

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.1987/B416

BETWEEN	LENA BAKER	PLAINTIFF
A N D	CHERRYLEE NONDRAM (Executives of the Estate of Corporal Trevor Lee Brown deceased)	
A N D	THE ATTORNEY GENERAL	FIRST DEFENDANT
A N D	L. MILLER	SECOND DEFENDANT
A N D	DONALD NORTON	THIRD DEFENDANT
A N D	LEROY STEWART	FOURTH DEFENDANT

Mr. Donovan Jackson instructed by Myers, Fletcher & Gordon, Manton & Hart for Plaintiff.

Mr. Burchelson instructed by the Director of State Proceedings for the First and Second Defendants.

Mr. Ramsay of Tenn Russell Ching-Sang Hamilton and Ramsay for the Third and Fourth Defendants.

Heard: July 10, 1990; November 11, 12, 16 and 17, 1990.

CORAM: PITTER, J.

The plaintiffs are the Executrices of the Estate of Corporal Trevor Lee Brown deceased who died on the 17th October, 1986, as a result of a motor vehicle accident which occurred along the main road at Ewarton in the parish of Saint Catherine. The action is brought against the defendants under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act.

The claim in negligence arose out of a collision on Friday the 17th October, 1986 between a lorry owned by the Jamaica Defence Force and driven by Private Lauriston Miller of the Jamaica Defence Force the second defendant and a Toyota land cruiser owned by Leroy Stewart the fourth defendant and driven by Donald Norton the third defendant. The deceased was a passenger amongst some 35 other colleagues all seated in the body of the lorry. The lorry was proceeding from Ewarton towards the Linstead direction whilst the land cruiser was travelling from the Linstead direction towards Ewarton. They collided along a stretch of road in the vicinity of the Alcan Bauxite Works which is on the left hand side of the road as one goes towards Linstead.

This stretch of road is fairly straight and at both ends are curves; a left hand corner coming from the Swarton end and a right hand corner coming from the Linstead end. Along this stretch of road was parked a motor truck immediately opposite the Alcan entrance. It was parked on the left hand side of the road as one proceeds towards Swarton. The evidence is that it was about to enter the Alcan premises and had stopped to allow vehicles coming from the opposite direction, one of which is the Jamaica Defence Force lorry, to pass. The indicators on this truck (blinkers) at the time indicated that the Alcan truck was preparing to turn right across the road. As the lorry passed this truck the land cruiser came around the corner from the Linstead end and collided with it and ended up under the parked truck. Following the impact, the lorry careened across the road behind the parked truck and overturned, killing the deceased on the spot and injuring several of its occupants.

The evidence from the second defendant supported by witnesses are that the lorry was proceeding at about 40 m.p.h. on its correct side of the road and as it was about passing the parked truck the land cruiser came around the corner on its right hand side travelling at a very fast speed and on about overtaking the parked truck travelled into the path of the lorry and collided with it. The land cruiser then ended under the back of the parked truck. It is the evidence of Isel Clarke whom I viewed as an independent witness that the land cruiser came around the corner fast, skidding and with "squealing" of brakes which drew her attention and that the Jamaica Defence Force lorry came off the road surface to its left to avoid the accident. She said the side wheels of the Jamaica Defence Force lorry had just come off the edge of the asphalt - some 3-4 feet from the edge.

The evidence of the third defendant Mr. Donald Norton is that he was driving the land cruiser when on approaching Alcan's main entrance from a distance of 200 feet away he saw a parked truck on the left hand side of the road in the vicinity of Alcan's gate. That he reduced his speed of between 35 and 40 m.p.h. to 30 m.p.h. and started to go right with the intention of overtaking the parked truck when the fourth defendant Leroy Stewart who was seated in the right front passenger seat told him that the lorry was approaching. He said he went to his left, slammed on his brakes, which failed, and collided into the back of the parked truck. Just then the front of the lorry passed the parked truck but its

rear collided with the right rear of the land cruiser. He admits that the right rear of the land cruiser at the time of the accident exceeded the white line in the roadway by some 6 inches. He denied he was in the act of overtaking the parked truck when the accident occurred. He admits however, that when he was attempting to overtake the parked truck he had pulled to his right and that he could not see around it at that time. He denied that the parked truck had its indicator lights blinking. Mr. Leroy Stewart the fourth defendant and owner of the land cruiser gave evidence supporting the third defendant. He however, puts the speed of the lorry as travelling at 55 m.p.h.

It is here convenient to deal with another witness called by the third defendant and who is asked to be regarded as independent. He is Mr. Patrick McKay the driver of the parked truck. His evidence which is uncontroverted, is that he parked his truck on the left hand side of the road in the Ewarton direction opposite the Alcan gates. That he intended going across the road into Alcan premises and that his indicator lights were on, signalling a right turn. Interestingly, neither Mr. Donald Norton the driver of the land cruiser nor Mr. Leroy Stewart his passenger saw this. Mr. McKay's evidence is that whilst he was parked he saw a Jamaica Defence Force lorry approaching from the Ewarton bend ahead of him at a speed of 40-45 m.p.h. The truck passed him. A couple seconds after, from his rear-view mirror he saw the land cruiser heading straight to the back of his truck and that he "neutralled the truck and eased his foot off the brakes to absorb the impact. That he took his foot off the brakes and braced for the accident."

