

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SVGHCV2011/0327

BETWEEN:

**COLLINGFORD JOHN
(of Dickson Village)**

First Claimant

AND

**GLEANOR JOHN
(of Dickson Village)**

Second Claimant

AND

**DE'ANDRÉ KINGSLEY LUC T'VON JOHN
Sole Beneficiary and Intended Administrator in the Estate
of Kingsley John (Deceased) by his mother and next friend BOFFY JOHN**

Third Claimant

AND

THE ATTORNEY GENERAL

Defendant

Appearances:

Mrs. Cheryl Bailey and Mrs. Mandella Peters for the First and Second Claimants
Mr. Duane Daniel with him Ms. Jenell Gibson for the Third Claimant
Ms. Moureeze Franklyn with her Mrs. Cerepha Harper-Joseph for the Defendant

2020: July 30
September 2.3

JUDGMENT ON ASSESSMENT OF DAMAGES

[1] **GILL, M.:** On December 21, 2016, Henry J. delivered judgment in these proceedings in favour of the claimants. Her Ladyship ordered as follows:

- (1) *The Crown is vicariously liable for Kingsley John's wrongful death.*
- (2) *Mr. Collingford John, Mrs. Gleanor John and Ms. Boffy John as D'André John's next friend are entitled to recover from the Crown, damages for Kingsley John's wrongful death, to be assessed on application to be made on or before 31st January 2017.*
- (3) *The Crown shall pay to Mr. Collingford John, Mrs. Gleanor John and Ms. Boffy John as D'André John's next friend, costs to be assessed on application to be made on or before 31st January 2017.*

[2] The claimants filed a notice of application for assessment of damages and costs on January 31, 2017. It should be noted that the claimants do not seek special damages.

Relevant facts

[3] The first claimant, Collingford John ("Mr. John"), is the father of the deceased Kingsley John and was 69 years old at the time of the application, having been born on July 11, 1947. The second claimant, Gleanor John ("Mrs. John"), is the mother of the deceased and was 63 years old at the time of the application, having been born on August 24, 1953.

[4] The deceased was born on January 27, 1983 and was 27 years old when he died on August 7, 2010 after a shooting incident at the Biabou Police Station.

[5] At the time of his death, the deceased lived at home with his parents and sister and was unmarried. During his lifetime, the deceased contributed to the household and to Mr. and Mrs. John.

[6] The deceased fathered one child, the third claimant, D'André Kingsley Luc T'von John ("DJ"), who was born on May 30, 2010. Before his demise, the deceased contributed approximately \$400.00 monthly to the maintenance of DJ.

[7] At the time of his death, the deceased had been employed as a police constable for approximately 7 years and he received a salary of \$23,676.00 per annum.

[8] The date of the judgment was December 21, 2016, which is about 6 years and 4 months or 6.33 years or 76 months from the date of death of the deceased.

Issue

[9] The court must determine the quantum of damages to be awarded to the claimants.

The legislation

[10] The Compensation for Injuries Act¹ ("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. Further, the Act provides that all causes of action vested in that person survive for the benefit of his estate.

[11] The relevant provisions of the Act are as follows:

3. Action to be maintainable notwithstanding death of person injured

Whensoever the death of any person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, before the 3rd July, 1884, (if death had not ensued), have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to an offence.

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

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

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:....*
- (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,...*

[12] 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

[13] In this case, Mr. and Mrs. John, as the parents, and DJ as the sole beneficiary and intended administrator of the estate of Kingsley John deceased, are entitled to compensation from the defendant. In addition, DJ is entitled to make an estate claim. DJ's mother and next friend, Boffy John, exhibited a grant of letters of administration in the estate of Kingsley John naming DJ as the sole beneficiary in the estate.

