

Supreme Court - Damages - Fatal Accident - Assessment under Fatal Acci-
dent Act and Law Reform (Miscellaneous Provisions) Act - Pain and suffering
inward for mother, dependents - Loss of Expectation of Life - Interest.
Cases related to
W. West & Son Limited v. Shepherd (1963) 2 All ER 625
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT No. C.L. A-116 OF 1987

BETWEEN

THE ADMINISTRATOR GENERAL FOR
JAMAICA (Administrator of the
Estate of Kingsley Seymour
Dixon, deceased)

PLAINTIFF

AND

VINCENT MORGAN

1ST DEFENDANT

AND

PATRICK WALTERS

2ND DEFENDANT

Messrs. R. Pershadsingh Q.C., and E. Hall for Plaintiff.

Miss D. Lightbourne for Defendants.

HEARD: 26.5.89, 6.7.89 and 7.7.89.

SMITH, J.

The deceased Kingsley Seymour Dixon was a fireman attached to the Kingston and St. Andrew Corporation Fire Brigade. On the 14th September, 1984, he was a passenger in Firebus No. 6 which was being driven along the Rockfort Main Road. A motor truck travelling in the opposite direction, negligently collided with the bus. The deceased was seriously injured as a result of collision and succumbed to such injuries on the 15th September, 1984.

The plaintiff as Administrator of the deceased's estate brings this action for:

- (i) Damages under the Fatal Accidents Act for the benefit the deceased's mother Kathleen Marshall and children, Michael aged 13, Sophia 12 years, Richard 10 years, Andrew - 3 years and Dale - 3 months.
- (ii) Damages under the Law Reform (Miscellaneous Provisions) Act for the benefit of the estate.

Damages under the Fatal Accidents Act.

1. Pain and Suffering.

According to witness Clifton Ivey, he went to the hospital about 11:00 p.m. on the 14th September, 1984. The deceased was groaning and restless, his feet were strapped to keep him in one position. When he left early next morning there was no change in the deceased's condition. Another witness, Sergeant Bertie Forbes, who was also injured in the accident said that when he saw the deceased at the hospital in the afternoon of the 15th September, 1984, he appeared unconscious. Forbes himself was knocked unconscious and did

not regain consciousness until 1:00 p.m.

Mr. Pershadsingh suggested that an award of \$5,000.00 would be appropriate under this head. Miss Lightbourne submitted that when death takes place shortly after the injuries were sustained, as in this case, damages are not normally awarded. She relied on H. West & Son Limited v. Shephard (1963) 2 All E.R. 625.

On the authorities it now seems settled that where an injured person does not suffer at all because of unconsciousness he gets no award under this head. Having regard to the evidence it is reasonable to hold that the deceased was unconscious and did not regain consciousness. No award can therefore be made hereunder.

2. Mother of deceased

The evidence is that the deceased used to give his mother \$50.00 per week. She was 56 years at time of her son's death. I agree with Miss Lightbourne that the proper method is to work out the dependency of the mother and apply to that a multiplier based on her age.

I propose to award an amount based on 4 year's dependency, that is, 208 weeks at \$50.00 week - \$10,400.00.

3. Children - dependents

The evidence is that the deceased gave \$250.00 per week in this regard. His common law wife, Miss Olga Bernard, said that with this amount she would buy food for the family including the deceased and clothes for children. She said that the money she earned, \$200.00 per week, was used to assist in the payment of school fees, bus fares and lunch for the children.

Thus, on the evidence, the amount of \$250.00 would be used to feed the deceased and his 5 children. This means that approximately \$210.00 per week would go towards the maintenance of the children.

In my view the age of majority, which is 18 years, is the appropriate basic for the determination of the period of dependency in respect of each child. It follows therefore that at the time of death:

Michael aged 13 years would have a dependency of	5 years
Sophia aged 12 years would have a dependency of	6 years
Richard aged 10 years would have a dependency of	8 years
Andrew aged 8 years would have a dependency of	10 years
Dale aged 8 months would have a dependency of	<u>17 years</u>

The total years of dependency would therefore be 46 years.

The average dependency is $46 \div 5 = 9.2$ years.

The annual amount spent on the 5 children is $\$210 \times 52 = \$10,920.00$.

Therefore the total sum to be shared among the children is
 $\$10,920.00 \times 9.2$ which is $\$100,464.00$.

Michael's share would be $\frac{5}{46} \times 100,464.00 = 10,920.00$

Sophia's share would be $\frac{6}{46} \times 100,464.00 = 13,104.00$

Richard's share would be $\frac{8}{46} \times 100,464.00 = 17,472.00$

Andrew's share would be $\frac{10}{46} \times 100,464.00 = 21,840.00$

Dale's share would be $\frac{17}{46} \times 100,464.00 = \frac{37,128.00}{100,464.00}$

Law Reform (Miscellaneous Provisions) Act

1. Loss of Expectation of Life - the amount of \$4,000.00 was agreed.
2. Special damages including funeral and testamentary expenses agreed at \$4,000.00.
3. Damages for lost years.

