[2020] JMSC Civ. 116

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2006/HCV 04007

BETWEEN	**LANDIS BLAKE**	**CLAIMANT**
	(Dependant and Administrator Ad Litem of the Estate of Lamar Blake)	
AND	**EWAN CHANG**	**1ST DEFENDANT**
AND	**WAYNE LEWIS**	**2ND DEFENDANT**

IN OPEN COURT

Ms. Catherine Minto and Miss Gabrielle Warren instructed by Nunes, Scholefield Deleon & Co. for the Claimant

Mr. Kwame Gordon instructed by Samuda & Johnson for the 1st Defendant

HEARD: 18th May, 6th October, 2017 and 12th June, 2020

Damages - Assessment - Fatal Accident - Law Reform (Miscellaneous Provisions) Act - Fatal Accidents Act

BROWN BECKFORD J,

[1] This matter has come to an end nearly 20 years after the death of Lamar Blake. Regrettably, I have contributed to this delay in the delivery of this judgment and I sincerely apologize.

[2] For convenience first names will be used in this judgment. No disrespect is intended towards the parties by employing this approach.

BACKGROUND

[3] The Claimant, Mr Landis Blake, is a Dependant and the Administrator Ad Litem of the Estate of Lamar Blake. The first and second Defendants are the owner and driver of a motor truck on which Lamar Blake was a passenger. On November 13, 2000 this motor truck was involved in a collision which sadly caused the death of Lamar. This claim was initiated against the Defendants on the 10th of November 2006. The Claimant asserts that the 2nd Defendant "so negligently drove, managed or controlled the 1st Defendant's motor truck that he caused the said vehicle to leave the main road and collide with an embankment" resulting in the death of Lamar.

[4] Mr Blake seeks damages against the Defendants for the benefit of the deceased's estate pursuant to the Law Reform (Miscellaneous Provisions) Act (LRMPA) and for the benefit of the dependants of the deceased by virtue of the Fatal Accidents Act (FAA).

[5] The following relief is sought:

a) Damages under the Fatal Accidents Act

b) Damages under the Law Reform Miscellaneous Provisions Act

c) Interest on the said Damages

d) Costs

[6] Default Judgment was entered for the Claimant against the Defendants for damages to be assessed. By this, the Defendants are taken to have accepted the version of facts with respect to the allegation of negligence against the 2nd Defendant as asserted by the Claimant.

THE EVIDENCE

[7] The evidence for the Court's consideration came from Mr Blake, and is as follows:

[8] The deceased Lamar Blake was born on October 7, 1979 and was 21 years old at the date of his death. He was employed by the Claimant as a truck driver. He was so employed after he left school at 19 years old. He hauled marl, sand, grit and bottled coconut water across several parishes. He also hauled crushed stone from a facility in St. Elizabeth. At the time the Claimant owned a 1087 International Truck which Lamar drove. Prior to Lamar working for him, he personally drove the truck for several years. He stayed home after Lamar commenced driving the truck.

[9] The Claimant states that Lamar earned a salary of Twelve Thousand Dollars ($12,000.00) to Fifteen Thousand Dollars ($15,000.00) weekly depending on the amount of loads he hauled per week. He drove every day of the week depending on the availability of work. The jobs were variable from week to week.

[10] Mr Blake identifies Rosalee Cooper-Blake, mother of the Lamar and Melanie, Mark and Christine Blake, his siblings as his dependants. Christine is not mentioned in the Particulars of Claim. Mr Blake is formerly an electrician. He ceased to be so engaged when he entered the trucking business. Mrs Blake is a trained nurse which occupation she was engaged in at the time of Lamar’s death, and after. His siblings were students. At his insistence, Lamar contributed Three Thousand Dollars ($3,000.00) weekly for the house. Of his own volition, having a good relationship with his sister Melanie, Lamar contributed Seven Thousand Dollars ($7,000.00) per term towards her school fees. Likewise, he contributed One Thousand, Five Hundred Dollars ($1,500.00) towards purchasing school shoes for his brother Mark. Occasionally, he saw Lamar give his mother pocket money of Three Thousand Dollars ($3,000.00) to four thousand dollars ($4,000.00) per month. He knew Lamar to be saving to purchase a motor car and that he saved $5,000 per week towards this effort. The balance of his pay, Lamar spent on himself.