The Dependency Claim

[14] 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.³

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

³ See *Calixtus Henry v Marie Ann Mitchel and Theresa Henry*, SLUHCV0001/2006, per Cottle J. at paragraph 11 of the judgment

The Multiplicand

- [15] In a dependency claim, the calculation of the value of the dependency is a purely financial one, the first stage of which is to quantify the net annual financial loss, the multiplicand.
- [16] After referring to several methods of calculation, learned counsel for Mr. and Mrs. John urged the court that it may be more useful to adopt the percentage or fraction approach adopted by the House of Lords in the seminal case of **Harris v Empress Motors Ltd.**⁴ In that case, the Court considered *inter alia* the damages recoverable by the dependents of a deceased man under the Fatal Accidents Act 1976. O'Connor LJ gave invaluable guidance on the calculation of the multiplicand. At page 565 (e to f) of the judgment, he expounded:
- “...the modern practice is to deduct a percentage from the net income figure to represent what the deceased would have spent exclusively on himself. The percentages have become conventional in the sense that they are used unless there is striking evidence to make the conventional figure inappropriate because there is no departure from the principle that each case must be decided on its own facts. Where the family unit was husband and wife the conventional figure is 33% and the rationale for this is that broadly speaking the net income was spent as to one-third for the benefit of each and one-third for their joint benefit....Where there are children the deduction falls to 25%, as was the agreed figure in the *Harris* case.”
- [17] According to this formula, where there is only a couple involved, the dependency income should be 67% or two-thirds of the net income. When there are children involved, the amount the deceased would be deemed to have spent on himself would be reduced to 25% or one-quarter of his earnings. Therefore, the dependency multiplicand would be 75% or three-quarters of the net income.
- [18] In this particular case, the deceased lived at home with his parents and DJ lived with his mother separately, thereby creating a split living situation. Learned counsel for Mr. and Mrs. John submitted that in these circumstances, the dependency income should fall somewhere in the middle (of 67% and 75%) and generously (for the defendant) recommended a multiplicand of 71% of the net income. I disagree with this approach. Reducing the dependency income from 75% to 71% means that the amount the deceased would have been expected to spend on

⁴ [1983] 3 All ER 561, consolidated with *Cole v Crown Poultry Packers Ltd*

himself works out to 29%. The fact that the child lived in a separate household does not equate to the deceased spending more money on himself. In fact, the opposite is more plausible. Therefore, if I were to use the **Harris** calculation, I would fix the dependency income as advanced by learned counsel for DJ at 75% of the net income of \$23,676.00. This amounts to \$17,757.00.

[19] Taking into consideration that the expenses of the child would naturally increase as the years go by, and that the contributions made towards the parents may diminish as a result, the claimants submitted that it would be fair for the multiplicand to be split, with one-third representing the portion of the dependency income for both parents and two-thirds representing the portion of the dependency income for the child. Thus, if I use the **Harris** method, the multiplicand for the parents would be \$5919.00, Mr. and Mrs. John each being apportioned \$2959.50 and the multiplicand for DJ would be \$11,838.00.

[20] Learned counsel for the defendant, Ms. Franklyn, drew the court's attention to the evidence in the witness statements of Mr. and Mrs. John that the deceased made monthly payments of approximately \$210.00 towards the household bills with contributions towards groceries as well as occasionally \$100.00 and unspecified contributions to the mortgage. Counsel observed that there were no documentary exhibits in support of these assertions. However, she accepted the multiplicand submitted by Mr. and Mrs. John as reasonable in light of the evidence presented. In the event that I use the **Harris** formula, I would adjust that figure from \$5547.29 to \$5919.00.

