

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

**SAINT VINCENT AND THE GRENADINES**

**CLAIM NO: SVGHCV2020/0030A**

**BETWEEN:**

**BRAD PITT**

**(Son and Personal Representative of the Estate of Keriell Wiltshire Deceased)**

Claimant

and

**MARIO WILSON**

Defendant

**Appearances:**

Ms. Michelle Fife for the Claimant

Ms. Chanté Francis for the Defendant

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2022: April 28;  
May 24.  
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**JUDGMENT ON ASSESSMENT OF DAMAGES**

- [1] **GILL, M.:** The claimant Brad Pitt ("Mr. Pitt") is the adult son and sole beneficiary and administrator of the estate of the deceased, Keriell Wiltshire ("Ms. Wiltshire"). He seeks damages for the untimely death of his mother caused when she was knocked down by a vehicle driven by the defendant Mario Wilson ("Mr. Wilson").
- [2] On October 26, 2019, Mr. Wilson gave Ms. Wiltshire and her friend Bernard Deane ("Mr. Deane") a lift to Mr. Deane's home. After Ms. Wiltshire exited the vehicle, Mr. Wilson, instead of reversing, drove forward, and his car struck Ms. Wiltshire and pinned her underneath, causing severe injury to her. She died instantly. She was 48 years old at the time.

[3] On March 2, 2020, Mr. Pitt commenced proceedings by claim form and statement of claim. He filed an amended claim on February 1, 2021 seeking general damages for negligence, special damages, interest, costs and such other relief as the court deems necessary and appropriate.

[4] On September 9, 2021, Mr. Wilson filed a notice of admission. Judgment on admissions was entered for Mr. Pitt on December 15, 2021, and the matter was listed for assessment of damages.

### **Issue**

[5] The court must determine the quantum of damages to be awarded to Mr. Pitt.

### **The Law**

[6] The Compensation for Injuries Act<sup>1</sup> (“the Act”) governs the rights of the wife, husband, parent and child of a person wrongfully killed to claim compensation for the financial loss suffered as a result of the death, and permits an action to be brought for the benefit of those dependents.<sup>2</sup> Further, the Act provides that all causes of action vested in that person survive for the benefit of his estate.<sup>3</sup>

[7] In the case of **Alfred Jackson v David Balcombe**, Mitchell J. gave a background to the Act and concluded that “...in St Vincent a deceased’s dependents are entitled to compensation from a wrongdoer who causes his death. Additionally, the estate of the deceased is entitled to compensation from the wrongdoer”.<sup>4</sup>

[8] In this assessment, Mr. Pitt is making a claim on behalf of the estate only.

### **The Estate Claim**

[9] By virtue of section 13(1) of the Act, all causes of action vested in the deceased shall survive for the benefit of her estate.

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<sup>1</sup> Cap. 122 of the Revised Laws of Saint Vincent and the Grenadines 2009

<sup>2</sup> Section 7

<sup>3</sup> Section 13(1)

<sup>4</sup> Civil Suit No. 138 of 1994, Saint Vincent and the Grenadines, at paragraph 5; and see section 13(6) of the Act

## SPECIAL DAMAGES

- [10] It is well established that special damages must be pleaded, particularised and proved.<sup>5</sup> Mr. Pitt has met the threshold in relation to funeral expenses in the sum of \$10,000.00. He has conceded that his claim for legal fees for the administration of the estate is not allowed under the Act.<sup>6</sup> Accordingly, I will award Mr. Pitt special damages in the sum of \$10,000.00.

## GENERAL DAMAGES

### Loss of expectation of life

- [11] This is usually a modest, conventional award. Mr. Pitt seeks \$5,500 under this head.
- [12] In 2006, Cottle M, as he then was, in **Yolanda Rodney v Osbourne Quow**,<sup>7</sup> awarded the sum of \$3,500.00 for such loss in respect of a 36 year old deceased. In **Carmillus Emmanuel and Another v Ronald Punnet et al**,<sup>8</sup> the sum of \$3,500.00 was awarded in the case of a 36-year-old woman killed instantly in a motor vehicular collision while she was a passenger in one of the vehicles involved. In **Sandra Ann-Marie George v Nigel Don-Juan Glasgow**,<sup>9</sup> Actie M., as she then was, in February 2017, taking inflation into account, awarded \$5000.00 in respect of a 19-year-old male who died as a result of the motor vehicle in which he was a passenger colliding with a wall. The same award of \$5,000.00 was made in 2019 by Moise M, as he then was, in **Aletha Hazell v Matthew Gregg**.<sup>10</sup> Recently in 2021, in the Grenada case of **Matthew Franklyn Veinotte v Daniella Williams Mitchell and Akim Frank**,<sup>11</sup> John-Theobalds M (Ag.) also awarded the sum of \$5,000.00 under this head. In keeping with the latest authorities, I will award the sum of \$5,000.00 for damages for loss of expectation of life.

