

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SVGHCV2018/0178

BETWEEN:

SHARON WALKER-GLASGOW
Attorney Administratrix for the Estate of
CALLIS ALRON ROY WALKER
aka **ALRON WALKER**

Claimant

AND

INNOTECH SERVICES (SVG) LTD

Defendant

Appearances:

Ms. Patina Knights for the Claimant

Ms. Keisal Peters for the Defendant

2020: November 24
2021: March 4

JUDGMENT ON ASSESSMENT OF DAMAGES

- [1] **GILL, M.:** On November 9, 2015, Callis Alron Roy Walker (“the deceased”) was a construction worker at the Argyle International Airport. He was employed by the defendant, Innotech Services (SVG) Ltd (“Innotech”). On that day, whilst working on the cargo terminal building, he fell from a height of approximately 20 to 30 feet and sustained multiple trauma. He was taken to the Milton Cato Memorial Hospital where he died later the same day. At the time, he was 36 years old, having been born on June 12, 1979.

- [2] On November 9, 2018, Sharon Walker-Glasgow, the aunt or sister and administratrix of the estate of the deceased, filed a claim in negligence against Innotech seeking damages pursuant to the Compensation for Injuries Act.¹ On February 4, 2019, judgment in default of defence was entered in favour of the claimant for an amount to be decided by the court.
- [3] The deceased is survived by his 2 daughters, Allia Shamika Walker and Callice Tamila Thompson. Allia was born on November 7, 2002 and was 13 years old when her father passed away. At that time, Callice was 8 years old, a few days from 9, having been born on November 14, 2006. Both daughters lived with him, Allia from birth and Callice, since she was a few weeks old. Their mother moved to Tortola a couple years after Callice was born.
- [4] The date of the assessment hearing being November 24, 2020 is about 5 years from the date of death of the deceased on November 9, 2015.
- [5] In the claim form and statement of claim, the claimant seeks the following relief;
- (a) Under the Compensation for Injuries Act, Cap. 122 of the Laws of Saint Vincent and the Grenadines Revised Edition 2009 damages for the dependents;
 - (b) Under the Compensation for Injuries Act aforesaid special damages in the amount of \$21,557.75 and general damages for the benefit of the Estate of the deceased;
 - (c) Interest;
 - (d) Further or other relief as the court deems necessary and appropriate;
 - (e) Costs.

Issue

- [6] The court must determine the quantum of damages to be awarded to the estate and the dependents of the deceased.

The legislation

- [7] The Compensation for Injuries Act (hereinafter “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

¹ Cap. 122 of the Revised Laws of Saint Vincent and the Grenadines 2009

as a result of the death, and permits an action to be brought for the benefit of those dependents. Further, the Act provides that all causes of action vested in that person survive for the benefit of his estate.

[8] Relevant provisions of the Act are as follows:

7. Action for benefit of relations

Every action in respect of injuries resulting in death shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased;...

9. Damages recoverable and how divided

In every such action, the judge or, where the trial is had before a jury, the jury, may give such damages as he or they may think proportioned to the injury resulting from such death to the parties respectively for whom, and for whose benefit, such action shall be brought, and the amounts so recovered, after deducting the costs not recovered from the defendants, shall be divided amongst the before-mentioned parties in such shares as the judge, or the jury by their verdict, shall find and direct:....

13. Effect of death in certain causes of action

(1) Subject to the provisions of this section, on the death of any person on or after 5th February, 1952, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:....

(2)

(6) The rights conferred by this section for the benefit of the estate of deceased persons shall be in addition to, and not in derogation of, any rights conferred on the dependants of deceased persons by sections 2 to 12 inclusive,...

[9] 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".²

² Civil Suit No. 138 of 1994, Saint Vincent and the Grenadines, at paragraph 5

The Estate Claim

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

SPECIAL DAMAGES

- [11] It is well established that special damages must be pleaded, particularised and proved.³ As special damages, the claimant seeks loss of funeral expenses pursuant to section 12 of the Act in the sum of \$18,917.75 and the amount on the bill issued by the Milton Cato General Hospital in respect of the deceased in the sum of \$2,640.00.
- [12] Innotech paid a part of the funeral expenses in the sum of \$11,600.00 so that there is a balance of \$9,957.75. The claimant produced receipts substantiating payments made in the sum of \$9,865.75. The deficiency of \$92.00 is with respect to wreaths for which the claimant stated she did not receive a receipt. The claimant asked the court to include this sum as reasonable in the circumstances. At the assessment hearing, learned counsel for Innotech, Ms. Peters, agreed to the inclusion of the sum of \$92.00 for wreaths. Therefore, all other sums claimed being proved by receipts, the global award for special damages is \$21,557.75, the balance to be paid being \$9,957.75.

