SUIT NO. C.L. 1382 of 1971

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

BETWEEN THE ADMINISTRATOR GENERAL FOR JAMAICA PLAINTIFF

(ADMINISTRATOR ESTATE LLEWELLYN O' REGGIO DECEASED)

A N D ARTHUR THOMAS DEFENDANTS

MELBOURNE REID

OLIVE FOREMAN

LLEWELLYN WYNTER

Mr. J. Leo Rhynie, attorney for the plaintiff instructed by Messers Myers
Mr. D. Jones of / . Fletcher and Gordon, attorneys

Mr. A. Rae, attorney for the first and second defendants instructed by Mr. R.C. Livingston.

Mr. Stanley Fyfe, Mr. Crafton Miller and Mrs Monica Earle Brown attorneys for the third defendant.

There was no appearance by or on behalf of the fourth defendant.

Hearing of this case took place on December 11, 12,13, 1978 March.12,13,14,1979 and June 4,5,6,8,1979.

JUDGMENT

ROSS J.

The plaintiff's claim against the / defendant is as Administrator of the Estate of Llewellyn O'Reggio deceased under the provisions of the Fatal Accidents Law, and the Law Reform (Miscellaneous Provisions) Law for damages in respect of injuries to the said Llwewllyn O' Reggio resulting in his death caused by the negligent driving of the motor vehicle lettered and numbered A F 321 owned by the first named defendant and driven

by the second named defendant and/or the negligent driving of motor vehicle lettered and numbered KG 982 owned by the third named defendant and driven by the fourth named defendant on the Boscobel main road between mile posts 9 and 10 in the parish of St. Mary on the 15th day of January 1971.

In his statement of claim the plaintiff set out the particulars of negligence on the part of the second and fourth defendants. In their defence the first and second defendants denied the allegations of negligence against the second defendant and stated that the collision was caused solely by the negligent driving of the fourth defendant, at the same time setting out the particulars of negligence of the fourth defendant. The third defendant in her defence denied that the fourth defendant was her servant or agent, and alleged that at the time of the accident she was ill and hospitalised, and that her motor vehicle which had been left parked at the Island Inn Hotel under the care of her nephew Mr. Britton Foreman was stolen on the night of the 14th-15th January,1971, that is the night immediately preceding the day when the collision occurred. The third defendant further stated in her defence that she did not know the fourth defendant, that she did not give him permission to drive her vehicle that she never had any transaction with him and that he had apparently stolen the vehicle.

The first question therefore to be decided is the question of negligence, having settled that I will next have to deal with the question of liability.

To settle these matters it is necessary to look closely at the evidence as to the manner in which the collision occurred.

The first witness for the plaintiff was Mr. Evroy Guy, an eye witness to the incident Mr. Guy testified that on 15th January,1971 in the late afternoon, he was a passenger in an Austin pickup or van which was driven by the fourth defendant and which was involved in a collision on the main road in the Boscobel area at a point where there was a hump in the road and one could not see the road beyond from either side until one was very close to the top of the hump; at this time he was employed to the Island Inn Hotel as a cook and had been so employed since 1969; the owners of the hotel were then Mrs. Olive Foreman, her husband (Mr "Daddy" Foreman) and Mr. Britton Foreman, his nephew; the Austin pickup was used to convey things for the hotel and the fourth defendant, Llewellyn Wynter was the regular driver of the pickup and had been so employed for about 5 months before the incident.

On the day of the incident, a ccording to Mr. Guy, Mrs. Chin, an employee of the Hotel , called him and Mr. Wynter and gave them instructions; then Mr. Wynter got the key to the vehicle from Mrs. Chin, and Mr. Wynter and himself left in the pickup to purchase

foodstuffs for the hotel in Oracabessa ; he told us that Wynter was driving "hard" at up to 80 miles per hour, and that he could tell us the speed because he saw it on what he described as the "clock", that while driving there was a Corsair motor car in front of them, and that Wynter "blow" the man who said Wynter could pass by giving him a signal; here the witness waved his arm making a circular motion to indicate the signal given by the driver of the Corsair.

