no stage sought time to satisfy this want in the application.

In assessing the damages in this matter the Court had evidence only from the plaintiff. No evidence was led on behalf of the nos. 2 and 3 defendants. Evidence of the deceased earnings at the time of his death and of his funeral expenses were not challenged and were admitted by consent. Indeed, the only issue before the Court was what multiplier should be used. There was no serious challenge to the multiplicand. And, at the close of the evidence led on behalf of the plaintiff, both sides agreed to a multiplier of 14 with a multiplicand of \$2,600: for the wife's loss and the same multiplier with a multiplicand of \$9,464: for loss to the Estate of the deceased. It was also agreed on both sides

that the deceased having died instantaneously, the issue of pain and suffering was de minimis.

The Court then, after a thorough and frank discussion with the lawyers on both sides, a discussion that centred around the principles of assessment of damages as set out in Corrigan v. St. Louis (1965) 7 WJR 491, Sanju v. Walker (1973) 21 WJR 86 and Heeralall v. Hack Bros. (1977) 25 WJR 117, together with both lawyers arrived at a figure of \$132,496 as damages on behalf of the deceased's estate. A discussion on scaling down then took place and it was agreed that taking all the circumstances into consideration, the contingencies, vicissitudes and imponderables of life, especially the fact that the plaintiff would have already acquired a benefit for herself on her personal claim, that the sum should be scaled down to \$100,000.

The end result of this matter was that even though an assessment on evidence took place, resultant figures were more or less agreed to by both sides present and the only reason a consent order at that stage was not made was because Miss Walwyn's clients were not present.

The assessment proceedings then ended with the Court awarding the plaintiff \$3,400 for funeral expenses, \$36,400 as the plaintiff's loss and \$100,000 as loss to the deceased's estate. After these figures were arrived at Miss Walwyn again expressed her agreement with the assessment and on behalf of her clients then consented to pay the plaintiff \$15,000 costs of the action. This was accepted by Mrs. Jenkins for the plaintiff and made the order of the Court.


Satrohan Singh
Supreme Court Judge

8th January, 1992