[2013] JMSC Civ 149

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2009 HCV 04028

BETWEEN	**ADMINISTRATOR GENERAL FOR JAMAICA (On behalf of the Near Relations and Dependents and Dependents and as Administrator Ad Litem of the Estate of Clive Brown, Deceased)**	**CLAIMANT**
AND	**JAMAICA PRE-MIX LIMITED**	**1st DEFENDANT**
AND	**ROHAN REID**	**2nd DEFENDANT**

Ms. Catherine Minto, instructed by Nunes, Scholefield, DeLeon & Co. for the Claimant

Mr. Kwame Gordon, instructed by Samuda & Johnson for the 1st Defendant

Heard: November 1 & 2, 2011, June 21 & 28, 2013 and October 18, 2013

ASSESSMENT OF DAMAGES – FATAL ACCIDENTS ACT – LAW REFORM (MISCELLANEOUS PROVISIONS) ACT

ANDERSON, K., J.

[1] This is an assessment of damages arising from a motor vehicle accident that occurred on 10 July 2006, arising from which, Mr. Clive Anthony Brown ('the deceased') died. The deceased was driving his motor vehicle along the Stony Hill Main Road and a grinder from a motor truck registered to Jamaica Pre-Mix

Limited (the '1st defendant') fell on his motor vehicle injuring him; he subsequently died as a result of those injuries. Rohan Reid (the '2nd defendant') was the driver of the said motor truck and the agent or servant of the 1st defendant. Separate actions were brought against the 1st and 2nd defendants and the matters were consolidated by an order of the court.

[2] The deceased died intestate. He was 36 years old at the date of death and is survived by his wife, Mrs. Franceita Brown, two children, Zinedine and Suwayne Brown, his mother – Ms. Beverly Allen and his father, - Mr. Anthony Brown. An application for court orders to appoint Mrs. Franceita Brown as Administrator (Ad Litem) for the estate of the deceased was filed on 31 July 2009. A letter from the Administrator-General's Office, dated 2 September 2009, to counsel for the claimant indicated that an amended Application for court order need be submitted to instead appoint the Administrator-General of Jamaica as the Administrator (Ad Litem) due to the involvement of minors as beneficiaries in the claim.

[3] A court order by Justice Glen Brown was granted on 15 September 2009 appointing the Administrator-General as Administrator (Ad Litem). The order stated that:

> *'(1) The Administrator-General is to be appointed Administrator (Ad Litem) for the Estate of CLIVE BROWN for the purpose of beginning and carrying on these proceedings as the Claimant herein and;*
>
> *(2) The Claimant be permitted to make a claim against the Defendants in these proceedings for damages for negligence for the benefit of the near relations of the deceased (Clive Brown).'*

[4] On 16 August 2010 default judgment was entered for the claimant against the 2nd defendant, as he failed to file a defence and on 20 October 2010 Summary Judgment was entered by consent against the 1st defendant. The 1st defendant and the claimant completed a mediation exercise on 16 March 2011 but were unable to arrive at a settlement. The matter was slated for assessment

of damages on 11 July 2011 and was adjourned until 1 and 2 November 2011. I reserved judgment on 2 November 2011 in order to allow for written submissions and the authorities to be relied upon to be filed and served by the parties on or before 9 November 2011. This court now turns to the question of assessment of damages. Before doing so though, I wish to hereby, apologize for the delay in delivering judgment in respect of this matter.

