

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2000/0031

BETWEEN:

BERTHA COMPTON (nee BLAIZE)
(Qua Administratrix of the Estate of the late Macrina Blaize)

Claimant

and

[1] DR. CHRISTIANA NATHANIEL
[2] DR. GERARD SALTIBUS
[3] THE HONOURABLE ATTORNEY GENERAL
[4] THE HOSPITAL ADMINISTRATOR, VICTORIA HOSPITAL

Defendants

Appearances:

Mr. Hilford D. A. Deterville, QC with Ms. Nandi A. O. Deterville for the claimant
Mrs. Brender Portland-Reynolds, Senior Crown Counsel for the defendants

2009: December 7;
2010: August 20.

JUDGMENT

- [1] GEORGES, J. [AG.]: I have read with consummate interest the written submissions and legal authorities submitted by counsel for each side pursuant to an order of the court dated 9th November 2009, in which the parties consented to judgment being entered for the claimant (on the issue of liability) with damages to be assessed.
- [2] The action arose from the death of Macrina Blaize ("the Deceased") a 34 year old auto sales clerk and mother of 3 children who died at Victoria Hospital on 5th March 1998 due to the alleged negligence of the 1st and 2nd defendants in the management of the condition of the Deceased. The suit was brought against the

3rd defendant by virtue of section 13(2) of the **Crown Proceedings Act** Chapter 13 of the **Revised Laws of Saint Lucia 1957** and against the 4th defendant by virtue of he being responsible for the day to day administration management and control of the medical nursing and other staff of the Victoria Hospital.

- [4] The action is brought for the benefit of the estate and for the benefit of the children of the Deceased under Articles 609 and 988(3) of the **Civil Code of Saint Lucia** Chapter 242 of the **Revised Laws of Saint Lucia 1957**.
- [5] Within days of counsel filing their respective submissions and legal authorities on the question of damages counsel for the claimant wrote to the Registrar and copied the letter to the Attorney General's Chambers and myself saying that since the filing of the order which the Court made in this matter on 9th November 2009 the attention of counsel had been brought to the decision of **Privy Council Appeal No. 1 of 2007 Felicia Andrina George Administratrix of the Estate of Hughes Williams Deceased v Eagle Air Services Limited** where Her Majesty's Board in an opinion delivered 12th May 2009 allowed Ms. George's appeal in which she sought damages on behalf of the estate of her spouse (Mr. Williams) and on behalf of herself and her five children by Mr. Williams as well as a claim for loss of dependency. The Board directed that judgment should be entered in her favour against the respondent for damages to be assessed and undertook at the insistence of Ms. George and the assistance of amici curiae the assessment of damages itself rather than remit it to the High Court in Saint Lucia.
- [6] In the light of that decision counsel for the claimant requested that each side be allowed to either make (written) supplemental submissions or that counsel for the parties be allowed to address the court against the background of that decision. No consensus having been reached I have proceeded on the basis of the written submissions and legal authorities in hand as well as the **Privy Council Appeal decision No. 1 of 2007** in so far as I consider it appropriate.
- [7] For that purpose I shall adopt the sequence of heads of claim followed by their Lordships' Board.

[8] On behalf of the estate of Macrina Blaize as in **George v Eagle Air Services Ltd and Others** four heads of claim are advanced:

- (1) loss of expectation of life;
- (2) funeral expenses;
- (3) lost years and
- (4) Loss of dependency.

Loss of Expectation of Life

[9] 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** (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 Counsel** (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.

Funeral Expenses

[10] The claim under that head is somewhat perplexing. This is a head of special damage which must be specifically pleaded and strictly proved. In his particulars of special damages in the Claimant's Writ of Summons dated 21st February 2000 the claimant's solicitor claimed funeral expenses of \$8,000.00. That figure has never been substantiated. At paragraph 8 of his written submissions dated 7th December 2009 he claims \$5,300.00 which is also unsupported by evidentiary proof. And by letter addressed to the Registrar dated 10th December 2009 learned counsel for the claimant states that in his written submissions he inadvertently omitted the sum of \$8,000.00 for funeral expenses from the items of special damages and that the said sum was not disputed. And indeed it was not by counsel for the defendant. This would bring the total sum for special damages from \$12,442.50 to \$20,442.50 as shown in the written submissions. The Registrar was asked to place the request before me which was copied to the Attorney General's Chambers. Inasmuch as the figure of \$8,000.00 for that head of damage was specifically pleaded by the claimant attorney at the very outset and is not disputed or unreasonable albeit unsubstantiated I am prepared to allow it.

