NMCS.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1993/F-202

BETWEEN	JESTINA BAXTER FISHER (As mother and near relative of LANGSTON BURKE)	1st PLAINTIFF
AND	THE ADMINISTRATOR GENERAL FOR JAMAICA (Administrator for the Estate of LANGSTON BURKE deceased)	2nd PLAINTIFF
AND	WINSTON ATKINSON	1st DEFENDANT
AND	HECTOR STEPHENSON	2nd DEFENDANT
AND	ALLAN STONE (Acting on behalf of themselves and all other members of the Board of management of St. George's College)	3rd DEFENDANT
AND	H. WISDOM (GENERAL CONTRACTORS) LIMITED	4th DEFENDANT
AND	THE JAMAICA PUBLIC SERVICE COMPANY LTD.	5th DEFENDANT

AND ALSO

SUIT NO. C.L. 1993/R-249

BETWEEN	CLIFTON ROBINSON	PLAINTIFF
AND	WINSTON ATKINSON	1st PLAINTIFF

A N D	HECTOR STEPHENSON	2nd DEFENDANT
A N D	ALLAN STONE (Acting on behalf of themselves and all other members of the Board of Management of St. George's College)	3rd DEFENDANT
A N D	H. WISDOM (GENERAL CONTRACTORS) LIMITED	4th DEFENDANT
A N D	THE JAMAICA PUBLIC SERVICE COMPANY LIMITED	5th DEFENDANT

David Henry instructed by Mrs. Winsome Marsh of Nunes, Scholefield, DeLeon & Co for the Plaintiff

Anthony Pearson instructed by Pearson & Co. for the 1st, 2nd and 3rd defendants

4th defendant unrepresented

Ms Ingrid Mangatal instructed by Dunn Cox Orrett & Ashenheim for the 5th defendant

Heard: 11th, 13th, 14th, 15th, 19th, 20th October, 1999; 17th, 18th, 19th, 21st,28th January, 2000 and 23rd June, 2000

CLARKE, J

The Board of Management of St. George's College is sued through its representatives, the first, second and third defendants, whom I shall hereinafter refer to as St. George's College. In 1992 they were desirous of constructing additions to the "Butler Building" classroom block on their

campus at Winchester Park, North Street in the parish of Kingston. They accordingly instructed a firm of architects, David Kirkwood and Associates Limited, to prepare working drawings for the construction of the said additions. When these had been prepared tenders were invited and in due course the fourth defendants entered into a written J.C.C. standard form of building contract with St. George's College dated 15th June 1992.

Before and during the construction of the additions, high tension electricity lines servicing the campus ran north to south along a section of the premises to the west but to the rear of the Butler Building. Prior to the commencement of construction the lines were some 30 feet from the nearest point on the building and ran on posts and apparatus provided by the fifth defendants for supplying electricity pursuant to the Electric Lighting Act. The work on the project involved the construction of another storey on the top of the existing building as well as an expansion of it at the northern end. The building was transformed from a rectangular shaped structure into a T-shaped one, two floors high. The expansion of the northern end, consistent with the T-shape, brought the north western section of the addition significantly closer to the high tension electricity lines.

Langston Burke was employed by the fourth defendants to do steel work on the project. Burke in turn employed Clifton Robinson, a resultant

plaintiff, to assist him. By December, 31, 1992 the walls and columns of the upper floor had been added. On that day Burke was standing atop the ground floor, and Robinson was standing in a box eave about 22 feet from the ground. They were in the north western section of the T-shaped structure. Burke was passing 30 feet long steel bars to Robinson. While Burke was passing the third steel bar to Robinson same came into contact with the fifth defendants' high tension power lines which were alive at the material time. Burke was electrocuted and Robinson suffered electric shock injury and damage.

Separate actions have been brought against all the defendants: one by Mr. Robinson and the other by the mother of Langston Burke, deceased, under the Fatal Accidents Act by the Administrator General on behalf of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act. In both actions, tried together by consent, the plaintiffs claim that the damage and loss which they suffered were caused by the defendants' negligence or breach of statutory duty.