[21] The evidence of Boffy John, DJ's mother and next friend, is that the deceased contributed approximately \$400.00 per month to her during her pregnancy with DJ. There is no evidence to suggest that this contribution changed for the months after DJ was born. This amounts to \$4800 per annum. Learned counsel for the defendant, Ms. Franklyn pointed out that using the multiplicand of \$11,838.00 for DJ, this gives a figure of \$986.50 per month. Counsel submitted that the true value of the dependency at the time of the deceased's demise was \$4800.00 per year or 20% of the yearly earnings of the deceased. The multiplicand provided by Mr. Daniel amounts to an increase of over 50% in the annual value of DJ's dependency. Still, Ms. Franklyn recognised the likelihood of a rise in value of the dependency of the minor child and suggested a multiplicand of \$7200 per year as more reasonable.

- [22] In my view, the **Harris** calculation is not the proper method to adopt in arriving at the multiplicand as it relates to DJ. As urged by the defendant, I highlight the caution by O'Connor LJ. that each case must be decided by its own facts. In the case at bar is a typical example of what His Lordship must have contemplated as "striking evidence to make the conventional figure inappropriate". Using a multiplicand of \$11,838.00 for DJ will result in his pre-trial loss amounting to \$74,934.54 as submitted (using 6 years and 4 months as the multiplier). On the basis that the deceased contributed \$400 monthly for DJ's maintenance, it would be not be out of order for the Crown to argue that DJ's pre-trial loss should be \$30,400.00 (\$400.00 x 6 years and 4 months). In fact, DJ's counsel, Mr. Daniel, recognised that **Harris** allows the court to make the computation based on evidence and accepted that it was open to the court to arrive at a pre-trial loss figure of \$30,400.00 in respect of DJ at an absolute minimum.
- [23] In light of the foregoing, the court ought not to, and will not, employ the percentage formula used in **Harris** simply on the basis that it is a recognised and accepted financial or mathematical calculation in the determination of the multiplicand. The evidence presented here does not justify it. The justice of this case demands otherwise. I consider that with DJ's birth, an increase in contributions to his mother for his maintenance was likely. Therefore, I accept the Crown's suggestion and set the dependency multiplicand for DJ at \$7200.00 per annum.
- [24] Notwithstanding my decision not to employ the **Harris** calculation, I felt it necessary to illustrate how it would play out had I done so, and to justify my departure from it.
- [25] Consequently, this affects my determination of the multiplicand for Mr. and Mrs. John. Having dispensed with the percentage method (which I regard as appropriate without factoring in DJ), I must now consider what is appropriate in the circumstances. As mentioned earlier, learned counsel for the defendant, Ms. Franklyn, based on the evidence presented, had no issue with the multiplicand figure proposed for Mr. and Mrs. John. I adopt this stance and, ironically, fix the multiplicand as suggested by Mr. and Mrs. John in the sum of \$5547.29, each parent being apportioned \$2773.65.

The Multiplier

- [26] Having determined the multiplicand for the parties, in each case it must be multiplied by an appropriate figure, the multiplier, to cover loss suffered after the date of death of the deceased. On this issue, the dictum of Lord Fraser in **Cookson v Knowles**⁵ 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.***”⁶ (*Emphasis added*)

Pre-trial Loss

- [27] Lord Fraser went on to pronounce a straightforward method of arriving at the award under this head. He explained:

“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.”

⁵ [1979] AC 556

⁶ Ibid at page 574 G to 575 D of the judgment

- [28] In this case, the period of the date of death to the date of judgment is 6 years and 4 months. Using this as the multiplier, the pre-trial loss for Mr. and Mrs. John is \$35,132.84 ($\$5547.29 \div 12 \times 76$ months), with each parent receiving \$17,566.42, and the pre-trial loss for DJ is \$45,600.00 ($\$7200.00 \div 12 \times 76$ months).