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<sup>5</sup> Per Lord Diplock in *Ilkiw v Samuels* [1963] 2 All ER 879 at 890

<sup>6</sup> Section 13(2)(c); see also *Deonarine v Narine* (1968) 14 WIR 33 at page 1 and *Yolanda Rodney v Osbourne Quow* Claim No. 415 of 2004 (Saint Vincent and the Grenadines) delivered April 20, 2006, at paragraph 9

<sup>7</sup> Claim No. 415 of 2004 (Saint Vincent and the Grenadines) at paragraph 10

<sup>8</sup> Claim No. 364 of 2004 (Saint Vincent and the Grenadines)

<sup>9</sup> Claim No. 465 of 2011 (Saint Vincent and the Grenadines)

<sup>10</sup> SVGHCV 2011/0170, delivered June 18, 2019

<sup>11</sup> GDAHCV2019/0549, delivered June 25, 2021

### **Pain and suffering and loss of amenities**

- [13] The evidence before the court reveals that Ms. Wiltshire died immediately on the scene of the accident. The witnesses did not hear her make any noises or see her try to move. They did not see her breathing or trying to breathe, but Mr. Wilson states, “She was completely unresponsive.” There is nothing to suggest that death was not instantaneous. In such cases of immediate death, no award for pain and suffering and loss of amenities is made. Even so, Mr. Pitt proposes a nominal award of \$3,500.00.
- [14] In **Yolanda Rodney**<sup>12</sup> the court awarded \$2,000.00 where the deceased “died on the spot” (as submitted on behalf of the defendant in that case) after the vehicle in which he was a passenger plunged some 100 feet, throwing him from the vehicle. Cottle M., as he then was, stated, “[The deceased] would have been aware, throughout that fatal plunge of his impending injury and as it turned out, his death. Despite the brevity of the period I imagine his agony must have been acute.”
- [15] A summary in McGregor on Damages is instructive.<sup>13</sup> It reads:
- “In *Bishop v Cunard White Star*, where the circumstances of death and the length of time that the deceased had survived the injury were unknown, it was held that no award should be made “in the absence of clear evidence of reasonably prolonged suffering”. Similarly, in *Hicks v Chief Constable of the South Yorkshire Police* claims by the personal representatives of three young spectators, crushed to death at the stadium in the Hillsborough disaster, for pain and suffering before their deaths were rejected at all levels of adjudication in the absence of clear evidence. In the Court of Appeal Parker L.J. said that in his view “when unconsciousness and death occur in such a short period after the injury which causes death no damages are recoverable. The last few moments of mental agony and pain are in reality part of the death itself”.
- [16] Mr. Pitt relies on the statement of the learned master in **Carmillus Emmanuel**<sup>14</sup> that the deceased “must have been aware even for a brief moment of her impending injuries and death and must have felt the impact of the collision just before her death”, and that she would have adopted the approach of Cottle M in **Yolanda Rodney** and awarded a nominal sum for pain and suffering. There was no evidence as to whether the deceased was conscious

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<sup>12</sup> Claim No. 415 of 2004 (Saint Vincent and the Grenadines)

<sup>13</sup> 18<sup>th</sup> Ed. paragraph 36-126

<sup>14</sup> Supra at note 8 at paragraph 24

after the accident. The learned master made no award under this head but only because of the concession of counsel that there could be no award as death was instantaneous. The case of **Rose v Ford**<sup>15</sup> also relied on by Mr. Pitt for a nominal award is distinguishable in that the deceased in that case was unconscious for the most part of the 4 days that she survived her injury. With regard to the approach considered by the learned master in **Carmillus Emmanuel**, in my view, there is no reason here to depart from the principle in relation to instantaneous death, and in circumstances of this case, I decline to make any award under this head.