Then he went on to say that when the Austin pickup reached up to the Corsair the driver of the Corsair step on his accelerator and the two vehicles were going like this "at this point the witness put the fingers of one hand beside the fingers of the other and moved his hands back-wards and forwards which suggested that each hand represented one vehicle and that one was ahead at one time and then the other, while the two vehicles were proceeding along the road, beside each other; as the attorneys were not clear as to what was done the witness was asked to show the positions of the vehicles in relation to each other using his hands, and the witness then put his hands in a position suggesting that the two vehicles were abreast of each other in the road. The witness went on to add that their position was like they were racing, but he also said "he didnt cut down his speed just when he sighted Corsair about a chain from the curve; he never travelled behind Corsair; as he saw Corsair he go wide of Corsair".

Mr. Guy further testified that at this point

the road was straight, that the two vehicles kept going abreast of each other, and that another car came from the opposite direction over a hump which they were approaching and collided head on with the Austin pickup; the Austin pickup was then on the right hand side of the road as it was overtaking and the car which came over the hump from the opposite direction was on its correct side of the road; after this the witness did not know what happened presumably he was unconscious as a result of the collision. In examination-in-chief this witness said "when the van in which I was travelling caught up with the Corsair it was about 4 or 5 chains away from the hump; he blew horn Corsair man tell him to pass, when Wynter came abreast of Corsair they were about 3 chains from hump and they continued abreast of each other for about 3 chains; then in cross-examination by Mr. Rae, this witness at first said that when he came around the bend and could first see the hump the distance to the hump was about 4-5 chains-; then he said that when he came around the bend and saw the Corsair for the first time it was about a chain ahead of the Austin pickup, and at that time the Corsair was travelling at about 50 miles per hour, and Wynter was travelling at about 65 miles per hour coming around the curve; that the Corsair travelled about 4 or 5 yards between the time when he first saw Corsair a chain away and when the Austin pickup got abreast of it for the first time.

Let us pause here for a moment and look at this evidence

first of all according to this witness, we have the driver of the Corsair who takes the trouble to give a signal to the car behind him to overtake, but who is such an irresponsible type that having given that signal he proceeds to accelerate at this very dangerous spot approaching a hump in the road it seems to me that this is rather contradictory conduct on the part of this driver who is the second defendant in this case. Then there is the conflict in the evidence of this witness; the Austin pickup is travelling at about 65 miles per hour and the Corsair about 5o miles per hour, and yet, in the time that the Corsair travels about 4 or 5 yards, the pickup travels about a chain i.e 22 yards.

Making every allowance for the fact that it is difficult to estimate distance and speed accurately in these circumstances and that nearly 8 years had passed since this incident occurred, this piece of evidence would tend to suggest that the pickup was travelling at a much faster speed than the Corsair; it would suggest that Mr. Guy's estimate of the speed of the Corsair at 50 miles per hour is quite inaccurate and exaggerated and it would further suggest that it was higly unlikely that the Corsair could have accelerated so rapidly within a couple of chains to be racing the pickup which had come around the curve at 65 miles per hour and which may well have accelerated to overtake the Corsair Mr. Guy said that Wynter was driving along the road before the collision at speed of up to 80 miles per hour and was taking corners

at 50 m.p. and 65 m.p.h and this was the regular patters of his driving, If Mr. Guy is to be believed he could tell the speed of the pickup as he saw the "clock" or speedmeter, Mr. Wynter he said was a very fast driver who had no fear. "there was no fear for him", he said-and he was as usual driving at high speeds that day.

It seems there is a further conflict between the version of the driver of the Corsair waving on the pickup behind him and Mr. W ynter going wide as soon as he saw the Corsair. I will return to to the evidence of Mr. Guy later, but let us turn now and look at the other evidence as to what happened at the time of the collision.

