

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.1988/G165

BETWEEN	LOUISE GILMOUR (Administrator Estate Kenneth Williams, Deceased)	PLAINTIFF
A N D	LOREEN LLEWELLYN	DEFENDANT

Dr. B. Marshall instructed by Gaynair & Fraser for the Plaintiff.

HEARD: OCTOBER 30, 1990 AND NOVEMBER 9, 1990.

CORAM: PITTER, J.

Kenneth Williams, a barber aged 35 years, died on the 4th day of May, 1986 as a result of injuries he received in a motor vehicle accident. He is survived by his mother Louise Gilmour, the plaintiff. He died intestate. Letters of Administration were granted to the plaintiff. By Writ of Summons dated 17th November, 1988, action was commenced under the provisions of the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act to recover damages for the dependents of the deceased and for his estate occasioned by his death by negligence. The defendant entered appearance but defaulted in filing a defence and Interlocutory Judgment was entered in favour of the plaintiff on the 30th May, 1989. The matter is now before me for assessment.

The evidence discloses that the deceased's motor car was extensively damaged in the accident and a claim is made in respect of it for the sum of Twenty Nine Thousand One Hundred and Eighty Dollars (\$29,180.00). The plaintiff is 79 years of age. It is her evidence that the deceased would give her a weekly sum of between \$40 - \$100 for her maintenance. He earned as a barber \$200 per week. Up to the time of his death, owned a Lada motor car which he had bought through a loan from the National Commercial Bank Limited, Ocho Rios. At the date of hearing of this action, he was indebted to the bank in the sum of Thirty Two Thousand Five Hundred and Fifty One Dollars and Forty Five Cents (\$32,551.45) for this car. Damages in respect of the motor car I assess in the sum of Twenty Nine Thousand Dollars (\$29,000.00) as an item under Special Damages.

DAMAGES UNDER THE FATAL ACCIDENTS ACT

I am satisfied by the evidence that the plaintiff has established her claim as being a dependant of the deceased. I am also satisfied that the deceased contributed an average of Seventy Dollars (\$70.00) per week from his weekly income of Two Hundred Dollars (\$200.00) for the support of the plaintiff, his mother. Dr. Marshall has urged the court to use a multiplier of 5 in calculating the post-trial dependency. He relies on the Demographic Statistic Report published by the Statistical Institute of Jamaica. Given the present age of the plaintiff, I am prepared to use a multiplier of 1.

The pre-trial dependency is calculated from the 4th May, 1986 to the 9th November, 1990 which is 54 months. Fifty Four (54) months @ \$70 per week =  $54 \times 70 \times 4 = \$15,120.00$ . The post-trial dependency is calculated from the 9th November, 1990 for 12 months which is  $52 \times 70 = \$3,640.00$ . The total dependency therefore is  $(\$15,120 + \$3,640) = \$18,760.00$ .

DAMAGES UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT

At the time of his death, the deceased was 35 years of age. No evidence was led as to his lifestyle or the amounts he would spend exclusively on himself in keeping with his status in life. Given the occupation of the deceased, it is reasonable to expect that he would have been working up to the age of 65 barring any unforeseen circumstances. The number of lost years therefore would be 30.

In arriving at a multiplier, I would refer to the case of Samuel Barrett v. Clinton Thomas and V.W. Lee & Sons S.C.C.A. 14/80 where the Court of Appeal approved a multiplier of 11 years where the deceased, a driver, was 35 years of age at the date of trial. In the instant case, the deceased being of similar age, I will adopt the multiplier of 11 as being appropriate. The yearly income of the deceased is \$10,400.00 ( $\$200 \times 52$ ) which would also represent his net yearly income. The pre-trial period is calculated from the date of death to the date of trial which is  $4\frac{1}{2}$  years. The income for this period therefore is  $\$10,400 \times 4\frac{1}{2} = \$46,800.00$ . Since there is no evidence of expenditures, I would allow 30% of his annual income as being the amount he would have spent exclusively on himself i.e. \$3,120 p.a. The net yearly

balance is  $\$10,400 - \$3,120 = \$7,280$  making the net pre-trial earnings  $\$7,280 \times 4\frac{1}{2} = \$32,760$ .

The post-trial period is calculated by deducting the pre-trial period of  $4\frac{1}{2}$  years from the 11 years multiplier which is  $6\frac{1}{2}$  years. The net post-trial income therefore is  $\$7,280 \times 6\frac{1}{2} = \$47,320$ . The total lost earnings is  $\$32,760.00 + \$47,320.00 = \$80,080.00$ . Added to this amount is the sum of Three Thousand Dollars ( $\$3,000.00$ ) for loss of expectancy of life, Six Thousand Dollars ( $\$6,000.00$ ) for funeral expenses and Twenty Nine Thousand Dollars ( $\$29,000.00$ ) in respect of the claim for negligence regarding damage to motor car making a grand total of One Hundred and Nine Thousand and Eighty Dollars ( $\$109,080.00$ ).

Final Judgment for the plaintiff is as follows:-

Under the Fatal Accidents Act - \$ 18,760.00

Under the Law Reform (Miscellaneous Provisions Act) - \$109,080.00

Interest is awarded on the sum of Thirty Five Thousand Dollars ( $\$35,000.00$ ) (being  $\$6,000$  for funeral expenses and  $\$29,000$  for special damages), at the rate of three percent (3%) per annum from the 30th May, 1989, to the 9th November, 1990.

Costs to be agreed or taxed.