[5] The claimant filed for an award of damages under both the **Fatal Accidents Act** – [1845] ('FAA') and the **Law Reform (Miscellaneous Provisions) Ac**t – [1955] ('LR(MP)A'). Both Acts are pleaded in concert in the case at hand. As the assessment of damages will proceed under both Acts, it is important to indicate from the outset that duplication in recovery of damages is not allowed, and therefore the court will be vigilant in determining the award of damages under the Acts to ensure that a dependant does not doubly recover. The claimant cannot benefit under the FAA except and to the extent that her dependency under the FAA exceeds the amount awarded under the LR(MP)A. Therefore, if there is excess under the FAA, then the claimant will be entitled only to that excess. In order to ensure that the claimant does not doubly recover, what must be done is that the claimant recovers only the maximum sum due under either of these statutes. In other words, if the claimant were to recover $10 in her claim under the FAA and also to recover $50 under the LR(MP)A, this would not entitle the claimant to recover damages from the defendants in the aggregate sum of $60. Instead, the claimant would only lawfully be permitted to recover the maximum sum of $50 under the LR(MP)A. The $10 awarded under the FAA would be taken as still having been awarded to the claimant, but would not entitle her to recover that $10 sum in addition to a further $50 arising out of her claim under the LR(MP)A. This court will first proceed to assess an award of damages under the FAA and then assess an award of damages under the LR(MP)A. This court notes, at this point, that the multiplier used under the FAA is the same multiplier used under the LR(MP)A.

ACTION UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT

[6] An action brought under the LR(MP)A is done so for the benefit of the deceased's estate. Section 2 of that Act states: '…on the death of any person … all causes of action … vested in him shall survive … for the benefit of his estate.' Under the LR(MP)A, the award is usually made for (1) loss of expectation of life (2) funeral expenses; (3) other special damages; and (4) the 'lost years' of earning capacity.

[7] With regard to special damages, the claimant has claimed for funeral expenses being the costs of suit, shirt, slippers, church, food supplies, chef, rum, heineken, beer, refreshments after funeral, the loss of the deceased's vehicle, the cost of the wrecker service which was used to tow away the deceased's vehicle, after the vehicular accident which caused his death, had occurred, along with the estimate for repairs to said vehicle and assessors invoice. The existence and cost of the razor phone are, in the present case, both unsubstantiated. It is trite law that pleaded particulars, must, as a general rule, be strictly proven. Nonetheless, this is only a general rule and in appropriate cases to insist on specific proof would amount to that which has, in caselaw addressing this subject, been described as, 'the vainest pedantry.' See: **Desmond Walters v Carlene Mitchell** – [1992] 29 J.L.R. 173, at p. 174, per Wolfe, J.A. (as he then was). It is therefore open to this court to accept a sum claimed as special damages without evidence of a receipt. With regard to the justice of the situation, this court cannot accept the sum claimed as special damages for the alleged loss of a 'razor' phone, without evidence of the existence of such a phone. This court agrees that the cost of the police report is standard, being $1000.00. The defendants dispute a portion of the funeral expenses. They assert that the 4 soft drinks totaling $2880.00 is unreasonable, and that the DJ/Music and Charter bus claims are unsubstantiated, stating that it is unclear why family members needed to be taken to and from the funeral in a bus and question the necessity of the bus. This court is of the opinion that 4 soft drinks totaling

$2880.00 must be understood as being 4 crates of soft drinks rather than as 4 soft drinks. This must be so, bearing in mind the nature of the event which was being catered for. The other challenged funeral expenses are also accepted by this court, as there is no evidence to the contrary presented by the defendants. The sum of $618,448.80 is accepted by this court as the figure for the funeral expenses and $572,220.00 as the figure for the property damages which represents a deduction of the $20,000.00 cost submitted for the razor phone by the claimant.

[8] Further, under the LR(MP)A, damages for loss of expectation of life are also calculated. A conventional sum for such damages is typically awarded. In **Bryan v. AG (unreported) – CL 2001 B 088**, Sinclair-Haynes J. stated that the figure under this head of damages, should be a conventional or moderate figure. There has been controversy with regard to this sum. Sinclair-Haynes J. also stated that the massive devaluation of the Jamaican dollar required that the figure be adjusted proportionate to the change in the dollar value. The sum of $30,000.00 was identified in **Hibbert v. AG** – [1988] 25 J.L.R. 429**, Radcliffe v. Smith & Anor** – [1988] 25 J.L.R. 516 and **Clarendon Parish Council & Evan v. Goulbourne** – [1990] 27 J.L.R. 516. In **Odemary Bartley v. Errol Walters and another (unreported) – CL 1999 B226**, Dukharan J. (as he then was) raised this figure to $70,000. In **Bryan (op. cit.)**, Sinclair-Haynes J. noted that the Bartley award at the time she decided **Bryan** would be updated to $118,984.88 based on the CPI; she awarded a moderate figure of $125,000.00 as appropriate. Brown J., took a similar approach in **Gordon et al. v. Administrator General (Gordon, deceased) (unreported) – 2006 HCV 01878.** In that case, both claimants and defendants presented recent awards granted by the Supreme Court that ranged from $50,000 to $175,000. Brown, J. having acknowledged the variance resulted from the devaluing Jamaican dollar, considered the claimant's proposed sum of $150,000.00 to be reasonable. The loss of expectation award should therefore be updated to match the devaluation of the dollar, but not to the extent that it would differ from the award under that head, as rendered by this court, in the