It is, I think, unarguable that the power lines were in such close proximity to the building that whilst performing their normal work on the site Burke and Robinson were exposed to the risk of injury or death if the

lines were energised. The primary issues, as Mr. Henry correctly identified, are therefore as follows:

(a) Whether the defendants or any of them are liable for the injury, loss and damage which Robinson and the dependants and estate of the deceased Burke have suffered by reason of both men coming into contact with the energised high tension lines.

(b) Whether Robinson and/or Burke were wholly responsible for the accident by reason of negligence of the one and/or the other, or whether one or both of them were contributorily negligent and so partly responsible for the accident.

It will now be convenient to consider the question of the liability of the several defendants.

St. George's College (1st, 2nd and 3rd defendants)

The plaintiffs' claim for damages against St. George's College is based on the Occupiers Liability Act and on the general law of negligence. I have no doubt on the evidence before me that the fourth defendant, themselves independent contractors, employed Burke as an independent contractor to do steel work on the project. And Burke in turn employed

Robinson, as he was wont to do, to assist him in the steel work that was sub-contracted to him. Burke and Robinson were therefore visitors within the meaning of the Occupiers Liability Act. The occupier(s) of the work site owed them the common duty of care "in respect of damages due to the state of the premises or to things done or omitted to be done on them", that is to say, "the duty to take care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for which he is invited or permitted by the occupier to be there": see sections 2(1) and 3(2) of the Occupiers Liability Act.

The test of who is an occupier of premises is whether a person has a sufficient degree of control associated with, and arising from his presence in, or use of, or activity in, the premises to ensure their safety and to appreciate that a failure on his part to use care may result in injury to a person lawfully coming on to them: see **Wheat v E. Lacon & Co. Ltd.** [1966] A.C. 552 at 577-579 per Lord Denning. Two or more persons may be occupiers of the same premises, each under a duty to use such care as is reasonable in relation to his degree of control: see Halsbury's Laws of England, Fourth Ed. Vol. 33, para. 630. In one case, the owners of a club and the defendants who ran a restaurant in the club under a license were both held to be occupiers: **Fisher v. C.H.T Ltd. and** Others [1966] 2 Q.B.475. And in another case a

building contractor and the building owner were both occupiers of the whole building although part of the building was separated by a screen beyond which the building contractor only went to attend to heating and lighting: **AMF International Ltd. v Magnet Banking LTD** [1968] 2 All E.R. 789. Although the fourth defendants in the case before me were unarguably occupiers of the work site, a question that arise concerns whether St. George's College were also occupiers of the site.

While I bear in mind that the work site was at all material times fenced around by the fourth defendants to whom possession had been given by St. George's College under a contract, I accept the evidence that St. George's College through their representatives, David Kirkwood the architect, and Father Schneider, the President of the College, attended all site meetings and gave directions concerning the conduct of the work and the performance of the contract. I find therefore, that St. George's College as owners did not divest themselves of control over the work site to the fourth defendants as to take them (St. George's College) outside the scope of being occupiers at the relevant time. Indeed, although the question of who is an occupier is a question of mixed law and fact, their statement of defence admitting that they were owners and/or occupiers is consistent with that finding.

So, was the common duty of care in relation to Burke and Robinson broken by St. George's College? Section 3(6) of the Occupiers Liability Act, relied on by Mr. Pearson, provides as follows:

> "Where damage is caused to a visitor by a danger due to the execution of any work of construction, maintenance or repair by an independent contractor, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps, if any, as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done".

The principal argument for St. George's College related to the general rule of non-liability of an employer for the negligence of their independent contractor in the execution of the work and to the applicability of section 3(6) of the Occupiers Liability Act. They are not liable as employers for the negligence of their independent contractors, the fourth defendants, and a **fortiori** they are not liable for the negligence of Burke to whom the steel work was subcontracted as an independent contractor by the fourth defendants. Even if St. George's College were occupiers of the work site, so the argument continues, section 3(6) would enable them to escape liability. The danger both men faced was the close proximity of the north western section of the structure to the energised power lines. The faulty execution

of construction was the passing by Burke of 30 feet lengths of steel rods to Robinson in close proximity to the energised power lines.

