

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim Number: SLUHCV2022/0159 formerly
SLUHCV2004/0574

BETWEEN

BARBARA ELIZABETH RADMORE administratrix of the estate
of **EDWARD DAVID RADMORE**

Claimant

-and-

S. M. J. (ST. LUCIA) LIMITED t/a S. M. J BEVERAGES LIMITED

Defendant

Before Master Alvin Pariagsingh

Appearance: Shari – Ann Walker for the Claimant; and
Alvin St. Clair for the Defendant.

2023: July 04
September 21
October 20.

JUDGMENT

Claimant's Assessment of Damages

[1] **PARIAGSINGH, M:** - On November 04, 2002, Mr. Edward Radmore, the deceased, a then successful business man in Saint Lucia lost his life in an accident. It was found at the trial of this matter that the Defendant is liable for the death of Mr. Radmore as the accident was caused by the negligence of the Defendant through its servant and/or agent and/ employee. The Claimant seeks damages on behalf of the deceased's estate, a survivorship claim. There is also a dependency claim.

THE SURVIVORSHIP ACTION:

- [2] An action for the benefit of the estate of the deceased is a survivorship action. This is an action brought by the personal representative of the deceased for any claim, with certain exceptions, the deceased could have brought had he survived. In this type of action the estate can recover both pecuniary and non-pecuniary loss to the estate under the head of general damages. The estate may also recover special damages.

SPECIAL DAMAGES:

- [3] Special damages must be specifically pleaded and proven: **Grant v Moonan**¹. The total claim for special damages is \$31,097.60. From this sum, only the claim for the clothing of the deceased at the time of the accident was disputed. That is, the sum of \$747.60. The Claimant's evidence is that this sum was an estimate as she was not in possession of a receipt for the deceased's clothes. This in my view is a reasonable expectation more so since the deceased died almost 21 years ago. The rule in **Grant** does not fetter the discretion of the Court to allow a reasonable expense under the head of special damage in the absence of a receipt. Counsel for the Defendant at the assessment, though not outrightly withdrawing this objection to this sum, did very correctly and maturely accept that he was not vociferously pursuing this objection. In my view, the sum claimed is reasonable and is accordingly allowed.

- [4] The Claimant's special damages are assessed and allowed in the sum of **\$31,097.60**.

INTEREST ON SPECIAL DAMAGES:

- [5] This matter has been in the system for the past 19 years. The first trial before Mason J was aborted and a trial done de novo was ordered in 2006. The second trial was conducted by Belle J in 2014. Judgment was delivered on liability only in the Claimant's favour in 2017. Following that judgment, the Defendant appealed the decision of Belle J and that appeal was dismissed in 2019.

¹ 1988 43 WIR 342

[6] I recited that history to put the delay into context for the purpose of interest. Pre-judgment interest is discretionary. It is not penal in nature. It is to preserve the value of the award at the time of the accident in current-day value. In other words, interest is awarded to bring the value of the award as of the date of the accident (in the case of special damages) to the day of assessment, the present day. In my view the purpose of the award justifies awarding pre-judgment interest on the special damages from the date of the accident to the date of judgment². The rate of interest on special damages is conventionally on half of the interest awarded for general damages³ In this jurisdiction, that rate is 3%. Although the Claimant has asked for interest from the date of the filing of the claim, I am of the view that for special damages, the appropriate date for commencement of interest is the date of the accident and not the date of the filing of the claim.

[7] The Defendant shall therefore pay the Claimant pre-judgment interest on the special damages at the rate of 3% per annum from the date of the accident to the date of judgment March 17, 2017.

GENERAL DAMAGES:

Non- Pecuniary loss:

[8] Under this head in a survivorship action, the estate may recover loss of amenities, pain and suffering and loss of expectation of life. Loss of amenities is not applicable in this case as the deceased died almost if not instantaneous with the accident⁴.

Loss of expectation of life.

