

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

Claim No. ANUHCV2012/0749

Between:

EMMANUEL ANTHONY
(The Administratrix of the Estate of Kinda Harvey, deceased)
Claimant

And

ATTORNEY GENERAL
MINISTRY OF WORKS AND TRANSPORT
Defendants

Before:

Master Fidela Corbin Lincoln

Appearances:

Sherrie Ann Bradshaw for the Claimant
Carla Brooks Harris with Rose-Anne Kim with for the Defendants

2017: March 30

JUDGMENT

- [1] **CORBIN LINCOLN M:** On 13th November 2011 Jordan Anthony (Jordan) died as a result of injuries sustained on 13th December 2010 when a heavy metal gate at King George V Grounds fell on him.
- [2] Mr. Emmanuel Anthony, the father of Jordan and personal representative of his Estate commenced a claim against the defendants for damages for negligence.

- [3] The defendants admitted liability in the defence but disputed the quantum of damages payable.

The Claimant's Case

- [4] The statement of claim averred that the claimant is entitled to loss and damage under the **Laws of Reform Miscellaneous Provisions Act** Cap 244 ("the **LRMPA**") and the **Fatal Accidents Act** Cap 166 ("the **FAA**"). The statement of claim seeks special damages of \$7,742.89 broken down as follows:

(1) 2 Wreaths	\$ 300.00
(2) Medical attention at MSJMC	\$ 200.00
(3) Medical Surgical Associates	\$ 250.00
(4) Apex X-Ray & Ultrasound Services	\$4,149.76
(5) Jamaican Association for the Deaf	\$ 704.13
(6) Barnes Funeral Home	\$2,139.00

- [5] The statement of claim also seeks general damages for pain and suffering.
- [6] It is submitted on behalf of Mr. Anthony that in addition to the sum claimed as special damages he should be awarded the sum of \$3,500 for loss of expectation of life and \$120,000 for pain and suffering and loss of amenities. The case of **Peter Cherry et al v Trevor Trim et al**¹ is cited in support of the claim for pain and suffering and loss of amenities.

The Defendants' Submissions

- [7] The defendants submit that the claimant pleaded the **LRMPA** and the **FAA**. However the **LRMPA** provides for the reduction of damages to dependents claiming under the **FAA** where the deceased is found to have been contributed to his demise. The **FAA** provides

¹ SLUHCV2011/0073

for the right of action by dependents of the deceased for damages for the loss of dependency. In this jurisdiction the right of action for damages for the benefit of the deceased's Estate is enshrined in the **Causes of Action (Survival) Act Cap 78 (CASA)**. The defendants contend that the claimant should not be able to rely on a statute which has not been pleaded and consequently no assessment of damages can properly proceed.

- [8] Alternatively, should the court be minded to proceed to assess damages the defendant contends that the statement of claim only seeks general damages for pain and suffering but the claimant now contends that the court should make an award for loss of expectation of life and loss of amenities. The claimant should be restricted to his pleadings.

Is the Failure to Plead the CASA Fatal?

- [9] The statement of claim did not refer to the **CASA**. The defendants were unable to provide any authority for the proposition that the failure to plead the CASA is fatal to the claim such that no award of damages could be made pursuant to that statute. In **Daphne Alves v The Attorney General of the Virgin Islands**² Hariprashad – Charles J held that apart from limitation statutes, there is no requirement to plead other statutes. In the circumstance I do not find that the claimant's failure to plead the CASA means that the claimant is unable to recover any damages thereunder. The statement of claim must however set out all the facts upon which a claimant intends to rely.

ASSESSMENT OF DAMAGES

Special Damages

- [10] The defendants do not dispute the claim for the sum of \$7,742.89. Mr. Anthony is therefore awarded the sum of \$7,742.89 as special damages.

² BVIHCV2007/0306

General Damages

- [11] The legal principles governing the assessment of general damages are well established. The main factors to be taken into account are: the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability; the pain and suffering endured; the loss of amenities suffered; and the extent to which the claimant's pecuniary prospects have been affected.
- [12] In this case the defendants challenge the right of the claimant to recover any general damages save for pain and suffering based on the pleaded claim. Counsel for the claimant conceded that based on the pleadings only damages for pain and suffering fall to be assessed.
- [13] With respect to pain and suffering, the evidence of Mr. Anthony is that Jordan was a spectator at a football practice at King George V grounds when a heavy metal gate fell upon him. Mr. Anthony states that at the date of the accident Jordan was 3 years old and he died at the age of 4 as a result of the injuries sustained "*namely severe head injuries, wound to the left side of the head, left parietal skull fracture , severe brain swelling, hydrocephalus, left facial weakness, brain damage and right lung opacities and right pleural effusion.* "
- [14] Mr. Anthony provided no medical report to support the claim of the nature and extent of the injuries sustained by Jordan. The only documentary evidence before the court is a death certificate which states that Jordan died as a consequence of cerebral edema.
- [15] Mr. Anthony relies on the award of \$50,000 made to one of the deceased claimants in the **Peter Cherry** case to support the claim for \$120,000 for pain and suffering and loss of amenities. In the **Peter Cherry** case there was evidence led with respect to the length of period the deceased was hospitalized and survived (3 days). The award included compensation for loss of amenities which is not being assessed in this case.

[16] While it is evident from the manner in which the accident occurred and the receipts showing that Jordan was undergoing some medical treatment that Jordan would have endured pain and suffering there is no evidence before the court with respect to extent and duration of the pain and suffering. The evidence shows that Jordan died approximately eleven (11) months after sustaining the injuries but there is no evidence of how long Jordan was hospitalized, whether he underwent any surgery and the nature or duration of any pain suffered as a result of the injuries. It appears to me that these are critical matters to be taken into consideration when determining the level of an award for pain and suffering. In the absence of such evidence the court is left to speculate.

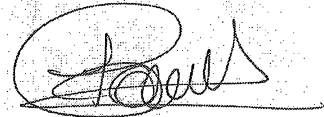
[17] The defendants submit that the sum of \$50,000.00 would be reasonable compensation for pain and suffering. Based on the limited oral and documentary evidence before the court I find that the defendant's generous offer of \$50,000.00 is reasonable compensation for pain and suffering.

[18] In summary, I award the claimant damages as follows:

- (1) \$7,742.89 as special damages
- (2) \$50,000 for pain and suffering

[19] The defendants shall pay interest on the sum of \$7,742.89 at a rate of 3% from the date of the accident to the date of judgment on the quantum of damages.

[20] The defendants shall pay prescribed costs to the claimant pursuant to the Civil Procedure Rules 2000 Part 65.5.



Fidela Corbin Lincoln
Master