JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 75/89

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

BETWEEN	CLARENDON PARISH COUNCIL	
AND	STANLEY EWAN	APPELLANTS
AND	JUNIE GOULDBOURNE (Administratrix of Estate Earnold Gouldbourne	RESPONDENT

Dr. Lloyd Barnett & Patrick Brooks for Appellants

John Vassell for Respondent

24th, 25th July & 29th October, 1990

GORDON, J.A. (AG.)

In this appeal the appellants sought the reduction of damages awarded by Clarke J., to the respondent under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act. The incident out of which the action arose occurred on 10th October 1982 when the deceased Earnold Gouldbourne died the result of an accident between the car he was driving and a vehicle owned by the Clarendon Parish Council and driven by Stanley Ewan. The facts were not in dispute.

Earnold Gouldbourne was at the time of his death a Minister of Religion and was incharge of the North Street United Church of Jamaica and Grand Cayman, Kingston, he was also a teacher on the staff of the St. Jago High School. Apart from his emoluments as a pastor he occupied with his wife a rent free

four bedroom manse at 8 Hopefield Avenue Kingston 6. Utilities, light, water, telephone were paid by the Church.

Reverend Gouldbourne was a graduate of Mico College and the University of the West Indies. He had confirmed plans to go abroad and read for his Masters in Theology. Although this would not have affected his remuneration as a Pastor it would have equipped him more adequately to fill the post as Moderator of the Circuit in due course.

Evidence was given by Reverend Samuel Smellie, General Secretary of the Church, that the deceased's emoluments for 1982 and 1983 would be $9,112.00 annually, for 1984 $11,815.00 increasing to $25,571.00 in 1988. He was subject to transfer. There was also evidence of the amounts he would have received over a similar period from his teaching activities.

The deceased died aged 33 years intestate, without issue, leaving his widow and father as dependants. He was in good health. The learned trial judge applied a multiplier of fifteen (15) years.

In assessing the pre-trial damages under the Fatal Accidents Act the trial judge used the data supplied re the emoluments from the Church and the school, the market rent value of the manse and the assessed value of the utilities. In so doing the amount assessed and awarded was $370,804.00 to which was added funeral expenses of $2,766.00 giving a total of $373,570.00. In assessing the post-trial damages he used the multiplicand of $84,100.00 based on the dependency for the year 1986, and assessed the damages at $700,833.00 thus, making the total damages assessed under this act at $1,074,403. It was agreed that the deceased spent 37% of his net salary from the Church and from teaching on himself, the multiplicand used therefore was 63% of this net total salary to which was added the value of the manse and utilities.

In assessing damages under the Law Reform (Miscellaneous Provisions) Act the trial judge considered this court's decision in Jamaica Public Service Co Ltd vs. Elsada Morgan et al S.C.C.A. 12/85 delivered 5th May, 1986. He awarded $5,000.00 for loss of expectation of life and $691,615.00 for lost years earnings. He assessed the value of the reversion at $139,323.00 which sum should go to the estate of the father of the intestate and the amount the widow should get at $557,292. He concluded his assessment by saying:

"In summary the awards are as follows:

(a) Under the Fatal Accidents Act the sum of $1,074.403 Minus $557,292 = $517,111

(b) Under the Law Reform (Miscellaneous Provisions) Act

(i)	Loss of expectation of life	$5,000.00
(ii)	Damages in respect of the deceased's loss of earnings in the lost years	691,615.00
	TOTAL	$696,615.00

Of the Law Reform Act award the amount to go to the widow is $557,292 and the amount to go to the estate of the deceased's father's (sic) is $139,323 ($696,615 minus $557,292).

I award interest on the pre-trial lost years earnings of $238,383 at 3% from 16th October, 1982 to the 6th July, 1989. The Plaintiff is to have her costs which are to be taxed if not agreed."

Dr. Barnett condensed the 15 grounds of appeal filed into three, viz:

(i) The learned trial judge was wrong in the figure selected as multiplier.

(ii) He was wrong in not scaling down the amount he selected as net income re fringe benefits.

(iii) Loss of expectation of life fixed at $5,000.00 does not accord with figure normally fixed.