[11] He incurred expenses of one hundred, Ninety-Two Thousand Dollars and Five Hundred and Eighty Six Dollars and Sixty Cents ($192,586.60) for Lamar's funeral.

[12] In cross-examination he said he was not aware where Lamar saved his money to buy a car. He overheard him tell his mother he was saving to buy a car.

[13] Lamar, he said in cross-examination, started working with him in January 2000. Though initially claiming Lamar had the requisite license to drive his truck at 19 years old, he resiled from that position agreeing that the license Lamar had at first was to drive a smaller tonnage truck. However, Lamar later got an addition to his license. He also agreed that a condition of the insurance policy was that the driver had to have at least three years' experience. In re-examination he said he did not recall if the insurance policy had an age restriction.

SUBMISSIONS

[14] The parties were directed to file and exchange written submissions at the end of trial. The submissions were fully considered by me but I will only refer to them as is necessary to explain the position I take on a particular issue.

THE CLAIM UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT

[15] The Law Reform (Miscellaneous Provisions) Act (hereinafter referred to as LRMPA) by virtue Section 2 provides that:

> *2.---Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:*
>
> *Provided that this subsection shall not apply to causes of action for defamation.*

[16] Against this background, an award is usually made for special damages, loss of expectation of life, funeral expenses, and loss of future earnings (the 'lost years') for the benefit of the deceased's estate.

A. *SPECIAL DAMAGES*

(i) Funeral Expenses

[17] The claim for Funeral Expenses can be recovered under the Fatal Accidents Act or the Law Reform (Miscellaneous Provisions) Act. Recovery in this claim was sought under the LRMPA

[18] The sum of One Hundred and Ninety-Two Thousand, Five Hundred and Eighty Six Dollars and Sixty Cents ($192,586.60) was specifically pleaded in the amended Particulars of Claim and attested by receipts and other supporting documents. The sum was accepted by the 1st Defendant. This sum is therefore awarded to the Claimant.

B. *LOSS OF EXPECTATION OF LIFE*

[19] The LRMPA, provides that the estate of the deceased is entitled to claim for the loss of expectation of life. The sum is to be a conventional one based on the prevailing authorities.

[20] In the case of **Yorkshire Electricity Board v Naylor** [1968] A.C. 529, 545, Lord Morris conveyed the guiding principle for awarding damages under this head. He indicated that:

> *"It is to be observed and remembered that the prospects to be considered and those which were being referred to by Viscount Simon L.C. in his speech were not the prospects of employment or of social status or of relative pecuniary affluence but the prospects of "a positive measure of happiness" or of "a predominantly happy life."*

[21] Counsel for the Claimant begun her submissions under this head by relying on the case of **Benham v Gambling** [1941] 1 All E. R where the Court set out the main considerations to be borne in the mind. The assessment of these damages is not done on the "actuarial or statistical" basis and should not be calculated on the length of life which is lost or the number of years of life before it. The guidance from **Benham** is that the Court is to *"give what is fair and moderate and to use common sense".* It was said by Viscount Simon L.C. that *"it is not the assessment of compensation for loss of years or for future pecuniary prospects, but it is the fixing upon common-sense principles of a reasonable figure for the loss of prospective happiness."*

[22] Reliance was also placed on the dictum of Lord Scarman in the case of **Lim Poh Choo v Camden and Islington Area Health Authority** [1979] 2 All E.R 910 (at p 920) where he said:

> *"An award for pain, suffering and loss of amenities is conventional in the sense that there is no pecuniary guideline which can point the way to a correct assessment. It is, therefore, dependant only in the most general way on the movement in money values. Like awards for loss of expectation of life, there will be a tendency in times of inflation for awards to increase, if only to prevent the conventional becoming the contemptible."*

[23] Counsel also referred to the decision in **Angella Brooks Grant v Attorney General [2016] JMSC Civ. 240**, where the Court awarded Two Hundred Thousand Dollars ($200, 000.00) for loss of expectation of life and advanced that this amount should be awarded in the case at bar. Counsel pointed to the fact however that this judgment is on appeal in relation to the multiplicand.