Post-trial Dependency – First and Second Claimants

- [29] For the post-trial loss, the life expectancies of Mr. and Mrs. John must be taken into account, Mr. John being 69 years old, and Mrs. John, 63 at the time of the application for assessment. They rely on the Abridged Life Table for Saint Vincent and the Grenadines as at 2016, prepared by the Statistical Office, Ministry of Economic Planning, Sustainable Development, Industry and Labour, Government of Saint Vincent and the Grenadines. Based on this document, which shows the life expectancies of people in the State, it was submitted that a multiplier of 17 should be applied to Mr. John and a multiplier of 21 should be applied to Mrs. John. These calculations would result in post-trial loss for Mr. John amounting to \$47,152.05 ($\2773.65×17), and for Mrs. John, \$58,246 ($\2773.65×21).
- [30] Ms. Franklyn, on behalf of the defendant, steered the court to consider other factors to be taken into consideration on this issue, in particular, the possibility of marriage of the deceased, which would ordinarily result in a reduced dependency for the parents. Counsel cited the case of **Dolbey v Goodwin**⁷ in which it was held that there is a good probability of an unmarried man of 29 marrying, and that there is a fundamental distinction between a claim for death of a husband and a claim for death of a son. To the latter, a lower multiplier must be applied. The court of appeal reduced the amount awarded by the judge at first instance by more than half on the reasoning that the deceased was likely to marry (although it appeared that he had not any matrimonial intentions at the time of his death), and his income would be used towards his wife and future investments, thereby reducing the amount of money the mother might have received from him.

⁷ [1955] 1 WLR 553

[31] In **Veronique Ismael v Justin Albert**, in awarding damages to the mother of a deceased who was 20 years old at the time of his death as a result of a motor vehicular accident, the court considered “the probability that the deceased would marry or become involved in a full time relationship with a woman, causing assistance to his mother to vanish or at least be reduced”.⁸

[32] I am persuaded on the authorities that in the circumstances of this case, the court must consider the prospect of marriage for this 27-year-old police officer in the determination of the multiplier for his parents. To my mind, the life expectancies of the parents do not sway the equation to any great extent. Based on the likelihood of reduced or no future payments to parents, I rule that an appropriate post-trial multiplier for Mr. John is 4 years, and in the case of Mrs. John, 7 years. Thus, the post-trial dependency value for Mr. John is $\$2773.65 \times 4 = \$11,094.60$, and for Mrs. John, it is $\$2773.65 \times 7 = \$19,415.55$.

[33] The dependency for Mr. and Mrs. John is calculated as follows:

Mr. John - pre-trial \$17,566.42 + post-trial \$11,094.60 = \$28,661.02

Mrs. John - pre-trial \$ 17,566.42 + post-trial \$19,415.55 = \$36,981.97.

[34] The court of appeal held that the deceased was 30% contributorily negligent in the cause of his death. Applying the discount, the total dependency for Mr. John is \$20,062.71, and the total dependency for Mrs. John is \$25,887.38 plus interest on the pre-trial loss in both cases.

Post-Trial Dependency – Third Claimant

[35] Mr. Daniel posited that in determining an appropriate multiplier for the post-trial loss for DJ, it may be prudent to consider the prospect of promotion and increased salary for the deceased, DJ's increased dependency, compounded by medical issues with his eyes for which doctor's orders require an eye examination and a change of glasses twice a year, and the decreased dependency of Mr. and Mrs. John. Counsel drew the court's attention to the case of **Monica Plummer v Conway Bay Limited and another** to illustrate the court's recognition of dependency

⁸ SLUHCV 0717 of 2002, per Edwards J. at paragraph 112 of the judgment

up to some stage between the ages of 18 and 25.⁹ 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. DJ was 2 months old when his father died and 6, going on 7 years old at the time of the application. Counsel submitted that a multiplier of 14 is appropriate for DJ's post-trial loss as the evidence shows a dependency up to at least age 20. Subtracting the pretrial period of 6 years and 4 months, the balance of 13 years and 8 months can be rounded off to 14, counsel suggested. He cited the St. Lucia case of **Germina Cherubin v The Attorney General of St. Lucia and Fire Officer Rudy Avril**¹⁰ in which Cenac-Phulgence J. used a post-trial dependency multiplier of 10 (total multiplier of 12, deducting 2 years for the pre-trial period) where the last daughter of the deceased was 7 years old at the time of his death. Her Ladyship also took into consideration that the wife of the deceased was not solely dependent on him but also made her contributions. The multiplier of 12 catered for the last child up to the age of 19. Therefore, Mr. Daniel argued that given the medical issues with DJ's eyes, a multiplier of 20 is justified in this case, 14 for the post-trial dependency.