### **Loss of Earnings for Lost Years**

- [17] This is the loss to the estate of what the deceased likely would have earned for the rest of her working life had she not been killed, with a deduction for what she likely would have spent on herself. To determine loss suffered after the date of death of the deceased, the dictum of Lord Fraser in **Cookson v Knowles**<sup>16</sup> is instructive. His Lordship opined:

“Assessment of damages in this way requires the pecuniary loss to be split in two parts, relating respectively to the period before the trial and the period after the trial, in the same way as it is split in a personal accident case. To that extent the same method of assessment is used in both classes of case.”<sup>17</sup>

### Pre-trial Loss

- [18] This is the pecuniary loss that has been sustained from the date of death up to the date of trial. The multiplier is the number of years between death and trial. The multiplicand is the annual net financial loss.
- [19] Lord Fraser went on to pronounce a straightforward method of arriving at the award under this head. He explained (using a weekly approach):

“The loss of support between the date of death and the date of trial is the total of the amounts assumed to have been lost for each week between those dates, although as a matter of practical convenience it is usual to take the median rate of wages as the multiplicand. In a case such as this, where the deceased’s age was such that he would probably have continued to work until the date of trial, the multiplier of this

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<sup>15</sup> [1951] 1 KB 99

<sup>16</sup> [1979] AC 556

<sup>17</sup> Ibid at page 575

part of the calculation is the number of weeks between the date of death and the date of trial.”

[20] At the date of her death, Ms. Wiltshire was employed by the government of Saint Vincent and the Grenadines as a graduate teacher earning a basic salary of \$4,404.00 per month, as evidenced by a salary slip exhibited to Mr. Pitt’s witness statement. With the necessary deductions for income tax (\$696.21) and NIS contributions (\$185.89), I calculate Ms. Wiltshire’s net earnings as a teacher with the government to be \$3,521.90 per month.

[21] In addition, Mr. Pitt is asking the court to take into account additional income Ms. Wiltshire purportedly earned by private tutoring at \$300.00 per week. Evidence of this is sketchy. Mr. Pitt’s witness statement exhibited 10 receipts totalling \$1,200.00, apparently for tutoring services for the month of May 2019. All are dated the end of May, except for one which is dated June 3, 2019. There is no other evidence of private tutoring in this assessment to allow the court to conclude that Ms. Wiltshire taught privately for other parts of the year. I take judicial notice that in this region, examination in primary and secondary schools are held around June and July. On the evidence before the court, I am prepared to accept that Ms. Wiltshire earned \$1,200 additional income per year for private tutoring.

[22] Based on the foregoing, I calculate Ms. Wiltshire’s net annual income to be \$43,462.80 ( $\$3,521.90 \times 12 = \$42,262.80$ ;  $\$42,262.80 + \$1,200.00$ ).

[23] As expounded by O’Connor LJ in **Harris v Express Motors Ltd**,<sup>18</sup> in calculating the multiplicand, a percentage is to be deducted from this net income to represent what Ms. Wiltshire would have spent exclusively on herself. In relation to the issue of living expenses, at page 575 His Lordship stated:

“I return to the two decisions in the House of Lords... In my judgment three principles emerge. (1) The ingredients that go to make up “living expenses” are the same whether the victim be young or old, single or married, with or without dependants. (2) The sum to be deducted as living expenses is the proportion of the victim’s net earnings that he spends to maintain himself at the standard of life appropriate to his case. (3) Any sums expended to maintain or benefit others do not form part of the victim’s living expenses and are not to be deducted from the net earnings.”

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<sup>18</sup> [1983] 3 All ER 561

[24] Mr. Pitt submits that the deduction should be 25%. Mr. Wilson says it should be 33%. Ms. Wiltshire was unmarried and did not have any dependents at the time of her death. Mr. Pitt lived outside of this country and admits he was not a dependent of Ms. Wiltshire at the time of her death. In these circumstances, a deduction of 33% is reasonable. In my view, with no dependents, a much more substantial deduction would be appropriate. However, I accept Mr. Wilson's proposal. Applying a 33% deduction, the multiplicand is \$29,120.08 (\$43,462.80 - \$14,342.72).

[25] In this case, the period of the date of death to the date of assessment is 2 years and 6 months. Using this as the multiplier, the pre-trial loss to the estate of Ms. Wiltshire is \$72,800.20 (\$29,120.08 x 2.5).

#### Loss of Future Earnings

[26] Ms. Wiltshire was due to retire in the year 2031 at the compulsory retirement age of 60. Mr. Pitt submits that a multiplier of 12 is appropriate.

