

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1994/S139

BETWEEN	EULAH STEPHENS (Lawful widow and Dependent of the deceased SYLVESTER STEPHENS)	PLAINTIFF
AND	BERESFORD RAYMOND	1 <sup>ST</sup> DEFENDANT
AND	THE UNIVERSITY OF THE WEST INDIES	2 <sup>ND</sup> DEFENDANT

Mr. R. Parris instructed by Parris & Co. for the Plaintiff.  
Mr. C. Samuda of Piper and Samuda for the second defendant.

Heard : September 24, 25, 29; October 2, 1997; March 23, 25, April 20, 21, 23, 24, 1998;  
March 1, 3, 22, 24, 24 1999; April 12, July 14, 2000

#### HARRISON J


This matter has been quite outstanding but the delay in its completion has been due to a number of factors. Having started the case in September 1997, it became part-heard and had to await dates for continuation at the date fixing sessions. All of the evidence was finally heard by me on the 25<sup>th</sup> March 1999 and both sides had agreed to submit written addresses. This did not materialise however. Finally, after making another attempt to have the matter re-listed, I heard the addresses on the 12<sup>th</sup> April 2000 and reserved judgment. I do apologise, for the delay in delivering the judgment.

#### THE PLEADINGS

##### The plaintiff's case

The plaintiff is the widow of Sylvester Stephens and she claims:

1. On behalf of herself and the dependents of the deceased damages for the death of the deceased under the Fatal Accidents Act and
2. Under the Law Reform (Miscellaneous Provision) Act damages on behalf of the estate of the deceased for the loss of expectation of life and consequential loss caused to the deceased, due to the negligent driving of a pickup driven by the first



defendant at Roaring River in the Parish of St. Ann on the 26<sup>th</sup> day of April, 1991. The said pickup is owned by the second defendant and the first defendant was at all material times the servant and/or agent of the second defendant.

Particulars of Negligence of the First defendant.

“(a) Driving at a speed which was excessive in the circumstances

(b) Failing to keep any or any proper look-out or to have any or any sufficient regard for traffic that was or might reasonably be expected to be on the said road.

© Causing or permitting the said Pick-up to go onto the wrong side of the road and there to collide with the said Lada motor car.

(d) Causing or permitting the said Pick-up to run off the road on its correct side of the road and thereafter to go over onto the wrong side of the road to collide with the said Lada motor car.

(e) Causing or permitting the said Pick-up to be driven along the said road when he knew he was sleepy and in no condition to drive same safely.

(f) Failing to take any or any special care at a long straight stretch of road.

(g) Failing to see the said Lada motor car in sufficient time to avoid the said collision or at all.

(h) Failing to stop, to slow down, or in any other way so to manage or control the said Pick-up so as to avoid the said collision.”

The second defendant's case

The second-named in its Defence, admitted that the first defendant was involved in a motor vehicle accident on the date aforesaid but denies that the first defendant caused or permitted the vehicle driven by the first defendant to collide with the car driven by the deceased. The second defendant says that the collision and the death of the deceased were caused solely or alternatively contributed to by the negligence of the deceased.

Particulars of Negligence of the deceased

“(a) Driving at an excessive speed

(b) Failing to keep any or any proper look out.

© Driving without due care and attention.

(d) Failing to have any or any adequate regard for other users of the road.

(e) Failing to heed and/or observe the presence or approach of the second-named defendant's pickup on the said road.

(f) Attempting to overtake a line of vehicles (4-5) at a time when and at a place where it was and unsafe so to do.

(g) Driving unto the incorrect side of the road.

(h) Driving into the path of the second-named defendant's pick-up.

(i) Colliding with the second-named defendant's pickup at a time when the same was travelling at a safe and reasonable rate of speed on its correct side of the road.

(j) Failing to stop, slow down, swerve or in any other way so to manage or manoeuvre his said motor car so as to avoid the said collision."

At the very outset of the trial, the action was discontinued against the first defendant as he was apparently not served with the Writ of Summons. The trial then proceeded against the second-named defendant.