Sgt. Douglas Waite of the Oracabessa Police Station came on the scene shortly after the collision and found three damaged motor vehicle: the Cortina the Austin pickup and the Corsair; the driver of the Cortina was pinned behind the steering-wheel and appeared to be dead and the back of the Cortina was off the road on the left coming from Oracabessa with only the front wheels on the asphalt; coming from the Ocho Rios direction the Austin pickup was facing across the road to the right, i.e. the back of the pickup was turned to the seaside and the front to the landside; the corsair was facing towards Oracabessa and it was on the left side of the road and about two chains from the other vehicles. This witness testified that he was able to determine the point of impact from broken glass and earth on the road and that this point was almost immediately in front of the

Cortina in the position in which he saw it; the width of the road at this point was 24 feet 6 inches; further, that in the vicinity of the collision there is a 30 m.p.h speed limit, and that there is a hump in the middle of a section of the road that is straight for about 10-12 chains, and that a vehicle travelling in one direction would only see another coming in the opposite direction when about one chain from the top of the hump.

There were two other eye-witnesses to the collision, these being the second defendant Melbourne Reid and his witness George Sterling. Mr. Reid stated that on 15/1/71 he was returning to Boscobel from Ocho Rios; that he was about half chain from the hump and travelling on his left at about 35 m.p.h when he saw the pickup about $\frac{3}{4}$ chain behind him and about to overtake him on his right, that as he approached the hump he saw another motor car coming from the direction of Oracabessa on its left side of the road, and immediately he heard a collision beside him between the pickup and the motor car from the direction of Oracabessa the pickup was overtaking his car but had not overtaken it when collision occurred; then he heard a hit on his car, which got out of control, went to the right, hit the bank and swerved back to the left; that his car was hit by the pickup after it had collided with the Cortina, which was the motor car coming from the direction of Oracabessa.

Mr. Reid denied that immediately before the collision he had been driving at 50 m.p.h. or at a speed in excess of that, or that his vehicle and the pickup were driving side by side on the road prior to the collision; he denied that he gave a signal to Wynter to overtake or that he accelerated to about 65 m.p.h before the collision.

Mr. George Sterling related that on the afternoon of the incident he was walking from the direction of Oracabessa to his home located about 2 chains from the 10 mile post, and that a Cortina motor car passed him when he was about 2 chains and some yards from the hump; that after the Cortina passed he saw a car approaching from the direction of Ocho Rios-both cars were approaching the hump from opposite directions; then while the car from Ocho Rios was coming he saw a white pickup by the tail of this car and about to overtake it; the pickup and Cortina collided and the pickup left the road and landed on the Corsair (which was the car coming from the direction of Ocho Rios) that when he first saw the Corsair, he did not then see the pickup, the Corsair and the Cortina were travelling at an ordinary speed, but the pickup was going fast.

The witnesses to whose evidence I have referred above are the witnesses who assisted the court as to how the collision occurred. Although there were some discrepancies in the evidence of these witnesses, they all gave their evidence in an apparently straightforward manner and it cannot be said that any of them was discredited in

cross-examination; Mr. Guy told us that he was unable to read and write, but he was obviously an intelligent young man whose only fault was that he was so positive that he recalled exactly what took place eight years ago and there was no possibility of error while Mr. Reid is a party to this action and therefore a witness with an interest in the case, his witness Mr. Sterling seemed to be an uninterested observer and I accepted generally his evidence. As I indicated earlier, I do not accept Mr. Guy's account as to the part played by the second defendant Mr. Reid. Not only does Mr. Guy's version seem improbable but also his evidence on this aspect of the case is conflicting and I reject it.

In the course of the submissions it was argued that if the second defendant had braked or taken other evasive action the collision would not have occurred, and further that he had failed to do all that the law requires a motorist to do when he is being overtaken. Mr. Guy in his evidence had given it as his opinion that the action of the second defendant contributed to the collision taking place. As I indicated earlier I do not accept Mr. Guy's account of what happened, and I am unable to say that on my findings of how the accident happened more than one person was negligent or liable. It was suggested that Reid's admission that he accelerated after completing the curve supports Guy's version but it seems to me only normal that on completing the curve the would accelerate, but the degree of acceleration was slight and in no way contributed to the collision. I find that the Austin pickup was being driven at a very fast speed by the

fourth defendant

/ on the way from Ocho Rios to Oracabessa that he negotiated a bend in the road and attempted to overtake a Corsair motor car driven by the second defendant on a straight between the bend and a hump in the road; that before he could complete the overtaking he came to the hump in the road where a collision occurred between the pickup and a Cortina motor car being driven by Llewellyn O'Reggio, the deceased who died on the spot; that the Corsair was on its proper side of the road reasonably close to its left hand, that the pickup was to the right of the Corsair in the middle of the road, and that the Cortina was coming from the opposite direction on its proper side of the road; that the collision was caused solely by the negligence of the fourth defendant.