GENERAL DAMAGES

Loss of expectation of life

- [13] This is a statutory award recoverable under the Act. It is usually a modest, conventional award. The claimant submitted that the award under this head should be \$7,500.00.
- [14] In **Carmillus Emmanuel and Cecelia John v Ronald Punnet et al**,⁴ 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**,⁵ 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

³ Per Lord Diplock in *Ilkiw v Samuels* [1963] 2 All ER 879 at 890

⁴ Claim No. 364 of 2004 (Saint Vincent and the Grenadines)

⁵ Claim No. 465 of 2011 (Saint Vincent and the Grenadines)

was a passenger colliding with a wall. Price-Findlay J. awarded \$10,000.00 in the case of the death of a 6-year-old boy in **George Jolly and Another v Vallen Francois and Another**.⁶ I note, however, that the award in that case included damages for pain and suffering. An award of US\$5,000.00 was made by Benjamin J. in 2002 in **Sony Prince v Loring George Gorda Aero Services Inc.**⁷ for loss of expectation of life of an adult. I will follow the court in the St. Vincent and the Grenadines case of **Sandra Ann-Marie George v Nigel Don-Juan Glasgow** and award \$5,000.00 in damages for loss of expectation of life.

Pain and suffering and loss of amenities

- [15] The claimant suggested an award of \$20,000.00 under this head. The deceased fell from the building on the afternoon of November 9, 2015 and succumbed to his injuries later the same day. There is a lack of cogent evidence to allow the court to make an award of the amount advocated by the claimant. It is not clear how long the deceased remained alive after the injuries. Unfortunately, a medical report was unavailable as the hospital indicated that the file of the deceased was not located. However, the death certificate of the deceased revealed that he died as a result of multiple trauma after falling from a height. In relation to the pain the deceased may have suffered before he died, as argued by learned counsel for Innotech, I must disregard what I consider to be hearsay evidence in the affidavit of the claimant in support of the assessment in this regard. Learned counsel for the claimant, Ms. Knights asked the court to consider the hospital bill, which included costs for tests, scans, laboratory work, X-rays, etc. suggesting that the deceased was alive for some time after he arrived at the hospital. Ms. Peters, whilst accepting that clearly, the deceased did not die instantly, posed the question as to whether he was conscious. Ms. Peters posited that there was no evidence before the court to confirm whether or not he was conscious.

- [16] In **Yolanda Rodney v Osborne Quow**,⁸ 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

⁶ GDAHCV2010/0302

⁷ BVIHCV1993/0035

⁸ Claim No. 415 of 2004 (Saint Vincent and the Grenadines)

have been acute.” With no admissible evidence that the deceased was conscious for the period from the time of his fall to the time he passed away, and taking into consideration that he fell some distance, although shorter than in **Yolanda Rodney**, I consider reasonable the sum of \$2,000.00 for pain and suffering and loss of amenities in this matter. Accordingly, I award that amount.

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 his working life had he not fallen and died, with a deduction for what he likely would have spent on himself. To cover loss suffered after the date of death of the deceased, the dictum of Lord Fraser in **Cookson v Knowles**⁹ is instructive. His Lordship opined:

“On the first question the most important point is whether the damages ought to be assessed as at the date of death or at the date of trial. In strict theory I think there is no doubt that they should be assessed as at the date of death, just as in theory they are assessed at the date of injury in a personal injury case. But the damages awarded to dependants under the Fatal Accidents Acts for loss of support during what would (but for the fatal accident) have been the remainder of the deceased person’s working life have been based on estimates of many uncertain factors, including the length of time during which the deceased would probably have continued to work and the amount that he would probably have earned during that time. The court has to make the best estimates that it can having regard to the deceased’s age and state of health and to his actual earnings immediately before his death, as well as to the prospects of any increases in his earnings due to promotion or other reasons. But it has always been recognised, and is clearly sensible, that when events have occurred, between the date of death and the date of trial, which enable the court to rely on ascertained facts rather than on mere estimates, they should be taken into account in assessing damages....***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.***”¹⁰ (Emphasis added)

Pre-trial Loss

- [18] As stated above, 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.