### THE FACTS

The plaintiff called one eyewitness to the accident. The witness Hubert Graham, testified that on the 26<sup>th</sup> April 1991 he was a passenger in the car driven by the deceased. He was seated in the left front passenger seat at the material time and another passenger who was picked up in Rio Bueno, was in the rear seat. Between 8:00 a.m and 10:00 a.m they were about two miles out of Ocho Rios and whilst the deceased was driving on a "stretch" of road about 10-15 chains in length, a Pick-up was approaching from Ocho Rios direction. The pick-up then drove into the bush on its left. The deceased spoke to him and he saw when the pick-up drove back onto the road. It went back into the bush, returned to the road and then headed across the road towards them.

Graham further testified that the deceased pulled to his left, blew his horn and applied brakes. However, when the pick-up was a few yards away from the deceased's car, the back of it hit into the right front fender of the deceased's car. The Lada motor car then came to a stop on its left soft shoulder facing Ocho Rios. They received injuries and the deceased, the other passenger and himself were taken to St. Ann's Bay Hospital. The driver of the Lada motor car eventually succumbed to his injuries.

Beresford Raymond, the driver of the pick-up gave evidence on behalf of the second defendant. He testified that on the 26<sup>th</sup> April 1991, he was driving on his left side of the road going towards Montego Bay when on reaching a stretch of road along the Roaring River main road, he observed a line of traffic approaching him from the opposite direction. He noticed a blue car traveling at a very fast rate of speed and it was trying to overtake about four (4) cars. On realizing that there could be a head on collision he pulled more over to his left soft shoulder. The driver of the Lada motor car could not

control it due to the speed at which he was travelling. The car then hit his vehicle on the right side and spun him around in the direction he was coming from. The impact occurred in the region of the right column between the two doors of the pick-up.

Raymond further testified that at the material time he was travelling at about 30 mph and the blue car was travelling between 65 and 70 mph. He denied going into any bush and said that he never left his side of the road. He denied also that his vehicle ran off the road went on the wrong side of the road and then collided with the other vehicle. He also denied that he was sleeping as he drove along the road.

### THE ROAD TRAFFIC LAW

By virtue of the provisions of section 51(1) of the Road Traffic Act the driver of a motor vehicle is required to observe the eight rules of the road laid down in the subsection. Of these eight rules four are relevant in considering the question of negligence in this case. These rules direct that a motor vehicle :

“(a) ... When overtaking other traffic the vehicle shall be kept on the right or off-side of such other traffic;

(c) shall not be driven alongside of, or overlapping, or so as to overtake other traffic proceeding in the same direction if by so doing it obstructs any traffic proceeding in the opposite direction;

(d) shall not be driven so as to cross or commence to cross or be turned in a road if by so doing it obstructs any traffic;

(g) shall not be driven so as to overtake other traffic unless the driver has a clear and unobstructed view of the road ahead;

From time immemorial the driver of a motor vehicle owes a duty of care to other users of the road. The duty to take care is also embodied in the Road Traffic Act as it states at section 51 (2):

“(2) Notwithstanding anything contained in this section it shall be the duty of a driver of a motor vehicle to take such action as may be necessary to avoid an accident, and the breach by a driver of any motor vehicle of any of the provisions of this section shall not exonerate the driver of any other motor vehicle from the duty imposed on him by this subsection.”

For all practical as well as legal purposes, section 51 (1) divides the roadway into two halves, and identifies the particular half in which a motor vehicle is to be driven. As a result, in the event of an accident between two vehicles on the road, the point of collision becomes an important fact in determining fault. Proof that this point is located within a particular half of the road is capable of giving rise to an inference that the driver who should have kept his vehicle within the other half is to be blamed for the accident.