[9] Article 609 of the Civil Code⁵ permits the making of a conventional award for loss of expectation of life. This is a figure which is not fixed. The Claimant submitted that the sum of \$8,000.00 should be awarded under this head. The Defendant submitted that the award should be \$5,000.00. The basis of the Claimant's submission is that the higher

² March 17, 2017

³ Jefford v Gee [1970] 2 QB 130

⁴ Rose v Ford [1937] AC 826

⁵ Chapter 4:01 of the Laws of Saint Lucia

sum should be awarded to take into account inflation. I do not find favour with this submission. The measure of protecting the award is an award of interest and not in making a high award. Having reviewed the authorities relied on by both parties, the general award made in this jurisdiction under this head is \$5,000.00 in recent times⁶.

[10] The sum of \$5,000.00 is awarded under this head of damages.

Damages for pain and suffering.

[11] This award is resisted by the Defendant. The authorities relied on by both parties' underscore that a person who is in an unresponsive state receives a very low award under this head as their ability to feel pain is affected by their state. In the instant case, the evidence of the Claimant⁷ is that the deceased was unresponsive at the scene of the accident. Her evidence is that she was taken to the scene of the accident where she met with Sgt. Leo who told her that the deceased, who was still in the vehicle, was unresponsive. It is an undisputed fact that the deceased was pronounced dead at the hospital⁸. The Claimant's submission about the use of a breathing tube somewhere between the accident site and the hospital in my view is hinged on direct evidence that has not been led. There is no evidence that the deceased was ever conscious or responsive post the accident.

[12] The Claimant relies on the cases of **Emmanuel & Anor v Punet et al**⁹ and **Rodney v Quow**¹⁰ to support her submission that the general approach when someone dies in an accident is to assume that the deceased, however brief, experienced some measure of pain. I find it to be distinguishable from the instant case. In this case, the Master held that the deceased would have suffered some pain from the injuries before death ensued.

⁶ Fadlin v Gaston, SLUHCV2016/0283 decision of St. Rose – Albertini delivered March 30, 2020

⁷ Paragraph 12 of the Claimant's witness statement

⁸ Paragraph 16 of the Claimant's witness statement – medical report of Dr. Freeman

⁹ No. 364 of 2004 (St. Vincent and the Grenadines)

¹⁰ No. 425 of 2004 (St. Vincent and the Grenadines)

[13] The authority of **Cherubin and The Attorney General of Saint Lucia et al**¹¹ cited by the Defendant is more on par with the facts of this case. As stated above the Claimant's own evidence is that she was told at the scene of the accident that the deceased was unresponsive. Given the evidence in this case and the fact that there is an evidential uncertainty whether the deceased died instantaneously with the accident, the sum of \$1,000.00 is awarded for damages for pain and suffering.

Pecuniary Loss:

[14] The approach to assessing damages under this head is the conventional multiplier v multiplicand approach as stated in **Alphonso v Ramnath**¹². The multiplicand is the amount the deceased would have earned prior to his death and the multiplier is the number of years the deceased was likely to have worked but for his death. Deductions are made for expected expenses as well as the uncertainties of life. No deductions are made for what the deceased would have spent on dependents¹³.

[15] In the recent decision of **Wilson v Willie**¹⁴ the Court of Appeal restated the correct approach to be adopted to the starting point of the multiplier is not the date of the accident or death of the deceased as traditionally used following **Cookson v Knowles**¹⁵ but rather the starting point should be the date of the trial as stated in **Knauer v Minister of Defence**¹⁶. In this case, at the date of trial, the deceased would have been 66 years.

[16] The time lapse between filing and judgment in this matter was 15 years. One of the reasons for the award traditionally being split into two, pre-trial loss and future loss, is to award interest¹⁷. In the case of a delay before the matter comes to trial, a variation in the approach to splitting the awards and using a simple multiplier is permissible. This

¹¹ SLUHCV2017/0319- decision of Cenac – Phulgence J on March 07, 2019

¹² (1997) 56 WIR 184

¹³ Clay v Pooler [1982] 3 All ER 570

¹⁴ SLUHCVAP2020/006 decision of Ellis JA delivered on July 23, 2023

¹⁵ [1979] AC 566

¹⁶ [2016] UKSC 9

¹⁷ Per Cookson v Knowles

approach was sanctioned in **Maraj v Samlal**¹⁸ and **Gittens v Interage Ltd**¹⁹. I adopt such an approach in this case and do not propose to split the award into pre-trial loss and post-trial loss.

