

THE EASTERN CARIBBEAN SUPREME COURT

THE HIGH COURT OF JUSTICE

HIGH COURT CIVIL CLAIM NO. 415 OF 2004

BETWEEN:

YOLANDA RODNEY

Claimant

v

OSBOURNE QUOW

Defendant

Appearances:

Mr. R. Williams for Claimant

Mr. S. E. Commissiong for Defendant

2006: April 20

DECISION

- [1] Curtis Rodney, a passenger in a vehicle driven by the defendant, died when the vehicle plunged over an embankment on a winding remote mountain road in the North Leeward part of St. Vincent. The vehicle fell some 100 feet. The deceased was thrown from the vehicle. The Court of Appeal found the defendant was liable for his death and ordered that damages to be assessed be paid by the defendant. This is that assessment.
- [2] This claim is brought by the widow and administratrix of the Estate of the deceased on behalf of the Estate of Curtis Rodney and on behalf of the dependants of the deceased. At the time of his death on 26th December 1997 Curtis Rodney was 36 years old. The widow was 32. The deceased earned \$600 per month. Of this sum he spent \$200 on himself. Mr. Commissiong for the Defendant submits that the sum of \$15.00 is also to be deducted as NIS contributions. I do not agree. Had the deceased lived he would have paid NIS. He would also have benefited

from those contributions by being able to collect any illness benefit to which he might become entitled. In the circumstances I do not deduct the \$15.00. The monthly earnings of the deceased available for his family was thus \$400.

- [3] The claim is brought under two heads the claimant seeks to recover damages under Sections 3 and 13 of the Compensation for Injuries Act Chapter 83 of the Laws of Saint Vincent and the Grenadines 1990.

Under Section 3: The Dependency Action

- [4] There are two dependants with whom I must be concerned. They are the claimant, the widow of the deceased, and the minor child, Curtland Rodney. Curtland attains the age of 16 on 6th September 2006. For the purposes of my assessment his dependency would end there unless he continued at school full time or some other relevant considerations apply. However, as I consider that the widow might rightfully expect to benefit to a greater extent from the earnings of her husband as the years go by I will make no adjustment to the multiplicand by deducting any sum in respect of the son after his dependency would have come to an end. Thus I treat the multiplicand as \$400 per month I deduct 25% of this as having been for the benefit of the deceased who shared the household. I thus arrive at a figure of $\$300 \times 12 = \$3,600$ annually.
- [5] I have had the benefit of assistance by both counsel. Mr. Williams cites the UK case *Lim Poh Choo v Camden & Islington Area Health Authority* (1979), ALLER 910 where the House of Lords approved a multiplier of 14 for a 41 year old woman.
- [6] Mr. Commissiong cites **Hermina Spencer v Tripple General Contracting Co. Ltd** a High Court Decision where a multiplier of 10 was adopted for a 25 year old man. He suggests a multiplier of 8 be chosen given the age of the deceased in this case was 36.

[7] Having reviewed the authorities I am content to select a multiplier of 12 years in this case. The award to the dependants is thus $\$3600 \times 12 = \$43,200$.

[8] I do so in the peculiar circumstances of this case. More than seven years have already passed since the death of Curtis Rodney. Were I to view the dependency in two periods- the time up to assessment and then in future this gives almost 8 years for the past and a prospective award of only just over 4 years. Had the assessment been done in 1998 a multiplier of 12 would have been apt.

Under Section 13 of the Act- The Survival Action

Special Damages

[9] The agreed items of special damages amount to \$2,010.00. While I do not share Mr. Commissiong's characterization of the cost of video taping as having been expended on 'personal delight' I agree that this sum cannot be recovered. I also do not allow the cost of obtaining letters of administration. Death is inevitable. This expense would arise in any event.

General Damages

Loss of Expectation of Life

[10] It is common to award a conventional sum under this head. In **Ermine Charles v Ezra Hebert & Eworth Stevens** No 171 of 2003 from this jurisdiction I awarded a sum of \$3,500.00. I make the same award here.

Pain Suffering and Loss of Amenities

[11] Mr. Commissiong suggests that no award should be made under this head as the deceased 'died on the spot'. I do not see this as a man dying, unaware, struck down by a bolt from the blue. Curtis Rodney would have been aware, throughout

that fatal plunge of his impending injury and as it turned out, his death. Despite the brevity of the period I imagine his agony must have been acute. Unfortunately I have been offered no assistance in this regard by counsel for the claimant. I restrict myself to a token sum of \$2,000.00 under this head.

The Lost Years

[12] The deceased annual earnings were $600 \times 12 = \$7,200.00$. As noted above I adopt a multiplier of 12. This produces a total award for loss income over the lost years of \$86,400. In this case the dependant is the claimant. She is also the administratrix of the estate of her late husband. Obviously the claimant cannot recover an award under Section 3 as well as Section 13 of the Act. This would be a duplication as I explained in the case **Ermine Charles v Ezra Herbert & Eworth Stevens**. I must also deduct from the total under the Survival Action the amount the deceased would have spent on himself, agreed in this case to be one third of his income.

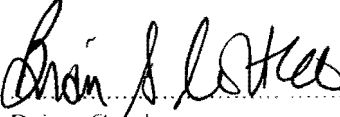
[13] The total award is

86,400 - 28,800	\$57,600.00
Special Damages	\$ 2,010.00
Loss of Expectation of Life	\$ 3,500.00
Pain and Suffering	<u>\$ 2,000.00</u>
Total	<u>\$65,110.00</u>

[14] I must also include a sum for the award to the minor child for the loss to him. I assess his dependency at \$100.00 per month or \$1200.00 annually. As noted earlier he attains the age of 16 years this year. I adopt a multiplier of 8 years as there has been no evidence led that the dependency would last beyond his 16th birthday. This gives a total of $1200 \times 8 = \$9,600.00$.

The Award

[15] I award the claimant damages in the amount of \$74,710.00. Prescribed costs on this amount is awarded of \$18,942.00.


.....
Brian Cottle
MASTER