Gordon case **(op.cit.)** Given the recent Court of Appeal judgment in **AG v. Bryan** – [2013] JMCA Civ 3, the conventional sum for a loss of expectation award appears to now be $125,000.00. The claimant has submitted that the sum of $150,000.00 should be accepted and this court agrees with this sum, since the dollar has been devaluing on a constant basis, ever since this court's judgment in the Bryan case was rendered.

[9] This court now turns to lost years which is a calculation of the loss to the estate by virtue of the loss of earnings of the deceased during the lost years, being years between retirement and death. It is the loss arising from the death of the deceased and is calculated as at the time of death of the deceased. This court duly notes that even though this figure represents loss to the deceased, as submitted by the claimant, it is not based on income but rather on annual expenditure. It is for this reason that the figure for net income is not ardently decided. The figure for net income acts as a guideline in order to place a check upon the total annual expenditure; in order to indicate whether the accuracy of that expenditure presented as evidence to this court may be called into question. In order to ascertain the amount of recoverable damages, this court must determine the multiplicand by ascertaining the deceased's total annual expenditure at the time of death, deducting the sum spent exclusively by the deceased on himself and also, deducting a portion of the sum spent jointly on all the dependants in the deceased's household on living expenses, and then, arriving at the multiplicand, by subtracting the sum spent exclusively by the deceased on himself. Further, where the deceased has joint living expenses, the portion attributable to his use should be extracted from that figure. A significant difference between calculation under the LR(MP)A and the FAA, is that the FAA does not take into account the deceased's portion of the living expenses in arriving at the multiplicand, whereas the LR(MP)A takes this into account. As submitted by counsel for the claimant the Court of Appeal of Jamaica authority of **Dyer v Stone** – [1990] 27 J.L.R. 268 is helpful and supports that which is stated in **Harris v Empress Motors Ltd**. – [1984] 1 W.L.R. 212**.**

[10] This court must now determine a multiplier. This multiplier will then be split into two parts, in order to calculate pre-trial loss and post-trial loss. Counsel for the claimant and defendants cite the decision of **Stanford Garwood** reported at page **218 Volume 4 of Khan's Personal Injury Awards**, as the authority for determining the multiplier of 12 for the deceased. However, this court must conduct its own assessment in order to determine whether it agrees with both counsel on that multiplier. The deceased at the time of death was 36 years old and was killed as a result of a tortious act of another. He appeared to be in good health. He held a stable job as the owner of a wholesale business and it is fair to assume that he would have likely retired beyond the age of 60. However, consideration must be made for the contingencies and vicissitudes of life. At the time of death of the deceased, his wife was 34 years old, his mother was 53, his father was 62, his children Zinedine and Suwayne Brown were 3 and 4 respectively. In order to calculate the multiplier, one would assume that the children would be dependent until 18, and that the spouse and parents would be dependent until 65. The formula, without taking into consideration the contingencies and vicissitudes of life, results in a multiplier of 12, as determined by both counsel. In taking into account the contingencies and the vicissitudes of life, the multiplier will be discounted to 11. Therefore, I do not accept the submissions of both counsel, that a multiplier of 12 is appropriate.