## THE ISSUES IN THE CASE

A number of issues arise for consideration. They are as follows:

1. Was there a line of vehicles travelling towards Ocho Rios at the material time?
2. Was the deceased overtaking any of these vehicles?
3. What was the speed of the vehicles before the collision took place?
4. On which side of the road did the collision take place?
5. What was the area of contact on the vehicles?
6. Did the defendant's vehicle leave the roadway and if it did, how many times did it do this?
7. Where did the vehicles end up after the impact?
8. Was the first defendant sleeping whilst he was driving?
9. What damage was done to the vehicles.

## EVALUATION OF THE EVIDENCE

### Vehicles on the roadway

The plaintiff's witness, Hubert Graham testified that at the material time it was only the deceased's motor vehicle and the pick-up driven by the first defendant that were on the stretch of road prior to the occurrence of the collision. Beresford Raymond on the other hand, said there were at least four motor vehicles proceeding ahead of the deceased's vehicle.

### Speed of the vehicles

Graham testified that when he first saw the Pick-up it was about 2-3 chains away from the Lada car. He estimated the speed of the pick-up at the time, to be between 55-60 miles per hour whilst the Lada car was travelling between 40-45 m.p.h. Raymond testified on the other hand, that at the material time he was travelling at about 30 mph whereas, the blue car was travelling between 65 and 70 mph.

### Movement of the vehicles

Graham said that when he first saw the pickup it was about three (3) chains away from the Lada and it had travelled for about one chain before it went into the bush. He said there is a corner on the side of the road heading towards Ocho Rios before one gets to the stretch and that the collision had taken place about half way down the stretch of road. He also said that the deceased had swerved to the left just before the impact.

In describing the act of swerving Graham said that the deceased had pulled to his left. He agreed that it was a violent swerve and that after this swerve half of the vehicle went on the deceased's left soft shoulder. He then saw when the pick-up "slide" and the rear of it hit the right front fender of the Lada car. According to him, when the pick-up turned across the road it was heading towards the bush on his left and in trying to take it away from them, the back came around and hit the front right fender. He also said that no other vehicle was on the road when he saw the pick-up. It was not true he said, that 4-5 vehicles were ahead of the Lada before the collision and neither did he see the deceased attempting to overtake these vehicles at the time of the collision. Neither did he see the deceased drive over to the other side of the road that the pick-up was proceeding from.

Graham testified that at the time of the impact the vehicles were still moving whilst half of the Lada was on the soft shoulder. The other half was on the road in a slant position facing the embankment. He was unable to say if the Lada had collided into the embankment but he maintained that it was resting on it.

### The act of overtaking

Raymond in explaining how the blue car was trying to overtake, said he meant that the deceased had already overtook the first car in front of him. When he saw him overtaking he stepped slightly on his brakes and slowed down. Under cross-examination he said that the driver overtook one car and was about to overtake the other three vehicles. He said, as he overtook the first car he came over on his side of the road and there were 3 cars then between himself and deceased's car. He also said he was about two car lengths away when he saw the deceased's motor car overtook the first car.

Under further cross-examination, Raymond said he was about three (3) car lengths away from the deceased's vehicle when he pulled to the left. He was further asked how far was he from the nearest car when he pulled over and he said he could not discern that. He said "As I go on the soft shoulder the car hit me. I went over slowly to the soft shoulder. Immediately he overtook the first car "he come and hit me" but he had not yet overtaken the other three cars". He also said that the impact had spun his vehicle around and the blue car ended up back on its left side. He was not sure if the driver had hit any other car. He was asked, "if you are in a straight line before the impact how then did the side of your vehicle got hit?" He said "It is the right front fender that hit me".

### Damages to the motor vehicles

What were the damages to the respective vehicles? Graham said that the pick-up had collided into the Lada's right front fender while the Lada collided into pick-up rear fender.

Graham also said that after he left hospital he observed that the front of the Lada car was badly damaged. The steering had come closer to the driver's seat and most of the front section was twisted. He was unable to recall if there was damage to the left front fender of the Lada. He recalled seeing damage to the right front fender however. He can't say where was damaged on the pick-up.

