

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

GDAHCV2019/0549

BETWEEN:

MATTHEW FRANKLYN VEINOTTE

Claimant

and

**1. DANIELLA C WILLIAMS MITCHELL
(EXECUTRIX FOR THE ESTATE OF 1ST DEFENDANT ROYIANSON DE
FREITAS, DECEASED)
2. AKIM FRANK**

Defendant

BEFORE:

Mrs. Michelle John-Theobalds

Master [Ag.]

APPEARANCES: (Via Zoom)

Ms. Chrystal Braveboy-Chetram of counsel for the claimant

Mr. Akim Frank, present but unrepresented.

2021: February 23;
June 25.

JUDGMENT

[1] **JOHN-THEOBALDS M [AG.]:** On 6th December 2015, 36 year old Linnea Veinotte was out for a morning run along the L'Anse Aux Epines main road, in the parish of St. George. What was intended to be recreational soon turned tragic when she was hit by a Suzuki Escudo which was being driven by the second named defendant, Akim Frank. As a result of the collision Ms Veinotte lost her life. The administrator

for her estate filed a claim against the owner of the vehicle as well as the driver of the vehicle. Somewhere during the proceedings the owner of the vehicle died and by order of Glasgow J on 10th July 2020 the executrix of the estate of Royianson De Fraitus (deceased) was substituted as the first named defendant.

- [2] On 14th October 2020 judgment in default of acknowledgment of service was entered against Akim Frank for special damages in the sum of \$8, 832.50 and general damages to be assessed by the court. This is the assessment of these damages.
- [3] The claim is for the recovery of damages for the estate of the deceased. The claimant relies on section 2(1) Law Reform (Miscellaneous Torts) Act,¹ which provides that on a person's death, a cause of action may survive after the person's death in a case such as this one. Where a cause of action survives, the Act also makes it clear that damages are recoverable for injury and loss suffered by the deceased, but it excludes loss or gain to the estate, save for funeral expenses. Corbin M buttressed this finding in **Kida Harvey v Don McIntosh**² by holding that the Act allows an action to be maintained by the estate for injury and loss suffered by a deceased.
- [4] I am satisfied that the administrators of the deceased's estate are entitled to recover damages for loss of expectation of life, pain and suffering, lost earnings for lost years, funeral expenses and other special damages and will now assess the damages to be awarded to the claimant under the headings claimed by the claimant.

Special Damages

- [5] The claimant has in their Statement of Claim, claimed for funeral expenses in the sum of \$8,832.50. A receipt from Otway/Bailey Funeral Home was annexed to the Amended Claim Form and Amended Statement of Claim filed as Exhibit "LV 8"

¹ Chapter 167 Laws of Grenada.

² GDAHCV2002/0145; Delivered on 5th November 2015; (Unreported).

evidencing that this amount has been paid in full. The claimant has proven this amount satisfactorily and I therefore award funeral expenses in the sum of \$8,832.50.

General Damages

- [6] The claimant submits that General Damages should be awarded under 3 heads; Lost Earnings for Lost years, Loss of expectation of Life and Pain and Suffering. I will take each in turn.

Lost Earnings for Lost years

- [7] At the time of her death, Mrs. Vienotte held a PHD in Genetics and Immunology and was employed as an Assistant Professor and Learning Strategist with the Department of Educational Services at Saint George's University. For this position she earned an annual salary of US\$ 87,681.52 before the deduction of the statutory withholding tax of 15%. This was evidenced by a copy of her letter of Appointment dated 22nd April, 2015 which was annexed to the First Claimant's Witness Statement. This letter also stated that she would be eligible for an annual target performance bonus of US\$886.94, which would have been paid at the end of October of the following academic year and which is also subject to the statutory withholding tax of 15%. On this basis, the claimants suggest that the deceased's gross annual salary, taking the bonus into consideration, was US\$88,568.46 and her annual net salary after tax was US\$75,283.19. I accept this sum.
- [8] When making an award under this head, the court must give consideration to the proportion of the deceased's earnings which would have been applied for the benefit of the family.
- [9] In **Irma Smith et al v Omari Phillip**,³ Mathurin M (as she then was) stated:
- "[4] The principles in calculating the award for loss of earnings was stated as follows in the Pickett case ... ;

³ ANUHCv2009/0579; delivered on 15th April, 2011; (Unreported).