⁹ [1979] AC 556

¹⁰ Ibid at pages 574 G to 575 D

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

[20] On the method used by the claimant, the suggested award for pre-trial loss of earnings is \$74,161.62. At the date of his death, the deceased was earning \$725.88 per fortnight or \$1,451.76 per month, as evidenced by a salary slip exhibited to the affidavit of the claimant. In addition, the claimant is asking the court to take into account additional income the deceased purportedly earned on weekends to supplement his income from Innotech. It is submitted this additional income came from the deceased working on weekends as a mason/carpenter and barber. The evidence of income other than from Innotech is as follows:

- i. Affidavit of John Walford Thomas. This affidavit revealed that Mr. Thomas, a farmer from the same village of the deceased, paid the deceased \$100.00 per day for working on his roof between 2011 and 2012. He also paid him \$100.00 a day for 3 days’ work inside his home plastering and building a cupboard. If the deceased did not work on weekends, Mr. Thomas would call him to help him in the field. If he had 3 persons, he would pay the deceased \$50.00 but if only the deceased, he would pay him \$100.00.
- ii. Affidavit of Linda Young. Ms. Young swore that the deceased worked for her on 2 separate occasions. In 2014, he built a wall for her in 3 days. The Sunday before he died, he had just finished building a bathroom for her mother. She paid him \$120.00 per day. She did not keep receipts.
- iii. Affidavit of Damion Gonsalves. Mr. Gonsalves, a teacher by profession, deposed that he is also a contractor of Rigid Construction that is not a registered company. In or about September 2011, the deceased worked with him on the construction of a house from Monday to Saturday for 6 months, and then the deceased moved on to other employment. Mr. Gonsalves swore that had it not been for his death, he would continue to employ the deceased.

- iv. Affidavit of Sharon Walker-Glasgow. The claimant attested to the weekend jobs of the deceased including constructing an extension, kitchen cabinets and bedroom closets. She further swore that if he did not go out on a job on the weekend, he would perform barber services for persons in the area, charging \$5.00 for children's cuts and \$10.00 for adults.

[21] Based on this evidence, the claimant submitted that the deceased would have earned an average of an additional \$240.00 on weekends to supplement his income. This would amount to approximately \$960.00 per month. Adding this to his income from Innotech, the claimant calculated that the deceased would have earned approximately \$2,411.76 per month or \$28,941.12 per annum. Deducting 25% of income spent exclusively on himself, and living expenses, the claimant's suggested multiplicand is \$21,705.84.

[22] The defendant's evidence shows that the deceased was not continuously employed by Innotech. In the affidavit of Anderson Omar Yarde, construction manager of Innotech, he deponed that the deceased was employed by Innotech on a project-by-project basis on 3 different occasions in relation to 2 projects in St. Vincent as follows:

- 1) 'Fire Station Project' at Argyle International Airport' - June 10, 2014 to November 13, 2014. The deceased worked 5 days per week, 8 hours a day. He was paid a gross hourly rate of \$11.25.
- 2) 'Cargo Building Project' at Argyle International Airport' - Between May 30, 2015 and June 10, 2015 (8 days) at a gross hourly rate of \$11.25, up to 8 hours.
- 3) 'Cargo Building Project' at Argyle International Airport – October 19, 2015 until the date of his death on November 9, 2015.

[23] According to Mr. Yarde, the deceased was expected to have continued working with Innotech until January 9, 2016. Learned Counsel Ms. Peters argued that based on this evidence, the multiplicand should be calculated on the basis that the deceased worked for only 6 months out of a year. On that basis, Counsel suggested a net annual income of \$8,710.56 (i.e. a monthly net income of \$1,451.76 for a 6-month work year). Applying the reasoning in the **Carmillus Emmanuel** case,¹¹

¹¹ Claim No. 465 of 2011 (Saint Vincent and the Grenadines)

Counsel deducted $\frac{1}{4}$ for income the deceased would have spent exclusively on himself and $\frac{1}{4}$ for living expenses, and came up with a multiplicand of \$4,355.28 for this case.

[24] The difference between the figures suggested by the parties for the multiplicand is, therefore, \$17,350.56.

[25] Apart from the pay slip, no documentary evidence was produced to substantiate the additional income. Learned Counsel for Innotech, Ms. Peters was of the view that although it is the culture in St. Vincent and the Grenadines for some self-employed persons not to keep records, it is not a good practice. Self-employed persons are expected to keep records. Counsel warned that if contributions to the National Insurance Scheme (NIS) are not paid, such persons might find themselves in hot water. She referred to the affidavit of Damion Gonsalves and pointed out that Mr. Gonsalves had no records to assist the court. As an employer, Counsel admonished, he should have records, and raised the question as to whether Mr. Gonsalves paid contributions. Further, she asked the court to note that the last time the deceased worked for Mr. Gonsalves was in 2011. The deceased died in 2015 so that Mr. Gonsalves did not employ him for 4 years. With no evidence of a pay slip or evidence of NIS contributions, counsel posited that the evidence before the court is not good enough to support the claim for pre-trial loss of earnings being made by the claimant.