[11] The court must now determine the multiplicand. The figure for the total annual expenditure is $3,003,632.00 and not $3,211,632 as presented by counsel for the claimant. The wife of the deceased provided the evidence as to the annual income of the deceased. It is important to understand the net income of the deceased, as it will act as a guideline for whether or not the evidence on total annual expenditure may be safely relied upon by this court. The exhibit of the 2008 tax return filed by Mrs. Franceita Brown on behalf of the wholesale, indicated profits of $410,000.00. This 2008 return was filed two years after the death of the deceased in 2006. The profits at the time of death of the deceased

are likely much higher than the $410,000.00 indicated as income on the tax return (net after tax; the evidence is that no tax was paid on the profits of F&B). The tax return is a more credible account than the daily sales record books offered as evidence by Mrs. Brown of the profits made by the business, which represented the deceased's income as at the time of his death on an annual basis. This court is of the opinion that the evidence clearly demonstrates that the business was on the downturn, which is why it eventually closed only a few years after the deceased died. Therefore, the exhibited tax income return which relates to two years post – death of the deceased, would be accepted as being lower, and maybe even far lower than profits at the time of death of the deceased. In particular it appears to this court, from the evidence given and I mean no disrespect to anyone in stating that run the family business, either as efficiently or as profitably as the deceased had, prior to his death, managed manage the business affairs. Therefore, this court accepts that the income reported by F&B wholesale to tax authorities, is in fact the income which was earned by F&B wholesale, during that relevant period of time. However, this court states that nothing that has been put forward by Mrs. Brown in her evidence lacks credibility; in fact her evidence is supported by the 2008 tax return as it takes into account the difference in profits between when the business was run by the deceased as opposed to solely by Mrs. Brown. It is very likely that the profits earned by the business were much higher than $410,000.00 at the time of death of the deceased.

[12] The figure for joint living expenses submitted by the claimant is $1,632,910.00. This figure must be adjusted specifically for the amount spent on construction of the home and vacation as this court considers that the construction of the home would not have continued indefinitely and that as the deceased is now dead, the amount for annual vacation certainly would have to be reduced by half to $1,576,910. Defence counsel has stated that there is no proof of the existence of a house. This court though, does not accept the defence counsel's contention in that respect. This court instead, accepts, not only the

evidence of Mrs. Brown, but also, the contention of the claimants' counsel, that such home does in fact exist. However, this court asserts that the amount for construction of the home would have to be discounted as it is assumed that construction of the house would have been completed, long in advance of the retirement age of the deceased, and therefore should be assessed only at a 5 to 6 year period of time.

[13] The figure for gas for the vehicle of the deceased is $5,500 per week. This court has taken into account that Mr. Brown used his vehicle heavily in his line of work and therefore accepts that only a percentage of this sum is exclusively spent on himself. In considering the appropriate figures in the calculation of the amount of the recoverable damages, this court will adjust the figure of $439,702.00 submitted by the claimant for gas for vehicle spent exclusively on the deceased to approximately $1500.00 per week, therefore amounting to $78,000.00. Therefore, the amount spent exclusively on the deceased will be $231,702.00. Total annual expenditure would therefore be reduced to $3,003, 632.00.

[14] In deducting a portion of the amount spent on joint living expenses, which is $1,576,910.00, this court notes that with three persons in the house, that as submitted by the claimant, it is reasonable for a third of this amount to be attributed to the deceased, which amounts to $525,636.67. Therefore, in proceeding with the formula laid down in **Harris (op. cit.)** and **Dyer (op. cit.)** after the deceased's exclusive expenses and joint living expense are deducted from the total annual expenditure, the figure of $2,246,293.33 is arrived at, and that figure will be discounted for 25% to the amount of $1,684,720.00 taking into account taxes. This figure represents the multiplicand for lost years. Using the multiplier of 11, the total loss to the estate would therefore be, $18,531,920.00. The Intestates' (Estates and Charges) Property Act states that under a LR(MP)A claim, the percentage should be divided as 50% for the wife and 25% for the children. Therefore, Mrs. Brown will be awarded $9,265,960.00 and Zinedine and Suwayne, $4,632,980.00 each under the LR(MP)A.