[24] On the other hand, Counsel for the 1st Defendant put forward the case of **Administrator General for Jamaica v People's Favourite Baking Company Ltd & Romaine Henry** [2017] JMSC Civ. 11, where the court awarded the sum of One Hundred and Twenty-Thousand Dollars ($120,000.00) for loss of expectation

of life. The submission was that a similar award should be made based on the recency of that decision.

[25] The amount of the conventional sum was considered in the Court of Appeal case of **The Attorney General v Devon Bryan** [2013] JMCA Civ.3. The sum of Two Hundred and Fifty Thousand Dollars ($250,000.00) was awarded by the Court at first instance. On appeal, the Court discussed the applicable principles concerning damages for loss of expectation of life and pointed out that an award under this head should be a very moderate sum. They found this award to be too generous in view of decided cases and stated that the award should not have exceeded One Hundred and Twenty Thousand Dollars ($120,000.00). This point was not taken into account in **Brooks Grant**

[26] Using the decision and points raised in **Devon Bryan** and the Consumer Price Index (CPI) for March 2020, the award of One Hundred and Twenty Thousand Dollars ($120,000.00) updates to One Hundred and Sixty-Five Thousand Dollars and Four Hundred and Fifteen Dollars and Thirty-Eight Cents $165,415.38 (268.8/195 x120,000 = 165,415.38). In view of this, I award the sum of One Hundred and Seventy Thousand Dollars $170,000.00 as a reasonable sum for loss of expectation of life.

LOST YEARS/LOSS OF FUTURE EARNINGS

[27] The estate of the deceased is entitled under the LRMPA to benefit from any claim to which the deceased himself would have been entitled. One such entitlement is for the loss of future earnings or lost years

[28] In **Vinston Miller v Caribbean Producers Jamaica Ltd & Anor** [2015] JMSC Civ 250, Campbell J, in applying Anderson J. in **Administrator General of Jamaica (on behalf of the Near Relations and Dependants and as Administrator Ad Litem of the Estate of Clive Brown, Deceased) v Jamaica Pre-Mix Limited et al)** [2013] JMSC Civ 149, explained the concept of the lost years by stating that it is a computation *" of the loss to the estate by virtue of the loss of earnings of the*

deceased during the lost years, being years between retirement and death. It is the loss arising from the death of the deceased and is calculated as at the time of death of the deceased." There must therefore be a determination of whether the deceased was employed and his earnings.

(a) *Whether Lamar was employed*

[29] From the evidence, there is a question raised as to whether the deceased Lamar Blake was employed so as to sustain the claim by his estate for “lost years”. The evidence in chief of Mr Blake is that the deceased started working at the age of 19 years as a truck driver, driving a 1987 International Truck. In cross-examination, he said Lamar started working for him in the year 2000. That would have made him 21 years old at the time.

[30] When queried in cross-examination as to whether Lamar was authorized under the insurance policy to drive the truck, Mr Blake contends that Lamar was driving the truck since the policy was open. He asserts that in the initial stages, the licence held by the deceased, allowed him to drive a truck of a smaller tonnage but when he updated his licence, he was later able to drive the International Truck. He eventually agreed that the driver should be 22 to 23 years old to drive the truck according to the Insurance Policy. He also agreed that as a condition of the policy, the driver had to have three (3) years’ experience. Lamar would not have met either of these criteria. He was contradictory as to the year and age that Lamar commenced driving the truck for him.

[31] When re-examined, the Claimant states that he was not sure if there was an age restriction on the insurance policy or if it was an open policy.

[32] The 1st Defendant challenges the credibility of the witness on this point and others and has pointed out a number of contradictions in the Mr Blake’s evidence. Chief among them related to the testimony whether the deceased had a child. There were also material changes in the pleadings relating to the deceased earnings and

dependants. The suggestion is that these differences were created in an attempt to bolster the claim for damages.

[33] Having had the opportunity to listen to the witness's account and to observe his demeanour, I find him to be generally unreliable and inconsistent in his evidence relating to Lamar's age when he commenced employment/driving the truck and the particulars of insurance relating to the truck. It is true that he was in a position to present supporting evidence of his claims, for example proof of the hireage of the truck. However, given the time that has elapsed since Lamar's death, it is unsurprising that he is unable to locate any other document relating to the truck. It is also apparent that Lamar, at age 19 or 21, would not have been covered by the insurance policy in force when he commenced driving the truck.

