

The Eastern Caribbean Supreme Court

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV2019/0119

BETWEEN:

**EUNELLA HONORE ALSO KNOWN AS
EULENA HONORE
(as representative in the Estate of L'hana Honore Deceased)**

Claimant

and

JOSIAH JOSEPH

Defendant

APPEARANCES:

Mrs. Dawn Yearwood-Stewart for the Claimant

PRESENT:

Mrs. Eunella Honore

2021: June 17.

Decision

- [1] **GARDNER HIPPOLYTE, M:** This is decision for an assessment of damages based on the death of a 17 year old girl - L'hana Honore who died on the 26th October 2016 from Cervical Fracture caused by traffic accident. There was only one witness, the Claimant and her evidence was not challenged.

BACKGROUND

- [2] On the 26th of October 2016 L'hana Honore left her home to proceed to the Dominica State College, where she was a first year student at the college majoring in mathematics and accounting. The court is informed at the time of the accident she was a passenger in motor vehicle TK657 being driven by Josiah Joseph, the defendant. L'hana was only 17 years old, having been born on the 25th day of April 1999 at the Princess Margaret Hospital. Her mother Eunella Honore applied for and obtained letters of administration on the 30th of March 2017 and she caused a claim to be filed in the High Court on the 28th of May 2019. She is seeking damages for wrongful death and loss of expectation of life.

- [3] On the 22nd of April 2020 Judgement in Default was obtained against the defendant with damages to be assessed along with costs. An application for assessment was made on the 11th day of December 2020 and on the 26th of January 2021 Master Thomas (Ag) ordered that the claimant should publish notice of the assessment in two publications of the newspaper and pursuant to that order the defendant was directed to file submissions and authorities. However, the defendant has not complied with CPR 12.13 and the assessment is conducted in accordance with established guidelines.

EVIDENCE OF EUNELLA HONORE

- [4] At the time of her death L'hana was 17 and attending the Dominica State College. She was majoring in mathematics and accounting. Her mother states she was a friendly, active child and a sports enthusiast as she participated in an volley ball, netball track and field and javelin. L'hana represented her country in netball in three neighbouring islands. She was quite talented as she received an award from the Portsmouth Town Council in recognition of her sportsmanship.
- [5] L'hana was valedictorian at her secondary school and also read and obtained 10 CXC subjects. It was her intention to become a Banker or an Accountant. Ms Honore also indicates that her daughter received certificates of excellence for French, information technology, social studies and religion. L'hana is one of four children of Mr and Mrs Honore. The affidavit in support of Mrs Honore is replete with numerous examples of the outstanding person that her daughter had become at such a very young age. Mrs Honore still feels the immeasurable hurt and pain as a result of the loss of her daughter. She is asking the court to be compensated for the loss of expectation of life and other consequential losses from the negligent driving of the defendant on the 26th of October 2016.

Funeral expenses

- [6] After L'hana died the defendant gave Ms Honore the sum of \$1,300.00, however the total amount that she spent in relation to her daughter's death expenses came to \$14,448.95. The claimant in her affidavit provided receipts for each item under this head and the court will allow the sum indicated. Having deducted the amount given by the defendant for the funeral expenses the remaining balance is \$13,148.95.

GENERAL DAMAGES

[7] Once a person suffers personal injuries they are entitled to general damages under the heads as set out in **Cornilliac v St Louis (1964) 7 WIR 491** at page 492:

- (a) The nature and extent of the injury sustained
- (b) The nature and gravity of the resulting physical disability
- (c) The pain and suffering endured
- (d) The loss of amenities suffered and
- (e) The extent to which the claimant's pecuniary interests have suffered

1. Pain and suffering

[8] L'hana Honore did not survive her injuries and she died of cervical fracture secondary to a car accident. No information is provided as to the length of time she survived but the death certificate indicates that her place of death was at Princess Margaret Hospital. Lord Diplock¹ states the that in personal injury cases *"that non-economic loss constitutes a major item in the damages. Such loss is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and.... basically a conventional figure derived from experience and from awards in comparable cases."*

[9] L'hana died as a result of her injuries. Whilst the court does not have an exact amount of time that she was alive but the court is guided by other decisions in the jurisdiction in relation to pain and suffering prior to death. In **Seaton v Duggins**² the deceased survived for a short period and an award was made for \$11,000.00 for pain and suffering. In the circumstances an award of \$9,000.00 is appropriate.

