

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SLUHCV2019/0099**

Between

**Lance Willie
[Administrator of the Estate of George Willie]**

Claimant

and

**(1) Eldon Wilson
(2) Donny Camille
(3) Miriam Holt**

Defendants

Before: MASTER Ricardo Sandcroft [Ag]

Appearances

Ms. Lydia Faisal of Counsel for the Claimant
Ms. Cleopatra McDonald of Counsel for the Defendants

**2020: January, 21st
2020: February, 17th**

JUDGMENT ON ASSESSMENT OF DAMAGES

[1] **R. SANDCROFT, M. [Ag.]**: This is an application for an assessment of damages. On the 26th day of July, 2019 judgment was entered for the Claimant on the admissions contained in the Defendants' Acknowledgement of Service filed on the 1st day of April, 2019. The Defendants were to pay the Claimant an amount to be assessed by the Court. As a result of a fatal accident on the 9th day of June 2016, Mr. George Willie unfortunately lost his life and this action is brought by his son, Mr. Lance Willie as Administrator on behalf of the late George Willie's Estate. This action was brought pursuant to Article 609 of the Civil Code of Saint Lucia and on behalf of the sole dependent of the Deceased in accordance with Article 988 of the said Civil Code¹. The claimant, having

¹ CHAPTER 4:01 CIVIL CODE OF SAINT LUCIA.

obtained letters of administration in his late father's estate now seeks compensation on behalf of his mother, the sole dependent of the Deceased as well as special and general damages for the beneficiaries of Mr. Willie's estate. The facts of the case are not generally in dispute and I will not repeat them in any detail, except where it is necessary to do so.

Special Damages

Damages on behalf of the Estate of George Willie - Article 609

[2] Article 609 (1) and (2) of the Civil Code of the Revised Laws of Saint Lucia 1957 provides that:

“On the death of any person after the commencement of this chapter, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his succession.... (2) Where a cause of action survives as aforesaid for the benefit of the succession of the deceased person the damages recoverable for the benefit of the succession of that person...

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his succession consequent on his death, except that a sum in respect of funeral expenses may be included.

[3] The claimant claims the sum of \$10,371.20 in funeral expenses. These are recoverable pursuant to Article 609 (1) and (2) of the Civil Code of the Revised Laws of Saint Lucia 1957, and the defendants raised the issue of privileged funeral expenses with this amount being awarded to the claimant and that it should include only what is suitable to the station and means of the deceased, and are payable out of all his movable property. Heavy weight was made by counsel for the defendants about this amount and whether the family of the deceased should have spent so much to bury their father and husband in such a manner as they did. Counsel for the defendants averred my mind to section 1896 of the Civil Code of Saint Lucia; however, this section was of no assistance to the defendants' case because it fell under the rubric which dealt with privileges upon movable property. Therefore, I find no merit in this argument of the defendants and will not be detained by it any farther. The claimant having shown proof of the funeral expenses I would therefore award the sum of \$10,371.20 to the claimant in funeral expenses.

General Damages –

A. Loss of Expectation of Life

[4] Damages for the loss of expectation of life are in respect of loss of life and not of loss of future pecuniary prospects, no regard being had to financial losses or gains during the period which the victim has been deprived (See; **Benham v Gambling** [1941] 1 All E.R. 7).

In **Hill v Administrator General Jamaica and The Attorney General**, [2014] JMSC Civ. 217, delivered on 19th December 2014, Lindo J (Ag), as she was then, cited the case of **Rose v Ford** [1937] AC 826, wherein the court stated:

“...settled law that a claim for loss of expectation of life is maintainable on behalf of the estate of the deceased. A conventional sum is usually awarded under this head of damages as such a loss is incapable of quantification using any known arithmetical formula.”

[5] The claimant has relied on the case of **Germina Cherubim Qua Administratrix of The Estate of Anthony Cherubin and (1) The Attorney General of Saint Lucia (2) Fire Officer Rudy Aril**² and state that the sum of \$4,000.00EC is a reasonable award to be granted for the loss of expectation of life. However, the defendants through counsel have vigorously argued that the amount of \$3,000.00EC is more reasonable and should be awarded to the claimant. The claimant relied by extension on the cases of **Jallim v Ghirawoo** where the Court awarded \$3,500.00 and **Sandra Ann-Marie George (Administrator of the Estate of Karlos George) v Nigel Don-Juan Glasgow** where an award of \$5,000.00 was awarded.