[11] I would also allow the other heads of expenses incurred in keeping with Article 988(5) of the **Civil Code** and these together with funeral expenses aforesaid in the aggregate total \$20,442.50 thus:

	\$
(1) funeral expenses	8,000.00
(2) disbursements for application of appointment of tutrix	57.50
(3) legal practitioner's fees for same	2,000.00
(4) disbursements for application of appointment for Administratrix	85.00
(5) legal practitioner's fees for same	5,000.00
TOTAL	20,442.50

Loss of Earnings in the Lost Years

- [12] The action under this head is brought for the benefit of the estate of the Deceased. Damages awarded under this head are referred to as damages for 'the lost years'. As stated earlier (at paragraph 9) notwithstanding the change in English Law damages can be recovered for the lost years in a case of death based on the provisions of Article 609 of the **Civil Code** which states that on the death of any person after the commencement of this chapter all causes of action subsisting or vested in him shall survive against or as the case may be for the benefit of his succession.
- [13] In **Plummer et al** (paragraph 9 supra) Shanks J in addressing the claim for the lost years held that "the loss which is recoverable is a notional surplus representing the difference between the Deceased's estimated net earnings during the lost years of life on the one hand and the cost of maintaining himself ... during the period on the other".
- [14] It is recognized and accepted that for the purpose of calculating loss of future earnings in the lost years the multiplier by multiplicand approach is generally applicable. See **Herring v Ministry of Defence (2003) EWCA Civ 528 Philbert v Raye Suit No. 415 of 1989 (Saint Lucia)** where a multiplier of 15 was utilized for a 30 year old and **Plummer et al** where a multiplier of 14 was used for a 27 year old. Counsel for the claimant in the instant case proposed a multiplier of 15 whilst counsel for the defendants suggested that a multiplier of 12 be utilized. For myself a multiplier of 15 would in the circumstances seem to be appropriate.
- [15] In **George v Eagle Air Services Ltd** the Board in **Privy Council Appeal No. 1 of 2007** taking the deceased Hughes Williams' net earnings each month as \$2,500.00 assessed damages as at 12th July 1993 (the date of filing the writ) to the date of assessment (15th July 2009) as giving a loss of \$570,000.00 (228 months x \$2,500.00) by which date Mr. Williams would have been 57 and would have had a further 8 years of working life ahead of him. Taking Ogden Table 9 their Lordships held that the relevant multiplier would be 7.03. Applying this to

annual earnings of \$30,000.00 ($\$2,500.00 \times 12$) the total future loss of earnings is \$210,900.00.

- [16] From these sums it was necessary to make deductions for sums which Mr. Williams would have spent on himself. The evidence showed (according to Ms. George) that in 1990 he kept \$69.00 (or 3% of \$2,500.00) each month for himself. This it was suggested would have increased as the children grew older and a deduction of 25% once the children reached an average age of 13 on 12th July 2009. Taking these percentage deductions their Lordships gave the following awards:

- (1) 12th July 1990 (date of death) to 12th July 1993 (filing of writ): Lost earnings of \$390,000.00 ($\$30,000.00 \times 13$) less 3% = \$378,300.00; plus
- (2) 12th July 1993 to 12th July 2009: Lost earnings of \$180,000.00 less 25% = \$135,000.00. 12th July 2009 to retirement: \$210,900.00 less 25% = \$158,175.00.

This gave a total for lost earnings of \$671,475.00. As has been seen this was calculated in two stages/phases namely from date of death of the deceased to date of assessment and from date of assessment to retirement with percentage deductions.

- [17] In computing the award of damages for lost years claimant attorney following **Plummer et al v Conway Bay Ltd** (paragraph 9 supra) submitted that where (as in the instant case) there is insufficient or no evidence of the deceased's living expenses the multiplicand should be assessed as a percentage of the Deceased's net earnings. On that basis 50% of the Deceased's net annual salary of \$13,200.00 was taken as the multiplicand i.e. \$6,600.00 increased by \$400.00 after the first five year period to allow for possible increases in remuneration on the basis of **Herring v Ministry of Defence [2003]** EWCA Civ 528. The claimant's claim for lost years was thus:

	\$
(1) Amount for lost years – 1 st period (\$6,000.00 x 5 years)	33,000.00
(2) Amount for lost years – 2 nd period (\$7,000.00 x 10 years)	70,000.00
Total for lost years	103,000.00