[34] Nonetheless at the time of his death, he had the relevant license to drive the International Truck. This was an upgrade to his licence. This, it would seem to me, would not have been necessary if it was not required to drive the truck in question. I find on a balance of probabilities that at the time of his death Lamar was engaged by his father as a truck driver.

(b) *Earnings*

[35] In the case of **Gammell v Wilson** [1982] A.C 27, p 78, the Court stated that *"there is no room for a "conventional" award in a case of alleged loss of earnings of the lost years."* It must be shown on the facts to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid speculation, then the court must make the best estimate it can. Given that there is no evidence that the deceased had any other training or vocation, it is therefore likely he would be employed by his father as a truck driver or be similarly employed for a considerable period.

[36] There was no challenge to the evidence of the amount generally earned by truck drivers around the time of Lamar's death. The court therefore accepts on a balance

of probabilities that the deceased earned between $12,000.00 and $15,000.00 weekly.

Lost Earnings

[37] The formulation to calculate the lost earnings is given in **Davies v Powell Duffryn Associated Colliers Ltd**. [1942] 1 All ER 657 where Lord Wright said:

> *"the starting point is the amount of wages which the deceased was earning, the ascertainment of which to some extent may depend on the regularity of employment. Then there is an estimate of how much was required or expended for his personal and living expenses. The balance will give a datum of basic figure which will generally be turned in a lump sum by taking a certain number of years purchase".*

These are the multiplicand and the multiplier respectively.

The Multiplicand

[38] Campbell J.A., in the leading authority of **Godfrey Dyer & Derrick Dyer v Gloria Stone** (1990) 27 JLR 268, (relied upon by both Counsel for the Claimant and Counsel for the 1st Defendant) set out in clear language the steps which must be taken in ascertaining the loss of future earnings for the "lost years". The first step is to establish from credible evidence what the net income of the deceased was at the date of death. Secondly, the court should estimate the deceased's net income being earned at the date of trial from evidence from persons in a position analogous to that which the deceased held at the time of his death or by persons in a position to which the deceased might reasonably have risen to. The average of these two levels of net income may then be considered as the average annual net income of the deceased for the pre-trial years. This formula is recommended when there is a long time between the date of death of the deceased and the trial as in this case. Thirdly, the expenditures which are exclusively incurred by the deceased for his maintenance, consistent with his status in life, are to be totalled. Added to this sum is the deceased portion of joint living expenses, in this case, Lamar's contribution to the household. The total expenses are deducted from the average income to determine the multiplicand.

[39] Lindo J (Ag) (as she then was) set out the different methods of computing the multiplicand in **Brenda Hill vs Administrator-General of Jamaica and The Attorney General of Jamaica** [2014] JMSC CIV.217 At paragraph 31 she states:

> *There are different methods of assessment of the multiplicand. These are: a. the "item by item approach", which is used when specific amounts can be attributed to what the deceased contributed to each dependant and to this other losses such as perks from employment is added b. Earnings minus living expenses which is used where it is difficult or impossible to ascertain the expenditure on each dependant, and c. The percentage approach where the court may assess the dependency as a per cent of the net earnings of the deceased in the case of a widow and children or where the widow is the only dependant: (Harris v Empress Motors Ltd [1983) 3 All ER 361**)***

These principles are applied below.

[40] In the case at bar, the deceased was employed as a truck driver by his father and had two years of experience at the date of his death. During the period of his employment, he was paid a salary of Twelve Thousand Dollars ($12,000.00) to Fifteen Thousand Dollars ($15,000.00) weekly. Lamar's net income will be the average earned weekly. I find therefore that the net income of the deceased at the date of death is Thirteen Thousand and Five Hundred Dollars ($13,500.00) weekly ($15,000+$12,000= $27,000. $27,000/2 =$13,500). This works out to be $702,000.00 annually ($13,500 x 52).