Raymond maintained that the Lada car had hit the pick-up's right side in the region of the right column between the doors and that the impact had spun him around in the direction he was coming from.

The Loss Adjuster's Report (Exhibit 8) reveals that the pick-up was examined on the 12<sup>th</sup> July, 1991. The report further states that as a result of an impact to the right side, damage was sustained inter alia, to:

“Front bumper, right front bumper arm, right front bumper lamp, right rear door, right rear side panel, right rear wheelhouse panel, tailgate, differential housing, driveshaft, gear box mount, right rear corner cab panel, rear cab panel, road rim, rear bumper, right front door, pick-up bed front panel, carrier bed flooring, rear chasis rails, right front fender, bonnett and gravel panel.”

### SUBMISSIONS ON LIABILITY

#### Mr. Parris

Mr. Parris submitted that Hubert Graham's evidence was more credible and neither was he tarnished or destroyed by cross-examination. He contended that the Loss Adjuster's Report tendered by the Defence, shows that the right side of the pick-up was damaged in a manner which was more consistent with Graham's evidence. He further submitted that if the accident had occurred in the manner described by Raymond, then the impact would have thrown the Lada motor car (which was travelling in a line of traffic) into the path of either one or more the three (3) cars which the deceased was attempting to overtake but had not overtaken or it would have collided with at least the fourth (4<sup>th</sup>) car he had already overtaken.

Mr. Parris further submitted that Raymond's evidence concerning the pick-up being in a straight line at the moment of impact, was not supported by the nature of the damage to the pick-up. There was damage in the middle of the right side. He also submitted that when Raymond testified that the pick-up spun around at the time of impact, this was not consistent with the pick-up being positioned in a straight line at the moment of impact. He argued that the spinning around of the pick-up was more consistent with Graham's narrative. Finally, he said that Raymond's description of the accident was totally impossible and ought to be rejected and the Court should accept Graham's testimony as being truthful and reliable.

#### Mr. Samuda

Mr. Samuda submitted that the account given by Graham was “irredeemably incredulous and absolutely improbable”. He submitted inter alia as follows:

“1 Given the evidence of Graham of the speed of the respective vehicles, the extraordinary manoeuvres of the course of the second defendant's vehicle and the physical conditions of the locus as manifested in the evidence, his account of the accident not only defies logic and common sense but assaults them.

2. Given the state of circumstances, it is impossible given the speed of the vehicles, proximity to one another, width of the road and the embankment, that a collision could have occurred at all and in the manner described by Graham.

3. The evidence of Graham conflicted with the pleadings as by virtue of particular (d) of the negligence of the first defendant, which states it only went off once, returned and then collided.

4. There were no facts or evidence that could explain the fanciful and perilous manoeuvres of the second defendant's vehicle to which Graham testified.

5. There is no evidence or allegation as to any mechanical defect.

6. There is no evidence or pleading as to the first defendant being drunk.

7. There was no evidence and only a mere allegation that the first defendant was sleeping at the material time.

8. If the Court accepts that the case of the plaintiff as expressed through Graham is improbable and fanciful, then the plaintiff cannot succeed irrespective of whether there are improbabilities in the defendant's case.

9. The evidence given by Raymond was very probable and not fanciful and the areas of damage described by him are more consistent with the Assessor's Report. Furthermore, the manner in which the first defendant described the accident is consistent with the impact by the side of the vehicle rather than between the right rear of the second defendant's vehicle and the right front of the vehicle driven by the deceased.

### FINDINGS

I have had the benefit of seeing and hearing the witnesses and observing their demeanour and I must say that I was impressed with the witness Graham. It is my considered view and I so hold, that he is an honest and reliable witness and one who I believe has spoken the truth about how the accident occurred.

I do agree with Mr. Parris when he submitted that Raymond's description of the accident is impossible and that Graham's narrative was more probable. I also agree with Mr. Parris that had the accident occurred in the way Raymond said it happened, then the impact would have thrown the Lada motor car in the path of other motor vehicles that were travelling in the direction of Ocho Rios. Furthermore, it is my considered view that if the pick-up was in a straight line at the moment of impact, the damages to the middle of the right side could not have taken place. I also accept as more probable, that the spinning around of the pick-up would be more consistent with contact being made between the moving vehicles as the pick-up headed back to its side of the road.



