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Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1979/A-018

BETWEEN	THE ADMINISTRATOR GENERAL FOR JAMAICA (Administrator of the Estate of Derek Grant, Deceased)	PLAINTIFF
A N D	SHIPPING ASSOCIATION OF JAMAICA	1ST DEFENDANT
A N D	JEFFREY GENTLES	2ND DEFENDANT
A N D	EDGAR MORRIS BROWN	3RD DEFENDANT

Dennis Goffe instructed by Myers, Fletcher and Gordon, Manton and Hart for Plaintiff.

G. Robinson instructed by Judah, Desnoes, Lake, Nunes, Scholefield and Company for First and Second Defondants.

G. English for Third Defendant.

Heard on: September 20, 21, 22, 1982; December 16, 1982; and July 11, 1983.

JUDGMENT

ALEXANDER J: (Ag.)

Derek Grant died on February 7, 1978. At the time of his death, he was employed as a Security Guard, to the Shipping Association of Jamaica.

At the time of his death, Grant was on the job, assisting the driver of an ambulance owned and operated at the time by the Shipping Association of Jamaica, driven by one Jeffrey Gentles, another employee of the Shipping Association of Jamaica, who was taking a sick, presumably another employee to the Shipping Association of Jamaica, to the Kingston Public Hospital.

On the way this ambulance had a collision with another vehicle owned and operated by Edgar Morris Brown, the third defendant, at the intersection of North and Orange Streets, resulting in Grant losing his life.

He was then aged twenty-eight years old, and died intestate. Letters of Administration were granted to the Administrator General for Jamaica in his estate on 30th January, 1979. It is in this capacity that the Administrator General for Jamaica brought this

action against the defendants pursuant to the Fatal Accidents Act on behalf of the following persons:

1. Lilieth Underhill - born on 19th March, 1927, mother of the deceased;

2. Nigel Grant - born on 27th October, 1970, son of the deceased;

3. Peter Grant - born on 4th February, 1972, son of the deceased;

4. Craig Grant - born on the 21st October, 1975, son of the deceased.

The plaintiff claims further under the provisions of the Law Reform (Miscellaneous Provisions) Act for the estate of the deceased, also Special Damages, stated at $2,491.00 in relation to Funeral expenses, and interest thereon, at such rate and for such period as may to the Court seems just.

Issue was joined in relation to liability and damages. It is necessary therefore to deal firstly with the issue of liability.

It was approximately 10:30 p.m. on February 7, 1978, when Edgar Morris Brown the third defendant then a taxi-operator, picked up three passengers in his vehicle, along North Street, Kingston, and was proceeding easterly along North Street. North Street, then and still is, a one-way street going east. He was proceeding on the right hand side of this street at approximately 25 m.p.h.

Morris said the street was virtually empty, not an unusual situation, given the time of the day and the area. As he approached the intersection of North and Orange Streets, where there are traffic lights, those governing the traffic proceeding along North Street, were showing green. He went on to say that at that stage he got a glance at those governing the Orange Street traffic and those showed red.

Morris proceeded through the green lights, and got to some point in the intersection, when a collision occurred between his vehicle and another which was proceeding up Orange Street. This other vehicle turned out to be an ambulance owned and operated by

the Shipping Association of Jamaica, driven by one Jeffrey Gentles, which was taking a sick to the Kingston Public Hospital, with Derek Grant the deceased assisting.

Morris claimed that this vehicle hit his vehicle on the right front, the impact spinning his vehicle around to face the direction it was coming from, while the other vehicle continued up Orange Street, ending up on its right side.

Morris is saying in short, that he was proceeding at a reasonably slow rate, that he had the right of way, he was in the process of exercising this right of way, when this other vehicle going at a fast rate of speed with the lights against it, proceeding nevertheless and collided with his vehicle. The collision therefore was caused solely by the driver of the other vehicle.

In support of Morris' story, one Joshua Campbell, was called to testify. He said he was having a drink of white rum, at a bar situated along Orange Street, above North Street, but at the intersection of both - Streets. He said he had had one drink, and was standing by a door outside the bar, on the Orange Street side of this bar. He was merely watching the traffic. He said he saw a car going from west to east. He saw a van coming up Orange Street. He said he saw the van hit the car and twisted the car to the position it was coming from. He said the car ended up on Orange Street and so did the van, except that the van had turned over. He made no mention of the traffic lights.

Here again, Mr. Campbell is saying that the van hit the car, and assuming the car, by virtue of the lights, had the right of way, it means that the van went through the red light and hit the car.

