

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.R. 047 OF 1986

BETWEEN	BEVERLY RADCLIFFE (Administratrix of estate of Deon Murray deceased)	PLAINTIFF
A N D	RALPH SMITH	FIRST DEFENDANT
A N D	LEROY RUSSELL	SECOND DEFENDANT

R. Pershadsingh, Q.C. and H. Edwards, Q.C. for plaintiff

W.K. Chin See, Q.C. and J. Givans for defendants.

HEARD: 18th November, 1987 and 8th & 9th December, 1988.

PANTON, J.

The deceased was 13½ years old at the time of her death. She was a passenger on a bus owned by the first defendant and driven by the second defendant. Due to the negligence of the latter, there was a collision with a truck. The deceased died as a result of injuries she sustained in that accident.

The plaintiff, as administratrix of the estate of the deceased, brought this action under the Law Reform (Miscellaneous Provisions) Act for the benefit of the estate, and under the Fatal Accidents Act for the benefit of her dependants.

There was no evidence in relation to the claim on behalf of the dependants so no award was made in that respect. Indeed, I would have been surprised if such evidence was available considering the age of the deceased.

The evidence presented was that the deceased, although she attended school, used to help one Miss Maisey Clarke at her bar/pork pit on Fridays after school, washing glasses and serving boxed drinks. She also helped one Miss Joan Morris with light housework on Saturdays. From Miss Clarke, she would receive \$25, and from Miss Morris \$20 for her efforts.

The plaintiff also testified that from time to time she and the deceased would spend a portion of these small earnings on items relating to the education of the deceased, as well as on items of food for the household. The rest would be saved. The plaintiff, however, remained responsible for the care and maintenance of the deceased.

Learned Queen's Counsel, Mr. Chin See, in his submissions, scoffed at the evidence as to the earnings of the deceased. He submitted that no award should be made for "lost years." He quoted from Gammell v. Wilson & Others, and Furness and Another v. B & S Massey Ltd. (1981) 1 AER. 578, particularly from the regularly referred to speech of Lord Scarman at page 593:

"The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in Gammell's case were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a 'conventional' award in a case of alleged loss of earnings of the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a 'conventional' award, should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime at the age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in Gammell's case may well be able to show either actual employment or real prospects, in either of which situation there will be an assessable claim. In the case of a young man, already in employment (as was young Mr. Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man, well-established in life, like Mr. Pickett, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it."

I am unable to say, as Mr. Chin See would wish me to, that there were no earnings by the deceased. In my judgment, the evidence as to earnings by her is credible evidence. I was most impressed by the testimony of Miss Morris, who is a secretary in the Ministry of Foreign Affairs. I also accepted the evidence given by the plaintiff and Desmond Spencer that the deceased used to help Miss Clarke at her business place, and I find

that she was paid \$25 for her efforts.

It is clear that this young Miss, a teenager, was industrious and had developed a settled pattern of helping herself. She did not waste her weekends. She worked and was paid. As Lord Scarman has said,

"there will be exceptions ..... A teenage boy or girl, as in Gammell's case may well be able to show either actual employment or real prospects."

In my judgment, this case involves no speculation as there is clearly an assessable claim. The evidence that I have accepted shows that the deceased was steadily employed on weekends.

In view of the fact that the deceased was not responsible for her maintenance, and so was not obliged to spend any of her weekly \$45 earnings on herself, one could regard the entire \$45 as surplus. However, I'll not close my eyes to the reality that a portion was in fact spent on her. I estimate a balance of \$25 as the surplus for the purpose of computing the award for "lost years".

The evidence is that she worked most Fridays and Saturdays. I assess "most" to be about 45 weekends in a year.

Due to her age and the settled pattern that she had developed, I think that a multiplier of 14 is reasonable.

The award for the lost years is:

$\$25 \times 45 \times 14 = \$15,750.00$ . This I consider, in the circumstances, to be the "fair compensation" mentioned by Lord Scarman.

The total awards are as follows --

Special Damages

\$300.00	- transportation for plaintiff to see daughter in hospital
\$150.00	- transportation for plaintiff to funeral
\$123.25	- clothes for deceased for funeral
\$100.00	- shoes of deceased lost at time of accident
\$ 30.00	- bag of deceased lost at time of accident
\$ 25.00	- basket of deceased lost at time of accident

TOTAL: \$728.25

4.

Loss of expectation of life: \$ 3,000.00

Lost years : \$15,750.00

Interest is awarded at 3% on the special damages and on \$4,275 (a portion of the lost years award) from 22nd March, 1985 to 9th December, 1988.

The defendant's attorney-at-law applied for a stay of execution for six weeks. Execution will be stayed for two weeks in relation to the "lost years" award.