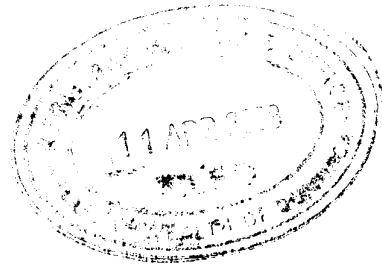


COMMONWEALTH OF DOMINICA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO DOMHCV2007/0175

BETWEEN:

MARIA GUYE
as personal representative of
ARTHUR C. WALDRON deceased

Claimant

And

FAUSTINUS TOUSSAINT

Defendant

Appearances:

Ms Noelize Knight for the Claimant

Mr David Bruney for the Defendant

.....
2007: November 23

2008: April 07
.....

JUDGMENT

- [1] **LANNS, MASTER:** This is an assessment of damages in respect of the death of Arthur C. Waldron who was run down by a jeep Cherokee driven by the Defendant on 3rd June 2004 while he was walking on Rodney Street, Portsmouth. Mr Waldron was rushed to the Princess Margaret Hospital and died the same day in consequence of his injuries.
- [2] On 31st May 2007, the Claimant brought an action as the personal representative of Arthur C Waldron. The defendant did not file a defence within the time prescribed by the Rules of Court and thus default judgment was entered against him on 14th August 2007.

- [3] I am satisfied that the defendant was duly served with the proceedings on 18th June 2007 and that he failed to acknowledge service or put in a defence and that the default judgment for damages to be assessed is a valid judgment.
- [4] When this matter came on for directions on the assessment, learned counsel for the Claimant reminded the Court that pursuant to CPR 12.13 the Defendant cannot be heard on the assessment of damages in this matter and that the only matters upon which the Defendant can be heard are those explicitly stated in CPR 12.13 and that assessment of damages is not one of them. She then urged the Court not to consider any submissions made by the Defendant in this matter as this would be in contravention of the Civil Procedure Rules.
- [5] I am in full agreement with Counsel that under CPR 12.13 a defendant has no right to appear and be heard on an assessment except in relation to costs. I hasten to add, however, that this Rule has been perceived as draconian especially since the court can always benefit from the assistance of both counsel in assessment matters which are sometimes very difficult and complex. Nonetheless, I must in this case, where counsel has raised objection, adhere strictly to the Rules of Court and decline to consider the written submissions of Counsel for the Defendant.
- [6] The Claimant seeks to recover damages for the benefit of the dependent of the deceased under the Fatal Accidents Act and for the benefit of the estate of the deceased under the Law Reform (Miscellaneous Provisions) Act.
- [7] I have heard oral evidence from the Claimant as well as from Ms Joan Thomas who was in the employ of the deceased; and I have seen Affidavits of both witnesses in support of the assessment together with exhibits attached. I have also seen a medical report of Dr Juan Cruz dated 8th June 2004. Counsel for the Claimant has favoured me with helpful submissions and I thank her.
- [8] I find the following facts established by the evidence which was tendered on behalf of the Claimants

- [9] At the time of his death, Arthur C. Waldron was 95 years old. He was described by Dr Juan Cruz as a well nourished old man. He was in good health, and was still a working man who did everything for himself including his banking transactions. Immediately before he was knocked down, the deceased was walking home from the bank which is near to his home. He was married and lived with his wife who was 93 years old at the date of death of her husband. His wife is still alive and is deprived of the companionship of her husband.
- [10] Prior to his death, the deceased operated a bakery and grocery shop in Portsmouth which he attended to six days a week and earned an average income of about \$3000.00 per month which I accept. During Christmas and Carnival seasons he made a little more. His annual net income is estimated at \$36,000.00. The deceased widow was wholly dependent on his support. He was the bread winner.
- [11] On 7th July 2005, the defendant was convicted of the offence of causing death of the deceased by dangerous driving.