I pause here to refer to the defence of the third defence that she did not know the fourth defendant, that she did not give him permission to drive her vehicle, that she never had any transaction with him and that he had apparently stolen the vehicle. If this is so, then although the third defendant is the registered owner of the Austin pickup she could not be liable for any damages as it could not properly besaid that the fourth defendant as the driver of her vehicle was her servant and or agent at the time of the accident.

Let us now look then at the evidence as to this aspect of the case. Again Mr. Guy is a very important witness: he related that in 1969 he was employed by Mr.

"Daddy" Foreman, husband of the third defendant, as a cook at the Island Inn Hotel, that at that time the hotel was being operated by Mrs. Olive Foreman and Mr. Daddy" Foreman and then about 8 months before the accident Mr. Britton Foreman started to manage the hotel ; after Mr. Britton Foreman came there Guy had three bosses -i.e. the three Foreman's; around the time of the accident Mrs. Foreman and her husband had been staying at the hotel, and that up to about 5 days before the accident Mrs. Foreman had been giving him orders, that Mr. Llewellyn Wynter came to the hotel to work about 5 months before accident and that his only job was to drive the pickup that when Mr. Wynter came to work at the hotel Guy did not see Mrs. Foreman and her husband as often as he used to do previously.

Sgt. Douglas Waite told the court that he had seen the Austin pickup on the road several times prior to the 15th January,1971, and that he had seen the fourth defendant driving the pickup on more than one occasion prior to the accident; that another fellow used to drive the pickup and that fellow stopped driving it, and he then saw Wynter driving it that he subsequently took a statement from Wynter at the Island Inn Hotel, where he also spoke with Mrs. Chin ; he was was the person investigating the accident and no report was ever made to him of the pickup having been stolen on the night of the 14th to the 15th January,1971 from the premises of the Island Inn Hotel, he attended a Coroners Inquest in regard to

Llewellyn O'Reggio

the death of and there was no mention there that this vehicle had been stolen on the night before the accident.

On the other hand Mrs. Olive Foreman painted a completely different picture in regard to the use of the pickup which she said she had purchased to use on her farm at Morgan's Pass in Clarendon and which was never used for the purposes of the Island Inn Hotel, even though the hotel did not have a vehicle for general use; and even though she used to take fruits in the van to the hotel and spend the weekend there (sometimes until Tuesday) while her husband was operating the hotel.

Mrs. Foreman testified that her husband started running the Island Inn Hotel in 1969 and handed it over to his daughter after about 10 or 11 months, and that after his daughter (Katie) started to run the hotel her husband was living at Morgans Pass looking after the property; although she used to spend weekends at the hotel when her husband was running it, she did not know the witness Evroy Guy and she had never been into the kitchen at the Island Inn Hotel- she was never, she said, interested in having a look at the kitchen.

Mrs. Foreman insisted in cross-examination that she had nothing to do with the Island Inn Hotel, except that she had been to the bank with her husband in order to get a line of credit, and that her husband and herself had signed a guarantee to repay the money loaned, and she had had to put up her title to the Morgan's Pass property as

collateral. According to her evidence as I understoon it, Mr. William Foreman, her husband ran the hotel from about December 1969 until about July,1970, when he handed it over to his daughter Miss Katie Foreman who carried on the running of the hotel until December,1970, when Mr. Stanley Watkiss and Mr. William Foreman handed it over to Mr. Britton Foreman after which Miss Katie Foreman left at his request.