I agree with Mr. Pearson that in all the circumstances St. George's College acted reasonably in entrusting the work of construction to the fourth defendants. Prior to doing so, they invited tenders, assessed the tenders, short listed them, received a tender report and, only thereafter, accepted the tender of the fourth defendants. It is also true that their acceptance of the tender was based not just on their assessment of all the tenders but also on their satisfaction with previous construction work done for them by the fourth defendants. They also engaged a qualified and experienced architect, Robert Kirkwood, for the purpose of monitoring the performance of the contract to see that the construction of the additions conformed to the terms of the contract.

Mr. Pearson submitted that the steps that were taken by St. George's College to satisfy themselves that the work had been properly done were to have a contract which set out obligations and also to have an independent contractor in the person of the architect responsible for supervising the performance of the contract.

That submission is attractive. The flaw in it, however, lies in the fact that the architect was in this connection not an independent contractor but

the agent of the building owner, St. George's College, As the architect himself admitted in evidence, he was for the purposes of giving directions under the contract for the execution of the work, the employer's representative: see **Clayton v Woodman & Son (Builders) Ltd.** [1962] 1 W.L.R. 585. I have no doubt that Burke and Robinson were at the time of the accident using the premises for which they were invited or permitted to be there by the main contractors, the fourth defendants, and by necessary implication, St. George's College. It is plain beyond a peradventure that the absence of reasonable safety resulted in the accident which arose out of the use of the premises by Burke and Robinson. In my judgment the absence of safety was a consequence of (a) the system of work adopted by the sub-contractor, Burke and the main contractor, the fourth defendants, and (b) the failure to request the fifth defendants to de-energise the power lines while the construction work was being carried out in the vicinity of the said lines. Of course, it would not ordinarily be reasonable to expect an occupier of premises having engaged a contractor whom he has reasonable grounds for regarding as competent to supervise the contractor's activities and a portion of the activities of the sub-contractor to ensure they were discharging their duties to their employees to observe a safe system of work. In special circumstances, however, where the occupier knew or ought to have known

that an unsafe system of work was being used, it might well be reasonable for the occupier to have taken steps to see that the system was made safe: see **Ferguson v. Walsh** [1987] 3 All E.R. 777 and 783 per Lord Keith (H. of L).

The provisions of section 3(6) of the Occupiers Liability Act notwithstanding, the crux of the issue as to the liability of St. George's College is, as Mr. Henry submitted, whether as occupier/employer they took such case as in all the circumstances of the case was reasonable to see that Burke and Robinson were reasonably safe in using the premises for the purposes for which they were invited thereon, namely, to work on the addition to the Butler Building as steel fabricators. That duty of care was, in my judgment, breached by St. George's College. It is plain on the evidence that they by themselves or through their representative, the architect, were at all material times actively engaged in the project and knew of the developments at every stage. They were aware or ought to have been aware of the danger of exposing Burke and Robinson to the risk of electrocution or injury from contact with the said power lines by reason of these men working in close proximity to them. In directing the progress of the work they ought to have taken reasonable care that Burke and Robinson were not exposed to the risk of electrocution or injury from the power lines.

These findings are bolstered by the evidence of the architect on this aspect of the case. He admitted that he was empowered under the contract to give directions or approvals for the work to be executed and so too were, his principals, St. George's College. He made further disclosures: He conducted coordination meetings in respect of construction scheduling. He gave approvals for the programme for each section of the work that was to be performed one month before the commencement of the work. He was to be provided with, for approval, a critical path programme, as well as a network scheduling indicating all sections of the work to be performed.. And where he considered it necessary, the critical path programme and the network scheduling were to be reviewed by him monthly. Even the setting out of the work was, he disclosed, subject to his approval and he could require corrections for work incorrectly performed.

Furthermore, I accept the evidence of Everton Hyatt, a builder of 15 years experience in the construction industry that the practice in the industry requires the employer (owner) to be responsible for seeing to the de-energising of electrical power lines on construction sites. That responsibility in my judgment was and remained the responsibility of St. George's College and I so hold.