[27] In **Veinotte**,<sup>19</sup> a multiplier of 14 was applied where the deceased, an assistant professor at the St. George's University, was 36 years old at the time of her death, with 24 years of working life ahead of her as submitted. A multiplier of 14 was also used in **Irma Smith and Another v Omari Phillip**<sup>20</sup> in the case of a technical manager who was 39 years old at the time of his death as a result of a motor vehicular accident. In **Anna Modeste et al v Jacobs et al**,<sup>21</sup> a multiplier of 12 was used for a 44 year old gas station attendant. The deceased in **Yolanda Rodney**<sup>22</sup> was 36 years old when he met his death. A multiplier of 12 was used.

[28] Mr. Wilson submits that a multiplier of 6 is just and appropriate in this case. He cites the Trinidad and Tobago case of **Bideshi et al v Attorney General**.<sup>23</sup> The deceased was a self-employed food vendor who died as a result of a motor vehicular accident at the age of 40. The learned master applied a multiplier of 8. Mr. Wilson uses this case to show that courts

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<sup>19</sup> Supra at note 11

<sup>20</sup> ANUHCv2009/0579, delivered April 15, 2011

<sup>21</sup> GDAHCv2000/0583

<sup>22</sup> Supra at note 7

<sup>23</sup> TT 2008 HC 293

are extremely slow to apply high multipliers, but instead usually apply multipliers of half or less of the remaining working years of the deceased.

[29] The cases of **Miriam Myers v Dickenson Bay Hotel Management Ltd**<sup>24</sup> and **Alphonso v Ramnath**<sup>25</sup> were also cited by Mr. Wilson. The learned master in **Miriam Myers** (which did not involve a fatal accident, but injuries sustained as a result of a fall) applied a multiplier of 12 where the claimant was 41 years old at the time of her fall and was expected to work until the age of 62. In the latter case (also not involving a fatality), the Court of Appeal substituted a multiplier of 12 for that of 15 used in the court below for a 45 year old who was treated as having a working life up to 65 years. Singh JA gave invaluable guidance as follows:

“In determining a multiplier a Court should be mindful that it is assessing general and not special damages. That it is evaluating prospects and that it is a once for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the plaintiff is getting a lump sum instead of several smaller sums spread over the years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working life but for the accident.”

[30] In **Nichanna Tamika Lewis v Rondeon Nash and Another**,<sup>26</sup> in 2020, a multiplier of 9 for future loss (in addition to a multiplier of 3 years, 10 months and 14 days for pre-trial loss of earnings) was applied by the learned master in the case of a government employed male attendant who died at the age of 40 and had another 20 years until retirement. A multiplier of 15 for a 30 year old mechanic and subcontractor was used in **Valencia Delaire v Anel Chedy**.<sup>27</sup>

[31] In the circumstances of this case, and allowing for the contingencies, vicissitudes and imponderables of life, I will use a multiplier of 8 years. Deducting the pre-trial period of 2 years and 6 months, this gives a post-trial multiplier of 5 years and 6 months. Applying the multiplicand of \$29,120.08, the award for post-trial loss is \$160,160.44.

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<sup>24</sup> ANUHCv2013/0231

<sup>25</sup> (1997) 56 WIR 184

<sup>26</sup> SVGHCv2018/0202

<sup>27</sup> SLUHCv2016/0432; see also *Philbert v Raye* SLUHCv 415 Of 1989

[32] The total sum for loss of earnings for the lost years is pre-trial loss \$72,800.20 + post-trial loss \$160,160.44 = \$232,960.64.

[33] I assess damages under the estate claim as follows:

- (i) Special damages in the sum of \$10,000.00
- (ii) Damages for loss of expectation of life in the sum of \$5,000.00
- (iii) Damages for loss of earnings in the sum of \$232,960.64.

The total estate award is \$247,960.64.

### **Order**

[34] Based on the foregoing, it is hereby ordered that the defendant shall pay the claimant as follows:

- 1) Special damages in the sum of \$10,000.00 with interest at the rate of 3% from the date of the accident to the date of assessment.
- 2) General damages for loss of expectation of life in the sum of \$5,000.00 with interest at the rate of 6% from the date of the filing of the claim to judgment on assessment.
- 3) Loss of earnings (pre-trial \$72,800.20 plus post-trial \$160,160.44) in the sum of \$232,960.64 with interest on the pre-trial loss at the rate of 3% from the date of death to the date of assessment.
- 4) Interest on the sums payable at the rate of 6% per annum from the date of judgment on assessment to the date of payment in full.
- 5) Prescribed costs on the global sum in accordance with CPR 65.5 in the sum of \$20,097.05.

**Tamara Gill**  
Master

**By the Court**

**Registrar**