I find the following facts proved on a balance of probabilities:

1. The accident occurred along the Roaring River stretch of road (10-15 chains in length) on the morning of the 26<sup>th</sup> April 1991.
2. Apart from the Lada motor car and the defendant's pick-up, there were no other vehicles in the vicinity where the accident occurred.
3. There are soft shoulders on either side of the road.
4. The pick-up which was driven by the first defendant was heading in the direction of Montego Bay left the roadway, went into the "bush" on its side of the road and then proceeded across the road on its incorrect side. No evidence was adduced to substantiate that the first defendant was sleeping at the material time but something must have gone amiss for him to have been driving in this manner.
5. The deceased who was proceeding in the direction of Ocho Rios, pulled to his left, blew his horn and applied brakes.
6. A part of the deceased's motor car was on its left soft shoulder when the pick-up collided with the deceased's motor car as it made its way back to the side of the road which it ought to have been travelling on.
7. The right front fender of the Lada motor car collided with the right side of the pick-up.
8. The Lada motor car then came to a stop on its left soft shoulder and was resting on the left embankment on its correct side of the roadway facing Ocho Rios.
9. The deceased had not overtaken nor was he in the act of overtaking vehicles along the stretch of road.
10. The first defendant was driving at a speed that was excessive in the circumstances.
11. The first defendant failed to see the Lada motor car in sufficient time to avoid the collision.
12. The first defendant failed to stop, to slow down, or in any way so to manage or control the said pick-up so as to avoid a collision.

### CONCLUSION

In my view, the indications are that the first defendant caused or permitted his vehicle to go onto the wrong side of the road and there to collide with the deceased's motor vehicle. He was therefore, in breach of his duty of care to the deceased.

It is my considered view also, having regards to the state of the evidence presented, that the accident was in no way contributed to by any negligence on the part of the deceased.

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

I agree with Mr. Samuda that as a matter of law no award can be made for the plaintiff under the Law Reform (Miscellaneous Provisions) Act, since the plaintiff is not properly constituted in law as a representative of the estate. The plaintiff has failed to prove that she had obtained Letters of Administration in the estate of her deceased husband. I will therefore have to consider the award of damages under the Fatal Accidents Act.

### Damages under the Fatal Accidents Act

I now move on to consider the question of damages under the Fatal Accidents Act. In dealing with the problems posed by the evidence and in an attempt to arrive at a broad estimate of the financial loss involved, I have borne in mind the practical approach adumbrated by Lord Wright in *Davies v. Powell Duffryn and Associated Collieries (No. 2)* [1942] 1 All E.R. at page 665 where he states inter alia:

“There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shilling and pence, subject to the element of reasonable future probabilities . . .”

By section 4(4) of the Fatal Accidents Act the court is empowered to “award such damages to each of the near relations as the Court considers appropriate to the actual or reasonably expected pecuniary loss caused to him or her by reason of the death of the deceased . . .” In computing this loss the court should approach the matter thus:

1. Find the multiplier.
2. Find the probable net earnings over the period between death and trial.
3. For the future years, assess a multiplicand, that is, the net salary and apply to it the balance of the multiplier.
4. Calculate the level of dependency of the near relations.
5. Add interest to the amount the near relations would have lost between death and the date of judgment.

### The deceased's employment and earnings

At this stage I propose to look at and determine the level of the dependency of the near relations. The deceased was approximately 30 years of age at the time of his death. He is survived by his widow who is the plaintiff, and three children. The children are, Kerry

Ann, Kersen and Kimberley. Kerry Ann was born on 2<sup>nd</sup> December 1981 and attends Mt. Alvernia High School. Kersen was born on the 26<sup>th</sup> June 1988 and attends Catherine Hall Primary School. Kimberley was born on the 15<sup>th</sup> July, 1990 and also attends Catherine Hall Primary School.