The responsibility of St. George's College for seeing to the de-energising of the power lines was in any event, as Mr. Henry submitted, non-delegable because the steel work on all accounts was extra hazardous involving, as it did, performance in close proximity to energised power lines. The general principle governing "extra-hazardous and dangerous operations was long ago authoritatively enunciated thus:

> "Even of these it may be predicated that if carefully and skilfully performed, no harm will follow; as instances of such operations may be given removing support from adjoining houses, doing dangerous work on the highway, or creating fire or explosion: hence it may be said, in one sense, that such operations are not necessarily attended with risk. But the rule of liability for independent contractors' act attaches to those operation, because they are inherently dangerous, and hence are done at the principal employer's peril": **Honeywill and Stein Ltd. v Larkin Bros. Ltd.** [1934] 1 K.B. 191 at 200, per Slesser L.J

And it is to be observed that the non-delegable duty is "a duty not merely to take care, but to provide that care is taken", so that if care is not taken, as is the case of the independent contractors is the case before me, the duty is broken: see the case of **Ballater** [1942] P. 112 at 117.

The main contractors (the fourth defendants)

At the trial the fourth defendants were absent and were unrepresented. They as well as St. George's College were, as I have already found,

occupiers of the work site. So the common duty of care was owed to the visitors, Burke and Robinson, not only by St. George's College but by the fourth defendants as well. Their work of construction brought the north western section of the addition to the Butler Building close to the power lines. As the main contractors on the site they had a duty to take special precautions for the safety of personnel on the site, particularly having regard to the proximity of the work to the energised power lines. Yet in point of fact they warned neither Burke nor Robinson of the danger posed by the closeness of the energised power lines and provided no safety equipment. As contact with these power lines was reasonably foreseeable, their failure to take reasonable steps to prevent this occurring is, in my judgment, a breach of their duty of care. They as joint tortfeasors with St. George's College must share in the liability for the injury to Robinson and the electrocution of Burke who, as I will show, was partly responsible for the accident.

Jamaica Public Service Company Limited (the fifth defendants)

The plaintiffs allege that the fifth defendants, the public utility company, must also share in the liability for the accident and the consequential damage. They plead the following particulars of negligence:

> "(a) causing or permitting its strands of electrically charged wires to run over and across the said

building when it knew or ought to have known that the said wires could come into contact with members of the public.

(b) Causing or permitting the said strands of electrically charged wires to run over and across the said building so that they could easily and inadvertently come in contact with the plaintiff who the said Defendant, their servants and/or agents knew or ought to have known was working on the said building at all material times.

(c) Failing and/or neglecting to take any or any adequate steps to prevent the strands of high tension electrically charged wires from being or becoming a danger to the deceased or anyone who was working on the building at all material times.

(d) The plaintiff(s) will further rely upon the doctrine of **res ipsa loquitur**."

They plead the following particulars of breach of statutory duty:

"(a) Failing and/or neglecting to serve the safety of the public from personal injury contrary to Section 5 of the Electric Lighting Act.

(b) Failing and/or neglecting to lay, place or carry over such supply lines posts and apparatus as are necessary or convenient for the safe and efficient supply of electricity contrary to Section 36 of the Electric Lighting Act.

(c) Failing to energise or insulate the said electricity lines when it knew or ought to have known that construction work was being carried on in the vicinity of the said line.

(d) Failing to ensure that the clearance above ground at any point in the span of the electric wires near to and/or in the vicinity of the building was not less than twenty (20) feet contrary to the Electric Lighting (Extra High Pressure conductors) Regulations 1928.

These particulars were denied by the fifth defendants.

