EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT & THE GRENDAINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NUMBER: SVGHCV2011/0465

BETWEEN:

SANDRA ANN- MARIE GEORGE
(ADMINISTRATRIX OF THE ESTATE OF KARLOS GEORGE)

CLAIMANT

AND

NIGEL DON- JUAN GLASGOW

DEFENDANT

BEFORE: MASTER AGNES ACTIE

APPEARANCES:
Mr. Sten Sargeant of Counsel for the Claimant
Ms. Samantha Robertson of Counsel for the Defendant

2016: March 22
2017: February 2

RULING ON ASSESSMENT OF DAMAGES

BACKGROUND FACTS

[1] **ACTIE, M:** On 26th October 2008, Karlos George (the deceased), was a front seat passenger in a motor vehicle owned and driven by the defendant. The defendant's vehicle ran off the road colliding with a wall resulting in Karlos' death.

[2] Mrs. Sandra Ann Marie George, mother and administratrix of the estate of the deceased, filed a claim form with a statement of claim against the defendant seeking compensation pursuant to **Compensation for Injuries Act** Cap 122. On 5th May 2015, the Court of Appeal entered judgment in default in favor of the claimant with damages to be assessed.

[3] The defendant failed to indicate an intention to participate in the assessment of damages and also failed to file submissions in compliance with CPR 12.13 and 16.2. Accordingly,

the assessment will proceed on the claimant's submissions and the governing principles in an assessment of damages.

SPECIAL DAMAGES

[4] The claimant seeks loss of funeral expenses as special damages pursuant to Section 12 of the **Compensation For Injuries Act.** The claimant avers that burial expenses totaled $28,800.00 but conceded that the defendant's insurance company made a part payment in the sum of $15,000.00 towards the funeral expenses .The claimant submitted a proforma invoice to support the total costs and claims the outstanding balance in the sum of $13, 800.00. The court accepts the evidence and accordingly makes an award in the sum of $13, 800.00 as special damages for funeral expenses.

DAMAGES FOR LOSS OF EARNINGS AND LOST YEARS

[5] The claimant claims for Pretrial loss of earnings and loss of future earnings as lost years. Lord Diplock in **Cookson v Knowles1,** established guidelines in the assessment of the damages in normal fatal accident cases. The assessment of damages in fatal accident cases as a general rule is to be split into two parts namely:

(1) The pre-trial loss is pecuniary loss which it is estimated loss already sustained from the date of death up to the date of trial. The multiplier for the pre-trial loss is the actual number of years between death and trial; and;

(2) The future loss is the pecuniary loss which it is estimated they will sustain from the trial onwards. The multiplier for post-trial loss is calculated by deducting the pre-trial period of years from the multiplier.

PRE TRIAL LOSS OF EARNINGS

[6] The claimant seeks pretrial loss of earnings in the sum of $52,820.85. It is the evidence as supported by a salary slip, that the deceased was employed with Ridgeview Construction Co. earning a monthly salary of $1238.48 with a net pay of $1037.33 after deductions[2]. It is the general rule when calculating a dependency loss that a percentage deduction is to be made from the net income to represent what the deceased would have spent exclusively

[1] [1978] 2 All E.R. 604,

[2] Brtish Transport Commission v Gourley [1955] 3 All ER 796

on himself. This principle was enunciated in **Harris v Empress Motors Ltd**[3]. by Lord Justice O'Connor and summarized as follows:

> "...In calculating the sum to be deducted for living expenses when assessing the net loss of earnings 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 defendants; 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 pro rata 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 of maintaining the deceased in his station of life;......

At page 228 Lord Justice O'Connor stated:

> "I return to the two decisions in the House of Lords. In my judgment three principles emerge: (1) The ingredients that go to make up "living expenses" are the same whether the victim be young or old, single or married, with or without dependants. (2) The sum to be deducted as living expenses is the proportion of the victim's net earnings that he spends to maintain himself at the standard of life appropriate to his case.. Any sums expended to maintain or benefit others do not form part of the *victim's living expenses and are not to be deducted from the net earnings.'*

[7] The deceased was 19 years old at the time of death living at home without issue and unmarried. The claimant claims the net pay for a period of 76 months from the date of the accident till judgment giving a total amount of $78,837.08. The claimant in accordance with established authorities accepts a deduction of 33% for personal expenses between the death and judgment making an award of $52,820.85. Accordingly I make the award as claimed.

LOSS OF FUTURE EARNINGS (THE LOST YEARS)

[8] The claimant claims for loss of future earnings. It is the evidence that the deceased was employed as a mason with Ridgeview Construction. The clamant also seeks in the alternative loss of chance. The claimant states that it was the intention of the deceased and his best friend, Maridonna Charles, to join the British Navy. Maridonna Charles who has since joined the army filed a witness statement in support of those averments.

