

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

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0202

IN THE MATTER OF THE COMPENSATION FOR INJURIES ACT, CAP 122 OF THE LAWS OF ST. VINCENT AND THE GRENADINES 2009. AND IN THE MATTER OF AN ACTION FOR BENEFIT OF RELATIONS PURSUANT TO SECTION 7 OF THE COMPENSATION FOR INJURIES ACT CAP 122 OF THE REVISED LAWS OF ST. VINCENT AND THE GRENADINES 2009.

BETWEEN:

NICHANNA TAMIKA LEWIS

(As a Beneficiary to the Estate of Nicholas Lewis deceased)

CLAIMANT

AND

**RONDEON NASH
SHARON NASH**

**FIRST NAMED DEFENDANT
SECOND NAMED DEFENDANT**

Appearances:

Ms. Patricia Marks-Minors for the Claimant

Ms. Samantha Robertson for the Defendants

2019: December, 11
2020: May, 15

JUDGMENT

Burnett, M. (Ag.):

- [1] This is an application for assessment of damages after a Judgment in Default of Defence was given in favor of the claimant on the 8th March, 2019.
- [2] On the 4th July, 2019, an order was made for the filing of Witness Statements and for the parties to file and exchange Witness Statements.
- [3] Witness Statements and Summary were filed by the claimant and the defendants filed a Notice of Intention to be heard on Assessment.

BACKGROUND

- [4] The claimant is the daughter and a beneficiary of the Estate of Nicholas Lewis deceased and brought this action in negligence for the benefit of the deceased dependents and beneficiaries, pursuant to the Compensation of Injuries Act Cap 122 of the Laws of St. Vincent and the Grenadines 2009.
- [5] The first named defendant was the driver of a motor vehicle PU895 which was owned by the second named defendant.
- [6] On 18th December, 2015, the first named defendant was driving the said vehicle which struck the deceased, causing him to sustain injuries and death on 22nd December, 2015.
- [7] The claimant claims Special Damages, General Damages and other reliefs.
- [8] On 8th March, 2019, Judgment in Default of Defence was granted to the claimant for an amount to be decided by the Court.

CLAIMANT CLAIM SPECIAL DAMAGES

- [9] It is a well established legal principle that Special Damages must be claimed specifically and strictly proved¹, the purpose of an award of Special Damages is to compensate for out of pocket expenses.
- [10] The Claimant claims the sum of \$2,390.88 as Special Damages for cost associated with the filing of Letters of Administration and registration details of the defendant's vehicle. Exhibits were attached evidencing these items.
- [11] I accept that the claimant has proven the sum of \$2,390.88. The total award for Special Damages of \$2,390.88 is granted.

GENERAL DAMAGES – LOSS OF EXPECTATION OF LIFE

- [12] The claimant claims the sum of \$5,000.00 under this head. Counsel for the Claimant Mrs. Patricia Marks-Minors relies on the case of **Sandra Ann-Marie George v Nigel Don-Juan Glasgow**².
- [13] This is a statutory award allocated under the Compensation for Injuries Act.
- [14] Counsel for the claimant also cites the authority of **Aletha Hazell v Matthew Gregg**³.

¹ Stroms Bruks Aktie v Hutchinson [1905] AC515

² SVGHCV2011/0465

³ SVGHCV2011/0170

- [15] While there is no set scale for an award for loss of expectation of life, the Court must strive for consistency by taking into consideration awards made within our jurisdiction. Master Lanns, in **Carmillus Emmauel v Ronald Punnett**⁴ arising out of this jurisdiction in 2013 and citing the decisions in 2006 in **Youland Rodney v Osborne Quow**⁵ where Cottle M followed the case of **Ermine Charles v Ezra Herbert and Asworth Stevens** made an award in the sum of \$3,500.00 in respect of the 36 year old deceased.
- [16] Taking into account the case cited at bar and that of **Ermine Charles v Ezra Herbert and Asworth Stevens**⁶ and giving effect to inflation. I agree that the sum of \$5,000.00 under this sub-head is quite reasonable. Consequently, the Court awards the sum of \$5,000.00 under this sub-head.

PAIN & SUFFERING AND LOSS OF AMENITIES

- [17] The claimant claims \$6,000.00 for pain and suffering and loss of amenities. The incident happened on the 18th December, 2015 and the deceased died on the 22nd December, 2015. Counsel for the claimant posited that the deceased died four (4) days after the accident and suggested that he would have endured some pain, he was also conscious at the time of the impact. The police report also detailed the injuries, fracture to left foot, collar bone and fractured skull.
- [18] Counsel for the claimant relies on the case of **Sandra Ann-Marie George v Nigel Don-Juan Glasgow** where the Court awarded the sum of \$2,000.00 for pain & suffering and loss of amenities.
- [19] The decisions have made it clear that damages for pain and suffering may be awarded in survival actions “although such damages will generally be small as death so often follows quickly upon the injury and even where it does not, may be preceded by a period of unconsciousness relieving the victim of any physical pain⁷.”
- [20] Taking into account the case of **Yoland Rodney v Osborne Quow**⁸ where in that case the deceased died instantly and a sum of \$2,000.00 was awarded. The Court is minded to award a sum of \$5,000.00 which is quite similar and in the range of the cited cases and taking into account the facts of this particular case.