The deceased, an electrical engineer, was employed to Telecommunications of Jamaica (referred to hereafter as T.O.J) on the 29<sup>th</sup> August 1986 as a probation technician. He had resigned from the Company on the 31<sup>st</sup> December 1990, as a technician at level 2.

There is evidence that at the date of death, the deceased had applied to be re-employed by T.O.J. The evidence has also revealed that he was on his way to Kingston to be interviewed for his old job when he met in the accident.

On the evidence of Earl Hendricks, Planning Engineer of TOJ and Naomi Holness, Personnel Services Manager, TOJ, the deceased would have been earning upon re-employment in April 1991 an annual sum of \$100,000. This would work out to be \$8,300 monthly.

Mr. Samuda submitted that the Court could not rely upon the evidence of Hendricks and Holness because it had not been established by the plaintiff that the deceased would have been re-employed. He further submitted that Mr. Edward Samuda, Industrial Relations Officer of TOJ, had testified that the decision for re-employment of the deceased would be taken by him after the interview. Since there was no interview, Counsel submitted that the Court should not use any figure regarding the deceased's re-employment with TOJ.

It is my considered view however, having regards to the evidence that the probabilities are that the deceased would have been favourably considered for re-employment had it not been for his untimely death. Earl Hendricks had testified to this effect:

“...I was overjoyed when Mr. Stephens indicated his intentions of re-employment...I believe I indicated this to my colleagues and immediate supervisor Mr. Leroy Smith...I had a role to play in his re-employment. That role was to make a decision as to whether he was suitable for re-employment in the section. I made the decision. I communicated this decision to Mr. Leroy Smith. Mr. Stephens would have been required to attend an interview at the Personnel Department in Kingston...”

Edward Samuda testified inter alia:

“...when an employee resigns, an exit interview is held with that employee. A copy of the interview is placed on the employee's file. This was done in Mr. Stephen's case. I saw that form. This form came from the External Planning Department. Mr. Hendricks had signed it. The form is relevant because one of the sections on it indicate whether or not the person is suitable or unsuitable for re-employment. If there was a negative comment in the exit interview form about the employee, I would not have requested the former employee to attend for an

interview for re-employment. Mr Stephens' post was not filled when the requisition for staff came in. There were three clear vacancies at the time..."

Leroy Smith, Plant Engineering Manager of TOJ for the western region of the Island testified inter alia, that :

"...I had a position on this re-application. I was delighted he had re-applied for the job. I was delighted as it was the time we were expanding the section and we needed to have competent staff to fill the vacancies...In addition the vacant position he had created when he resigned was not taken up to that point.."

The witnesses Hendricks, Holness, Samuda and Smith were thoroughly cross-examined but their credibility remained intact at the end of the day. I find them to be truthful and honest witnesses.

There is also evidence that the deceased man was engaged in other activities prior to the date set for the interview. The plaintiff testified that he was employed as Parish Coordinator to the HEART Trust for St. James. He also did part-time teaching at Montego Bay Community College and he worked on the afternoon shift at Montego Bay Secondary School. The plaintiff said under cross-examination however, that she had no letter in her possession regarding his employment.

The plaintiff has testified that she does not remember the exact figures he earned as Coordinator but it was about \$20,000 net per month. She also said that he had worked with a cousin who was an electrician and was in receipt of about \$10,000 per month on an average. She further testified that he had earned about \$160 per hour at the Community College and there were times when she taught for him and collected his cheque. Apart from the occasions when she had seen the deceased's pay advice from the school she had no documents to establish his monthly earnings. No one was called to give evidence in respect of his earnings.

Mr. Samuda submitted that the plaintiff should establish with certainty the earnings of the deceased at the date of death and if the deceased had lived and enjoyed good health. He further submitted that the figures mentioned by the plaintiff were just proffered and nothing more and that she has not met the onus of proof. It would mean therefore, according to Mr. Samuda that if the earnings were not established then the Court could not move to assessment of damages and furthermore, the pleadings were in conflict with the evidence and were irreconcilable.