In my judgment there is no evidence to support any of these allegations. It is true that the tragedy happened when a steel rod which Burke and Robinson were handling came into contact with live electric wires placed by the fifth defendants. And while Section 5 of the Electric Lighting Act imposes a duty on the public utility company to secure the public from personal injury, the duty to exercise due and reasonable care: see **Jamaica Public Service Company Limited v. Winston Barr and Others** (unreported) Supreme Court Civil Appeal Nos. 45 and 48/85 at page 41 per Downer J.A. There is no evidence to suggest that the power lines were below 20 feet from above the ground contrary to the Electric Lighting (Extra High Pressure Conductors) Regulations 1928. While there is no doubt that the power lines ran by way of posts fitted with 5 foot cross bars there is no evidence to suggest that that the lines were of the wrong height or were sagging, in breach of the Regulations. There is no pleading that the fifth defendants erected the power lines too close to the original building and there is no evidence to suggest this. Indeed, I accept the evidence of the architect, Mr. Kirkwood, who visited the site many times, before during and after construction, that the power lines were about 30 feet away from the closest point on the original building. So, contrary to the plaintiffs'

pleading, not only did the power lines not run over or across the building as indicated in evidence by Robinson himself, but, as Ms Mangatal has pointed out, it is clear on the evidence that it was the expansion that brought the north western part of the building, i.e. on the top of the 'T' closest to the public utility company's power lines, within at the most 10 to 12 feet.

In my judgment, the proximate cause of the accident lay in the faulty system of work employed by the main contractors and also by the deceased sub-contractor Burke, which included the manual lifting of and passing of 30 feet steel bars in close proximity to power lines as well as in the failure to request the fifth defendants to de-energise same. So it is plain that the fifth defendants have shown that the loss and damage was caused by "the conscious act of another's volition": see **Dominion National Gas Company v. Collins** [1908-10] All E.R. Rep. 61 and 65 per Lord Dunedin. Furthermore there is no evidence that they knew of the construction; and in point of fact, they were not requested to de-energise or relocate the said lines. Barr's case (**supra**) is, therefore, clearly distinguishable. There, the utility company not only knew of the construction and request to de-energise, but they had that knowledge one year prior to the injury to Barr. And it is not to be forgotten that in the case before me, although the building contract was entered into between St. George's College and the fourth

defendants in June 1992, construction work had only been taking place for about 3 months before the accident.

Nevertheless, Mr. Henry submitted that the fifth defendants ought to have been aware of the said construction work. The construction had been going on for over three months. It was of some significance in terms of size and the location of the construction site should be noted. There was a failure to know of the work being carried out in close proximity to their power lines and such failure was not consistent with due care on their part in respect of the interest of members of the public to be affected.

It is to be observed, however, that the construction work was being carried out on the compound of St. George's College away from the main road or its vicinity, there being no evidence that the construction work being carried out was public and conspicuous. There would, therefore, be no basis for saying that the fifth defendants were put on an enquiry. True, they made hazard patrols along the public streets to detect faults in the functioning of their system. Yet they were not in my opinion, obliged (in the absence of actual knowledge of the construction or of any request to de-energise) to enter private premises to see or examine the state of activity in relation to their power lines installed on the premises. The contention that they ought

to have been aware of the construction prior to the accident cannot, therefore, be sustained.

So, in the result, their duty to exercise due and reasonable care to secure Burke and Robinson as members of the public from personal injury was not broken when the tragic accident occurred on the work site. There is therefore, no liability on their part for the loss and damage arising from the accident.

Question of contributory negligence of Burke and Robinson and negligence of Burke as an employer

Langston Burke, as an independent contractor employed by the fourth defendants to do steel work, clearly failed to provide a safe system of work for his employee, the plaintiff, Clifton Robinson. As Ms. Mangatal put it in argument, he failed to provide protective apparatus or to give special instructions in the face of what should have been a reasonable expectation that the lines were live. Burke's legal personal representative has not been sued. Burke was, however, partly responsible for the accident. His own negligence contributed to the damage in respect of which the plaintiffs have sued and, accordingly, the damages recoverable by them will be reduced by the extent of his contribution to the accident, which I find to be 20%.

As Mr. Henry has observed, allegations of negligence were pleaded belatedly against the plaintiff, Clifton Robinson. Robinson worked with Burke, the sub-contractor to the main contractor, the fourth defendants.

The argument against him was that he did not have any regard for his own safety. He quite candidly told the Court that he did not expect the high tension wires to be live.