ACTION UNDER THE FATAL ACCIDENTS ACT

[15] An action brought under the FAA is done for the benefit of the deceased's 'near relations.' A near relation is defined in section 2 of the FAA as 'a wife, husband, parent, child, brother, sister, nephew or niece of the deceased person.' In order to recover, there must be actual dependency by the person on earnings and other income of the deceased or on the deceased's services. The action is only available where the deceased was in a position at the time of his death to have brought the action himself. The action in the instant case was brought on behalf of the near relations, being: the deceased's wife, Mrs. Franceita Brown, his two children, Zinedine Brown, who was born to the deceased and Mrs. Franceita Brown, and Suwayne Brown, who was born during the marriage between the deceased and Mrs. Franceita Brown to the deceased and another woman – Ms. Beverly Allen. This court finds that the deceased was in a position to have brought the action himself at the time of death. Further, this court finds that the near relations were in fact dependent upon the deceased, based upon the evidence presented to this court.

[16] When assessing a claim for damages under the FAA, this court is guided by the broad principles laid out in the House of Lords decision – **Davies v. Powell Duffryn Associated Collieries Limited (No. 2)** – [1942] A.C. 601. Lord Wright said in **Davies (op. cit.)** at p. 167:

> *'There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning ... Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datums or a basic figure which will generally be turned into a lump sum by taking a certain number of years purchase.'*

The following guide from **Alicia Dixon (Administratrix Estate Christopher Dixon Deceased) v Kenneth Harris and the Attorney General** – [1993] 30 J.L.R. 67 is instructive in assessing damages, Justice Harrison (Ag.) stated:

> *'(1) Find the multiplier; (2) find the probable net earnings over the period between death and trial; (3) for the future years, assess a multiplicand, that is, the net salary and apply to it the balance of multiplier (4) calculate the level of dependency of the near relations; and (5) add interest to the amount the near relations would have lost between death and the date of judgment.'*

[17] In the case – **Cookson v Knowles** – [1978] 2 All E.R. 604, the House of Lords established that the assessment of the damages in normal fatal accident cases should be split in two parts. Lord Diplock, at page 612, provided the following summary of the principles for assessing damages in fatal accident cases:

> *'(1) In the normal fatal accident case, the damages ought, as a general rule, to be split into two parts:*
>
> *(a) the pecuniary loss which it is estimated the dependants have already sustained from the date of death up to the date of trial ('the pre-trial loss'), and;*
>
> *(b) the pecuniary loss which it is estimated they will sustain from the trial onwards ('the future loss').*
>
> *(2) Interest on the pre-trial loss should be awarded for a period between the date of death and the date of trial at half the short term interest rates current during that period.*
>
> *(3) For the purpose of calculating the future loss, the 'dependency' used as the multiplicand should be the figure to which it is estimated the annual dependency would have amounted by the date of trial.*

(4) No interest should be awarded on the future loss.

(5) No other allowance should be made for the prospective continuing inflation after the date of trial.'

As stated above, the figure used as the multiplier must be considered as being composed of two parts in order for this court to properly calculate the pre-trial and post-trial loss. The multiplier for the pre-trial loss is the actual number of years between death and trial; which is 5 years as the date of the death was 2006 and the date of the assessment hearing in 2011. The multiplier for post-trial loss is calculated by deducting the pre-trial period of 5 years from the 11 years multiplier which amounts to 6 years.

[18] Now that the multiplier has been determined, this court will now determine the multiplicand. The claimant's judgment as rendered in the case **Harris v Empress Motors Ltd. (op. cit.)** is instructive. In that judgment, O'Connor L.J. stated that the modern method of calculating the dependency is to deduct a percentage of the net income to represent what the deceased would have spent on himself. At p. 216, O'Connor L.J. stated that:

> *'In the course of time the courts have worked out a simple solution to the similar problem of calculating the net dependency under The Fatal Accidents Act in cases where the dependants are wife and children. In times past the calculation called for a tedious inquiry of how much housekeeping money was paid to the wife, who paid how much for the children's shoes etc. This had all swept away and the modern practice is to deduct a percentage from the net income figure to represent what the deceased would have spent exclusively on himself. The percentages have become conventional in the sense they are used unless there is striking evidence to make the conventional figure inappropriate because there is no departure from the principle and that each case must be decided upon its own facts. Where the family unit was husband and wife, the conventional figure is 33 percent and the rationale of this is that broadly*

> *speaking, the net income was spent as to one-third for the benefit of each and one-third for their joint benefit. No deduction is made in respect of the joint portion because one cannot buy or drive half of a motor car. Part of the income may be spent for the benefit of neither husband or wife. If the facts be, for example, that out of the net income of GBP8,000 per annum the deceased was paying GBP2,000 to a charity the percentage could be applied to GBP6,000 and not GBP8,000. Where there are children the deduction falls to 25 percent as was the agreed figure in the Harris case.'*

The claimant has presented evidence on the actual dependency of the dependants. In calculating the amount of dependency as stated in **Mallet v McMonagle** – [1969] 2 W.L.R. 767, at page 773, per Ld. Diplock, the starting point is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of death. Evidence must be attained of the annual expenditure of the deceased on himself for personal and living expenses and then this amount deducted from the annual net income he received at the time of death. The remainder can properly be regarded as the value of the dependency.

[19] At this point, this court will determine the level of the dependency of the near relations by first ascertaining the annualised expenditures of the deceased and apportioning that expenditure between what the deceased spent on himself and what he spent on dependants. Then this court would ascertain the percentage of the expenditure spent on the dependants relative to the total actual annualised expenditure. This percentage will then be used to determine the amount of the net income that is to be regarded as the dependence in the year of death of the deceased. As calculated under the LR(MP)A the total annual expenditure is $3,003,632 and the figure for the sum spent exclusively on the deceased is $231,702.00.

[20] Each of the dependents will be dealt with in turn. This court will first consider, Mrs. Franceita Brown, the wife of the deceased. At the time of death of

the deceased, Mrs. Brown (window of the deceased) was aged 34. Counsel for the claimant has submitted that there is no independent claim for the wife as a dependant based on the **Malyon v Plummer** – [1964] 1 Q.B. 330 principles and she benefits only under the estate claim as she is the spouse. This court turns now to the evidence presented for the children of the deceased. The claim for Zinedine Brown, born on January 28, 2002 is $217,450.00 and for Suwayne Brown, born on November 20, 2002, is $464,900.00. Counsel for the defendants asserts that the amount spent is too 'exorbitant.' However, this court does not accept this assertion and therefore affirms the claim made on behalf of Zinedine and Suwayne Brown. This court now considers the claim made for Anthony Brown is $225,670.00. For the same reason that the evidence for the children is accepted, it is now applied here. The defendants have provided no evidence contradicting that of the claimant and in addition, the evidence led on the claimant's behalf, in support of those particular sums claimed for is not inherently lacking in credibility. As such, this court accepts such evidence as being both truthful and accurate, from a mathematical stand point. This court now considers the claim made for Beverly Allen. The claim is $231,000.00. The defendants have asserted that the figure is excessive and exorbitant. This court however, disagrees with that assertion. The dependant's claim that she received US$3500.00 per year at exchange rate of JA$66 – US$1 in July 2006 is accepted. Therefore, the total sum for dependants, as claimed for, being - $1,139,020.00 is accepted by this court.

[21] This court does not though, agree with the claimant that the pre-assessment loss is 13,858,192.00, given the need for the cost of vacation being discounted. Therefore, the total dependency expenditure of $2,771,930.00 would be reduced by $56,000.00 which represents half of the vacation cost. This would amount to $2,715,930.00. According to the **Dyer v Stone (op.cit.)** formula, the percentage spent on his dependants is calculated by dividing the figure for the total expenditure on dependants by the total annual expenditure and multiplying that figure by 100. This would therefore, in the case at hand be $2,715,930.00,

