

Remedies
FATAL ACCIDENT

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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.1988/A181

REMEDIES

BETWEEN	THE ADMINISTRATOR GENERAL FOR JAMAICA (Administrator Estate Gladstone Keith Richardson deceased)	PLAINTIFF
AND	FITZROY THOMAS	FIRST DEFENDANT
AND	CLARISSA SIMPSON	SECOND DEFENDANT
AND	FAYMOND CLEMETSON	THIRD DEFENDANT

Mrs. Kathleen Nosworthy and Miss Janet Nosworthy for Plaintiff.

W. K. Chin See Q.C. and John Vassell for Defendants.

Heard: October 5, 1989 March 26, 27, 29 and October 9, 1990.

CORAM: WOLFE J.

JUDGMENT

Gladstone Keith Richardson, a Sergeant of Police 47 years of age, died on the 4th day of August, 1987 as a result of injuries he received in a motor vehicle accident on the said day. He was unmarried at the time of his death but was survived by five (5) sons and two (2) daughters as listed below:

1. Garfield Richardson born - 1/12/63.
2. Colin Richardson born - 24/6/66.
3. Jacqueline Richardson born - 17/10/68.
4. Michael Richardson born - 19/10/68.
5. Gregory Richardson born - 18/8/70.
6. Jason Richardson born - 31/12/73.
7. Yanique Richardson born - 25/11/82.

The deceased died intestate and on the 22nd day of November, 1988 Letters of Administration were granted to the Administrator General. By Writ of Summons dated the 20th day of December 1988 actions were commenced to recover damages under the Fatal Accidents Act for the benefit of the dependants of the deceased as well as under the Law Reform (Miscellaneous Provisions) Act for the benefit of the Estate of the deceased.

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Each defendant entered Appearance in the actions but defaulted in filing a defence.

Interlocutory Judgment was entered against the second and third defendants on the 24th day of April, 1989.

Pursuant to an Order made on the 12th day of June, 1989 the matter came before me for Assessment of Damages.

SUMMARY OF EVIDENCE

The evidence disclosed that the deceased was born on the 11th day of September 1940. He joined the Jamaica Constabulary Force on the 16th day of March 1965. Up to the time of his death he had served the Jamaica Constabulary Force for a period of twenty two (22) years. In the period of twenty two years he rose to the rank of Sergeant and acted as an Inspector for a period of three (3) months from 14th August, 1980 to 1st November, 1980. During his years of service he received eight (8) Commendations. Commendation, it should be noted, is an acknowledgement by the Jamaica Constabulary Force that the person receiving the commendation has carried out an operation with distinction.

At the time of his death the deceased was in receipt of a salary of Nineteen Thousand Nine Hundred and Fifty Six Dollars (\$19,956.00) per annum.

He also received:-

1. Special duty allowance of Two Thousand Six Hundred and Eighty Eight Dollars (\$2,688.00) per annum.
2. Washing allowance Eight Hundred and Eighty Five Dollars (\$885.00) per annum.
3. Ceremonial Dress allowance of Seven Hundred and Eighty Three Dollars (\$783.00) per annum.

At the time of hearing, the annual salary of a sergeant of police stood at Thirty Thousand Eight Hundred and Ninety Seven Dollars (\$30,897.00)

Senior Superintendent Keton Morgan, Commandant at the Jamaica Police Academy, Twickenham Park under whose command the deceased fell, testified that the deceased was reliable, hardworking well disciplined and had received about six (6) awards in the course of the execution of his duties.

Awards and commendations are different categories of recognition. The purpose of this evidence no doubt, was to indicate to the court that the deceased had prospects of advancement in his job. Indeed he was appointed to act as an Inspector, albeit, for a short period of three (3) months.

Four of the deceased's children namely Garfield, Colin, Jacqueline and Gregory were the products of a common law relationship between the deceased and Miss Francis Escoffery. It appears that this relationship continued up to 1986, when Miss Francis sought greener pastures in the United States of America, where she now resides. All of Miss Francis children except Gregory resided with her in the United States of America, prior to the death of the deceased. Gregory continued to live with his father up to the time of his father's death. In fact Gregory is still residing in the house of which his father died possessed.