[36] The defendant proposed a total multiplier of 14, that is, 6 years and 4 months pre-trial and 7 years and 8 months post-trial. On the face of the written submissions of the defendant, it appeared that the defendant accepted the post-trial multiplier of 14. However, Ms. Franklyn cleared this up in her oral submissions.

[37] Given the evidence of DJ's mother and next friend Boffy John in relation to the medical issues with DJ's eyes, evidence not challenged by the defendant, I agree with Mr. Daniel that a post-trial multiplier of 14 for DJ is justified. The post-trial dependency for DJ is, therefore, $\$7200 \times 14 = \$100,800.00$.

[38] On the dependency claim, DJ is entitled to $\$45,600.00$ (pre-trial) + $\$100,800$ (post-trial) = $\$146,400.00$. With the deduction of 30% for the contributory negligence of the deceased, the dependency award for DJ is $\$102,480.00$.

⁹ Claim No. 942 of 2000 (St. Lucia) per Shanks J. at paragraph 14 of the judgment

¹⁰ SLUHCV2017/0319

The Estate Claim

- [39] 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. Of the three claimants, only DJ qualifies to make an estate claim in this case.

Loss of expectation of life

- [40] In keeping with the authority of **Carmillus Emmanuel and Cecelia John v Ronald Punnet et al**,¹¹ the sum of \$3,500.00 is claimed under this head for DJ. This is normally a small conventional award. The defendant accepts this amount as reasonable. I agree. Applying the 30% deduction, I award DJ \$2,450.00 in damages for loss of expectation of life.

Pain and suffering

- [41] The sum of \$2,000.00 is proposed here. Learned counsel for DJ submitted that the facts at trial suggested that the deceased did not die instantly when he was shot so DJ is entitled to damages under this head. In **Yolanda Rodney v Osborne Quow**,¹² the Court awarded \$2,000.00 despite the brevity of the period the deceased remained alive after the vehicle in which he was a passenger plunged some 100 feet, throwing him from the vehicle. Again, the defendant accepted the suggested figure. I consider reasonable the sum of \$2,000.00 for pain and suffering in this matter. Accordingly, I award that amount, discounted by 30%, resulting in the sum of \$1,400.00.

Earnings for lost years

- [42] This takes into consideration the loss to the estate of what the deceased likely would have earned for the rest of his working life had he not been shot and killed, with a deduction for what he likely would have spent on himself. The amount claimed for pre-trial loss of earnings is \$112,401.81,

¹¹ Claim No. 364 of 2004 (St. Vincent and the Grenadines)

¹² Claim No. 415 of 2004 (St. Vincent and the Grenadines)

and for post-trial loss of earnings, \$479,439.00. Counsel used the same multiplicand for both, being 75% of \$23,676, the annual income of the deceased. This amounts to \$17,757.00.