Gentles did not testify.

Mr. Robinson conceded that the lights were showing red for vehicles proceeding up Orange Street as the van was then doing, but contended that:

a) It was an emergency vehicle, by virtue of being an ambulance;

b) it was on an emergency mission, that is to say, it was taking a sick to the Kingston Public Hospital;

c) that as a result, the van had on flashing lights at the top, and a siren blaring;

d) that because of the nature, and the mission of the vehicle coupled with the flashing lights and blaring siren, it had the right of way until its mission was accomplished;

e) that the right of way included going through a red light;

f) that Morris heard or ought to have heard the siren at least, and therefore ought to have made the way clear for this vehicle, despite having the green light;

g) that Morris failed so to do and more than that, it was he who hit the van, and not the van who hit him;

h) that Morris therefore was the sole cause of the collision, or at least partially the cause of it.

Both Morris and Campbell, denied hearing any sirens, or seeing any flashing lights; although both admitted that after the collision, they realised that the van was in fact an ambulance.

Although lengthy submissions were made as to what are the legal requirements for a vehicle to enjoy the status of an emergency vehicle, and the rights, privileges, duties and liabilities attached thereto, it is my view that I must first settle in my mind the question of whether or not flashing lights and or sirens were in effect that night, for it is on that and that alone that liability hinges.

If flashing lights and a siren were going that night, then I am forced to see the matter in a certain way. If on the other hand there were none, then it seems to me, I must see the matter in another way, and the status of the vehicle seems to be irrelevant to both considerations.

It is 10:30 p.m. and the area of North and Orange Streets is virtually free of vehicular activity. A vehicle is quietly proceeding easterly along North Street, with three or four persons in it. If suddenly a siren is heard in the distance, because if a vehicle is coming along Orange Street approaching North Street, at 10:30 p.m. on a quiet night, anyone along North Street, approaching

Orange Street should hear it, what would this person driving this vehicle, at that time along North Street would reasonably be expected to do in those circumstances.

He is approaching Orange Street, and therefore getting nearer and nearer to the siren, as the vehicle with the siren is at the same time approaching North Street. He would not at that stage know what is the reason for the siren going. Is it the police, the fire brigade, or an ambulance?

Any driver knows that the sound of a siren means that an emergency vehicle is around, and his duty in the circumstances is to pull over and or stop to make way for this emergency vehicle.

Apart from that whether by instinct or sheer common driving sense such a driver would opt for sefety, by ensuring that he get himself away as much as is possible from such a vehicle.

The last thing I would expect such a driver to do, is to proceed towards such a vehicle. Yet, this is what Mr. Morris is supposed to have done that night, if I am to believe the first and second defendants.

The question of the flashing lights does not arise, because Mr. Morris would not have seen them until after he would have entered the intersection which on the basis of the position of the vehicles by then, the accident could not have been avoided.

Secondly, I would have expected Mr. Campbell to hear the siren also. He said he did not. Mr. Morris would have had ample reasons for misleading the Court in this regard, if I chose to disregard what I just stated in relation to him. What could have been Mr. Campbell's reason. I could not think of any.

I was therefore satisfied that there was no siren on that night. Indeed the road being as empty as it was, the ambulance driver probably felt there was no need to employ his siren. The traffic lights being red in relation to him, means he did not have the right of way.

The court's attention was drawn to the physical evidence,

that is the damage done to both vehicle, and their respective position after the collision.

Mr. Robinson submitted very strenuously that that evidence clearly shows that the vehicle travelling easterly must have hit the one going northerly.

A look at a photograph of the third defendant's vehicle after the impact - Exhibit 4 - shows that there was extensive damage to the right front fender and the entire front of that vehicle. A look at the Assessors report - Exhibit 2 - shows damage to the other vehicle to and along the left side. There was extensive damage to the right side also, but that could have been caused by the vehicle ending up on that side, after the impact.

Mr. Robinson submitted that that shows clearly that Morris' vehicle hit the ambulance on its left side, but because the ambulance was travelling faster at the time of the impact, than the other vehicle, the ambulance continued along its original path, taking the other vehicle along with it.

I could not agree with this submission. I believed that the entire physical evidence is far more consistent with the ambulance's left front hitting Morris' right front, the ambulance continuing along with its left side damgaing the entire front section of Morris' vehicle, and at the same time taking it along its intended path. A close look at Exhibit 4 - shows a twist towards the left in relation to the damage or the same direction the ambulance was going vis-a-vis this vehicle.