Dr. Barnett contended that the multiplier of 15 years was too high and did not accord with decided cases from this Court of which Stone v. Dyer C.A. 7/88 delivered 9th July 1990 was the latest. In that case previous cases were reviewed and the judges were unanimous that a multiplier of 15 years in a case where the deceased was 35 years old was too high and it was reduced to 11 years. On the multiplicand he contended that no account was taken of contingencies and uncertainties and there was no taxing down. He submitted further that the benefits the intestate enjoyed at the time of his death were attached to his office as pastor of the North Street Church and were approved by the committee of that Church; that there was no evidence he would have received similar benefits in future postings hence there was no justification for the 100% projection of that benefit into the future and that there were also uncertainties attached to the benefit he received from teaching and these were ignored in the calculations.

On the loss of expectation of life Dr. Barnett said that while he was not contending that $5,000.00 was unreasonable, the established pattern is $3,000.00.

Mr. Vassell contended that the learned trial judge applied the correct principles and arrived at a just assessment which should be allowed to stand. There was no basis, he submitted for Dr. Barnett's submission that the award should be reduced by 50%. If there was merit in those submissions a reduction of 10% was all that was indicated. The multiplier of 15 years he submitted was not so high that the court should interfere.

The first question that falls to be determined is the multiplier that should be applied in this case. We cannot ignore decisions of this court on this subject. There are three cases that have to be considered.

In Samuel Barrett v. Clinton Thomas & V.W. Lee & Sons S.C.C.A. 14/80 (unreported) the judgment of the court was delivered on 8th October, 1981. Here an injured driver aged 35 at the date of trial had an award of a multiplier of 15 years reduced by this court to one of 11 years.

In Cecil Wong v. Winston Williams C.C.C.A. 83/81 (unreported) delivered on 14th October, 1982 this court approved a multiplier of 10 years for damages for loss of earnings for a truck driver aged 37 years at the time of trial.

In Jamaica Public Service Co Ltd v. Elsada Morgan (supra) the Court of Appeal approved a multiplier of 14 years as appropriate for a man who died at age 25 in excellent health.

The pattern that emerges from an examination of these cases is that the multiplier is age-related and that if a multiplier of fourteen (14) years is appropriate for a man aged 25 years a multiplier of 15 is inappropriate for a man aged 33 years.

In Dyer vs. Stone (supra) this Court considered the cases abovementioned and concluded that on the basis of established authority where the deceased was of the age of 35 years the multiplier should be eleven (11) years. In this case the deceased was 33 years at the time of his death, he had enjoyed good health and had no physical complaints. The learned trial judge applied a multiplier of 15 years. We considered this is in excess of the permissible limits and accordingly reduced the figure to one of twelve (12) years.

The deceased had been a Minister of Religion and had in addition, taught in the St. Jago High School, earning substantial sums, which were credited to the dependency. He was subject to transfer in his vocation as a Minister of Religion and on the evidence of Reverend Samuel Smellie this transfer could place him anywhere in Jamaica. Conceivably, a transfer

could place him where his services as a teacher were not required or where the school that required his services was so far removed from his base that it would not be economically feasible for him to accept appointment or the expenses attendant on his acceptance of the post e.g. travelling, would substantially affect his earnings. We found that there was virtue in Dr. Barnett's submission that the deceased could be posted where the fringe benefits attached to the post might not be as ample as those provided for the North Street pastor. In such an event his earning ability would be affected resulting in a reduction of his contribution to the domestic consortium and thus the dependency. The learned trial judge in arriving at the multiplicand did not give consideration to or make allowances for the uncertainties as indicated above. We considered that the justice of the case required a reduction of 15% in the multiplicand determined for the fringe benefits of utilities and rental and the contribution from his salary from teaching.

The award for loss of expectation of life was abnormal it is therefore reduced to $3,000.00 for conformity.

The result therefore is that the appeal is allowed and the damages awarded in the court below reduced as follows:

(a) Under the Fatal Accidents Act, sum of $716,730. minus $374,035 = $342,695.00

(b) Under the Law Reform (Miscellaneous Provisions Act)

(i) Loss of expectation of life $3,000.00

(ii) Damages in respect of deceased's loss of earnings in the lost years $464,544.00

Total $467,544.00

Of the Law Reform Act, award, the amount to go to the widow is $374,035.00 and the amount to go to the estate of the deceased's father is $90,509.00 ($464,544.00) - $374,035.00).

Interest on the pre-trial earnings of $209,360.00 at 3% from 10th October, 1982 to 6th July, 1989.

Appellant to have his costs of appeal agreed or taxed.