Datum figure - Fire Service.

After 12½ years service the deceased was, at the time of his death, a first class Fireman - one rung from the bottom. This was so although the evidence is that he was a better than average worker, cooperative, hardworking and of good conduct. The deceased was getting the pay of a lance corporal at the maximum of the scale. The lance corporal is a grade higher than a first class fireman. In 1984 when he died the maximum pay of a lance corporal was \$10,632.00 per annum. This does not include certain allowances to which he was entitled. In the opinion of Chief Officer Herbert Hall, if deceased had lived to retirement age he would reach the rank of Assistant Superintendent.

At the time of trial (July 1989) had the deceased been alive it is reasonable to assume that his basic salary would be at the maximum of a corporal, that is, \$16,080.00 per annum. In choosing a datum figure I must bear in mind several relevant matters for example, the likelihood of an increase in salary through promotion and union bargaining. It is quite probable that expenditure on the children would have increased over the years. I must also bear in mind that the capital sum arrived at will be payable now as also the uncertainties and vicissitude of life.

Bearing in mind these things and the submissions made by counsel on both sides I am of the view that it would be reasonable to start with \$18,080.00 in an effort to arrive at a datum figure under this head.

To this amount must be added overtime of \$6,000.00 per annum, as agreed. From the resulting sum of \$22,080.00 must be deducted income tax. The amount taxable would be \$22,080.00 - \$10,580.00. The tax deductible would be 1/3 of \$11,580.00 = \$3,860.00. Thus the figure after tax would be \$18,220.00.

We must now add the allowances he would receive. The allowances he would certainly get are \$2,008 for housing and \$521 for washing. The others are uncertain and depend on various factors, it is thus manifestly reasonable to omit them. With allowances the total amount would be \$20,829.

A further scaling down must be made in respect of 'voluntary deductions.' The evidence is that 'voluntary deductions' amount to \$425.70 per month, that is, \$5,108.40 per annum. On the authorities this amount must not be included in the deceased's net earnings. Thus the figure would be further reduced to \$15,720.60.

Masonry

Witness Clifton Ivey estimated the monthly income of the deceased from masonry at \$1,200.00 - 1,400.00. This amount must be scaled down having regard to uncertainties in life in general and the building industry in particular and of course to the probability that with greater responsibility there would be less time available for the sideline job.

I think \$6,000.00 per annum is a reasonable figure having regard to all the circumstances and bearing in mind that income tax would be deductible.

The total earnings would therefore be \$15,720.60 + \$6,000 = \$21,720.60. From the deceased's total earnings there must be deducted an amount which is an estimate of how much would have been expended or required for his personal living expenses. The resulting figure would be the available surplus.

I see no reason why I should not stick to the conventional 33 1/3% of the net earnings as an assessment of the personal expenses. Indeed, I understand counsel for parties to be at one here. We therefore have a datum figure of \$15,480.40 for the multiplier.

THE MULTIPLIER

The deceased was 35 years of age at death. He would normally retire at 60. Taking all the factors into consideration such as the age of the deceased, the fact that he had been in his employment for 12½ years and that his earning

capacity was not in doubt and bearing in mind the submissions of counsel, I am inclined to think that 12 years' purchase would not be unreasonable. Thus the net loss of earnings for the lost years would be $\$15,480.40 \times 12 = \$185,764.80$.

Where the persons benefitting under both Acts are the same it seems that "doubling" is not permissible. It would follow therefore that the award under this Act would be $\$185,764.80 - 110,864.00 = 74,900.80$. I would therefore make the following awards:

(1) Under the Fatal Accidents Act.

- | | | |
|----------------------------|---|---------------------|
| (a) To deceased's mother | - | \$10,400.00 |
| (b) To deceased's children | - | <u>\$100,464.00</u> |
| | | \$110,864.00 |

(2) Under the Law Reform (Miscellaneous Provisions) Act.

- | | | |
|--|---|--------------------|
| (a) Loss of expectation of Life | - | \$4,000.00 |
| (b) Special damages including funeral expenses | - | \$4,000.00 |
| (c) Net Loss of earnings | - | <u>\$74,900.80</u> |
| | | \$82,900.80 |

Special damages will attract interest. In addition to the amount of \$4,000.00 the loss of earnings from the date of death to the date of trial would be special damages. Loss of earnings for this period (5 years) would be best calculated as $5/12$ of $\$185,764.80 = \$77,402.00$. Thus the total special damages would be $\$77,402.00 + \$4,000.00 = \$81,402.00$. This amount (\$81,402.00) will bear interest at 4% from the 15th September, 1934 to 9th November, 1989.

Costs to the Plaintiff to be taxed if not agreed.

F. A. SMITH
PUISNE JUDGE.