I believe that if Morris' car had hit the ambulance, that impact would have thrown the ambulance "off its track" so to speak, and therefore would have expected to see it ending up somewhere along North Street, and not up Orange Street virtually taking Morris' vehicle with it, despite the vast differences in their speeds, at the time.

I am satisfied that the ambulance going at a fast rate of speed in an effort to get the sick to the hospital as quickly as possible, but probably not having on its flashing lights and certainly

not its siren, possibly because of the roads in the area being virtually empty at that hour, drove through the red lights at the intersection of North and Orange Streets. By doing so, the ambulance collided with Morris' vehicle, which had the right of way and was proceeding quite normally. The fact that there was an emergency is not enough. There was a duty on the ambulance driver to take all reasonable care in the circumstances in relation to other users of the road. He did not.

I find therefore that the second defendant was the sole cause of the accident.

I go on now to the issue of damages, and I will deal firstly with the claim for special damages which is confined to the Funeral expenses. This payment was undertaken by Kenneth Grant, the brother of the deceased. He itemises his expenses along the following lines:

(1) $1,600 to the undertakers;

(2) $350 for hiring a bus to take mourners to the funeral which was held in Trelawny;

(3) $700 or $800 for the grave and vault.

This would mean a total of either $2,650 or $2,750 or in excess of the sum stated on the claim which reads $2,491.00.

Streatfield J. in Hart v. Griffith-Jones [1948] 2 A.E.R. 729 at page 731 had this to say:

> " I do not think that the construction placed on the words 'Funeral Expenses' in the Assurance Companies Act 1909 helps me with regard to their construction in the Law Reform Act. I have to be guided by what is reasonable".

Applying this test to what was expended by Mr. Kenneth Grant, I must disallow the monies spent for the hiring of the bus. In relation to the other payments, and in the absence of positive proof, an award of $2,000 seems appropriate.

There is a claim under two distinct Acts of Parliament:

1. Fatal Accidents Act;

2. Law Reform (Miscellaneous Provisions) Act.

Dealing firstly with the Fatal Accident Act, persons must claiming under this act comply with the provisions of Section 4(1)(a) which reads:

> " If in any such action the Court finds for the plaintiff, then, subject to the provisions of subsection (5), the Court may award such damages to each of the near relations of the deceased person as the Court considers appropriate to the actual or reasonably expected pecuniary loss caused to him or her by reason of the death of the deceased person and the amount so received (after deducting the costs not recovered from the defendant) shall be divided accordingly among the near relations".

"Near relations" in the interpretation section of the act means the wife, husband, parent, child, brother, sister, nephew or niece of the deceased person.

In this action the persons claiming are the mother and the three children of the deceased. Quite clearly they qualify as near relations.

It was strongly submitted on behalf of the first and second defendants that the near relations must establish a "dependency". However section 4(1)(4) speaks only of "..... the actual or reasonably expected pecuniary loss caused to him or her by reason of the death of the deceased person....."

In any event, the evidence clearly shows that the persons involved are persons of very modest means, who must by that factor alone need every penny they can get. This must then mean a "dependency" if one in fact needs to be shown as distinct from a pecuniary loss.

I am satisfied therefore that the mother and the three children have complied with the requirements and are entitled to benefit under the provisions of the Act.

The mother of the deceased was aged 52 years at the time of the death of her son. He was giving her $50 per month, while maintaining his three children. The deceased was unmarried and aged 28 years old.

I feel constrained to take into account a number of

possibilities, that is to say, that the deceased may have gotten married and or had more children as well as having to pay more for the children he already had.

Each of these may have adversely affected the contributions to his mother. I am fortified in this belief by a passage from Kemp and Kemp Volume 1 4th Edition at page 327 under the heading: "Claim for death of Adult child". It reads as follows:

> " Each case, of course, must depend on its particular facts, but there is one factor common to most cases where a deceased son was unmarried and had been contributing quite a substantial sum to his parent or parents. That factor is the possibility, or even probability that, if he had not died, he would some day have married and in consequence his contribution to his parents would have ceased or become much smaller....."

Taking all these factors into account a dependency of three years seems quite appropriate.

Turning now to the children, in my view, a convenient approach is the age of majority which is 18 years.

Nigel was born 7th October, 1970 - dependency 10 years;

Peter was born 4th February, 1972 - dependency 12 years;

Craig was born 21st October, 1975 - dependency 15 years.

The total years of dependency would therefore be 40, which divided by 4, the number of dependants, give an average of 10 years.