[41] I am however persuaded by the submissions of Counsel for the 1st Defendant and the principle laid down in **Viston Miller (supra),** where Campbell J discounted the annual earnings of the deceased by ten percent (10%) to cover periods where the deceased did not work. In that case the deceased was a building contractor and carpenter who would do job work, that is, from project to project. The Judge found that the jobs would not have all been of the same duration and there would be periods when he did not work. In that case no specific time period was determined. The evidence before the court in the case at bar, is that Lamar worked "every day depending on the availability of work". There is no further evidence from which to evaluate the down time. I would apply the same principle from **Viston Miller** to the case at bar. The gross annual earnings of Seven Hundred and Two Thousand

Dollars ($702,000.00) discounted by ten percent (10%) works out to be Six Hundred and Thirty One Thousand and Eight Hundred Dollars ($631,800.00.)

[42] There is unchallenged evidence in support of the Claimant, from another truck owner and operator that the basic salary of truck drivers in 2009 ranged from Fifteen Thousand Dollars ($15,000) to Twenty Thousand Dollars ($20,000.00) per week. The average gross income at the date of trial would be Seventeen Thousand and Five Hundred Dollars $17,500 weekly ($15,000+$20,000= $35,000. $35,000/2 =$17,500) which would annualize to Nine Hundred and Ten Thousand Dollars $910,000.00 ($17,500 x 52). When discounted by 10%, the gross annual earnings become $819,000.00.

[43] I note that Counsel for the 1st Defendant in his submissions advanced that the sums be reduced further and alluded to the guidance given in **Vinston Miller (supra).** The argument is that both the gross annual income of the deceased at the time of death and the gross annual income at the time of trial would be subject to taxes. I accept this submission.

[44] The applicable amounts allowed before taxes for the periods are as follows: Year 2000 - $100,464.00 and Year 2017- $1,375,140.00. The taxable amount for the relevant period was $531,336 (631,800 -100,464.00). Therefore, the gross annual earnings would be discounted by 25% being the rate of income tax or $132,832.00. The net annual income at date of death is therefore $498,966.00. ($398502.00+ $100,464.00). There would be no deduction from income at the time of trial as the income fell below the taxable threshold.

[45] Where the living expenses of the deceased is concerned, Counsel for the Claimant relied on the case of **Attorney General of Jamaica v Devon Bryan (supra)** to and argued for a flexible approach. In that case, there was no evidence as to the deceased's expenses and therefore the learned judge saying she was "forced to assume that the deceased would have spent about one-third of his income on himself and two-thirds on his estate", utilized the percentage approach. She noted

that the evidence provided was not very helpful, but felt obliged to estimate a sum that would have represented the living expenses of the deceased. Counsel pointed to the fact that the Attorney General appealed the decision (See **Attorney General of Jamaica v Devon Bryan) No 88/207** on the basis that the learned Judge erred in law in making an award for the lost years without sufficient evidence on which to do so. However, the learned Judge's approach was not disturbed by the Court of Appeal.

[46] The percentage approach was also utilised by Brown J who applied 30% in **Temard Gordon et al v the Administrator General** Claim No 2006 HCV 01878 Unreported) as the amount spent exclusively on the deceased. Here the deceased was 40 years old and had a common law spouse.

[47] Marsh J in **Leevon Phillips v Ivy Shaw** Claim No. 2007 HCV 00799), where the deceased was aged 61 years and had five (5) children all of whom were adults, applied the reasonable sum of $7,500.00 for personal expenditure from a net income of $20,000.00

[48] Counsel for the 1st Defendant submitted that that in the case of the **Administrator General of Jamaica v People's Favourite Baking Company Ltd. & Romaine Henry** [2017] JMSC Civ 11, at paragraph 61 Fraser J explained that in the case there is a "dearth of evidence as to what the deceased's personal and exclusive expenses were …." the percentage methodology of ascertaining the multiplicand was appropriate in such circumstances where the deceased had a wife and children. Here the deceased was a police constable with four children. The evidence was that he was the sole breadwinner. In the case at bar, Counsel submitted that there was some evidence from which a fair estimate of Lamar's expenses could be calculated.

[49] It was noted in **Devon Bryan** that there was not as yet any compilation of data which would guide the applicable percentage. We are left to continue to use "intelligent extrapolation" and precedents to determine a fair estimate. In the cases

reviewed above, the deceased could be considered family men responsible for their households. The greater portion of their income therefore was spent on their respective households. Lamar was a young man with no obligations of family. He still lived at home. It stands to reason that the greater portion of his income, I suggest in the region of two-thirds, would in the circumstances be spent on himself.

