

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1979/A001

BETWEEN	ADMINISTRATOR GENERAL FOR JAMAICA (Administrator Estate Kenroy Bachelor)	PLAINTIFF
AND	ASTON DACRES	DEFENDANT

C. U. Hines and Mrs. Elizabeth Hines for plaintiff.
 Maurice Tenn and John Vassell for Defendant.

July 13, 14, 15, 1981

WOLFE, J.:

Following a motor vehicle accident on the 8th January, 1978, along the River Road, Bog Walk, in the parish of Saint Catherine, Kenroy Bachelor, a passenger, on the defendant's motor truck, succumbed to his injuries. He was then twenty-eight (28) years of age and a Sales Clerk employed to Motor Sales Limited.

The deceased was survived by three children, born out of a common law union, namely, Kevin Nicholas - born 27th August, 1971;
 Kirk Dane - born 25th March, 1973;
 Kenrick - born 7th October, 1974.

Harold Hutchinson a supervisor employed to Motor Sales Limited had this to say of the deceased:

" He joined the company as a storeman and was eventually promoted to Sales Clerk. He was one of our most important salesman. He was very vigilant. He could sell parts for more than one type of vehicle. This is an asset in this type of business. He was a dependable worker. During removal from Hanover Street to South Camp Road, there was a redundancy. Only Bachelor and I survived. He had the potential to be promoted to a supervisor. At the time of his death he earned about Eighty Dollars (\$80.00) weekly. "

The deceased having died intestate, Letters of Administration were duly granted to the Administrator General of Jamaica in his estate.

The plaintiff called one witness as to the fact of the collision which resulted in the death of Bachelor, namely, Glenford Findlay, a pot-washer at B.H. Paints Limited and a passenger in the

ill-fated motor truck.

Findlay testified that as the truck wended its way along the winding River Road in the Bog Walk gorge, driven by the defendant, Aston Dacres, it was about 6:30 p.m. and dark. It was raining. They had gone to Saint Mary earlier on that day to pay their last respect to a person unknown at the invitation of Aston Dacres.

As the truck travelled along it suddenly collided with a rock which forms part of the embankment along the roadway. The impact was severe. The top of the truck was torn off. The deceased who was then a passenger in the rear of the vehicle was thrown therefrom. For him it was a fatal experience.

Aston Dacres the driver of the vehicle contended that as he drove along keeping as near to his left as was possible and while negotiating a left hand bend he was blinded by the lights of an on coming vehicle, which appeared to be travelling astride the white line in the middle of the road. Although travelling as near to his left as he could, he then swung further left to avoid a head on collision with this oncoming vehicle.

The swing to the left caused his vehicle to collide with a rock overhead, which he says jutted out over the roadway for some four feet.

The oncoming vehicle continued on its way without its identity having been ascertained.

While the burden of proof of negligence is upon the plaintiff, it is significant that the defendant failed to call his wife who was seated in the front of the truck beside him to support him in the allegation as to the lights of the oncoming vehicle and the manner in which the said vehicle was being driven.

It is to be clearly understood that in deciding the issue as to liability this failure has in no way been a determining factor.

Under cross-examination the defendant had this to say:

" I was negotiating a left hand bend. I was keeping close to my left side. I did not apply my brake before because I was driving normally and comfortably. I thought car and truck could pass safely so that is why I did not apply my brakes. Had I thought that car and truck were going to be in a collision I would have applied my brakes before. I did not see the rock because it was night. "

In support of his case, the defendant called one Slipa Nicholas a lumber worker at National Heroes Circle in Kingston who testified that prior to the collision the deceased was standing near to a small door in the side of the truck which was bolted and tied with a piece of rope. As he stood there, Mr. Nicholas testified, the deceased held on to the side of the truck "rocking to the beat of the religious hymns" which were being chanted. A not uncommon practice amongst Jamaicans returning from funerals in the country side.

It is worthy of note that Glenford Findlay stated on oath that when he last saw the deceased, just prior to the collision, deceased was seated on the last but one seat board to the rear of the truck.

The manner in which Aston Dacres and his witness Slipa Nicholas prevaricated as they gave their evidence led me to one conclusion and one conclusion only that they were not witnesses of truth and therefore unworthy of belief.

I therefore rejected the defendant's version as to how the collision was caused, namely, that having ^{been} blinded by the lights of an oncoming vehicle, he swerved left to avoid what appeared to have been an inevitable head on collision and in so doing collided with the rock.

His answers to questions in cross-examination as is evidenced by the extract from his testimony quoted earlier in this judgment, in my view, puts paid to his version of the accident.

I find that the oncoming vehicle, to which he referred, was mythical. I therefore reject the contention that he acted in the "agony of the moment" and therefore his act did not amount to negligence.

It is patently clear on the evidence that the defendant in negotiating a left hand bend went too close to his left and in so doing his vehicle collided with the rocky terrain which borders the road way.

Although the Road Traffic Act enjoins the drivers of motor vehicles to drive on the left of the road way, it is in my view negligent driving to drive so perilously close to the left as to occasion a collision with the rocks which forms a border with the road way.

I therefore find that the collision was due solely to the negligent manner in which the defendant operated his motor truck.

I further find that the deceased was at the material time of the collision properly seated.

The more difficult area of this action is the question of damages under the Fatal Accident Act which enures for the benefit of the deceased's dependents. Before embarking upon the exercise of quantifying damages under the Fatal Accidents Act, let me quickly dispose of the question of damages under the Law Reform (Miscellaneous Provisions) Act.

Special damages were agreed at One Thousand Dollars (\$1,000.00) being the amount expended for funeral expenses.

By way of General Damages, I make an award of Two Thousand Dollars (\$2,000.00) for loss of expectation of life.

DAMAGES UNDER THE FATAL ACCIDENT ACT:

The deceased died at the age of 28 years. Assuming that in the normal course of things he would have lived up to 65 years, there is thirty-seven years of purchase.

AGES OF CHILDREN ON DEATH OF DECEASED:

Kevin	-	7 years	Dependency of 11 years
Kirk		5 years	Dependency of 13 years
Kenrick		4 years	Dependency of 14 years
			<u>Total years of Dependency 38 years.</u>

5.

Thirty-eight years divided by three would give approximately 13 years of purchase. However, thirteen years of purchase would place the youngest child out in the cold for a period of one year. To avoid such a result I am of the view that in all the circumstances of the case a multiplier of 14 years would be reasonable.

I accept the evidence of Linnette Mighty-Collier, the common law wife of the deceased that the deceased made a weekly contribution of Sixty Dollars (\$60.00) to her to maintain the household.

The amount of Sixty Dollars will therefore be scaled down by 2/5. The contribution by the deceased in respect of the children is therefore fixed at the sum of Thirty-six Dollars (\$36.00) per week which would be an annual sum of One Thousand Eight Hundred and Seventy-two Dollars (\$1,872.00). Using a multiplier of 14 years this would produce a sum of Twenty-six Thousand, Two Hundred and Eight Dollars (\$26,208) to be divided among the three children.

There will therefore be judgment for the plaintiff as set out hereunder:

Fatal Accidents Act

To be divided among the three (3) children \$26,208.00

Law Reform (Miscellaneous Provisions) Act

Funeral Expenses 1,000.00

Lost of Expectation of life 2,000.00

\$29,208.00

with costs to be taxed if not agreed.