2. Loss of expectation of life

[10] Counsel for the claimant has suggested that the court should consider the case of **Benham v Gambling**³ as good authority for assessing damages under this head. Viscount Simon SC noted the wide variation in awards made under this head and he stated

"I am of opinion that the right conclusion is not to be reached by applying what may be called statistical or actuarial test. Figures calculated to represent the expectation of human life at

¹ Wright v British Railways Board [1983] 3 WLR 211 at page 214

² SKBCV2005/0198 as per Belle J

³ [1941] 1 ALLER 7 referred to in **Kida Harvey v Don McIntosh** GDAHCV2005/0145 **Corbin Lincoln M** at para 22.

various ages are averages arrived at from a vast mass of vital statistics. The figure is not necessarily one which can be properly attributed to a given individual. In any case, the thing to be valued is not the prospect of length of days, but the prospect of a predominantly happy life. The age of the individual may, in some cases, be a relevant factor..... It would be fallacious to assume, for this purpose, that all human life is continuously an enjoyable thing, so that the shortening of it calls for compensation, to be paid to the deceased's estate on a quantitative basis. The ups and downs of life, its pains and sorrows as well as its joys and pleasures - - all assessing damages for shortening of life, therefore, such damages should not be calculated solely, or even mainly on the basis of the length of life which is lost.....That makes up like fitful fever have to be allowed for in the estimate..... the question thus resolves itself into that of fixing a reasonable figure to be paid by way damages for the loss of a measure of prospective happiness.

- [11] Throughout the affidavit in support of the assessment Mrs Honore spoke about the achievements of her daughter, both academically and athletically. Her CXC exam results were exhibited as well as other achievements. The court in fixing a figure is mindful of similar cases in the jurisdiction, where an award for a 16 year old adolescent student in the British Virgin Islands was granted under this head in the sum of \$4000.00 USD.⁴ The court is referred by counsel for the claimant to a number of cases in a judgment of Master Lanns⁵ and based on those cases she is submitting that an appropriate amount for L'hana is \$10,000.00. The court agrees with this submission especially in light of Justice Benjamin's decision referred to above.
- [12] As pointed out by counsel for the claimant since L'hana was not employed at the time of the accident the court is unable to consider Loss of years.

FATAL ACCIDENTS ACT

- [13] Under section 4(2)(b) (ii) of the Fatal Accident's Act Chap 7:59 of the Laws of Dominica the Claimant is entitled to \$5,000 for bereavement, which the court will also award in the circumstances.

⁴ Claudia Grant v Francisco Samuel Civil Suit no 72 of 1996 (BVI) Benjamin J.

⁵ **Carmillus Emmanuel et al v Ronal Punnet et al** consolidated with **Dorna Hackshaw v Kendrick Scarborough et al** SVGHCV 2004/0364 and 2005/0249 at para 17-21

INTEREST

- [14] Mrs Honore will be entitled to interest on the special damages at the rate of 3% from the date of the accident to today. As stated by Lord Denning⁶

“Interest should not be awarded as compensation for damage done. It should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him.... in all ordinary cases he should have thought it would be fair to award interest on the today's sum of special damages from the date of the accident to until the date of the trial.”

ORDER

- [15] In summary it is ordered that the defendant shall pay the claimant the following awards:
1. Funeral expenses - \$13,148.95 with interest at 3% per annum from the date of the incident to today, which is 1696 days;
 2. Pain and Suffering prior to death – \$9,000.00
 3. Loss of expectation of life - \$10,000.00
 4. Bereavement - \$5,000.00
 5. Prescribed costs of the global sum in accordance with CPR 65.5
 6. Interest at 5% per annum from date of Judgement to payment.

Charon Gardner-Hippolyte
High Court Master

⁶ **Jefford v Gee** [1970] 2 QB 130 at paragraph 146A