"The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at the time of death would suggest he was reasonably likely to achieve."

Additionally, the court must make the best estimate based on the known facts and prospects at the time of death."

- [10] To inform how the court should determine the multiplicand used to calculate the lost earnings, Mathurin M went further to state:

*"[5] The judgment of Benjamin J. in **Anna Modeste et al v Jacobs et al (GDAHCV2000/0583)** addressed in detail the manner in which the court determines the annual salary which is the multiplicand used for calculating the lost earnings. He referred to Lord Scarman in **Gammel v Wilson** who confirmed the approach taken by Lord Wilberforce in **Pickett's** case;*

'the amount to be recovered in respect of earnings in the "lost years" should be after deduction of an estimated sum to represent the victim's probable living expenses during those years. I think that this is right because the basis, in principle, for recovery lies in the interest which he has in making provision for dependents and others, and this he would do out of his surplus. "

*[6] Benjamin J also referred to Connor LJ in the unanimous Court of Appeal judgment in **Harris v Empress Motors Ltd (1983) 3All ER 561***

"However, where the deceased expended the whole or part of his net earnings on living expenses (such as rent, mortgage, interest, rates, heating, electricity, gas, telephone etc and the cost of running a car) for the joint benefit of himself and his dependents, a proportion of that expenditure (the exact proportion being dependent on the number of dependents) should be treated as expenditure exclusively attributable to his living expenses and thus deductible from his net earnings in making the assessment under the 1934 Act; for example, where the only dependent is the deceased's wife one-half of the expenditure for their joint benefit should be deducted from his net earnings, but where there is a wife and two dependent children, one quarter of the expenditure for the family's benefit should be deducted from his net earnings." (emphasis mine)

- [11] Taking into consideration the submission made by the claimant that the deceased would have wholly applied her income for the benefit of her husband and two minor sons, I am satisfied that in accordance with the principles enunciated in **Harris v Empress Motors Ltd** and applied in **Irma Smith et al v Omari Phillip**, the

deceased net annual salary should be discounted by 25% as a deduction to represent the deceased's living expenses. The surplus of 75% equivalent to US\$56,462.39, would represent the multiplicand.

[12] The claimant submits that the deceased who was 36 years old at the time of her death was in good health and lived a full and active life. It is submitted that the deceased had approximately 24 working years ahead of her. For this reason the claimant has submitted that a multiplier of 16 would be reasonable under the circumstances. To bolster this, the claimant used the following cases:

- (i) **Anna Modeste et al v Jacobs et al** (GDAHCV2000/0583) where a multiplier of 12 was used for a 44 year old male who was a gas station attendant
- (ii) **Irma Smith et al v Omari Phillip** where a multiplier of 14 was used for a 39 year old male who was a Technical Manager;
- (iii) **Yolanda Rodney v Osbourne Quow** where a multiplier of 12 was used for a 36 year old male.

[13] In **Alphonso v Raamnath**⁴ the appellate court examined a number of cases where persons were of varied ages and in giving the judgment of the court Singh JA pronounced⁵:

“In determining the 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.”

⁴ Alphonso v Ramnath (1997) 56 WIR 184.

⁵ At pages13-14.

[14] Having considered the cases submitted by the clamant, I find that a multiplier of 14 is more appropriate. Additionally, taking into account the vicissitudes and contingencies which could have occurred in the deceased's life, the sum is further discounted by 10%.

[15] Accordingly an award of $\text{US\$}56,462.39 \times 14 = \text{\$}790,473.46$, less 10% = $\text{\$}711,426.114$ is made for lost earnings for lost years.

Loss of Expectation of life

[16] The claimants submit that they are entitled to an award under this head in the sum of \$5000.