$3,003,632.00, multiplied by 100, which amounts to 90.4%. The pre-assessment loss would be calculated using the 90.4% of the multiplicand, which is the total annual expenditure, for a period of 5 years. This amounts to $13,576,416.64. This court disagrees that the post-assessment loss would be $19,401,469.00, for two reasons. The first is that as the multiplier has decreased to 11, as stated above, the multiplier for the post-assessment period would be 6 and not 7 as stated by the claimant. Further, the figure for construction of home and vacation must be reduced. For post-assessment period, the figure for home will be discounted by one year, and the figure for vacation will be reduced by a half. Firstly, this court will calculate the figure when only 5 of the 6 years are used in order to account for the years for which the discount for construction of the home does not apply. This will be the same figure as for the pre-assessment loss, being $13,576,416.64. For the one-year discount, the figure would be reduced by $1,040,000.00 amounting to $1,675.930.00. The percentage would be 55.8%. The total for post-assessment loss would therefore be 55.8% of the multiplicand, which amounts to $1,676, 026.66 multiplied by 1 year. Therefore the post-assessment loss amounts to $15,252,443.30. Therefore, the total claim under the FAA is $28,828,859.94 as the sum of pre-assessment and post-assessment loss ($13,576,416.64 + $15,252,443.30). Apportionment of the award is up to the discretion of the trial judge. Counsel for the claimant has asked this court to apportion the amount for damages as follows, (based upon the level of dependency) as 23.26% for Mrs. Brown (the spouse), 29.72% for Zinedine, 14.72% for Suwayne, 4.8% for Anthony Brown and 5.2% for Miss Beverly Allen. Counsel for the 1st defendant has asked for the apportionment to be done as follows:

Spouse	-	78%
Zinedine	-	8%
Suwayne	-	5%
Beverly Allen	-	5%
Anthony Brown	-	5%

[22] This court apportions the award to the claimants as follows: Ms. Franceita Brown – 45.56%, Suwayne Brown – 29.72%, Zinedine Brown – 14.72%, Anthony Brown–4.8% and Beverly Allen–5.2%. The court has noticed that the apportionment as set out by claimant's counsel does not, when aggregated, amount to 100% and the court believes that a larger percentage of the apportionment as asked for the claimant should be awarded to Mrs. Brown, as such, this court has awarded, in her favour, an apportionment of 45.56%. Equally, this court has noted that the extent of the dependency of Suwayne as compared with Zinedine is actually at a much higher level for the former than it is for the latter. Accordingly, the court will apportion the award in respect of Suwayne as 29.72% and in respect of Zinedine as 14.72%. The other apportionments are as set out immediately above.

[23] The first three dependants being Mrs. Brown, Zinedine and Suwayne would also benefit under the LR(MP)A and therefore it is pertinent to avoid a duplication of damages. The award of damages under the FAA for Mrs. Brown's and Zinedine's claims exceed that award under the LR(MP)A. The claim of Mrs. Franceita Brown is $13,134,428.58, which is $3,868,468.59 in excess of the award under the LR(MP)A. Zinedine's claim under the FAA is $8,567,937.17, which is $3,934,957.17 in excess of the award under the LR(MP)A. Therefore, the award under the FAA will be for the excess for Mrs. Brown and Zinedine, and for Ms. Beverly Allen and Anthony Brown, being $3,868,468.59, $3,934,957.17, $1,552.204.93 and $1,432,804.55 respectively.

[24] **Orders are as follows:**

1) It is ordered that the claimant recovers from the defendants, the sum of $18,531,920.00 as general damages under the LR(MP)A and the sums of $618,448.80 for funeral expenses and $572,220.00 for property damages, as special damages under the LR(MP)A. The sums of $10,788,435.24 and $150,000.00 are awarded in the claimant's favour, for lost years and loss of expectation of life respectively, under the FAA.

2) The claimants shall file and serve this order.

3) It is noted that the parties' counsel have requested to be heard as regards interest on the damages awarded. Pursuant to that request, this court will now hear from the parties as to same and will immediately thereafter, make the appropriate order as regards same.

.....
Hon. Kirk Anderson, J.