- [43] The 75% is based on the **Harris** method, 25% equating to the amount the deceased would have spent on himself, 75% going to his estate. Having dispensed with this method for the dependency claim, in this part of the assessment, I accept 25% of his yearly income as a reasonable amount the deceased would have spent on himself. Using a multiplier of 6 years and 4 months for the pre-trial loss, that figure is \$112,401.81 (75% x \$23,676.00 x 6.33).
- [44] For the post-trial loss of earnings, Mr. Daniel proposed a multiplier of 27. Counsel attempted to justify this figure given that the deceased was 27 years old at the time of his death, he would have been 33 at the date of trial and he had an expectation to work up to age 60. Mr. Daniel, again, relied on the **Germina Cherubin** case to support his contention. In that case, 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. Mr. Daniel submitted that the deceased in this case, being 27 at the time of his death, had another 33 years of work ahead of him before retirement. Deducting the pre-trial period, the multiplier for the post-trial period should be 27 years. Therefore, the post-trial loss of earnings would amount to \$479,439.00.
- [45] When the pre-trial and post-trial figures are added, the total is \$112,401.81 + \$479,439.00 = \$591,840.81. Deducting the 30% discount, the claim for loss of earnings is \$414,288.57.
- [46] The defendant countered that proposal with a suggested sum of \$76,947.00 for total loss of earnings. Learned counsel cited two cases in which the deceased were of similar age to the deceased in this case. In the first, **Noreen Stapleton and Ermine Stapleton v Ralph Walker and Rudolph Charles**,¹³ two male cousins, aged 23 and 26, respectively, both farmers, were killed instantly when the motorcycle on which they were riding collided with a truck. The court awarded damages to the estate and dependents in the two consolidated cases. In the case of the

¹³ Suit No. 504 of 1992, 505 of 1992 (St. Vincent and the Grenadines)

deceased who was 26 years old, a multiplier of 11 was used, calculated at 1/3 of the 33 expected remaining productive years. In respect of the 23 year old, who was expected to retire at about age 60, some 36 years later, a multiplier of 12 was used, that is, one third of his remaining productive life.

[47] In the latter case, **Mendy Phillip v Sheldon Gaston et al**,¹⁴ as was Kingsley John, the deceased, an avid and gainfully employed fisherman, was 27 years old when he died. St. Rose- Albertini J. (Ag.) accepted that a multiplier of 15 would generally apply to a person of his age, but deducted a period of 82 months (6.83 years) which accounted for the time between the date of death and the date of assessment. For the post-trial loss of earnings, a multiplier of 8.17 was applied.

[48] Ms. Franklyn submitted that in light of the authorities, a multiplier of 13 is appropriate. It appears that counsel calculated the applicable multiplicand as 25% of the yearly income instead of 75%, being guided by the written submissions of DJ's counsel. These submissions were drastically revised in Mr. Daniel's oral submissions. Using the multiplicand as 25% of the yearly income of the deceased, the defendant's suggested total loss of earnings was $25\% \times \$23,676.00 \times 13 = \$76,947.00$. However, as adjusted by Mr. Daniel, using a multiplicand of 75% of the yearly income for the estate, and applying the defendant's suggested multiplier of 13, this produces the sum of $\$17,757.00 \times 13 = \$230,841.00$.

[49] The multiplier of 13 proposed by the defendant is intended to cover the entire loss of earnings, both pre-trial and post-trial. This would result in a post-trial multiplier of 6 years and 8 months, a vast difference from the 27-year post-trial multiplier claimed for the estate. On a perusal of the authorities, it is clear to me that when the number of remaining productive years turns out to be substantial, the courts discount the figure considerably. I have not come across a similar case in which anything in the region of 27 years was used as the multiplier. In the circumstances of this case, I see no reason to depart from precedent. Further, there is no evidence to suggest that promotion was likely for this particular officer.

¹⁴ SLUHCV2016/0203 consolidated with Claim No. SLUHCV2016/0283 Julianne Fadlin and another v Sheldon Gaston et al

[50] In light of the foregoing, and taking guidance from the learned trial judge in **Mendy Phillip** that a multiplier of 15 is generally applied in cases where the deceased is about the age of the deceased in this case, and allowing for the imponderables of life, I conclude that an appropriate multiplier for loss of earnings is 15. Deducting the 6.33 years for the pre-trial period, the multiplier for the post-trial period is 8.67 years. The post-trial loss of earnings amounts to \$17,757.00 x 8.67 = \$153,953.19.