- [18] Relying on the dicta of Lord Wilberforce in **Gammell v Wilson (1982)** AC 27 learned counsel for the defendants pointed out that the amount to be received in respect of earnings in the “lost years” should be after deduction of an estimated sum representing the victim’s probable living expenses during those years. The basis in principle for recovery lies in the interest in making provision for dependants and others out of a notional surplus. The issue is what constitutes “living expenses”. This is elaborated in the Court of Appeal case of **Harris v Empress Motors Ltd (1983)** 3 All ER 561 which states that:

“... where the deceased expended the whole or part of his net earnings on living expenses (such rent, mortgage, interest, rates, heating, electricity, gas, telephone etc and the cost of running a car) for the joint benefit of himself and his dependents, a proportion of that expenditure (the exact proportion being dependent on the number of dependents) should be treated as expenditure exclusively attributable to his living expenses and thus deductible from his net earnings in making the assessment under the 1934 Act; for example, where the only dependent is the deceased’s wife one-half of the expenditure for their joint benefit should be deducted from his net earnings, but where there is a wife and two dependent children, one quarter of the expenditure for the family’s benefit should be deducted from his net earnings.”

On that basis counsel for the defendants opined that there would have been a surplus of \$4,400.00 which would serve as the multiplicand. The multiplier was put at 12 as indicated at paragraph 14. The loss of future earnings was therefore $\$4,400.00 \times 11 = \$48,400.00$ which represents pre-assessment loss plus $\$4,400.00 \times 1 = \$4,400.00$ representing post-assessment loss thus giving a grand total of \$52,800.00 a difference of over \$50,000.00 from the claimant's figure of \$103,000.00.

[19] Applying the formula utilized by their Lordships in **George v Eagle Air Services Ltd** as set out at paragraphs 15 and 16 on the basis of damages for 'the lost years' being assessed in the instant case as at 23rd February 2000 this gives a loss to date of \$163,900.00 (149 months x \$1,100.00). Macrina Blaize ("the Deceased") would by now have been 46 and would have had a further 19 years of working life ahead of her. Taking Ogden Table 9 the relevant multiplier is 14.58. Applying this to annual earnings of \$13,200.00 (\$1,100.00 x 12) the total future loss of earnings is \$182,456.00.

[20] From these sums it is necessary to deduct the sums which represent Ms. Blaize's probable living expenses during those years which would come out of her surplus earnings. At this juncture it is appropriate to mention that at the date of death of the Deceased on 5th March 1998 was the mother of three minor children namely:

- (1) Gilma Tamara Blaize born on 20th April 1984;
- (2) Johan Lindon Felix born on 12th January 1991; and
- (3) Neil Kevin Blaize born on 20th November 1994.

They were then aged approximately 14, 7 and 3 respectively.

[21] At paragraph 15 of his written submissions learned counsel for the claimant suggested that the Deceased would have spent 75% of her annual income on the care and maintenance of her dependant children which would result in a deduction of 25% where the average age of the three children from the date of death of the Deceased 5th March 1998 to date of filing suit 23rd February 2000 would have been 8. Between the date of filing and the date of assessment 20th August 2010 Gilma would have attained her majority and the average age of Johan and Neil would have been 15 hence a deduction of 20% would in my opinion be appropriate and from date of assessment to the attainment of age 18 by Neil a deduction of 15% would in my view be apt.

[22] Taking these percentage deductions gives the following loss of earnings awards:

(1) 5th March 1998 to 23rd February 2000: Lost earnings of \$105,600.00
less 25% = \$79,200.00; plus

(2) 23rd February 2000 to 12th August 2010: Lost earnings of
\$196,000.00 less 20% = \$156,800.00; plus

(3) 12th August 2010 to 20th November 2012: Lost earnings of
\$26,400.00 less 15% = \$3,960.00.

This gives a total claim for loss of earnings of \$239,960.00.

The Dependency Claim

[23] Article 988(3) of the **Civil Code** includes children of a deceased as being entitled to the benefit of any action. Two of the children have now attained majority since their mother's death in March 1998 and the filing of the claim in February 2000. Damages due to the dependents as the Deceased's dependants were due as at the date of her death. As at the date of the death and the date of filing of the claim all three were minors and remained her dependants for the purposes of this claim.