He is unable to say at what speed the land cruiser was travelling as he was looking in the rear view mirror and whether the land cruiser was behaving in any particular or unusual manner. What then could have brought about this state of apprehension in him? Why did he anticipate the collision of the land cruiser with his truck if the land cruiser was travelling at a normal speed of 30-35 m.p.h. and the land cruiser not behaving unusually? If he is to be believed then having taken all measures to soften the collision he must have anticipated the collision with the land cruiser and his truck. It must be then that the land cruiser was travelling at a very fast speed and in such a manner that he did not expect it to stop without colliding into the back of his truck.

This evidence supports the contention of the driver of the lorry and his witnesses that the land cruiser was indeed travelling at a very fast speed and on its incorrect side of the road.

1. It emerged from the evidence of all the parties that the Jamaica Defence Force lorry was travelling on its correct side of the road as it travelled along that stretch of road.
2. There is controversy as to its speed. The driver and his witnesses testified to speeds ranging from 25-40 m.p.h. The driver of the land cruiser gave the speed as 40 m.p.h. whilst the fourth defendant as at 50 m.p.h. I am prepared to accept a speed of 40 m.p.h.
3. The second defendant and his witnesses all say that land cruiser was travelling very fast up to about 65 m.p.h. The driver the third defendant and his witness gave speeds of 30-35 m.p.h. I accept as true the speed of 65 m.p.h.
4. The land cruiser after coming around the corner attempted to overtake the parked truck. This is supported by the third and fourth defendants.
5. The road is asphalted and dry and approximately 25 ft. wide.
6. Alcan premises - gate is approximately midway between both corners.
7. That there is a slight bend between the parked truck and the Linstead corner as one looks towards the Linstead direction.

In considering the evidence in its entirety, I find that

- (a) The Jamaica Defence Force lorry was proceeding on its correct side of the road.
- (b) The land cruiser came around the corner on the wrong side of the road at an excessive speed and travelled into the path of the lorry.
- (c) That the land cruiser collided with the lorry and then ran into the back of the parked truck.
- (d) That the collision with the lorry took place on the lorry's side of the road.
- (e) That the driver of the lorry took all the necessary action to avoid the accident.
- (f) I reject the evidence of the third and fourth defendants and accept the evidence of the second defendant and his witnesses.

(6) That the driver of the land cruiser was the sole cause of the accident.

There will therefore be judgment for the plaintiff against the third and fourth defendants with costs to be taxed or agreed and judgment for the first and second defendants against the plaintiff - with such costs to be ~~agreed~~ or taxed to be borne by the third and fourth defendants.

The deceased, Trevor Lee Brown, a Corporal in the Jamaica Defence Force, died on the 17th October, 1986 as a result of injuries he received in this accident. He was unmarried at the time of his death and survived by his mother Lena Baker, his father Charles Brown four brothers and four sisters. At the time of his death he was 24 years old. He had joined the Jamaica Defence Force in April 1980 (25th April, 1980) as a private and after receiving two promotions he was elevated to the rank of Corporal in 1985. He had served six years in the Jamaica Defence Force up to the time of his death; and had signed on for a further period of three years having done the senior NCO upgrading course in anticipation of his next promotion as Sergeant. He earned a salary of Fourteen Thousand Five Hundred Dollars (\$14,500.00) p.a. plus an allowance of One Thousand Two Hundred Dollars (\$1,200.00) p.a. making a total of Fifteen Thousand Seven Hundred Dollars (\$15,700) p.a.

The plaintiff Lena Baker and Cherry Lee Nondram are executrices in the Deceased's Estate. Lena Baker aged 54 years old is the mother of the deceased. Cherry Lee Nondram is his sister. They seek to recover damages under the Fatal Accidents Act on behalf of near relations and under the Law Reform (Miscellaneous Provisions) Act for the estate of the deceased.

DAMAGES UNDER THE FATAL ACCIDENTS ACT

A claim is made on behalf of the near relations of the deceased i.e. his mother Lena Baker, his sisters of the full blood, Cheryl Nondram born the 25th August, 1960, Christine Josephs born the 24th July, 1958, Patsy Brown born the 7th December, 1963 and Carol Brown born the 25th May, 1967.

I am not satisfied by the evidence before me that the deceased's sisters earlier referred to were his dependants. They have each reached their majority and all working. There is no evidence that they were in receipt of any benefit from him and that his death deprived them of such. In the circumstances I find as a fact that they were not dependants of the deceased. On the other hand however, the evidence establishes that his mother Lena Baker is such a dependant. It is her evidence, and which I accept that up to the time of his death, she received

as support from him a monthly sum of \$300 -- \$400, and I place an average of Three Hundred and Fifty Dollars (\$350.00) per month.

