

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2016/0222

BETWEEN:

Delma Elick

**Administratrix of the Estate of Frederika Elick also known as Frederika Ellick also
known as Frederica Elick (Deceased)**

Claimant

and

Kert Joseph

Defendant

Appearances:

Mrs. Wauneen Louis- Harris for the claimant

Mr. Alberton Richelieu for the defendant

2017: August 9

JUDGMENT

[1] **ACTIE, M.:** On 5th May 2013, Frederika Elick was a pedestrian crossing the Sarrot Road when she was hit by a vehicle driven by the defendant, She died instantly as a result of multiples injuries sustained. Delma Elick as administratrix of the deceased estate filed a claim against the defendant driver and on 12th May 2016 obtained judgment in default of acknowledgment of service for an amount to be decided by the court on assessment of damages.

[2] The claimant Qua Adminsitratix seeks damages for the benefit of the estate and dependants of the deceased respectively pursuant to Articles 609 and 988 of the **Civil Code of Saint Lucia Cap 202.**

[3] **Article 609 (1) and (2) of the Civil Code** provides as follows:

- (1) 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 maybe, 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-
 - (a) ...
 - (b) ...
 - (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 expense may be included.

[4] **Article 988(3) of the Civil Code** provides:-

“Every such action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused, but not withstanding anything contained in this Code with regard to prescription.”

Special Damages for the benefit of the estate

[5] The claimant claimed special damages on behalf of the estate of the deceased. Special damages are damages capable of exact calculation up to the date of trial. They must be specifically pleaded, particularized and proven in order to be recoverable. The rule of law was clearly stated by Diplock LJ in **Ilkiw –v- Samuels and Others**¹:-

¹ [1963] 1 WLR 991 at page 1006

"Special damages, in the sense of a monetary loss which the Plaintiff has sustained up to the date of trial, must be pleaded and particularised. _ _ In my view, it is plain law – so plain that there appears to be no direct authority because everyone has accepted it as being the law for the last hundred years – that you can recover in an action only special damage which has been pleaded, and, of course, proved."

[6] The claimant pleaded, particularized, proved and is awarded Special Damages in the sum of \$8963.60 comprising of the following:-

- | | | |
|-------|---|--------------|
| (i) | Services procured from Rambally's Funeral expenses - | \$3,105.00 |
| (ii) | Funeral Parlor | - \$1288..60 |
| (iii) | Burial Fees | \$1,500.00 |
| (iv) | Legal fees for Letters of Administration of the Deceased- | \$2500.00 |
| (v) | Cost of Traffic Report – | \$250.00 |
| (vi) | Cost of Post Mortem Report | \$ 50.00 |

General Damages:-

(1) Loss of Expectation of life

[7] The claimant seeks general damages for loss of expectation of life in the sum of \$20,000.00. An award for loss of expectation of life is usually a modest conventional award. In **Bertha Compton (nee Blaize) Qua Administratrix of the Estate of the late Macrina Blaize) v Dr. Christiana Nathaniel etal**², Georges J. (Ag) states :

“ 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:-** the abolition in England of such awards **by the Administration of Justice Act 1982** section1(20)(A) has been held by the Eastern Caribbean Court of Appeal to have no effect in Saint Lucia: **Mathurin v Augustin** (HCV

² CLUHCV 2000/0031 delivered on 20th August 2010

2007/ 041, 2nd June 2008). In order to accommodate inflation the standard sum under that head has progressively been uprated

Bearing in mind that the **George v Eagle Air Services Ltd** case related to an accident in 1990 the Board considered \$2500.00 appropriate. In light of the prevailing trend as well as the decision Shanks J in **Plummer et al v Conway Bay Ltd** Suit No.1041 of 2000 increasing an award to \$3000.00 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.”.

- [8] In keeping with the conventional approach I will make an award in the sum of \$3000.00 for loss of expectation of life.

