# JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 21/68

BEFORE: The Hon. Mr. Justice Shelley - Presiding
The Hon. Mr. Justice Fox.
The Hon. Mr. Justice Smith (Ag.)

LUCAS HALL - Defendant/Appellant

v.

DELORES BLEASDELL- Administratrix of the Estate of THOMAS McKENZIE BLEASDELL - deseased) Plaintiff/Respondent

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Mr. Ronald Williams for the Defendant/Appellant
Messrs David Muirhead and K. Van Cork for the Plaintiff/Respondent

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1st, 2nd and 3rd June
and 10th July, 1970.

FOX, J.A:

The deceased was 24 years old at the time of his death. In September 1961, he was employed as a mechanic in a garage in London. He was drafted for service in the British Army for four months. In April 1962, he went to America. He returned to England in August, 1965 and married the plaintiff the following month. Six days later the couple left the United Kingdom for Canada via Trinidad, where the deceased's father is a Senator; and Jamaica, where the plaintiff has relatives. They came to Jamaica in October. The deceased died as a result of an accident on the 22nd of November, 1965.

The difficulty in this case is due to the dearth of evidence as to the value of the dependency. There is no information as to the actual or probable earnings of the deceased in the United Kingdom or in America. He and his mother owned a house in America. She became ill and had to return home. The house was sold. There is no evidence

as to the amount of the proceeds of sale or the disposition of these proceeds. The deceased paid for the plane tickets from London to Canada. There is no evidence as to whether the payment was made from income or savings or any other source. Even if it is regarded as being indicative of the financial viability of the deceased at a particular time, its effect as a guide to his earning potential is considerably qualified by the fact that, on the evidence, he left no estate, and his funeral expenses were bourne in the main by his father.

The starting point for the assessment of damages under the Fatal Accident Law, Cap. 125, is usually the amount of wages which the deceased was earning at the time of his death. In the absence of such evidence, the calculations in this case must commence with the regular weekly allowance of £13 made to the plaintiff by the deceased from the date of marriage to the time of death. Out of this sum, the cost of some meals and the week's rent of £3 for a room, was paid during the six days the couple lived together in London. The deceased was said to be a generous person. He made gifts to his wife and took her out to meals for which he paid. In Trinidad, the couple was provided with accommodation and hospitality by the deceased's father and the plaintiff retained the full amount of the weekly allowance of £13. In Jamaica, the plaintiff contributed £5 a week towards the housekeeping expenses of her relatives, and this is as reasonable a figure as any on which to estimate the weekly amount required for the personal expenses of the deceased. The allowance of £13 should therefore be reduced by this estimated figure and by a further sum representing other living expenses such as rent. In the absence of evidence, no realistic assessment can be attempted of the value of any other contribution which may have been made by the deceased to the plaintiff, and the value of the dependency cannot exceed a figure of more than £9 a week.

In his submissions on the number of years purchase by which the value of the dependency should be multiplied so as



/to arrive....

to arrive at a proper lump sum payable for damages, counsel for the appellant emphasized the possibility of the plaintiff's early remarriage and suggested that the decision of the Court of Appeal in Goodburn Etc. v. Thomas Cotton Limited /1968/ 1 All E.R. 518 was directly in point. In that case the plaintiff's widow was an attractive young woman of twenty-five years at the time of her husband's death, and so distinctly 'marriage minded' that within six months of his decease, she seriously considered marrying a young man with whom she had formed an intimate friendship . The final step was not taken because of frequent disagreements. This information was dragged out of the plaintiff in cross-examination. Her lack of candour seemed to have deepened the Court's conviction that she would have contracted an early marriage, if not to her young friend, to some other man. The plaintiff was the mother of three very young children and this fact no doubt influenced the judgment of the Court of Appeal in reaching seven years as the appropriate multiplier. In this case, the plaintiff appears to be attractive and in good health . At the time of the enquiry before the Registrar in March, 1968, she was three months away from her twenty-eighth year. She is the mother of a posthumous child born on the 7th of July, 1966. She entertained hope of remarriage in the not too distant future, but up to March, 1968, she had no prospect of this. It is clear that she is not as distinctly 'marriage minded' as the plaintiff in Goodburn's case, and the significance of the possibility of remarriage should be qualified accordingly. The thinking which seems appropriate is that of Lord Denning in Nunn v. Cocksedge, Limited, 1956 C.A. No. 242. (Vide Kemp & Kemp Volume 2. The Quantum of Damages - p. 20 - note 19.) Care should be taken therefore, to ensure that not too much weight is given to the chances of plaintiff's remarriage, however attractive she may be.