Leonora Mendez the mother of Jason Richardson testified that the child lives with her in the United States of America and has been so living since July 1983. Since then the deceased had never maintained Jason.

DAMAGES UNDER THE FATAL ACCIDENTS ACT

Under the Fatal Accidents Act the action enures for the benefit of dependants of the deceased at the time of his death. A dependant, referred to as a near relative, is one who can satisfy a court that at the time of the death of the deceased he was in receipt of a benefit from the deceased and that the death has deprived him of such a benefit. ✓

From the evidence adduced before me I am satisfied that only Gregory and Yanique were dependants of the deceased. Submissions by Counsel for the plaintiff endeavouring to show that Jason was a dependant have in my view failed. The unequivocal evidence of Leonora Mendez is that the deceased ceased maintaining the child when he went to live with her in the United States of America. The amounts, which Miss Mendez said were given to her by the deceased on her visits to Jamaica, were used to purchase gifts and was not regarded by her as maintenance for Jason. "I maintained Jason fully" was her evidence. For these reasons I hold that a dependency has not been established in respect of JASON.

RE GREGORY

Gregory who was born on the 18th day of August 1970 lived with his father from birth up to the time of his father's death. He testified that he was a very sickly person. He suffered with asthma. The condition seriously affected his schooling. He left school at fifteen (15) years of age, and was unable to pursue a meaningful trade or occupation because of the frequency of the attacks. His father provided for his every need. He was unable to quantify his father's living expenses but said that he received a sum of Fifty Dollars (\$50.00) per week from his father as pocket money. Worthy of note is the fact that he would have attained his majority approximately one (1) year after his father's death. I am inclined to the view that the deceased would have continued to maintain Gregory even upon the attainment of his majority. Two factors have influenced me to so hold namely (1) he continued to support him by way of providing for his every need and (2) providing him with a weekly allowance of Fifty Dollars (\$50.00) even after he had ceased attending school.

Notwithstanding the above, having seen Gregory I formed the view that he was in fairly good physical condition and that his claim that he is unable to work because of his asthmatic condition is a most unreasonable one. The reality of the situation is that there are numerous persons suffering with asthma who are very active and gainfully employed. I find that the extent of his illness was grossly exaggerated. In the circumstances I am only prepared to grant him a dependency for a period up to age twenty one. I find the monthly dependency to be Two Hundred Dollars (\$200.00) computed as follows:

Fifty Dollars (\$50.00) per week multiplied by four weeks.

COMPUTATION OF GREGORY'S DEPENDENCY

Pre-trial Dependency

August 1987 - March 1990 - 32 months.

$\$200 \times 32 = \6400.00

POST TRIAL DEPENDENCY

Add a period of 17 months from date of trial to date of 21st birthday

$17 \times 200 = \$3400.00$

Total Amount of Dependency - \$9800.00

Counsel for the plaintiff urged the court to find that Gregory received an estimated amount of Five Hundred Dollars (\$500.00) monthly from the deceased. Such a finding would lack evidential support. Probably a word of warning to counsel appearing in matters of this nature would be appropriate. Evidence should be adduced before the court to properly assist it in deciding the value of the dependency. They cannot just pull a figure out of the air and expect the court to act upon it. While there will always be an element of speculation in this type of exercise the court's finding cannot be based solely on speculation.

RE YANIQUE

Yanique was born on the 25th of November 1982. She was five (5) years of age when her father died. Eunice Gordon mother of Yanique testified that the deceased gave her Three Hundred Dollars (\$300.00) per month as maintenance. In addition thereto he paid the rent of Eighty Dollars (\$80.00) per month as well as all medical bills for Yanique. She finally estimated that she received approximately Five Hundred Dollars (\$500.00) per month from the deceased as maintenance for Yanique. No evidence was adduced as to the child's performance in school. In the absence of any such evidence that she is likely to pursue higher education I am unable to justify extending the dependency beyond her years of majority. I therefore find a monthly dependency of Five Hundred Dollars (\$500.00) for a period of thirteen years.