(2) Loss of earnings for loss years

- [9]. An award for loss of earnings for loss years is calculated by using the conventional multiplier/multiplicand approach. The court takes into account the multiplicand, being the amount the deceased would have earned before her death. The multiplier is used to assess number of years of earning in an effort to arrive at an amount that the claimant has been prevented, but for her death, from earning. The calculation of the multiplier must also account for other risks and vicissitudes that would have naturally occurred in the deceased’s lifetime.

- [10] The nature of the award under this head was described by Shanks J in **Plummer et al v Conway Bay Ltd**³ as :-

“a notional surplus representing the difference between the deceased estimated net earnings during the lost years of life under one hand and the cost of maintaining himself during the period of the other. A

³ SLUHCV2000/ 1041

deduction is made not towards the support of the defendants but allocated exclusively to the deceased himself”.

[11] In **Auguste v Maynard** Matthew J in calculating the multiplicand relying on the authority of **White and Another v London Transport Executive**⁴ said :-

“I bear in mind that in arriving at the deceased’s notional surplus earning on which the award is to be based, no deduction is to be made from his net earnings on account of money he would have spent on his dependents. The loss is therefore to be measured by the difference between the deceased’s estimated net earnings and the estimated costs of his maintenance and of providing for himself the facilities of a reasonably satisfying and enjoyable life”

[12] The claimant avers that the deceased during her lifetime worked as a farmer and domestic helper by providing laundry services for persons in the community and working on the banana plantations preparing bananas for export. The claimant avers that the deceased earned an average income of \$24000 from the sales of her produce and rendering services as a helper. The claimant did not provide any documents to substantiate wages as claimed. The court accepts that the nature of the deceased earnings would not generate salary slips or other documentation to prove the sum claimed. Accordingly the undisputed sum of \$2400.00 is accepted to consider an award under this head.

[13] An award under this head is based on the number of years which the claimant could have been expected to work had the accident not occurred. A deduction is made to take into consideration an amount that the deceased would have spent on herself during her lifetime which according to the authorities is in the absence of evidence, usually calculated at 30% of the income. The deceased was 55 years old with an estimated retirement age of 65. I am of the view that a multiplier of 9 is appropriate taking into account risks and vicissitudes that could have naturally

⁴ 1982) 1 AER 410

occurred in the deceased's lifetime. Accordingly an award of $\$2400 \times 12 \times 9 = \$259,200.00 - \$77,760 (30\%) = \$181,440.00$ is made for loss years.

The Dependency claim

[14] The claimant claims avers that Julius Elick and Delvin Elick, age 16 and 17 Respectively at the date of the accident were dependants of the deceased. Both of the defendants have reached the age of majority.

[15] In relation to the dependency claim where the dependants had reached the age of majority, the Privy Council in **Felicia Andrina George v Eagle Air Services Ltd**⁵ held that it was inappropriate to make any separate dependency award and states :-

“This overlaps with the lost years claim. Double recovery can however be avoided by taking the latter as the starting point in circumstances where the children's dependency is over. In *Gammell v Wilson* [1982] AC 27, Lord Edmund-Davies cited in this connection Lord Atkin's statement in *Rose v Ford* [1937] AC 826, 835, that "If those who benefit under the [Law Reform (Miscellaneous Provisions) Act] and the Fatal Accidents Acts also benefit under the will or intestacy of the deceased personally, their damages under those Acts will be affected".

[16] No award for the dependants is made in keeping with the principle enunciated by the Privy Council in **Felicia Andrina George v Eagle Air Services Ltd**.

ORDER

[17] In summary and for the reasons outlined above the claimant is awarded the following sums:-

- i. Loss of expectation of life - \$3000.00
- ii. Funeral Expenses - \$8963.60 with interest at the rate of 3% until payment.
- iii. Loss of earnings for the lost years - \$181,444.00 with interest at

⁵ [2009] UKPC 35 (15 July 2009)

the rate of 6% from the date of the incident until judgment.

- iv. Prescribed costs on the global sum in accordance with CPR 65.5

**AGNES ACTIE
MASTER, HIGH COURT**

BY THE COURT

REGISTRAR