Miss Catherine Foreman(otherwise called Katie) gave evidence in support of the third defendant, her mother; shesaid she knew Evroy Guy a cook, and she employed him to work at the hotel sometime between July,1970, and December,1970; she could not recall approximately how large a staff she had at the hotel; between July,1970 and when her mother had the accident, in September,1970 her mother as well as her father frequently spent weekends there.

Mr.William Foreman, husband of the third defendant also gave evidence and to a large extent supported the evidence given by his wife and daughter; he too stated that the pickup was not used for the purposes of the hotel; he further related that this car which was damaged in the accident in September,1970, when his wife was injured remained in the garage for about 5 weeks before it was fixed, and that during the period he used taxis to get around; although he agreed that the pickup was vital to the functioning of the farm, the pickup was left parked

at the Island Inn Hotel while his car was in the garage and the produce of the farm was transported by donkeys and by a tractor on the farm.

Mr. Foreman further testified that his wife, (as she had earlier related,) was on 15th January, 1971 an out-patient going to the University Hospital for physiotherapy treatment, and that on this same date she was hospitalised; he explained this apparent contradiction by stating that she was hospitalised as an out patient on 15th January, 1971

He denied that Mr. Euroy Guy had been employed by him that Mrs. Chin had been employed by him, that there was any time when he his wife and Britton Foreman worked together at the hotel, and he denied, too, that Britton Foreman had come to the Island Inn Hotel about 8 months before January, 1971.

In the course of cross-examination this witness said that he was told by mr. Britton Foreman that the pickup was stolen on the night of 14th January, 1971 and was involved in an accident on 15th January, 1971 when someone was fatally injur ed; but he said it never occurred to him to report to the police that the vehicle was stolen; as I understand it, this is the sole basis on which the allegation was made in the defence of the third defendant that the vehicle was stolen shortly before the accident.

I have already found that the collision was caused solely by the negligence of the fourth defendant and I must now consider whether the third defendant is as the plaintiff claims, liable on the ground that the third defendant was the owner of the vehicle driven by the fourth defendant and that the fourth defendant was the servant or agent of the third defendant at the material time. Ownership of the vehicle is admitted by the third defendant. There is a sharp conflict in the evidence of Euroy Guy on the one hand and the third defendant and her daughter and husband on the other hand in regard to the use of the vehicle. Mr. Guy said that the vehicle was generally used for the purposes of the hotel, that the fourth defendant was employed to drive the vehicle and had been driving the vehicle for some months before the accident, and that the third defendant actively participated with her husband in the running of the hotel; although he was cross-examined at length it was never at anytime suggested to him that the third defendant's daughter had at anytime taken part in the running of the hotel or that she and not her father (as Guy said) had employed him.

The third defendant and her witness as emphatically denied that Mr. Guy was speaking the truth on these matters it seems more than a little surprising that the third defendant's husband with her financial assistance had embarked on this venture and that she went to the hotel every weekend but took no part in the running of the hotel, not even to go into the kitchen and see what it was like; looking at the third defendant as she gave evidence it seemed to me that she was certainly

not the type to sit idly by in such a situation; she was obviously a manager, managing her farm at Morgan's Pass and I am satisfied that nothing could have kept her from running the hotel and everyone in sight when she was there; it is distinctly odd that the third defendant's daughter should have managed or assisted in managing the hotel for many months and (allowing for the passage of eight years). She could not give any idea of the number of rooms and that no question in regard to her presence there was put to Mr. Guy in cross examination.

Looking generally at the evidence it seems to me that the evidence given by the third defendant and her witnesses is patently unreliable; the account given by Mr. Guy as to how and by whom the Island Inn Hotel was operated during the period he was there seems such more probable. The evidence of Sergeant Waite supports Mr. Guy's statement that the third defendant's vehicle was used for the hotel's business and driven by the fourth defendant.