[50] However, in the instant case, evidence was given as to the expenses of the deceased which were not seriously challenged in cross-examination. Accepting the lower figure for contribution to his mother as the Claimant did, he spent Fifty-Eight Thousand Dollars ($58,000.00) annually on his family members. His contribution to joint living expenses was One Hundred and Fifty-Six Thousand Dollars ($156,000.00) annually, a total of Two Hundred and Fourteen Thousand Dollars ($214,000.00) annually or Seventeen Thousand and Eight Hundred and Seventy-Five Thousand Dollars ($17,875.00) monthly. I find the evidence given relating to his contributions (average $17,875.00 per month from income of Fifty-Five Thousand and Five Hundred and Seventy-Five Dollars ($55,575.00) per month {666,900/12}) to be roughly equivalent to a 2/3rd 1/3rd apportionment and therefore reasonable. From the evidence he spent all of the balance of his income on himself. The personal expenditure of Lamar would therefore amount to Two Hundred and Eighty-Four Thousand and Four Hundred and Sixty Six Dollars ($284,466.00) ($498,966.00-$214,500.00) annually or $23,705.50 monthly.

The Multiplier

[51] The case of **Dyer v Stone** (supra) at page 280 approved the dicta of Lord Tullybelton in **Cookson v Knowles** [1979] AC 556 where it was said that the multiplier is *"related primarily to the deceased person's age and hence to the probable length of his working life at the date of death."*

[52] Counsel for the Claimant relied on the case of **Jeffrey Young vs. Book Traders, Derrick Harvey and West Indies Publishing Ltd.** Suit No CL 1996 Y 003, in positing that the appropriate multiplier in the case at bar is 16. It was submitted

that as in **Jeffrey Young**, the deceased was 25 years old and in the case at bar the deceased is 21 years old, the inference being that there was not a significant age difference between the deceased in **Jeffrey Young** and Lamar so there should be no difference in the multiplier.

[53] Counsel for the 1st Defendant, on the other hand, argued that the appropriate multiplier is 14. Counsel relied on the case of **Jamaica Public Service Co. Ltd v Elsada Morgan** (1984) 23 JLR 138, where the deceased was twenty-five (25) years old at the time of his death. The argument was that the relative closeness in the age of that deceased to the deceased in the current case warrants a multiplier of 14.

[54] In the current case, Lamar Blake died at 21 years of age. The fact pattern here is similar as the deceased in **Elsada Morgan** who died at age 25 in excellent health. Similarly, in **Alicia Dixon (Administratrix of the Estate Christopher Dixon) v Harris and the Attorney General** (1993) 30 JLR 67, Harrison J. (Ag) (as he then was) accepted a multiplier of 14 which was used in respect of the deceased who was a 27 years old air pilot at the time of death. There was no reason given in the **Jeffrey Young** case as to the choice of 16 as a multiplier so as to determine any distinguishing feature. As said by Harrison J. (Ag) he would prefer a multiplier sanctioned by the Court of Appeal in similar circumstances. For these reasons I consider a multiplier of **14** as appropriate in these circumstances.

Calculations

(i) Pre-Trial Years

i. The Net Annual Income of the deceased at the date of death is $ 498,966.00

ii. The Net Annual Income at the time of trial $ 819,000.00

$1,317,966.00

iii. Average annual net income $1,317,966.00 = $658 ,983.00

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iv. Expenditure on himself at the time of death annualized to $284,466.00

v. Multiplicand = $658,983.00 – $284,466.00 = $374,517.00

vi. The loss of earnings for pre-trial years as a result is $374,517 x 14 = **$5,243,238.00**

(ii) Post-Trial Years

Both parties have submitted the sum for Loss of earnings for post-trial years to be Zero Dollars ($0) being subsumed in the multiplicand. The Court is accepting this position.

THE CLAIM UNDER THE FATAL ACCIDENTS ACT

[55] Pursuant to Section 3 of the Fatal Accidents Act:

> *'Whensoever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony.'*

[56] Section 4 (1) provides that:

> *'Any action brought in pursuance of the provisions of this Act shall be brought-*
>
> *a) by and in the name of the personal representative of the deceased person; or*

b) where the office of the personal representative of the deceased is vacant, or where no action has been instituted by the personal representative within six months of the date of death of the deceased person, by or in the name of all or any of the near relations of the deceased person, and in either case any such action shall be for the benefit of the near relations of the deceased person.'