That he was entitled to have that expectation I entirely agree. Consistently on the site were the main contractor, architect, employers and representatives. They knew of the progress and stage of the work at all times. It was their responsibility, at any rate, the principal employer's responsibility to see that the lines were de-energised. Robinson was employed by Burke as a steel fabricator, not as an electrician and he was doing his job at all material times. He was an invitee of the principal employer and the main contractor. He was entitled to believe that the site would therefore be safe for him to execute his particular task. He was not warned of any danger, nor was he provided with safety equipment.

Accordingly I conclude that he ought not to bear any responsibility for the damage as same was not the result of any fault on his part.

Damages:

(1) Clifton Robinson

(a) Special Damages

These were agreed at $39,365.00 in total

(b) General Damages

Clinton Robinson suffered electric shock and unconsciousness for about 5 minutes, burns to the palms of both hands and burns to the right dorsum of the foot and right hallux (big toe)). He was hospitalised. The big toe became gangrenous and was amputated. He was treated with antibiotics and was discharged from hospital after approximately three weeks.

I accept his evidence that he has suffered severe pain to foot and hands. He paid several visits to the doctor after discharge from hospital and his injuries prevented him from working for several months . The absence of the big toe has affected him in his day to day living and sometimes he suffers pain in the region of the amputated toe which causes him to limp a bit.

What would therefore be fair and reasonable compensation to Robinson for his pain and suffering and loss of amenities? I have had little guidance from the cases cited to me on quantum, but

taking into account Robinson's injuries, hospitalization and residual disability, general damages amounting $700,000.00 for pain and suffering and loss of amenities would be fair and reasonable compensation.

He can only recover from St. George's College and the fourth defendants 80% of both that sum and the agreed special damages of $39,365.00 because his employer Burke against whose estate he has made no claim contributed, as I have found, 20% to the damage. So the award in favour of Clifton Robinson against St. George's College and the fourth defendants jointly and severally is as follows:

Special Damages 80% of $39,365.00 = $31,492.00

with interest at 5% per annum from

31st December, 1992 to 23rd June, 2000

General Damages 80% of $700,000.00 = $560,000.00

with interest at 5% per annum from 9th

January, 1995 to 23rd June, 2000.

(2) Damages under the Fatal Accidents Act on Behalf of the near relations of the deceased Langston Burke and under the Law Reform (Miscellaneous Provisions) Act on behalf of the deceased estate

(a) The particulars of the persons on whose behalf the claim under

the Fatal Accidents Act is made are as follows:

(i) Courtney Burke, born January 1970 – son

(ii) Lamont Burke born November 21, 1981 – son

(iii) Jestina Baxter Fisher – mother

(iv) Sandra Palmer – common-law-wife

Courtney Burke, the oldest son of the deceased is about 29 years old now according to Sandra Palmer, who lived as common law wife of the deceased up to the time of his death. Courtney was himself working at the time of the accident as a steel fabricator. He was 22 years old and was not living with the deceased. Based on his father's own life history and occupation as a tradesman, Courtney would not have been expected to be a dependant. Rather, he was himself a tradesman in his own right, and not a dependant of the deceased.

Sandra Palmer, common law wife of the deceased up to the time of his death, cannot recover under the Fatal Accidents Act as she is not a near relation of the deceased.

On the other hand, both Lamont Burke, the 11 year old son of the deceased in 1992, and Jestina Baxter-Fisher, then the 74 year old mother of the deceased, lived with the deceased up to the time of his death and would receive regular financial support from him. The measure of damages is the

pecuniary loss suffered by both defendants as a result of the death. The pecuniary loss in question means the actual financial benefit of which they have been deprived and which is reasonable probable they would have received if the deceased had remained alive. There are of course many imponderables which must be taken into account and while arithmetical calculations are unavoidable, much of the calculations is bound to be theoretical in an area where "arithmetic is a good servant but a bad master": see **Daniels v Jones** [1961] 1 W.L.R. 1103 at 1110 per Holroyd Pearce L.J.