[6] In the case of **Bertha Compton (nee Blaize) Qua Administratrix of the Estate of the late Macrina Blaize) v Dr. Christina Nathaniel et al**,³ Georges J [Ag.] said the following:

“Article 609 of the **Civil Code** permits the making of a conventional award for loss of expectation of life. As Lord Mance declared in delivering the opinion of Her Majesty's Board in **George v Eagle Air Services Ltd** (paragraph 5 supra) the abolition in England of such awards by the Administration of Justice Act 1982 section 1(20) (A) has been held by the Eastern Caribbean Court of Appeal to have no effect in Saint Lucia: **Mathurin v Augustin** (HCV 2007/041, 2nd June 2008). In order to accommodate inflation the standard sum under that head has progressively been uprated and indeed in **Jallim v Ghirawoo**

² SVGHCV2017/0319

³ SLUHCV2000/0031, delivered 20th August 2010 at para 9.

(2003/0483, 17th February 2005) the Court of Appeal indicated obiter in relation to an accident occurring in October 2002 that in its view in 2005 the time had come to uprate the conventional award to \$3,500.00. Bearing in mind that the George v Eagle Air Services Ltd case related to an accident in 1990 the Board considered \$2,500.00 appropriate. In light of the prevailing trend as well as the decision of Shanks J in Plummer et al v Conway Bay Ltd Suit No. 1041 of 2000 increasing an award to \$3,000.00 which was subsequently upheld by the Court of Appeal and affirmed by the Privy Council (No. 81 of 2006) I would myself award a like amount under that head which in fact accords with that suggested by counsel for each side.” (my emphasis)

[7] In **Veronica Auguste v Tyrone Maynard et al** SLUHCV1984/0440 recently deceased Matthew J helpfully explained that while damages under this head had traditionally been limited to a small conventional award for loss of expectation of life, the current approach adopted by our courts following the landmark decisions of **Pickett v British Rail Engineering Limited** 1979 1 AER 774 and **Gammell v Wilson** 1980 2 AER 557 is to allow recovery for future earnings for the “lost years”. Although legislation in the form of the Administration of Justice Act did away with the claim for lost income during the lost years in the United Kingdom, the cases of Pickett and Gammell have historically been adopted as binding authority in our jurisdiction. This was recently affirmed by the Court of Appeal in **Cyril Mathurin v Anthony Augustin et al** HCVAP2007/041.

[8] There is no set scale for an award for loss of expectation of life; however, the Court must always strive for consistency taking into account analogous awards made within the jurisdiction. Master Lanns, in **Carmillus Emmanuel v. Ronald Punne**⁴ arising out of this jurisdiction in 2013 and citing the decisions in 2006 in **Yoland Rodney v Osborne Qvow**⁵ where Cottle, M. (as he then was) followed the case of **Ermine Charles v. Ezra Herbert and Eworth Stevens**⁶ made an award in the sum of \$3500.00 in respect of the 36 year old deceased. I take into consideration the various awards made in this jurisdiction and taking into account inflation since the fatal accident in 2016 and will accordingly allow an award in the sum of \$3,500.00.

B. Damages for the Lost Years (Loss of Earnings)

[9] In calculating the award for loss of earnings, 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

⁴ CLAIM NO. 364 of 2004 consolidated with CLAIM NO. 249 of 2005

⁵ Claim No. 415 of 2004 delivered in 2006

⁶ [1966] 2 All E.R. 721

a standard which the job and career prospects at the time of death would suggest he was reasonably likely to achieve.

- [10] The Deceased was born on 24th October 1954 and was 62 years old at the date of the fatal accident. He was a banana farmer and operated a banana farming business from which he earned a living. The evidence of the Deceased's son Lance Willie is that the Deceased in the year 2016 would have made earnings of \$10,800.00 from bananas he sold from January to June 2016. He further states that his father Mr. George Willie was in a contractual relationship with Canelle Farms Limited, confirmed by letter from the said Company, that the Deceased earned \$10,800.00 for the months January to June 2016. Ms. Faisal estimates the Deceased's monthly expenses as \$1,800.00. There is nothing outside of the letter from Canelle Farms Limited that points to any form of income of the Deceased. Counsel for the claimant has asked the Court to also take notice of a document purported to have been from the Agriculture, forestry and fishing (Employ), and that it gives an indicia of the age of the Deceased as a comparator. This submission has not found fertile ground with the Court and therefore will not form part of the basis of the decision of this Court.