[17] The Claimant submitted that a multiplier of 19 years should be used. The basis of this figure is simply that the deceased being a successful businessman of fairly good health would have foreseeably worked until he was 70. At the time of his death, he was 51 years old. The Claimant therefore calculates the multiplier as being the difference between the age of the deceased at the time of his death and him attaining the age of 70. The Defendant submits that the multiplier should be 6 years.

[18] The Claimant relies on the case of **Mario's Pizzeria Limited v Ramjit**²⁰, to ground her submission that in arriving at a multiplier, the Court ought to take into account that for a self-employed businessman, there is no requirement for him to retire at 60. I accept and agree with this statement of the law. Where I part company with the Claimant is that the multiplier should be the remaining years until the deceased turned 70. In the very case of **Mario's Pizzeria**, the Claimant was 49 years old at the time of the accident and a multiplier of 9 years was awarded. In the instance case, the Claimant was 51, two years older than in the authority relied on and the Claimant seeks a multiplier almost twice the amount of years.

[19] In my view, given the Claimant's age at the time of death and the evidence of him being in good health and self-employed, an appropriate multiplier is ten (10) years. This is taking into account that the deceased's remaining working years would be approximately 19 years and a reduction of 9 years for the uncertainties of life and his age. I have decided to use the multiplier as in **Mario's Pizzeria** despite the Claimant in that case being two years younger than the deceased given the particular characteristic of the deceased in this case. The deceased in this case was a successful businessman who enjoyed at least three streams of income and who by the evidence, was healthy.

¹⁸ HCA1058/1973 – Trinidad and Tobago (unreported)

¹⁹ HCA 414 /1992 – Barbados (unreported)

²⁰ Civil Appeal No. 146 of 2003 – Trinidad and Tobago (unreported)

[20] Multiplicand is the annual income of the deceased less a discount for living and other expenses. The authorities suggest that the appropriate deduction to be made from the annual income is in the region of 30% where there is no direct evidence of the deceased's living expenses. In this case there is no direct evidence of the deceased's living expenses and the deduction of 30% is therefore appropriate in my view.

[21] There is dispute between the parties concerning the earnings of the deceased. The Claimant's evidence is that the deceased was a businessman and shareholder in other businesses. The deceased's personal earnings for the last year of his life was \$30,000.00 according to the Claimant's evidence. The Claimant relies on an Annual Tax Return for the year 1999²¹ in support of the personal earnings of the deceased.

[22] The Claimant's evidence is also that the deceased was a businessman and owned several businesses. He formed St. Lucia Specialized Glass-UPVC Aluminum Manufacturers Co. Ltd (SPECLAM Glass). This company, the Claimant contends, earned approximately \$800,000.00 a year. This business was closed after the deceased died as it could not be sustained without his contribution, according to the Claimant.

[23] The Claimant's evidence in cross examination is that the workers entrusted to run the business pilfered from the company and started their own businesses which competed with the deceased's company thus causing it to close its doors. The deceased also owned two other businesses known as Glass Plus and Vibes Music Store. In support of the proof of the income generated by the deceased's businesses, the Claimant relies on the financial statements for the year ending March 1999.²²

[24] The Defendant's cross examination of the Claimant and her witness on the issue of her earnings and lack of documents to support her claim was largely uneventful. It did however, install in the Court an impression of the Claimant and her witness being truthful

²¹ Paragraph 25 of the witness statement of the Claimant – Tax Return for the year 1999

²² Paragraphs 26 and 27 of the witness statement of the Claimant

witnesses. The Claimant and her witness were very forthright and non-evasive. Her evidence was that she was a housewife for 28 years to the deceased and had no part in the business, the accounts or the records. I accept her evidence that the deceased was the person responsible for all financial dealing and I accept her evidence that whatever documents she had was supplied for the production of the financial statements. I also find the Claimant to be a truthful witness whose evidence I accept without reservation. The same impression was formed of the Claimant's witness.