It should be pointed out that at the end of the addresses, Mr. Parris had applied to amend paragraph 4(b) of the statement of claim in keeping with the evidence of the plaintiff. No objections were raised by Mr. Samuda when the evidence concerning the deceased's employment with the HEART Trust Programme and the informal working arrangements with his cousin were given by the plaintiff. The Court therefore allowed the amendments.

The amended section would now read:

“(b) The nature of the claim in respect of which damages are brought (sic) is as follows:

At the time of death the deceased was 29 years of age, he enjoyed good health and lived a happy and vigorous married life. He was an electrical engineer employed with the Telephone Company of Jamaica and at the date of his death although having applied to be re-employed in his old job by TOJ he was working as a Parish Co-ordinator with Solidarity HEART Trust Programme as a part-time mathematics teacher and doing informal contract with his cousin Wally a licensed electrician. Upon re-employment he had prospects of considerable advancement in his chosen field. His income was likely to increase and it is estimated that in 5 years it would raise to approximately \$500,000 and in 10 years to \$800,000 and to continue to increase thereafter. The deceased paid all the outgoings of the house occupied by him and his family and he further paid all the other household and sundry expenses including clothing, holidays and other outgoings for the family. In addition the deceased paid his widow a personal allowance of \$2000 per month and he further paid the school fees of his children and intended in due course to pay for their further education at University level.

Having had the opportunity of seeing and hearing the plaintiff I find her to be truthful. Her credit was in no way impugned. I accept her figures regarding the deceased's earnings albeit estimated. I find that they are not exaggerated and they may be used as a pivot to find the basic dependency.

### The deceased's annual income

The deceased's net annual income at the date of death is arrived at as follows:

1. Earning from the Community College (\$160 per hour – 4 hrs. per week - \$2560 per month	\$30,720 p:a
2. Earning from Solidarity Programme (\$20,000 monthly)	\$240,000 p:a
3. Earning from the deceased's cousin Wally (\$10,000 monthly)	\$120,000
	Total \$390,720.00

### Expenditure

#### Expenses taken care of by deceased

The deceased took care of food, household help, utilities (electricity, water, telephone, cooking gas). He had been servicing a motor car loan at the National Commercial Bank and he was also responsible for the upkeep of the car.

He paid the children's school fees. He also gave his wife a monthly allowance. Medical expenses were high as there were three young children. These expenses were shared however, but the deceased paid most of it.

Based on the evidence I find that the approximate expenses are as follows:

1. Food	\$6,000 monthly.
2. Household help	\$2,800 monthly
3. Utilities	\$2000 monthly
4. National Commercial Bank Loan	\$2000 monthly
5. School fees (two children attending school)	\$12,000 yearly
6. Upkeep of car	\$3000.00 monthly
7. Monthly allowance to wife	\$1500
8. Medical expenses	\$3000 per child yearly (\$9000)
9. Wife's medical expenses	\$1000 annually

Total \$229,000.00

Shared expenses

They shared expenses for clothing, educational materials like books, entertainment (going out on Fridays) vacation each year and medical expenses.

1. Clothing	\$1500 per year
2. Educational materials	\$10,000 yearly
3. Taking family out on Friday nights	\$36,000 annually (\$750.00 per weekx4x 12)
4. Yearly vacation	\$20,000

Total \$67,500.00

When \$67,500 is divided by 2, the deceased's contribution would amount to \$33,750.00. The total annualized expenditure therefore of the deceased on his dependants in the year of death would amount to \$263,350.00

Deceased's expenses on himself

The deceased did not spend much money on himself. He did not smoke, nor drink. He would buy his clothing sometimes. He liked electronic equipment and would purchase items such as component sets, tape recorders etc... The plaintiff said "maybe he would spend \$5,000 monthly on himself. This meant \$5.00 out of every \$100.00 was spent on himself.