It is reasonable to assume that had the deceased lived and remained in the employment of the Jamaica Defence Force, having qualified himself, he would have received his promotion to the rank of sergeant sometime in 1988, given the rate of his previous promotions.

The pre-trial dependency in respect of Lena Baker will be calculated from the date of the death of the deceased to the date of trial at a rate of Three Hundred and Fifty Dollars (\$350.00) per month which amounts to Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750.00) (computed as follows: 47 months x \$350.00).

The next step is to arrive at a multiplier or the number of years purchase. Mr. Jackson has urged the court to use a figure of 15 as the multiplier.

In Jamaica Public Service Company Limited vs. Elzada Morgan SCCA No. 12/85

(unreported) the Court of Appeal approved a multiplier of 14 as being appropriate for the deceased who was 25 years old at the time of his death.

In Godfrey Dyer et al v. Gloria Stone SCCA No. 7/88 (unreported) a multiplier of 14 was considered appropriate by the Court of Appeal where the deceased at the time of his death was 24 years of age. I adopt this figure as being reasonable and appropriate and apply it to the instant case. The post-trial period is calculated by deducting the pre-trial period of 4 years from the 14 years multiplier which amounts to 10 years.

Based on the evidence, I find that at the date of trial the deceased would have been promoted to the rank of sergeant and earning a net salary of Nineteen Thousand One hundred and Seventy Five Dollars and Seventy Cents (\$19,175.70) per annum. I would expect him to maintain the upper end of his regular contributions i.e. Four Hundred Dollars (\$400.00) per month which amounts to Four Thousand Eight Hundred Dollars (\$4,800.00) per year. Over the 10 years post-trial period, the dependency would amount to Forty Eight Thousand Dollars (\$48,000.00). This added to the pre-trial dependency of Fifteen Thousand Seven Hundred and Fifty Dollars (\$15,750.00) amounts to a total of Sixty Three Thousand Seven Hundred and Fifty Dollars (\$63,750.00).

DAMAGES UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT

In Godfrey Dyer and Derrick Dyer v. Gloria Stone (Supra) Campbell J.A., sets out the steps to be followed in assessing the loss of future earnings for the "lost years".

Wolfe J. in the case of the Administrator General for Jamaica v. Fitzroy Thomas et al (unreported) summarized the procedure as follows and which I adopt.

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 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.

Applying the above principles, the net annual income at

date of death	= \$12,735.50
arrived at after statutory deductions of 33%	
Net annual income at date of trial	= \$19,175.70
Total	= \$31,911.20
Average	= \$15,955.60

The evidence is bereft of details which makes computation in respect of expenditures exclusively incurred by the deceased to maintain himself consistent with his status in life very difficult and indeed rather speculative. The conventional method used in Harris v. Express Motors Limited i.e. a mathematical formula was disapproved in Jamaica Public Service Company Limited v. Elzada Morgan (Supra) where Carey, J.A. said:-

"The experience in the United Kingdom has plainly led the courts to adopt this mathematical formula. But we are not dealing with English conditions in this jurisdiction and I would be slow until we had gained more experience in this field to adopt a formula suited to English conditions but not yet tested in the Jamaican media. We have no statistical accumulation of data in this country to show what percentage of salary or wages, spend on themselves, or for that matter settled married men with families. Plainly we have not yet arrived at a percentage to which the courts may resort as is suggested in the case cited."

The evidence in the instant case would not allow for the formula approved in Godfrey Byer et al v. Gloria Stone (Supra) to be applied, there being no figures to work with. It is here that a distinction has to be drawn. Given the percentage applied in Marris v. Express Motors Limited (1983) 3 AER 561 and our own local judgments I am persuaded to use 25% as that percentage the deceased would have spent exclusively on himself given his status in life.

From his average net earnings of	\$ 15,955.60
deduct 25%	= \$ 3,988.90
Total expenditure	= \$ 3,988.90

Loss earnings for pre-trial years = $(\$15,955.60 - \$3,988.90) \times 4 =$
 $\$11,966.70 \times 4 = \$47,866.80$

Post-trial calculation

= $(\$19,175.70 - \$3,988.90) \times 10 = \$151,868.00$

Total lost earnings = $\$47,866.80 + \$151,868.00 = \$203,727.60$

Add to this I award the sum of Three Thousand Dollars (\$3,000.00) for loss of expectation of life and a further sum of Six Thousand Dollars (\$6,000.00) for funeral expenses making a grand total of Two Hundred and Twelve Thousand Seven Hundred and Twenty Seven Dollars and Sixty Cents (\$212,727.60).

Final judgment for the plaintiff is as follows:-

Under the Fatal Accidents Act = \$ 63,750.00

Under the Law Reform (Miscellaneous Provisions) Act = \$212,727.60 plus

Interest is awarded on \$6,000.00 at the rate of 3% per annum from the 4th May, 1986 to the 17th November, 1990.

Costs to be agreed or taxed.