[51] The total figure for loss of earnings is \$112,401.81 + \$153,953.19 = \$266,355.00. Deducting the 30% for contributory negligence, this amounts to \$186,448.50.

The entitlement to both the estate claim and the dependency claim

[52] On hearing the submissions from Mr. Daniel and Ms. Franklyn, the court is satisfied that counsel are *ad idem* that the amount awarded for the dependency must be subtracted from that awarded for the estate claim. The authorities clearly illustrate the issue. The court of appeal, in **Tripple General Contracting Company Ltd. v Hermina Spencer**,¹⁵ deducted the sum of \$39,000.00 awarded under the dependency head from the \$177,500.00 awarded for the lost years. Likewise, Cenac-Phulgence J., in **Germina Cherubin**, awarded the balance of \$55,731.36 to the deceased's estate after deducting the dependency claim assessed at \$60,307.20 from the estate claim award of \$117,538.56.

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

- (i) Damages for loss of expectation of life in the sum of \$2,450.00
- (ii) Damages for pain and suffering in the sum of \$1,400.00.
- (iii) Damages for loss of earnings in the sum of \$186,448.50.

The total estate claim is, therefore, \$190,298.50.

[54] Mr. Daniel transparently spelled out to the court that not only must the dependency sum awarded to DJ be deducted from the estate award, but the court is also required to deduct the dependency

¹⁵ Civil Appeal No. 6 of 1998 (St. Vincent and the Grenadines)

of Mr. and Mrs. John. Thus, from the estate sum of \$190,298.50, I deduct Mr. and Mrs. John's dependency of \$20,062.71 + \$25,887.38 = \$45,950.09, and DJ's dependency of \$102,480.00 and award the estate the sum of \$41,868.41.

Calculation of interest

[55] On the authority of **Martin Alphonso et al v Deodat Ramnath**,¹⁶ interest ought to be paid to a claimant for being kept out of money that ought to have been paid to him. Applying the principles enunciated by Singh JA., no pre-judgment interest is awarded for damages for loss of earnings and loss of expectation of life. Post-judgment interest is permitted at the statutory rate from the date of judgment until payment.

Order

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

- (1) On the dependency claim, the defendant shall pay the first claimant damages in the sum of \$20,062.71 with interest on the pre-trial loss.
- (2) On the dependency claim, the defendant shall pay the second claimant damages in the sum of \$25,887.38 with interest on the pre-trial loss.
- (3) On the dependency claim, the defendant shall pay the third claimant damages in the sum of \$102,480.00 with interest on the pre-trial loss.
- (4) On the estate claim, the defendant shall pay the third claimant damages in the sum of \$41,868.41.
- (5) The defendant shall pay the third claimant interest on the damages of \$1,400.00 for pain and suffering at the rate of 6% per annum from the date of service of the claim to the date of this assessment.
- (6) The defendant shall pay the first claimant interest on the damages of \$20,062.00 for the dependency claim at the rate of 6% per annum from the date of this assessment to the date of payment.

¹⁶ (1997) 56 WIR 183

- (7) The defendant shall pay the second claimant interest on the damages of \$25,887.38 for the dependency claim at the rate of 6% per annum from the date of this assessment to the date of payment.
- (8) The defendant shall pay the third claimant interest on the damages of \$102,480.00 for the dependency claim at the rate of 6% per annum from the date of this assessment to the date of payment.
- (9) The defendant shall pay the third claimant interest on the damages of \$41,868.41 for the estate claim at the rate of 6% per annum from the date of this assessment to the date of payment.

Costs

[57] The claimants are awarded prescribed costs in accordance with CPR 65.5 as follows:

- (1) the first claimant in the sum of \$3,009.41
- (2) the second claimant in the sum of \$3883.11
- (3) the third claimant in the sum of \$20, 543.55.

[58] I am most grateful to all counsel for their invaluable assistance in this matter.

Tamara Gill
Master

By the Court

Registrar