The payments:

Mother	-	$600.00	per annum
Nigel	-	$520.00	per annum
Peter	-	$520.00	per annum
Craig	-	$780.00	per annum

This makes his total payment in respect of all his dependants $2,420.00. Using the average period of dependency as the multiplier beings a total of $24,200 which will be apportioned thus:

Mother	-	$ 1,800
Nigel	-	5,200
Peter	-	6,240
Craig	-	10,960
		$24,200

I now turn to the claim under the Law Reform (Miscellaneous Provisions) Act.

By the decision of the House of Lords in the matter of Gammel v. Wilson and Others reported in 1 A.E.R. 1981 at page 578 a claim can be made in respect of the lost earnings of the deceased or the "lost years" as it is referred to in that case. This, of course, is in addition to the normal Loss of Expectation of Life of the deceased.

I will quickly dispose of the latter by awarding the conventional figure of $2,000. The "lost years" is not quite as easy. A convenient starting point is to look at the evidence of the income of the deceased up to his death. Firstly, Mr. Ulyett, his supervisor put it at $202 per fortnight, gross. Secondly, his common-law-wife, Yvonne Singh stated that his "take home" pay was about $160 fortnightly. Thirdly, Exhibit 9 - one of the pay slips of the deceased, shows a figure of $154.94 net, which included an additional $50 for overtime work. This was for a two week period in August 1977.

Mr. Ulyett did not seem to be too impressed with the performance and potential of the deceased. Indeed, he was of the view that were it not for the fact that the deceased was a member of a very strong trade union he may very well have lost his job.

He held out little hope for the deceased to have made any worthwhile progress in his job, and felt that any progress he made would have been the result of union bargaining. He conceded that had the deceased lived up to the time of trial, his gross earnings would have been increased to about $327.60 per fortnight.

What appearshere is on the one hand the deceased lacking the capacity to make any reasonable progress in his employment, but on the other hand making some strides because of the bargaining power of his union. He was aged 28 years at death.

In Maxfield v. Llewellyn and Others - 1961 C.A. No. 213 cited in Kemp and Kemp Volume 1 at page 247 involving a labourer

aged 28 years, a multiplier of 17 was used. Taking all the circumstances as outlined in this matter before me, a multiplier of 15 seems reasonable. Taking the figure $160 per fortnight as the starting point, this means about $320 per month. Out of that he paid $50 to his mother, approximately $40 to Nigel, $40 to Peter, and $60 to Craig or a total of $190 per month. This leaves him with approximately $130 per month for himself.

There is a paucity of eveidence in relation to his other expenditure, but clearly there must have been. I cannot believe that the deceased would be paying out more than half of his net income to his dependents and thereby leaving himself destitute.

On that basis I am of the view that he was able to retain something for himself out of the remaining $130. I must also bear in mind that the child he gave $15 per week to actually lived with him. A sum of $40 per month seems reasonable as the amount the deceased could retain from his remaining $130 or $480 per annum. Using this figure with a multiplier of 15 brings a total of $7,200. Add to this the sum of $2,000 awarded for loss of expectation of life, brings a total $9,200. This then is the amount that would go to the estate of the deceased and having died intestate, leaving these three children, under the provision of Section 4(2) of the Intestate Estates and Property Act, such child would be entitled to an equal share out of that amount.

The mother of course, could not derive any benefit from this fund. The children being dependents on the claim made under the Fatal Accidents Act stand to gain also under this claim.

Under the principle laid in Kendalla vs. British Airways Board 1980 1 A.E.R. page 341, where beneficiaries of the Estate and dependents are one and the same, benefits derived under one limb must be deducted from benefits gained on the other. On the figures I have arrived at under each limb, one completely extinguishes the other.

There will therefore be no award on the claim for loss of earnings, under the Law Reform Act.

However the sum of $2,000 under the provisions of the same Act for loss of expectation of life will be given.

The third defendant having filed an Appearance but no Defence ought to have had Summary Judgment taken out on him. This was not done. Instead he appeared and gave evidence at the trial on behalf of the plaintiff. In my view he no longer had any standing as a party to the proceedings.

There will therefore be judgment for the plaintiff against the first and second defendants as follows:-

(1) $2,000 for Loss of Expectation of Life under the provisions of the Law Reform Act

(2) $2,000 as Special Damages

(3) $24,200 as General Damages under the provisions of the Fatal Accident Act.

Interest on the Special Damages will be fixed at 4% per annum from February 7th 1978 and on the General Damages at 8% per annum from the date of the filing of the Writ.

Costs to the plaintiff against both defendants to be agreed or taxed.

R. E. ALEXANDER
JUDGE (AG)