[26] Ms. Peters submitted that if the court is minded to extend the period of 6 months, it should not take into account evidence not provided. Since there is no documentary evidence to support the sum of \$960.00 per month for additional income being put forward by the claimant, Counsel suggested that amount should be reduced if the court is minded to consider a sum as additional income.

[27] The clear evidence is that the deceased was not employed by Innotech on a permanent basis. The longest period was the 5-month stint in 2014. The last engagement was expected to last less than 3 months. Therefore, I agree with the defendant's submission (at least in relation to calculating the income from Innotech), that a period of 6 months employment per year should be used in the calculation of the multiplicand. On that basis, the deceased would have received \$8,710.56 (\$1,451.76 x 6 months) from Innotech per annum (in effect).

[28] Notwithstanding the absence of documentary evidence of the additional income claimed, it is clear that the deceased managed to secure some other jobs to maintain himself and his family. The affidavit evidence presented did little to assist the court. However, in the circumstances, I am minded to consider a modest, nominal amount as earned monthly by the deceased when he was not on the job for Innotech. I am of the view that the sum of \$300 per month is appropriate. This would give a figure of \$3,600.00 per annum for additional income, making the total annual income of the deceased \$12,310.56.

[29] As expounded by O'Connor LJ in **Harris v Express Motors Ltd**,¹² a percentage is to be deducted from this net income to represent what the deceased would have spent exclusively on himself. 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."

I accept 25% of his yearly income as a reasonable amount the deceased would have spent on himself. This amounts to \$3,077.64. Therefore, I apply a multiplicand of \$9,232.92 (\$12,310.56 - \$3,077.64).

[30] In this case, the period of the date of death to the date of assessment is just about 5 years. Using this as the multiplier, the pre-trial loss to the estate of the deceased is \$46,164.60 (\$9,232.92 x 5).

Post-trial Loss

[31] For the post-trial loss of earnings, Ms. Knights proposed a multiplier of 15.53. The deceased was 36 years old at the time of his death. He would have been 41 at the date of assessment. Counsel submitted that given his occupation, he probably would have worked up to the pension age of 70 (as in the Ogden Tables), and invited the court to use a total multiplier (pre-trial plus post trial loss)

¹² [1983] 3 All ER 561

of 19.53 as provided in the Ogden Tables.¹³ Ms. Knights cited the Trinidad and Tobago cases of **Mario's Pizzeria Limited v Hardeo Ramjit**¹⁴ and **Seepersad v Persad & Anor**¹⁵ in support of her contention. In **Seepersad**, the Privy Council uplifted the multiplier for future loss of earnings from 10 to 16 in respect of a 37 year old who suffered injuries as a result a vehicle falling 25 feet on top of his taxi, which he was driving at the time. He was not killed.as were 2 passengers in the taxi.

[32] In the St. Lucia case of **Germina Cherubin v The Attorney General of St. Lucia and Fire Officer Rudy Avril**,¹⁶ the deceased was 48 at the time of the accident that killed him. He was employed as a driver for a bakery. The court considered that the deceased would have worked another 15 years until retirement and applied a multiplier of 13, taking into account that two years had elapsed between the date of death and the date of assessment.

[33] Ms. Peters for the defendant submitted that the court ought to use a multiplier of 12 as was done in **Carmillus Emmanuel and Cecelia John v Ronald Punnet et al**¹⁷ in the case of a 36 year old.

[34] In considering authorities on this issue, it appears that when the number of remaining productive years may be substantial, the courts discount the figure considerably.¹⁸ In the circumstances of this case, I will use a multiplier of 15 years and deduct the pre-trial period of 5 years, giving a post-trial multiplier of 10 years. Applying the multiplicand of \$9,232.92, the award for post-trial loss is \$92,329.20.

[35] The total sum for loss of earnings for the lost years is pre-trial loss \$46,164.60 + post-trial loss \$92,329.20 = \$138,493.80.