In his submissions on the question, counsel for the respondent discussed the cases in Table III in Kemp & Kemp Vol. 2 at page 42. These cases exemplify awards in the case of a

workman with good prospects of Future Promotion and/or Increased Earnings, and are singularly inappropriate to the instant case where the evidence of the future prospects of the deceased, if he had not been killed, is nil. This factor has, perhaps, the most important effect in reducing the multiplier. In Mallett v. McMonangle [1969] 2 All E.R. p. 178, the deceased, a young working man, had excellent prospects of increased future earnings in the near future if he had lived. The Court of Appeal considered that the jury must have reached a multiplier far in excess of the figure of sixteen years, which, as Lord Diplock pointed out, was the highest figure appropriate to a case in that category. The appeal was allowed and the award set aside. In this case, it appears to me that the number of years purchase should not be in excess of a figure which, when applied to the value of the dependency, results in a sum in the vicinity of £5,500. In my opinion, the Registrar's award of £8,000 is clearly excessive and should be reduced to the figure indicated.

SMITH, J.A:

There is nothing to indicate how the learned Registrar arrived at the amount of £8,000 damages awarded under the Fatal Accidents Law, but he was under no obligation to disclose his method of calculation. In this situation, the only way in which the sum awarded can be tested to determine whether it is excessive, as the defendant contends, or not, is for us to do our own calculations based on what, on the evidence, is a reasonable sum to allow as the annual value of the dependency and a reasonable number of years' purchase.

In my opinion, the evidence does not support a dependency in excess of £468 ($936.00) a year, or £9 ($18) a week. The plaintiff's evidence was that for the ten weeks of the marriage her deceased husband gave her an allowance of £13 ($26.00)



/a week....

a week. For the purpose of arriving at the true value of the dependency only the first week of the marriage should, in my view, be considered. This was the only week that the couple 'kept house'. They were on holiday from then until the husband's untimely death. The plaintiff said that out of the £13 ($26.00) she paid £3 ($6.00) for rent and spent £3 ($6.00) for her husband's food and drink. She is entitled to have something added for such part of the milk and bread brought in by him which she consumed and for the meals she had away from home for which he paid. When all of this is taken into account, as I have said, £9 ($18.00) a week is a reasonable sum to allow.

In my view, there is no evidence to justify an increase in the dependency on account of the birth of the posthumous child. In a case where there is evidence of the deceased's probable future earnings, an allowance could properly be made for this, if the deceased's earnings would be sufficient to accommodate the increase.. Here, there is no evidence at all of what the deceased earned in the past or was likely to earn in the future. There was no evidence of the source of the £13 ($26.00) he gave to the plaintiff weekly. These sums and the amount paid for travel, could well have come from the proceeds of the sale of the house which, it was said, he owned in America. All the plaintiff, who was the only witness, said was that in 1961 the deceased was a mechanic employed at a garage in London. That in April 1962, he went to the United States and though she said she knew in what capacity he was engaged when he first went there she gave no evidence of it. She said also that she knew how much he earned in the United States but gave no evidence of it. In this state of the evidence, it is impossible to say whether the deceased would have been able to increase the weekly allowance on the birth of the child and, if so, by how much.

With a dependency of the annual value of £468 ($936.00), a multiplier of 17 or 18 would have to be employed to arrive at the damages of £8,000 awarded. We were referred to Mallett v. McMonangle /1969/ 2 All E.R. 178 in which Lord Diplock, in

the House of Lords, said, at page 191:

> "In cases such as the present where the deceased was aged 25 and the appellant, his widow, about the same age, Courts have not infrequently awarded 16 years' purchase. It is seldom that this number of years' purchase is exceeded."

Lord Diplock went on to point out (ibid p. 191) that 16 years' purchase ' represents the capital value of an annuity certain for a period of 26 years at interest rates of 4 per cent, 29 years at interest rates of 4½ per cent or 33 years at interest rates of 5 per cent'. He continued:

> "Having regard to the uncertainties to be taken into account, 16 years would appear to represent a reasonable maximum number of years' purchase where the deceased died in his twenties. Even if the period were extended to 40 years, that is, when the deceased would have attained the age of 65, the additional number of years' purchase at interest rates of 4 per cent would be less than 4 years, at 4½ per cent, would be less than 2½ years, and at 5 per cent would be little more than 1 year."