[3] 3 All Er 561

[9] While I accept that the deceased was a young man with career aspirations, I am not persuaded that the calculations should be based on the prospective income he would have received had he been recruited in the army. The evidence does not indicate any confirmed enrollment. I am of the view that the prospect of joining the army was speculative at the time of his demise. Accordingly, the court accepts the evidence of the net monthly income with Ridgeview Construction in the sum of $1037.33 x 12 making a multiplicand of $12,447.96.

[10] The deceased was 19 at the date of the accident and 26 at the date when judgment was entered by the Court of Appeal in 2015. Taking into account the usual principles, retirement, the vicissitudes and uncertainties of life and the age at the date of judgment, I am of the view that a multiplier of 18 is appropriate making a total award of $224,063.28. This amount to be reduced to take into account the amount that the deceased would have spent exclusively on himself as a single man without children. Counsel suggests a deduction of 25%. I am aware of the decision of Master Cottle, as he then was, in **Irmine Charles v Ezra Herbert**[4] emanating from this jurisdiction where the award was discounted by 50%. The conventional approach is that, an award should not be discounted at no more than one third (1/3) in such circumstances as before this court. Accordingly, taking all into consideration I will discount the award by one third (1/3) making a sum of $224,063.28 - 74,687.76 = $149,375.53.

LOSS OF EXPECTATION OF LIFE

[11] The claimant claims for loss of expectation of life, which is a statutory award allowed under the Compensation for Injuries Act. Counsel for the claimant avers that there is no set statutory award and cites several authorities in support with awards ranging in the sum of $2500.00 to $10,000.00. An award for loss of life is usually a modest conventional award. Counsel cites the decision in the Grenada case of **George Jolly et al v Vallen Francois et al**[5] where Price Findlay J. in 2011 awarded $10,000 for loss of expectation of life.

[4] HCV 171/2013 delivered on 2nd December 2005
[5] GDAHCV2010/0302 delivered on December 1,2011

[12] 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 similar awards made within the jurisdiction. Master Lanns, in Carmilllus **Emmanuel V Ronald Punnet**[6] arising out of this jurisdiction in 2013 and citing the decisions in 2006 in **Yoland Rodney v Osborne Qvow**[7] where Cottle M. followed the case of **Ermine Charles v Ezra Herbert and Eworth Stevens** 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 award in 2013 and will accordingly allow an award in the sum of $5000.00.

DEPENDENCY CLAIM

[13] The claimant states that the deceased made monthly contributions of $250.00 toward the electricity bills. I am of the view that the amount claimed is reasonable in the circumstances. Accordingly the amount claimed in the sum of $15,000.00 representing the dependency of five years is allowed.

PAIN AND SUFFERING

[14] The claimant claims for pain and suffering in the sum of $2000.00. It is the evidence that the accident occurred at 2:00 p.m. on the afternoon of 26th December 2008 and the deceased succumbed to his injuries on the morning of 27th December 2008. The claimant relies on the authority of **Yoland Rodney** supra, where the deceased died instantly in seeking an award for $2000.00. Accordingly I award the sum claimed of $2000.00 for pain and suffering.

LOSS OF AMENITIES

[15] The claimant claims loss of amenities in the sum of $5000.00. The claimant in her affidavit states of her intention to attend entertainment activities with the deceased. Counsel in support cites the decision in **Andrews v Freeborough**[8] where it was held that;

"on the death of any person, all causes of action subsisting against and vested in him shall survive against or as the same may be, for the benefit of his estate".

[6] CLAIM NO 364 OF 2004 consolidated with CLAIM NO 249 OF 2005
[7] Claim No 415 of2004 delivered in 2006
[8] [1966 2 All E.R. 721

[16] Any amount under this head is an artificial sum as damages for loss of amenities in such circumstances remain at large with a very moderate amount to be awarded. Taking into consideration similar awards made under this head I will accordingly make an award in the sum of $2000.00

ORDER

[17] In summary, it is ordered that the defendant shall pay the claimant the following awards;

1. **Special Damages**

   (1) Funeral Expenses $13,800.00

   (2) Loss of Pre-Trial Earnings = $37,805.85 being $58,820.85 less $15,000.00 as dependency award

   (3) Dependency claim - $15,000.00

   Total special damages in the sum of $66, 605.85 with interest at the rate of 3% from the date of death to the date of judgment on 5th May 2015.

2. **Pos Trialloss**

   (1) Loss of future Earnings-$ $149,375.53

3. **General Damages**

   (1) Loss of expectation of life - $5000.00

   (2) Pain and suffering $2000.00

   (3) Loss of amenities $2000.00

4. Interest on general damages at the rate of 6% from the date of filing the claim until judgment on liability on 5th May 2015 with no interest on Loss of future earnings.

5. Prescribed costs on the global award in accordance with CPR 65.5.

18. I wish to apologize to the parties for the delay in delivering this judgment and to thank counsel for the claimant for his very helpful submissions.

Agnes Actie

Master