[25] The difficulty faced is the sparsity of documents verifying the income of the deceased and more so documents closer in time to the death of the deceased regarding his income. From the unedited financial statements for the business for 1999 the Claimant indicated that the deceased earned an additional \$20,000.00 per year. If this evidence is accepted at its highest, the deceased's annual earnings was about \$50,000.00.

[26] I accept the Claimant's direct evidence based on her credibility. Applying a discount of 30% for the deceased's personal expenses, the multiplicand would be \$35,000.00

[27] The loss to the estate would therefore be $35,000.00 \times 10 = \$350,000.00$.

THE DEPENDENCY CLAIM:

[28] The Claimant submits that a separate award ought to be made for the dependency claim of the Claimant as widow of the deceased and the two daughters of the deceased. This claim is strenuously contested by the Defendant.

[29] The Defendant contends that the only person who ought to be able to maintain a dependency claim ought to be the Claimant, the widow of the deceased. In any event it is submitted that to permit a separate award would lead to double compensation as the sums which would have been used by the deceased to fund the dependency of the Claimant has already been compensated under the damages to the estate.

[30] The Claimant contends that the dependency claim on behalf of the two daughters of the deceased is maintainable notwithstanding that they were already adults at the time of death of the deceased. Only one dependent gave evidence at the trial of the claim. At the time of the accident, she was already in her early 20's. Whilst I accept that the deceased paid her bills and maintained the home in which she lived, I decline to make an award to her as a dependent. There was no evidence of the likely duration of the dependency or the need for such dependency given the age of both daughters of the deceased. Their claim as dependents are not allowed.

[31] In respect of the Claimant's claim as widow of the deceased, I agree with the Defendant's submissions. Any sum to be paid to her out of the estate as a dependent would have to be deducted from the loss of earnings quantified above. This is supported by the decision of Taylor – Alexander M (as she then was) in **Owen Williams -v- Kenyan Frederick**²³. There is no need therefore to quantify the dependency of the Claimant as any such sum will have to be paid out of the estate. In any event, it would be impractical to apportion the dependency value of the Claimant as the sum claimed by her is in excess of the gross income of the deceased.

INTEREST:

[32] Interest on general damages shall run from the date of the judgment, to the date of payment at the rate of 6% per annum until the sum is liquidated. The date of judgment for the purpose of a bifurcated trial is not the date of the award on assessment. It is the date of the judgment on liability.

COSTS IN THE HIGH COURT:

[33] The Claimant is entitled to her costs of this claim. These costs are on the prescribed scale. The Claimant is also entitled to interest on the costs from the date of the judgment for costs at the rate of 6% per annum to the date of payment in keeping with the guidance in the case of **Powell v Herefordshire Health Authority**²⁴

²³ SLUHCv2009/0825

²⁴ [2002] EWCA Civ 1786

COSTS IN THE COURT OF APPEAL:

[34] The Defendant was also ordered to pay the Claimant's costs of its appeal at 2/3 the sum ordered in this Court.

ORDER:

[35] The Defendant shall pay the Claimant:

1. General damages quantified in the sum of **\$356,000.00** together with interest at the rate of 6% per annum from the date of judgment (March 16, 2017) until the debt is liquidated.
2. Special damages in the sum of **\$31,097.60** together with interest at the rate of 3% per annum from the date of the accident to the date of judgment (5,246 days) in the sum of **\$13,408.60** and continuing at the rate of 6% per annum from the date of judgment on liability, March 16, 2017 until the debt is liquidated.
3. Prescribed costs of the claim on value of the awards made (inclusive of pre-judgment interest on special damages totaling \$400,506.20) calculated in the sum of **\$48,800.62** together with interest thereon at the rate of 6% per annum from the date of judgment, March 16, 2017 to the date of payment.
4. Costs of the appeal in the sum of \$32,533.75.

Alvin Pariagsingh
High Court Master

By the Court


Dp. Registrar