Claims / entitlements under the Fatal Accidents Act

- [12] The Claimant claims damages for loss of dependency, bereavement and funeral expenses.
- [13] **Loss of dependency:** The claimant claims 2/3 or (\$24,000.00) of the annual income of the deceased as being spent on the wife and for household expenses. I accept this figure as reasonable estimate of what the deceased would have spent on his wife and for household expenses but for the accident.
- [14] Given the deceased good health, his ability to manage his own affairs, the fact that he continued to work at age 95, it seems that there was a possibility that his working life could have extended up to 98 years especially in Dominica where persons have lived well past their 100th birthday. Being also mindful of the age of the dependent wife, I accept the submission of counsel that 3 years would be an appropriate multiplier. I have also taken into account the fact that

the Claimant would be awarded a lump sum instead of what she would have received over a protracted period. The income for the period is therefore assessed at $\$3000,00 \times 36 = \$108,000.00$. From this amount I deduct $\$36,000.00$ which the deceased would have spent on himself resulting in a remainder of $\$72,000.00$. I adopt this as the value of the dependency.

[15] **Bereavement:** Under Section 4 of the Fatal Accidents Act Chapter 7:59 the Claimant is entitled to recover $\$5000.00$ as damages for bereavement. The Claimant has made such a claim and is therefore awarded the sum of $\$5000.00$ under this head.

[16] **Funeral Expenses:** Section 5 of the Fatal Accidents Act states that "If the dependents have incurred funeral expenses in respect of the deceased, damages may be awarded in respect of those expenses". The claimant claims $\$6,645.00$ ¹ as funeral expenses and produced receipt in relation thereto. Thus, I am satisfied, based on the evidence that the Claimant has proved that she incurred this expense and is entitled to recover the amount of $\$6,645.00$ as funeral expenses.

Claims/entitlements under the Law Reform (Miscellaneous Provisions) Act

[17] Under the **Law Reform (Miscellaneous Provisions) Act** Chapter 7:99, the Claimant is entitled to be compensated for the loss to the estate of the deceased. Section 13, Part III provides:

13. (1) Subject to this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him survive against, or as the case may be, for the benefit of his estate."

.....
¹ See Exhibit MG4

[18] And s. 13. (4) (c) reads:

13.

(1) ...

(2) ...

(3) ...

(4) Where a cause of action survives for the benefit of the estate of a deceased person, the damage recoverable for the benefit of the estate of that person shall not include -

(a) ...

(b) ...

(c) where the death of that person has been caused by an act or omission which gives rise to the cause of action the damages shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

[19] Under a survival action, an award is usually made for loss of expectation of life, (even where death is instantaneous)² funeral expenses, other special damages and 'the lost years' Also, damages for pain and suffering and loss of amenities up to the death of the deceased are recoverable. However, the claimant has only claimed damages in respect to hospital charges and damages for pain and suffering, the reason being, I take it, to prevent double recovery.

Hospital charges: Exhibit JT2 is a copy of the hospital Invoice from the Princess Margaret Hospital dated 8th June 2004 referred to in the Affidavit of Joan Thomas filed on 18th October 2007 deposing that the invoice was issued to her in respect of the deceased's hospital fees which totalled \$230.00. I therefore propose to award the estate that sum.

.....
² Rose v Ford [1937] 3 All ER 359.

Sonny Prince v Loring George and Gorda Aero Service Inc [2002] BVIHCV2002/0035. Judgment delivered by Benjamin J in April 2002.

[20] **Pain and suffering:** The evidence is that the deceased succumbed to his injuries some 10 hours after he was run down. Mr Waldron suffered multiple injuries in the accident. They are referred to in the Statement of Claim and set forth in the medical report of Dr Juan Cruz. He was conscious upon arrival at the hospital, and was able to feel and communicate while in the hospital. I award the sum of \$4000.00 for the pain and suffering endured by Mr Waldron in the last 10 hours of his life.

[21] As previously stated, no claim was made for loss of expectation of life, funeral expenses and the "lost years". Accordingly, I make no award under these heads.

Summary of the award

[22] I award the claimant damages as follows:

• Loss of dependency	\$ 72,000.00
• Bereavement	\$ 5,000.00
• Funeral expenses	\$ 6,645.00
• Hospital Charges	\$ 230.00
• Pain and suffering	\$ 4,000.00
Total award	<u>\$ 87,875.00</u>

[23] I award interest at the rate of 5% per annum from the date of judgment until payment.

[24] I will award prescribed costs of \$13,345.00.


Pearlitta E. Lanns
MASTER