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

(i) Special damages in the sum of \$21,557.75

¹³ Actuarial Tables for use in Personal Injury and Fatal Accidents cases, 7th Edition, Supplementary Table (UK)

¹⁴ Civil Appeal No. 146 of 2003

¹⁵ [2004] UKPC 19

¹⁶ SLUHCV2017/0319

¹⁷ Claim No. 364 of 2004 (Saint Vincent and the Grenadines)

¹⁸ See Noreen Stapleton and Ermine Stapleton v Ralph Walker and Rudolph Charles (Suit No. 504 of 1992, 505 Of 1992 (St. Vincent and the Grenadines); see also Mendy Phillip v Sheldon Gaston et al (SLUHCV2016/0203 consolidated with SLUHCV2016/0283 Julianne Fadlin and another v Sheldon Gaston et al)

- (ii) Damages for loss of expectation of life in the sum of \$5,000.00
- (iii) Damages for pain and suffering and loss of amenities in the sum of \$2,000.00
- (iv) Damages for loss of earnings in the sum of \$138,493.80

The total estate claim is, therefore, \$167,051.55.

The Dependency Claim

- [37] In order to calculate the award of damages to be made under this head, the value of the dependency, that is, the amount provided by the deceased to his dependents, must first be ascertained, and that amount is to be multiplied by the period of the dependency.¹⁹
- [38] As stated earlier, the deceased is survived by his 2 daughters Allia who was 13 at the date of his death and Callice who was a few days short of 9 at the time. They lived with him. He was their sole provider. Allia is now 18 and Callice 14.
- [39] The case of **Monica Plummer v Conway Bay Limited and another** illustrates the court's recognition of dependency up to some stage between the ages of 18 and 25.²⁰ In that case, a multiplier of 10 was used for minor children who were aged 7 and 8 at the time of the accident that resulted in the death of their father.
- [40] In this case, I will use the age of 18 as that which the girls would have been dependent on their father. The period of dependency since the death would be 5 years for Allia and 7 years for Callice. Following the approach of the court in **Carmillus Emmanuel**, the average length of the dependency is 6 years.
- [41] Both counsel used the same multiplicand (as calculated by each) to calculate the dependency award. The claimant used a multiplier of 7.5 for the average dependency. Based on the claimant's multiplicand of \$21,705.84, the proposed award for the dependency claim is \$162,793.80. With the defendant's suggested multiplier of \$4,355.28 and a proposed average multiplier of 5 years, the defendant calculated the dependency award as \$21,776.40.

¹⁹ See *Calixtus Henry v Marie Ann Mitchel and Theresa Henry*, SLUHCV0001/2006, per Cottle J. at paragraph 11

²⁰ Claim No. 942 of 2000 (St. Lucia)

[42] The difference between the parties' suggested dependency awards is \$107,396.28.

[43] Using the multiplicand the court has determined, the dependency award is $\$9,232.92 \times 6 = \$55,397.52$.

Interest

[44] Consistent with the method of calculation of interest in **Sandra Ann-Marie George v Nigel Don-Juan Glasgow**,²¹ 3% interest should be awarded on the special damages and pre-trial loss of earnings, from the date of death to the date of judgment on liability. For general damages for loss of expectation of life, and pain and suffering and loss of amenities, the claimant is entitled to interest at the statutory rate of 6% from the date of filing of the claim until judgment on liability. No interest is payable on loss of future earnings.

Order

[45] Based on the foregoing, I make the following orders:

(1) On the estate claim, the defendant shall pay the claimant as follows:

1. Special damages in the sum of \$21,557.75 with interest at the rate of 3% from the date of death to the date of judgment on liability on February 4, 2019.
2. General damages for loss of expectation of life in the sum of \$5,000.00 and for pain and suffering and loss of amenities in the sum of \$2,000.00 with interest at the rate of 6% from the date of the filing of the claim to judgment on liability on February 4, 2019.

²¹Claim No. 465 of 2011 (Saint Vincent and the Grenadines)

3. Loss of earnings (pre-trial \$46,164.60 plus post-trial \$92,329.20) in the sum of \$138,493.80 with interest on the pre-trial loss at the rate of 3% from the date of death to the date of judgment on liability on February 4, 2019.

(2) On the dependency claim, the defendant shall pay the claimant damages in the sum of \$55,379.52.

(3) The defendant shall pay the claimant interest on the sums payable at the rate of 6% per annum from the date of this assessment to the date of payment.

Costs

[46] The claimant is awarded prescribed costs on the global sum of \$222,449.07 (the estate award plus the dependency award) in accordance with CPR 65.5 in the sum of \$18,183.68.

Tamara Gill

Master

By the Court

Registrar