[17] An award for loss of expectation of life is usually a modest and conventional award. There is no set scale for an award for loss of expectation of life, however in making an award under this head, the court must strive for consistency taking into account similar awards made by this court. Over the years we have seen an increase in the amount awarded under this head with cases from 2017 such as **Sandra Ann-Marie George (Administratrix of the Estate of Karlos Geroge) v Nigel Don-Juan Glasgow**⁶ and from 2019 such as **Althea Hazell v Matthew Gregg**⁷ awarding a sum of \$5000.00.

[18] I find this sum to be reasonable and accordingly award \$5000.00 for this head.

Pain and Suffering

[19] The first claimant in his witness statement states that the precise death of the deceased is unknown. After days of searching, the deceased's body was found on 11th December, 2015, some 5 days later. The post mortem revealed that the cause of death was blunt force trauma to the chest and lower limb hemothorax. Given the

⁶ SVGHCV2011/0465; delivered on 2nd February, 2017; unreported.

⁷ SVGHCV2011/0170; delivered on 18th June 2019; unreported.

extent of the deceased injuries, it is submitted that the deceased experienced pain and suffering for whatever period of her life between the accident and her death.

[20] In **Kida Harvey**, where there was no evidence of the deceased's precise time of death, the court awarded \$2500, on the assumption that the deceased did not survive long after the accident. In **Althea Hazell** the court awarded \$3000 where the deceased died the day of the accident but there was limited evidence regarding the extent of the deceased's pain and suffering. In **Sandra Ann-Marie George** an award of \$4000.00 was held to be reasonable where the deceased died the following morning. In **George Jolly et al v Vallen Francois et al**⁸, where death occurred within hours of the injuries, an award of \$10,000 was made.

[21] The claimants submit that the sum of \$5000.000 is a fair and reasonable award. I find that the award of \$5000 is reasonable and accordingly award.

Interest

[22] The claimant has submitted that the court is empowered by the West Indies Associated States Supreme Court (Grenada) Act⁹ to award pre and post judgment interest at rates. Counsel has urged the court to award pre-judgment interest at a rate deemed suitable by the court, and post judgment interest at a rate of 6%.

[23] In **Alphonso v Ramnath Singh JA**, in addressing the issue of interest, opined as follows:

"The general principle is that interest ought only to be awarded to a plaintiff for being kept out of money which ought to have been paid to him. With regard to general damages, no interest should be awarded before judgment on loss of future earnings. On damages for loss of amenity and pain and suffering, interest should be awarded from the date of the service of the writ to the date of trial at the rate payable on money in Court placed on short term investment. Regarding special damages interest should be awarded

⁸ GDAHCV2010/0302; delivered on 1st December 2011; unreported.

⁹ CAP 336 Laws of Grenada.

for the period from the date of the accident to the date of trial at half the above rate. [See Jefford v. Gee (1970) 1 All E.R. 1202].”¹⁰

[24] Interest is therefore ordered in keeping with the principles set out in **Alphonso v Ramnath**, which will be outlined below.

Conclusion

[25] I therefore order as follows:

- (i) Special Damages in the sum of \$8,832.50, with interest at the rate of 3% per annum from the date of the accident to the date of judgment.
- (ii) The sum of US\$ \$711,426.114 for lost earnings for lost years, with no award being made for pre judgment interest.
- (iii) The sum of \$5000.00 for loss of expectation of life, with interest at the statutory rate of 6% from the date of the service of the claim, which according to the Affidavit of Service of Ronald Thompson filed on 7th August, 2020 is 6th August 2020, until the date of this judgment.
- (iv) The sum of \$5000.00 for pain and suffering, with interest at the statutory rate of 6% from the date of the service of the claim, until the date of this judgment.
- (v) Post judgment interest is awarded on the global sum at the statutory rate of 6% from today’s date to the date of payment.
- (vi) Prescribed costs on the global award in accordance with rule 65.5 of the **Civil Procedure Rules 2000**.

[26] I am grateful to counsel for the appellant for her most helpful submissions.

Michelle John-Theobalds
Master [Ag.]

¹⁰ At page 18.

By the Court

Registrar