COMPUTATION OF YANIQUE'S DEPENDENCY

Pre trial Dependency

August 1987 - March 1990

\$500.00 x 32 months = \$16000.00

POST TRIAL DEPENDENCY

April 1990 - November 2000 = 128 months

\$500.00 x 128 months = 64000

Total Dependency = \$80,000.00

It might be argued that the monthly dependencies of Two Hundred Dollars (\$200.00) and Five Hundred Dollars (\$500.00) in favour of Gregory and Yanique respectively are in excess of the deceased's net income.

I have deliberately refrained from reducing the dependencies to accord with the net income in order to compensate for any increase which may properly have accrued to the dependencies.

LAW REFORM (MISCELLANEOUS) PROVISIONS ACT.

Re Multiplier

The deceased died at age forty seven (47). The retiring age of a police officer is 60 years of age. In the absence of any unforeseen circumstances it is reasonable to conclude that the deceased would have worked until age 60, which would make the number of lost years equal to 13 years.

In Samuel Barrett v. Clinton Thomas & V. W. Lee & Sons SCCA 14/80 dated 8th October 1981 (Unreported). The Court of Appeal reduced a multiplier of 15 years given to an injured driver aged 35 years at date of trial to one of eleven (11) years.

In Cecil Wong McDonald v. Winston Williams SCCA 83/81 DATED 14th October 1982 (Unreported) the Court of Appeal approved a multiplier of ten (10) years for a truck driver aged 37 years at the date of death.

In Jamaica Public Service Company Limited v. Elzada Morgan SCCA 12/80 the Court of Appeal approved a multiplier of 14 years for a plaintiff aged 25 years at the time of death.

Finally in Godfrey Dyer and Derrick Dyer v. Gloria Stone, Executrix, Estate Edward Joslyn Stone SCCA 7/88 dated 9th July 1990 (Unreported) the Court of Appeal approved and followed the decision of the court in Samuel Barrett v. Clinton Thomas & V. W. Lee & Sons (Supra).

Campbell J.A. delivering the Judgment of the court said:

"What is plain from this case [referring to Jamaica Public Service Company Limited v. Elzada Morgan (supra)] is that this court in considering a multiplier of 14 years as appropriate for a healthy man aged 25 years could not consistently approve a multiplier of 14 years much less 15 years as also appropriate for a person who is ten years older."

The deceased in the instant died at age 47 which is 22 years older than the deceased in Jamaica Public Service Company Limited and Elzada Morgan. From the cases cited a multiplier of eight (8) years would in my view be appropriate.

MULTIPLICAND

The evidence disclosed that at the time of his death the deceased was in receipt of a salary of One Thousand Nine Hundred and Twenty Four Dollars and Ninety Five Cents (\$1924.95) per month. His net monthly income amounted to Six Hundred and Six Dollars and Eight Cents (\$606.00).

At the time of hearing the deceased, had he been alive, would have been in receipt of a salary of Thirty Five Thousand Two Hundred and Fifty Three Dollars (\$35,253.00) per annum.

In *Godfrey Dyer & Derrick Dyer v. Gloria Stone Executrix, Estate Edward Joslyn Stone (supra) Campbell J.A.*: set out in clear and lucid language the steps which must be followed in ascertaining the loss of future earnings for the "lost years." I set out those steps below

1. Ascertain from credible evidence the net income of the deceased at the date of death.
2. Where a relatively long period has elapsed between date of death and trial of the action the deceased's net income at date of trial must be estimated by reference to the net income being earned at the date of trial by persons in a corresponding position to that held by deceased at the time of his death or by persons in a position to which the deceased might reasonably have attained. The average of the net income at 1 and 2 is considered to be the average annual net income of the deceased for the pre-trial period.
3. (a) Total the expenditures at the time of death which are exclusively incurred by the deceased to maintain himself reasonably consistent with his status in life.
(b) Add to (a) a portion of the joint living expenses like rent and electricity which under the Fatal Accidents Act would have been treated as wholly for the benefit of the dependants.
(c) Calculate the total of (a) and (b) as a percentage of the net income at the date of death.
4. Reduce the average net income for each of the pre-trial years by the percentage at (c). The remaining balances constitute lost earnings for these years.