[57] A person of 'near relations' under section 2 (1) is described to mean:

'near relations' in relation to a deceased person, means the wife, husband, parent, child, brother, sister nephew or niece of the deceased person.'

[58] Further, Section 4 (4) provides that:

'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 by reason of the death of the deceased person and the amount so recovered (after deducting the costs not recovered from the defendant) shall be divided accordingly among the near relations.'

DEPENDANTS

[59] The claim before this court was brought by Landis Blake, father of the deceased on behalf of Rosalee Blake, mother of the deceased, Melanie Blake, sister of the deceased and Mark Blake, brother of the deceased. I wish to briefly point out as a means of observation that by way of Amended Particulars of Claim, these were the only three listed dependants of the deceased.

[60] Nonetheless, given the definition of 'near relations' advanced under section 2(1) of the **Fatal Accidents Act**, and the documentary proof submitted by the Claimant in the form of birth certificates, it has been accepted that the dependants listed in this claim are all near relations of the deceased and are entitled to bring this action for the recovery of damages under his estate.

[61] I am guided by the dicta of Wolfe J. (as he then was) in **The Administrator General for Jamaica (Administrator estate Gladstone Keith Richardson, deceased) v Fitzroy Thomas, Clarissa Simpson & Richard Clemetson** – Suit no.1988/A181 (unreported), Supreme Court of Jamaica, October 9,1990 where he asserts, at page 3 that *"a dependant referred to as near relation, 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."*

[62] It becomes apparent that at or before the date of the death of the deceased, the named dependants ought to have been reliant on the deceased for a particular benefit that they are now deprived of due to his death. The evidence led by the Claimant is that Lamar provided for the dependants a total of Fifty-Eight Thousand and Five Hundred Dollars ($58,500.00) on an annual basis.

[63] By way of his witness statement, the Claimant particularized Lamar's contributions as Three Thousand Dollars ($3,000) weekly for the house, Seven Thousand Dollars ($7,000) per term towards his sister's school fees, One Thousand and Five Hundred Dollars ($1,500) towards purchasing school shoes for his brother and he would occasionally give his mother pocket money of Three Thousand Dollars ($3,000) to Four Thousand Dollars ($4,000) per month. He saved Five Thousand Dollars ($5,000) per week and used the balance of his pay for his personal use.

[64] Lamar and all the named dependants resided together in the same household. His father Landis Blake was an electrician and an entrepreneur. He was the owner of a trucking business to which the deceased was employed as a driver. His mother, Rosalee Cooper Blake was gainfully employed as a registered nurse. From the evidence, she was so employed up to the time of his death. His siblings Mark and Melanie were both enrolled in school. To what extent in these circumstances could Lamar be said to be responsible for any of his near relations.

[65] In the case of **Carl George Smith (Administrator of the Estate of Donovan Smith, deceased) vs Johnny Hinds et al** (Suit No. C.L.C S-365/85 (Unreported),

the deceased was employed by his father as the Manager of a gift shop situate in Ocho Rios. He was also in charge of his haulage truck. He was paid a total of Six Hundred and Fifty Dollars ($650.00) weekly from which he gave Two Hundred and Fifty Dollars ($250.00) per week to his parents with whom he lived. Both parents were gainfully employed and his father had other significant means of livelihood.

[66] Cooke J in the circumstances found that there was no dependency in the parents upon the deceased as the amount paid to them weekly was attributable to the living expenses of the deceased. He declined as a result to make an order under the **Fatal Accidents Act.**

[67] The facts of both cases are similar. In the present case, the deceased worked and contributed to the household expenses on a weekly basis in the sum of Three Thousand Dollars ($3,000.00.) Both parents were also still gainfully employed up to the date of the deceased's death. He also occasionally gave his mother a total of Three Thousand dollars ($3,000.00) to Four Thousand Dollars ($4,000.00) monthly as pocket money. There is no evidence as to the relative frequency of these sums. It certainly does not seem as if she relied on these sums given its flexible nature and they appear to be no more than gifts to her.

