

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2016/0432

BETWEEN:

VALENCIA DELAIRE aka VALENCIA CHANGOO

**In her capacity as administratrix of the Estate of the Late Lenson Skelly and Tutrix of
the minor child Rochelle Tamara Skelly**

Claimant

and

ANEL CHEDY

(by her personal Representative Paula Chedy)

Defendant

Appearances:

Ms. Maureen John-Xavier for the Claimant

Mr. Leslie Prospere for the Defendant

Mr. Duane Jn. Baptiste representing Greta Skelly an interested 3rd party

2017: July 13

JUDGMENT

- [1] **ACTIE, M.:** On 26th October, 2016, the claimant obtained judgment in default of acknowledgment of service for an amount to be decided by the court. The defendant has not complied with CPR 12.13 and the assessment is conducted in accordance with established guidelines.

Background

[2] On 11th August, 2013, Lenson Skelly, 30 years old, was a passenger in a motor vehicle owned and driven by the defendant, when he met his tragic death in a motor vehicular accident. The deceased was a single man with one minor dependant. By order of the court dated 21st July, 2016, Valencia Delaire was appointed administratrix of the estate of the deceased and tutrix to the minor child, Rochelle Tamara Skelly.

[3] Valencia Delaire claims damages for the benefit of the estate of the deceased and the dependency pursuant to **Articles 609 (1) (2) and 988 (3) of the Civil Code**¹.

[4] **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.

Loss of expectation of life

[5] The claimant claims for loss of expectation of life. In **Bertha Compton (nee Blaize) Qua Administratrix of the Estate of the late Macrina Blaize) v Dr. Christiana Nathaniel et al**², Georges J. (Ag) states:

¹ Cap

“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 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 of Shanks J in **Plummer etal 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.”

- [6] I will allow the sum of \$3000.00 for loss of expectation of life in keeping with the conventional approach in decided cases.

Funeral Expenses

- [7] The claimant claims funeral expenses totalling \$14,273.95. The sum total claimed is supported by evidence to prove the following:
- (a) Rambally Funeral home - \$6,931.45
 - (b) Disbursements for application for appointment of Tutrix- \$57.50
 - (c) Legal fees for appointment of Tutrix - \$2000.00
 - (d) Disbursements for application for Administratrix - \$85.00
 - (e) Legal Fees for the application of appointment of Administratrix- \$5000.00
 - (f) Traffic Accident Report - \$200.00

² CLUHCV 2000/0031 delivered on 20th August 2010

The total amount claimed is awarded in keeping with the decision of **Bertha Compton (nee Blaize) Qua Administratrix (above)**

Loss of earnings for loss years

[8] 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 his death. A deduction is to be made exclusively for an amount which the deceased would have spent on himself. The deceased was 30 years old, single and resided with his mother at the time of his death. He was a mechanic by profession and worked as subcontractor with Consolidated Foods Limited (CFL). CFL gave a summary of the deceased past six (6) months invoice payment in the total sum of \$31,980.00 with an average monthly earning of \$5330.00.

[9] Counsel for the claimant suggests a multiplier of 15 in keeping with the authorities cited in support of the assessment. The court in **Philbert v Raye**³ and **Bertha Compton (nee Blaize) Qua Administratrix of the Estate of the late Macrina Blaize) v Dr. Christiana Nathaniel et al**, used a multiplier of 15 for a 30 year old and 34 year old, respectively. Valencia Delaire avers that she was unaware of the deceased's expenditure for maintenance. Counsel suggests a deduction of 30% for vicissitudes and imponderables of life in keeping with the authorities. Accordingly, I make an award of $\$5330 \times 12 = \$63,960 \times 15 = 959\,400.00 - 287,820 (30\%) = \$671,580.00$.

The Dependency claim

[10] Rochelle Tamara Skelly, 9 years old, is the only dependant of the deceased. It is the evidence that the deceased contributed approximately \$500.00 monthly towards the maintenance of the child.

³ SLUHCV 415 of 1989

[11] The Privy Council in **Felicia Andrina George v Eagle Air Services Ltd**⁴ in relation to the dependency claim states :-

“This overlaps with the loss years claim. Double recovery can however be avoided by taking the latter as the starting point in circumstances where children’s dependency is over”.

[12] Counsel urged the court not to make an award under this head in keeping with the decision of the Board (above).

Order

[13] In summary, It is ordered that the defendant shall pay the claimants the following awards:-

- (1) Loss of expectation of life -\$3000.00
- (2) Funeral Expenses - \$14,273.95 with interest at the rate of 6% from date of death to date of judgment.
- (3) Loss of earnings for the lost years in the sum of \$671,580. 00 with interest at the rate of 6% from the date of the death until judgment in accordance with **Felicia Andrina George v Eagle Air Services Ltd [2009] PC 1 of 2007.**
- (4) **Prescribed costs** on the global sum in accordance with CPR 65.5.

Agnes Actie

High Court Master

By the Court

REGISTRAR

⁴ {2009} PC 1 of 2007