5. The exercise is repeated for the post trial years but instead of deducting the living expenses which were computed as a percentage of the net income at the date of death from the average net income they are deducted from the actual estimated income at the date of trial.

CALCULATION - PRE TRIAL

Net Annual income at date of death	=	\$ 7,284.00
Net Annual income at date of trial	=	\$10,353.00 \$17,637.00
Average Annual net income for pre trial period	=	\$17,637 ÷ 2 = \$ 8,818.50
Total Expenditure	=	\$ 2,424.00

Expenditure as a % of net income at time of death = $\frac{\$2424}{\$7284} = 0.33$

Lost earnings for pre trial years = $\$8818.50 - \$2910.00 \times 3 = \$17,725.50$

N.B. \$2910.00 represents $.33 \times 8810.50$

POST TRIAL CALCULATION

Lost earnings for post trial years.

= $\$10353 - \$2910 \times 5 = \$37,215.00$

TOTAL LOST EARNINGS = $\$17,725.50 + \$37,215.00 = \$54,940.50$

In calculating the lost years the court has been severely handicapped as no evidence was adduced to assist the court in properly assessing the prospects of the deceased's advancement in his job. The evidence is that the accused acted as an inspector of police for a short period. One would have expected evidence to be produced to show that had the deceased lived to the age of retirement there was the possibility of his attaining the rank of a Superintendent to cite an example. Neither Senior Superintendent Keeton Morgan nor Superintendent Locksley Anderson assisted in this regard. Again the court was expected to indulge in speculation. The deceased appeared to have been a very private person. Neither his women folk, his children nor his colleagues knew much about him or his domestic affairs.

CONCLUSION

As no dependant is permitted to take more than once, Yanique and Gregory will only be able to take under the Fatal Accidents Act. So there will be Judgment for the plaintiff against the 2nd and 3rd defendants as set out hereunder.

FATAL ACCIDENT ACT

Yanique Richardson	-	\$ 80,000.00
Gregory Richardson	-	\$ 9,800.00

LAW REFORM MISCELLANEOUS (PROVISIONS) ACT

Funeral Expenses	-	\$ 5,000.00
Loss of Expectation of life	-	\$ 3,000.00
Loss of earnings in the lost years	-	\$ 54,940.00

The amount of Fifty Seven Thousand Nine Hundred and Forty Dollars (\$57,940.00) which is to be divided among the seven children will be reduced by Sixteen Thousand Five Hundred and Fifty Four Dollars (\$16,554.00) being the total shares of Yanique and Gregory.

Hence, the amount of Forty One Thousand Three Hundred and Eighty Six Dollars (\$41,386.00) will be divided between the five (5) children who did not receive an award under the Fatal Accidents Act.

Final Judgment for the plaintiff as follows

Fatal Accidents Act	\$ 89,800.00
Law Reform Miscellaneous Provisions) Act.	\$ 46,386.00
	<u>\$136,186.00</u>

Interest is awarded at three percent (3%) on Sixteen Thousand Dollars (\$16,000.00) and Six Thousand Four Hundred Dollars (\$6,400.00) being the pre trial portions included in the above Judgment under the Fatal Accident Act, from the 4th August, 1987 to 9th October, 1990.

Interest is awarded at three percent (3%) on the Funeral Expenses of Five Thousand Dollars (\$5,000.00) from the date of service of the writ to 9th October, 1990.

Costs to be taxed if not agreed.