DAMAGES FOR LOSS OF EARNINGS AND LOST YEARS

- [21] In the landmark decision of **Cookson v Knowles**⁹, Lord Diplock (at page 569 E) stated: “... as a general rule, in fatal accident cases, the damages should be assessed in two (2) parts, the first and

⁴ Claim No 364 of 2004 consolidated with Claim No. 249 of 2005

⁵ Claim No 415 of 2004 delivered in 2006

⁶ SVGHCV2003/0171

⁷ McGregor on Damages, 15th edition Para 1609

⁸ Claim No. 415 of 2004 delivered in 2006

⁹ [1978] 2 All ER, 604.

the less speculative component being an estimate of the loss sustained up to the date of trial, and the second component being an estimate of the loss to be sustained thereafter.”

PRE TRIAL LOSS OF EARNINGS

- [22] The claimant seeks pre trial loss of earnings in the sum of \$55,717.52. In evidence was a letter signed by the Permanent Secretary of the Ministry of Health stating that, the deceased was employed as a male attendant earning \$1,599.00 per month.
- [23] Under cross examination by Ms. Samantha Robertson, Counsel for the defendants, the claimant could not say whether this figure was gross or net earnings. It is an established rule that when calculating a dependency loss, a percentage deduction is to be made from the net income to represent what the deceased would have spent exclusively on himself.
- [24] Lord Justice O'Connor summarized the principles as follows: “... In calculating the sum to be deducted for living expenses when assessing the net loss of earning for the lost years, the ingredients constituting the deceased’s living expenses were the same irrespective of the deceased’s age, marital status or number of dependants; that the sum to be deducted as those living expenses was the proportion of net earnings the deceased would have spent to maintain himself at his standard of living and did not include savings or sums spent exclusively for the maintenance or benefit of others but where there were shared living expenses a prorata proportion should be deducted; that, accordingly, the correct approach to the calculation of the deceased’s living expenses was not to make an assessment of those expenses as would be done for the purposes of calculating a dependency....but to assess as a **percentage** the available surplus after deducting from the net earnings the cost maintaining the deceased in his station of life¹⁰”;....
- [25] Counsel for the claimant, Mrs. Patricia Marks-Minors, submitted that it is fair to reduce the amount by 25% as the amount the deceased would have spent on himself.
- [26] Counsel for the defendants, Ms. Samantha Robertson, posited that no evidence was proffered to prove the amount that was spent on a monthly basis by the deceased.
- [27] The Court is of the view that having regard to the applicant’s stating that she did not live with the deceased, a deduction of 25% is an acceptable and reasonable figure for the Court, making a multiplicand of \$1,199.25.
- [28] The deceased was 40 years at the date of the accident.
- [29] The Court also takes into account the principles of retirement, the vicissitudes and uncertainties of life and the age at the date of judgment. I am of the view that a multiplier of three (3) years ten (10) months and fourteen (14) days as submitted by the claimant, to be a fair and reasonable one.
- [30] Using this method of calculation I award the sum of \$55,717.52.

¹⁰ Harris v Empress Motors Ltd (1984)\WLR

FUTURE LOSS (LOSS SUSTAINED AFTER THE DATE OF TRIAL)

- [31] The claimant claims \$271,582.52 as loss of future earnings. The evidence before the Court was that the deceased was employed as a male attendant with the Government of St. Vincent and the Grenadines.
- [32] At the date of assessment the deceased would have been about 44 years; he was employed for about 13 years. Had he survived, he would have worked for another 20 years to the age of retirement of 60 as the evidence did not disclose him to be an unfit person.
- [33] Using his date of death of 40 years, and taking into account the risks and vicissitudes of life, a multiplier of 9 is appropriate in the circumstances. I award \$14,391.00 x 9 = \$129,519.00.

THE DEPENDENCY CLAIM

- [34] The claimant seeks an amount in the Court's discretion having regard to avoid double recovery with that of lost years.
- [35] The Court notes that five (5) of the children are under the age of 18 at the time of assessment.
- [36] The claimant claims that the deceased contributed \$1,000.00 as per month towards the family.
- [37] Having regard to the salary of the deceased the Court finds that the amount of \$1,000.00 was unlikely. I consider the sum of \$350.00 per month to be reasonable. Accordingly, the Court will allow the sum of \$21,000.00 representing the dependency for five (5) years.

ORDER

I therefore make the following order:

1. The defendants will pay the sum of \$2,390.88 in Special Damages to the claimant representing the cost of obtaining the grant of Letters of Administration and Registration details of PU 895.
2. The defendants will pay interest on Special Damages at a rate of 3% per annum from the date of filing of the claim to the date of judgment.
3. The defendants will pay the sum of \$5,000.00 in General Damages for pain and suffering.
4. The defendants will pay the sum of \$5,000.00 in General Damages for loss of expectation of life.
5. The defendants will pay the sum of \$55,717.52 for pre trial loss of earnings and \$129,519.00 for future loss of earnings.
6. Interest is awarded at a rate of 6% from the date of judgment until judgment debt is paid in full.

7. The defendants will pay prescribed costs in accordance with CPR Part 65.5.

[38] Finally, I wish to thank Counsel for her submissions in this matter.

Rickie Burnett
MASTER (Ag.)

By the Court

Registrar