[68] However, in the case of **Taff Vale Railway Co. v Jenkins** [1913] AC 1, it was held that it was not necessary for a plaintiff to show that the deceased had been earning money and had contributed to the support of the plaintiff before death, provided that there was a reasonable expectation of future pecuniary advantage to the plaintiff had the deceased lived. In that case, a daughter was living with her parents when she died at age 16. Her dressmaker's apprenticeship had two months to run after which she would have begun to earn increasing sums of money, being exceptionally clever at her work. It was held that there was evidence of loss, based on reasonably expected future dependency upon which the jury could reasonably act.

[69] The question for the court as said by the Court of Appeal in ***Reginald Brown*** is whether the deceased would be inclined or would have been in a position to assist his mother in her senior years with her daily living expenses. The main issue therefore is whether from the occasional monthly contributions to his mother, a reasonable expectation of future pecuniary advantage can be inferred. In this regard, the occasional contributions/gifts can be said to be evidence of a dutiful son who would likely assist his mother in her senior years. I find therefore that his mother was a dependant.

[70] In the case of **Wensley Johnson v Selvin Graham and another** [1983] 20 JLR 1241 a nineteen-year-old girl was killed by the Defendants in a motor truck incident. The brother and mother of the deceased were her alleged dependants. She was employed on Saturdays for Thirty-Nine (39) weeks during the school holidays. She earned One Thousand, Four Hundred and Thirty Dollars ($1,430.00) annually and contributed Four Hundred and Seventy-Six Dollars and Sixty Six Cents ($476.66) each to her mother and brother. At the time of her death, the deceased was a fifth former at the Marymount High School and she aspired to become a bilingual-secretary. Evidence was led to show that a bilingual-secretary could earn between One Thousand, Two Hundred Dollars ($1,200.00) and One Thousand, Six Hundred Dollars ($1,600) per month.

[71] In deciding whether the mother and brother were dependants, the Court held only the mother was a dependant of the deceased. The deceased was a school girl who did part time work at a store. Her father was an inspector of police and they all lived in one household. The court asked the question whether a girl in the circumstances would reasonably be expected to contribute one third of her earnings to the upkeep of her brother. The Court in applying a common sense approach, answered the question in the negative. The Court rejected the contention that the brother was a dependant of the deceased. The mother was held to be a dependant to the extent that since the deceased lived at home, it is reasonable to say that she received as her keep, a portion of what the deceased had, prior to her death, contributed to the family fund.

[72] Where the siblings of the deceased are concerned, the facts of **Wensley Johnson** are similar to the case of bar. The deceased in the present case was employed and contributed to the family expenses. He assisted by contributing minimally to the school expenses of his siblings. The parents of the deceased were both employed at the time of his death and they all lived together in the same household. They were relatively young, each earning an income and there is no evidence they would not be in a position to support their children to majority. In applying the principle of **Wensley Johnson** and the common sense approach used, I find as a result that the siblings Melanie Blake and Mark Blake were not dependants of the deceased.

DAMAGES UNDER THE FATAL ACCIDENTS ACT

[73] Lamar's total annual expenditure as found before is $498,966.00. Deducting his personal expenses gives us the multiplicand for the purposes of the FAA. This would be $498,966 – $284,466 = $214,500. The percentage of dependency is calculated by putting the multiplicand over the total annual expenditure and multiply by 100. This would be (214500 / 498966) x 100 = $42.9889 or 43%. The level of dependency is 43% of the multiplicand or $214,500 x 43% = $92235. Applying the multiplier of 14 would be $92,235 x 14 = 1,291,290. The total to be awarded under the FAA would be One Million, Two Hundred and Ninety One Thousand, and Two Hundred and Ninety Dollars ($1,291,290.00.) The amount under this head is less than the amount to be awarded to her under the LRMPA. Given that his mother could only recover sums in excess of the amount awarded under the LRMPA, no award is made under this head.

ORDERS

[74] The Defendants are jointly and severally liable to pay the Claimant:

a) Under the Law Reform (Miscellaneous Provisions) Act:

i. Special Damages $192,586.60

ii. Loss of Expectation of Life $160,000.00

iii. Lost Years

Mother $2,621,619.00

Father $2,621,619.00

b) Interest on Special Damages from November 13, 2000 to the date of judgment at rate of three percent (3%) per annum.

c) Interest on loss of expectation of life and lost years from the date of filing of the claim to the date of judgment at rate of three percent (3%) per annum.