Loss of Earnings – The Lost Years Analysis

- [11] In the case of **Cookes v. Knowles**⁷, Lord Diplock noted that a two stage approach ought to be taken in determining loss of earnings in cases such as the present. He states that:

“... as a general rule, in fatal accident cases the damages should be assessed in two parts, the first and 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.”

- [12] In the first of these two stages, the claimant submits that Mr. Willie earned approximately \$1,800.00 per month prior to his death. In his witness statement Lance Willie (Administrator of the Estate of George Willie) presented documentary evidence to establish that Mr. George Willie earned \$10,800.00 from having sold five hundred and fifteen (515) cartons of bananas, this was over a period of January to June, 2016. He also suggested that Mr. Willie earned \$90.00 monthly from selling other farm produce.

⁷ (1979) AC 556

It was submitted therefore that Mr. Willie earned \$1800.00 monthly from his banana farming, \$90.00 from selling other farm products. I would therefore accept his earnings of \$1,800.00 monthly and would include an addition sum of \$90.00 given the nature of the evidence provided. Therefore I find that Mr. Willie would earn on average \$1,890.00 monthly prior to his death. It is also to be noted from the letter from Canelle Farms Ltd, that even though the Deceased commenced trading with the said company towards the end of 2013 until his demise in June of 2016, the letter only alluded to the selling of five hundred and fifteen (515) cartons of bananas in 2016.

[13] A period of three point five (3.5) years has elapsed since the date of the accident and the parties have not overtly agreed that this should be adopted as the multiplier. I would therefore award the sum of \$22,680.00 per year for a period of three point five (3.5) years amounting to \$79,380.00 in loss of earnings for the lost years.

[14] I must now consider an appropriate multiplier for future loss of earnings in the lost years. I am assisted by the fact that both parties have agreed that a multiplier of approximately four (4) is appropriate, given that Mr. Willie was 62 years of age at the time of his death. I would therefore award the sum of \$90,720.00 for loss of future earnings in the lost years.

[15] In coming to this decision I also placed reliance on the dicta of Lord Scarman in **Gammell v Wilson** [1981] 1 All ER 578 which is one of the leading English cases in this area. Lord Scarman was at pains to point out that there must be evidence on which an estimation can be made. Further, that in the case of a young child the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. He pointed out that there will be exceptions such as in the case of a child television star. From his dicta it is patently clear that where no estimate is possible, no award, not even a conventional award, should be made. He also highlighted that in all cases it is a matter of evidence and a reasonable estimate based on the evidence.

The Dependency Claim

[16] Article 988(2) and (10), of the **Civil Code** provide as follows:

“988.

- (1) Where the death of a person is caused by a wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his or her injury thereby, 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 was caused under such circumstances as amount in law to felony. ...
- (10) For the purposes of an action brought under this article, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.”

[17] Counsel for the claimant has also submitted that the mother/spouse was dependent on Mr. Willie during his lifetime. The claimant states that she received \$1,000.00 monthly from him for her own maintenance. He claims damages on his mother's behalf as the sole dependent, given that all Mr. Willie's children are now adults. However, the dependency claim must be considered with due regard to the damages already claimed in loss of income for the lost years. In my view, Mr. Willie would have maintained his wife out of his income. Given that the estate has claimed this loss of income there would inevitably be an overlap if the court were to grant compensation in the dependency claim as put forward by counsel. The court would grant compensation in the dependency claim only if that exceeds the amount which would have been awarded in loss of income. The difference would have therefore been awarded. I do not find this to be the case in the present circumstances and would therefore decline to make such an award.

{18} I therefore make the following orders:

- (a) The defendants will pay the sum of \$10,371.20 in special damages to the claimant, representing the funeral expenses and the cost of obtaining the grant of letters of administration;
- (b) the defendants will pay interest on special damages at a rate of 3% per annum from the date of the filing of the claim to the date of judgment;

(c) the defendants will pay the sum of \$3,500.00 in general damages for loss of expectation of life;

(d) the defendants will pay the sum of \$79,380.00 for loss of income from the date of death to the date of judgement and \$90,720.00 for future loss of income;

(e) interest is awarded at a rate of 6% per annum from the date of judgment until the judgement debt is paid in full.

(f) The defendants will pay prescribed costs in the sum of \$31,125.00.

[19] Finally, I wish to thank counsel for their submissions in this matter.

**Ricardo Sandcroft
Master [Ag]**

By the Court

Registrar