The starting point for assessing the annual loss or dependency (multiplicand) is to deduct from the annual wages earned by the deceased the estimated amount of his own living expenses, that is to say, what he would have spent exclusively on himself: see **Davies v Powell Duffryn Associated Collieries Ltd.** [1942] A.C. 601 at 617 per Lord Wright. The deceased did not work regularly. His monthly income was $10,000.00. Over the 6 years he lived with Sandra Palmer he worked for about half of that period. In the circumstances, I accept Ms Mangatal's approach and arrive at an initial sum of $70,000.00 per year as his annual wages. That sum must, however, be adjusted upwards. As the witness Everton Hyatt said in evidence, at the time of the accident a steel fabricator like Burke or Robinson would have been earning $600.00 or $700.00 per day in 1992 and

would today earn $1,400.00 to $1,500.00 per day. Using a 5 day work week the deceased, had he lived, would be earning today $28,000.00 per month at the rate of $1,400.00 per day. It is, I think, permissible to strike an average between $28,000.00 per month and $10,000.00 per month and this come to $19,000.00 per month. As the deceased's employment was by no means continuous the $19,000.00 per month is discounted to a figure of $12,000.00 per month and that equals $144,000.00 per year. From this sum must be deducted a figure for the deceased's own living expenses. In the circumstances, I think that a deduction of 1/3 is appropriate. The annual loss of dependency (multiplicand) is, therefore, $96,000.00 which must be capitalised by the application of an appropriate multiplier. Taken into account are such uncertain factors as the expectation of working life left to the deceased at the date of his death and of the life expectancy of the deceased's mother now aged 82 years as well as the fact that the dependency of Lamont, aged 11 years at the time of death, would have ceased at the age of 18 years. I have finally arrived at 4 years purchase as the multiplier. Therefore the amount arrived at for the duration of the dependency is $96,000 x 4 = $374,000. Based on the evidence of the actual contributions made by the deceased to the two dependants I apportion this award as follows:

Lamont Burke 20% - $74,500.00
Jestina Baxter-Fisher %80% - $299,500.00

(b) Damages under the Law Reform (Miscellaneous Provisions) Act

(i) Damages for loss of earnings in the lost years

The deceased was 41 years of age at the time of his death. He was in good health. A multiplier is in my view appropriate and is in keeping with the guidelines laid down in the Court of Appeal decision in **Dyer v Stone** (1990) 27 J.L.R. 268. The average net income of the deceased at the date of death and the estimated income he would have earned at the date of trial may fairly be considered as the average annual net income for the pre-trial years. A one third deduction as representing the deceased's own living expenses is appropriate. The figure arrived at on that basis is $96,000.00.

So the total of the average annual net income for the pre-trial period is $96,000 x 8 = $768,000. For the post trial period of 2 years the deceased's living expenses computed at 1/3 of the net income at the date of death is deducted not from the average net income but rather from the estimated annual income of $112,000.00 at the date of trial. So the total loss of

income for the lost years comes to $112,000 x 2 + $768,000 = $992,000.00.

The damages awardable under the Law Reform Act are for the benefit of those entitled to the estate of the deceased Burke, who died intestate. It is the deceased's issue, Courtney Burke and Lamont Burke, not his mother, Jestina Baxter-Fisher who take on his intestacy: See Section 5 of the Intestates Estates and Property Charges Act. Lamont Burke's award under the Fatal Accidents Act is accordingly extinguished.

Like the plaintiff Clifton Robinson, the plaintiffs in the other suit can only recover against St. George's College and the fourth defendants 80% of their awardable damages because of Langston Burke's contribution of 20% to the accident by reason of his negligence.

The actual award against the said defendants are accordingly as follows:

(a) Under the Fatal Accidents Act (Dependency to - $239.600 Baxter Fisher only).

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

(i)	Loss of earnings for the lost years	$793,600
(ii)	Loss of expectation of life	4,000
(iii)	Funeral and Administration Expenses	55,902

I award interest at 5% per annum on the sum of $239,600 award under the Fatal Accidents Act from the date of death of the deceased to 23rd June 2000. I also award interest at 5% on the special damages from 5th January 1995 to 23rd June 2000.

St. George's College and the fourth defendants must pay 80% of the agreed or taxed cost of the plaintiff in both suits. The plaintiffs in suit C.L. F202 of 1993 are to pay the remaining 20% of Clifton Robinson's agreed or taxed costs.