In this case, the deceased was 24 years old when he died and the plaintiff 25. Accepting Lord Diplock's approach and his arithmetic, as I do, the maximum of 16 years would apply exactly in this case. But the maximum is subject to be reduced by factors peculiar to a particular case. Regarding the prospect of remarriage, Lord Diplock said (ibid p.191):

> "Similarly, even in the case of a young widow, the prospects of remarriage may be thought to be reduced by the existence of several young children to a point at which little account need be taken of this factor."

In the Hallett case (supra) the widow had three infant children but no view was expressed by Lord Diplock on the extent to which the maximum of 16 years would be affected, if at all, by the prospects of remarriage.

Learned counsel for the defendant referred us to Goodburn v. Thomas Cotton Limited, [1968] 1 All E.R. 518, in which

the Court of Appeal in England reduced damages awarded under the Fatal Accident Acts because of the strong probability that the widow would have remarried by the time she was 30 years old, namely, within 6 years of the accident which resulted in her husband's death. The Court held that a multiplier of 11 years was, therefore, unreal and reduced the award to a sum which represented approximately 6 years' purchase of the widow's dependency. It was submitted that there was little distinction between that case and the present on the prospects of remarriage and that 6 years' purchase should also be employed in this case.

In the Goodburn case (supra) the widow was 25 years old at the time of the accident with two young children of the marriage. She was attractive and admitted that she had been going out with a young man, a Mr. Walker; that he had asked her to marry him and she had seriously thought of doing so; that she had met his parents and he had spent a night with her at what had been her matrimonial home; that there had been a discussion at the house of her parents-in-law of the effects of such a marriage on her two children; and that, although there was no longer any question of her marrying him owing to frequent arguments, she would remarry if the right person came along. The widow, in giving evidence, tried at first to conceal her association with Mr. Walker. Willmer, L.J. said, at p. 521, that "reading the evidence ..... one cannot fail to receive the impression that the plaintiff was being somewhat less than candid in the evidence which she was giving." It seems to have been the strong probability that the widow would marry Mr. Walker 'in the quite near future' which made the Court treat the matter as one almost of certainty that she would remarry by the time she was 30 years old. Willmer, L.J. said, at p. 522: "To my mind..... it would be a matter for surprise if the plaintiff has not remarried by the time she is 30 years old."

I do not agree with the contention that there is very little distinction between the Goodburn case (supra) and this on the prospects of remarriage. In this case, the plaintiff agreed with the suggestion, during cross-examination,

that she is an attractive young lady. She said that several people had told her this and she accepted the compliments as genuine and sincere; that she did not for the moment hope to remarry, though she hopes may be in the future it will happen; that she hoped within the next four years she will meet the right person. She agreed that her baby, being a girl, should, if possible, have a father or step-father alive to look after her. She said it would be pleasant to find someone to fall in love with and have children; that it is desirable that her daughter should not grow up an only child. She had said previously, during examination-in-chief, that she was not engaged and she knew of no prospects of her becoming engaged or married in the future. Before us, she was described by learned counsel for the defendant as marriage-minded, though not as strongly so as the widow in the Goodburn case. I think that that is the most that can be said of the plaintiff in this regard. But what attractive young woman is not marriage-minded? To be marriage-minded without more does not mean, necessarily, that a marriage is imminent. I cannot agree, as was contended, that a multiplier of 6 should be applied in this case as was done in the Goodburn case (supra). That case was decided on its special facts which, as shown above, are not the same as in this case. Almost five years have gone since the deceased's death and, as far as is known, the plaintiff has not remarried. I am quite unable to say that there is evidence of a strong probability of the plaintiff remarrying in the quite near future, though her prospects of remarriage are fairly favourable.

I am satisfied, however, that the damages awarded are too high. It may be that the learned Registrar did not take the prospects of remarriage sufficiently into account. I would allow the appeal and reduce the damages awarded to £5,500 ($11,000.00). I would apportion £1,200 ($2,400.00) thereof to the child and the balance of £4,300 ($8,600.00) to the plaintiff

FOX, J.A:

Mr. Justice Shelley has had the opportunity of reading these judgments. He has asked me to say that he agrees with them and with allowing the appeal in their terms.

The appeal is therefore allowed, the award of £8,000 under the Fatal Accidents Law is set aside and an award of £5,500 substituted therefor, apportioned as follows:

£4,300 to the widow

£1,200 to the child.

The award of £500 under the Law Reform (Miscellaneous Provisions) Law which was not appealed from, stands.

Cost of this appeal to be the appellant's, to be agreed or taxed.