[24] In computing the dependency claim claimant attorney multiplied the dependency period ("the multiplier") by the value of the money which it was deemed that the Deceased would have spent on the dependents ("the multiplicand"). The multiplier was taken as the sum of the dependency period divided by 3 i.e. $4 + 11 + 13 = 28$ divided by 3 = 9. The multiplicand was taken as \$10,500.00 i.e. 75% of \$14,000.00 with an allowance for possible increases in salary over the years. Thus the sum of \$94,500.00 (i.e. $\$10,500.00 \times 9$) was claimed under that head by the claimant.

[25] The defendants' attorney however arrived at a figure of \$71,775.00 on the basis that an assessment would be done for the youngest child (Neil) before and after the date of assessment as his dependency (14 years) would end at the age of 18

in April 2012 whilst a separate assessment would be considered for the two 'adult children' Gilma and Johan for the period of their actual dependency i.e. from March 1998 to April 2002 when Gilma attained age 18 a period of dependency of 4 years whilst Johan turned 18 on 12th January 2009 with his period of dependency being 11 years. I am persuaded by that calculation and accept the resultant figure as fair and equitable.

- [26] Interestingly in the concluding paragraph 8 of the Privy Council judgment in **George v Eagle Air Services Appeal No. 1 of 2007** the Law Lords observed that the dependency claim overlapped with the lost years claim in which case their Lordships opined that:

"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". In the present case, it is not therefore appropriate to make any separate dependency award."

- [27] And Senior Crown Counsel for the dependants in concluding her written summary submitted at paragraph 5.16 that:

"It should be noted that in cases where the dependants and the beneficiaries under the estate are the same, the law will not allow both the damages under the dependency action and the sums quantified under the survival action to be collected. In this regard, **Article 579(1) of the Civil Code** states that the succession of the deceased who is a single woman will fall to her children. See also ***Gammell v Wilson* [1980] 2 a.e.r 557**, ***Richards v Clarke Suit No. 142 of 1989***, and ***Harris v Empress***, where the greater of the two sums was awarded.

- [28] Consequently learned counsel further submitted that an award in accordance with the calculations proposed by her under the dependency claim ought to be made to the claimant.

- [29] Yet in **Mathurin v Augustin** (paragraph 9) where the sole issue on this appeal was whether the estate of the deceased was entitled to recover damages for the

deceased's loss of future earnings during the years of life lost to her because of the dependants' negligence Barrow JA in dismissing the appeal and upholding the Master's decision that the respondent was entitled to an award of damages in favour of the estate for the lost years explained at paragraph 15 of his judgment that the current law of England (**The Administration of Justice Act 1982**) which abolished recovery of damages for lost years conflicts with the express provision of article 609 of the Code which permits the recovery of such damages but in case of conflict the Code prevails. It should be noted that subsequent to the filing of the notice of appeal in **Mathurin** damages payable to the dependants of the deceased had been agreed.

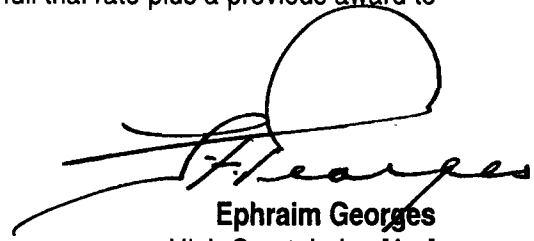
[30] Article 609 of the **Civil Code** is pellucidly clear and declares that on the death of a person after the commencement of this Chapter all causes of action subsisting or vested in him shall survive against or as the case may be for the benefit of his succession. And Article 988(3) includes children of a deceased as being entitled to the benefit of any action.

[31] In the result the following awards are made:

Loss of expectation of life	3,000.00
Funeral expenses	8,000.00
Interest (\$8,000.00 x 3% x 12)	2,680.00
Special damages (Article 988(5))	12,442.00
Interest (\$12,442.00 x 3% x 12)	4,479.12
Dependency claim	71,775.00
Pre-assessment interest on Dependency (Calculation Table I of defendants' submissions)	12,150.00
Loss of earnings	239,960.00
Interest on past loss of earnings for 12 years: \$226,000.00 x 6 x 6%	81,360.00
Total award inclusive of interest to 20 th August 2010 is thus	435,846.12

With interest at the rate of 6% per annum from date of judgment to date of payment.

- [32] Costs awarded under the CPR at 75% of the full trial rate plus a previous award to the claimant of \$2,000.00.



Ephraim Georges
High Court Judge [Ag.]