Looking at the evidence however, his annual income from all sources at death is \$390,720.00. On an average he would therefore be spending \$3,315 monthly on himself. That works out at \$39,768 per annum. He would spend also \$1000 for his medical so this means \$12,000.00 annually. The total annual expenditure on himself would be \$51,768.00.

### The pre-trial dependency

What was the deceased's net annual income at the date of death? The Court accepts the figure of \$390,720 as the sum he was actually earning at the time of his death.

Now, the total annualized expenditure on the dependants amounts to \$263,350.00 and the deceased's benefit amounts to \$51,768.00. The dependency at the time of death would therefore be a percentage of the total annualized expenditure on the dependants and the deceased man himself. This would be  $\frac{\$263,350.00 + \$51,768.00}{\$390,720.00} = 80\%$ .

My next task is to arrive at the average figure of dependency for each of the pre-trial years in order to get the aggregate dependency for that period.

The deceased died in 1991 and the trial concluded in 2000. This makes the pre-trial period to be 9 years. Having arrived at the pre-trial period I will now have to decide what would be the deceased's earning at the year of trial? Mr. Parris submitted that it was established by the evidence from Hendricks, Smith and Samuda that the deceased would have been re-employed by TOJ in his former position, that is a technician at level 2. According to the hierarchy of posts in TOJ, he would have been at least a Junior Executive by now. The evidence revealed that a Junior Executive earns \$840,000.00 per annum and that there would have been a 10% increase retroactive from April 1<sup>st</sup> 1989. I agree also with this submission and will use the sum of \$840,000.00 as the deceased's annual income. Income tax and other statutory deductions would have to be applied so, I will use the figure of 38 1/2 % as a total percentage. The net income would amount to \$520,800.00 and 80% of this sum would be \$416,000.00. Therefore, the annual dependency between the date of death and trial would amount to \$416,000.00 (the amount at trial) plus \$263,350.00 (the amount at death) divided by 2 = \$339,675.00

The aggregate dependency for the pre-trial period would therefore be  $\$339,675.00 \times 9 = \$3,057,075.00$ .

### The multiplier

What would be a reasonable multiplier? Learned counsel for the plaintiff submitted that a multiplier of 13 should be used. The deceased was approximately 30 years old at death and in apparently good health. He held several jobs and one could reasonably assume that

he would have retired at age 65 years. Having regards to the authorities I would agree that 13 would be an appropriate multiplier.

The post-trial loss

The post trial loss would therefore be:

$$\$416,000.00 \times 4 \text{ years} = \$1,664,000.00.$$

The total then for both periods amount to \$4,721,075.00. This is the sum I will award under the Fatal Accidents Act.

SPECIAL DAMAGES

The sum claimed in respect of the value of the motor car was not pursued so I will make no award in respect of this item. The sum of \$32,000.00 was pleaded in respect of funeral expenses but it has not been specifically proved. The plaintiff testified that she got receipts from the funeral home but they were not tendered. Although she claimed that she had returned cheques to prove payment, none was tendered. I therefore hold that the items under special damages have not been proved. The Court will therefore make no award under this head of damages.

CONCLUSION

The results which have been achieved from the various computations above indicate quite clearly that the beneficiaries would benefit entirely from the award under the Fatal Accidents Act.

The sum of \$4,721,075.00 is therefore awarded to the widow and the children.

Counsel for the plaintiff has requested the court to apportion the award among the dependents. This apportionment is as follows:

Kerry Ann	- 14% =	\$660,950.50
Kersen	- 16% =	\$755,372.00
Kimberley	- 20% =	\$944,215.00
Widow-	50% =	\$2,360,537.50

Final judgment will therefore be for \$4,721,075.00 with interest at 3% on the sum of \$3,057,075.00 being the pre-trial portion of the award under the Fatal Accidents Act from the 26<sup>th</sup> April, 1991 to the 30<sup>th</sup> June, 2000.

X There shall be costs to the Plaintiff to be taxed if not agreed.