On this aspect of the case I find that the third defendant had an interest in the hotel and actively participated in its management up to a short time before the accident on 15th January,1971; that the vehicle, ownership of which was admitted by the third defendant , was used generally for the purposes of the hotel with her knowledge and consent; that the fourth defendant was employed to drive this vehicle and drove it frequently; that the vehicle was left at the hotel after the third defendant was injured in a motor vehicle accident so that it could be sued for the purposes of the hotel; that there is no evidence to support the allegation of the third defendant that her vehicle was stolen on the night of 14th January,1971 that when the collision occurred on the afternoon of 15th January,1971 the third defendant's vehicle was being driven by the fourth defendant with the consent of the third defendant and in the course of his duties as an employee of the Island Inn Hotel; and that the presumption that he

was then the servant and or agent of the third defendant (the owner of the vehicle) has not been rebutted. Accordingly, I find that the third defendant is liable for the negligence of the fourth defendant and that the third and fourth defendants are liable in damages.

I now turn to the rather difficult question of damages. Here the claims are made under the provisions of the Fatal Accidents Acts and the Law Reform (Miscellaneous Provisions) Act on behalf of the widow and four children of the deceased.

The starting point is the salary and allowances which the deceased was receiving at the time of his death. It is in evidence and unchallenged, that at the time of his death the deceased's annual salary was $5,688 plus a rental allowance of $2,760 plus an entertainment allowance of $480 making a total of $8,928,00; in addition he was provided with a free motor car including free upkeep of the car, free gasoline, the payment of his driving license and insurance for the car as well as free telephone and medical and dental expenses for the family.

Mrs. O'Reggio testified that the deceased's net earnings were about $620-$650 per month and that of this amount he spent about $400 per month on her children; she also said that the deceased spent about 25% of his earnings on himself.

Mrs. O'Reggio is obviously a very intelligent lady, holding a responsible position in the Ministry of Finance and I regard her as a truthful and reliable witness. It seems to me that having regard to the salary and emoluments as given by her, after deduction for income tax, etc the deceased's net salary and other emolumen s would have been about $600, and if he spent 25% of his net earnings on himself, then $400 per month would seem to be a fair estimate of the average amount spent by the deceased on his family; I therefore accept her evidence that about $400 per month was spent by the deceased on her and the children; on an annual basis this comes to

$4,800.00 this figure will be the base from which I will

I will arrive at a datum figure. Taking into account the perquisites such as the free motor car, telephone, medical and dental expenses, it seems to me that these services are worth at least $100 per month, and so the sum of $1,200 should be added to give a figure of $6,00.00.

In arriving at the datum figure it is necessary that I bear in mind the other relevant matters which could affect a datum figure: matters such as the probability of an increase or a decrease in earnings. Evidence was given by senior employees of the company to indicate that between the death of the deceased and the trial of this case there had been a substantial increase in salaries and emoluments of the Jamaica Telephone Company's employees and that the deceased would most likely have advanced to a much more lucrative post with the company. Thus, it is in evidence that the post of district manager held by the deceased at the time of his death now carries a salary of $15,000 per annum plus increased allowances for rental and entertainment, and other perquisites. Taking into account the evidence of the widow of the deceased as to the substantial expenses incurred in connection with her children's education and also the evidence of the Senior Officer of the Jamaica Telephone Company to which I have referred above and at the same time bearing in mind the other relevant matters which could affect a datum figure (e.g., the perquisites which the deceased received or would now receive) it seems to me that the datum figure should exceed the figure of $6,000.00 , taking and I consider that a fair figure into account these matters would be $7,500.00.

Having settled the datum figure we now go on to ascertain the value of the dependency; firstly we must decide what was the reasonable expectation of the deceased's working life; at the time of his death he was 39 years old and would normally expect to work until he was 60 years

and so continue to work for a further 21 years. At the time of his death, deceased's four children were aged 16 years, 14 years, 13 years, and 9 years; it seems to me that in the normal course of things children with this back-ground would get a secondary education and go on to a University or some other course of advanced study, and so I consider that the dependency should not end at 18 years as was suggested by Mr. Miller, but at 22 years. The dependency of the widow would therefore be 21 years and of the children 6 years, 8 years, 9 years and 13 years respectively.

These figure produce an average period of dependency of approximately 11 years- this figure would be the multiplier and multiplying the datum figure by this multiplier, the result is $82,500.00

Next we decide on the amount by which this figure should be taxed down to equate it with a capital sum payable now and to reflect the ordinary chances and uncertainties of life, including the possibility of the widow's re marriage. Mrs. O'Reggio was 38 years old at the time of her husband's death and is still unmarried nearly 9 years later she is an attractive lady, her children are now adults with the exception of the youngest who is now 17 years old; I note too that the deceased had enjoyed excellent health and in the normal course of things would have expected to live for many more years. While it is possible that the widow may marry, it seems to me that this possibility is not one of

any real significance in the calculations in which I am engaged. Having regard to the evidence and the submissions made on this aspect of the case, it seems to me that the datum figure should be taxed down by a quarter to give a fair result. I therefore arrive at a taxed down figure of $61,875.00.

I turn next to the question of benefits accruing to the widow and children as a result of the death. There is a sum of $2,000 paid by Confideration Life Insurance Company on a group Life Policy and a sum of $12,481.84 paid by the Jamaica Telephone Company in settlement of benefits payable by the company, making a total of $14,481.84 In addition to this, the widow received $10,000 as beneficiary under a life insurance policy with the Standard Life Insurance Company; this brings the total of the benefits accruing to the widow and children to $24,481.84. I do not ~~propose~~ propose to deal with the $10,000 paid to the widow on a separate basis as it is clear from the evidence that she was the sole support of herself and her children after husband's death and whatever amounts came to her were spent for the benefit of herself and her children. It is stated in Munkman's Damages for Personal Injuries and Death (3rd edition) at page.135 "the courts are taking the common sense view that the family as a whole enjoyed the benefit of the father's property before the death, and it is not some new and countervailing benefit which has come to them for the first time"- and I fully agree with this view.

While it seems to me that the value of the deceased's estate should be taken into account, there should not be an automatic pound for pound deduction in respect of any of the benefits referred to above. The method used by Graham Perkins J. (as he then was) in Rattray v. Muir et. al report at Vol 15 West Indian Reports p.87 was, as I understand it, to take the total amount of the benefits to the widow and children, assume that it was invested at 7% for the period of 17 years (the average period of dependency in that case),make an allowance for income tax on the income received and tax down the resulting figure to the extent of one-quarter to arrive at the portion of the benefits to the widow and children which should be deducted from the taxed down figure of the datum figure multiplied by the period of dependency. In justifying this procedure Graham-Perkins J said"I so approach this supposed accelerated benefit because I think it produces a fair result bearing in mind the probability that the dependents and more particularly the wife, would have succeeded to a much larger estate if the deceased had lived; the possibility of the wife prodeceasing her husband, the possibility of savings which might reasonably have been expected to be made by the deceased as and when the children became self supporting and of course, the possibility of the deceased's death within the period of 17 years".

In considering this method of arriving at the amounts to be deducted, it is to be noted that interest rates vary from time to time, that rates of income tax change almost from year to year, and that the period of dependency was an average of the periods of dependency of the widow and children in that case. It seems to me that having regard to the imponderable factors involved, which must be borne in mind, that an equally fair result would be obtained in a particular case by deducting a fraction of the total of the benefits to the widow and children, the particular fraction varying with the circumstances. In this case I am of the view that the particular fraction should be one-half and that the deduction of one-half of the total of the benefits would produce as fair a result as could be obtained by any other method. Accordingly I would deduct one half of $24,481.84 or $12,240.92 from the taxed down figure of $61,875.00 leaving the sum of $49,634.08.

On the claim under the Law Reform Act I award $1,000 which will be dealt with in the usual way. The special damages have been agreed at $953.00.

Accordingly I award judgment to the plaintiff in the sum of $49,634.08 on the claim under the Fatal Accident Act in the sum of $953.00 on the claim under the Law Reform Act against the third and fourth defendants with costs to be agreed or taxed. I also award judgment im favour of the first and second defendants against the plaintiff with costs to be agreed or taxed, these last

mentioned costs to be paid by the third and fourth defendants.

Apportionment among beneficiaries.

The widow	25,634.08
Llewellyn	5,000.00
Michael	6,000.00
Donovan	6,000.00
Sherrill	7,000.00
Total	$ 49,634.08