



[2019] JMSC Civ. 4

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2009HCV06124

BETWEEN	REGINALD BROWN (father and near relative of Demory Brown, deceased)	1ST CLAIMANT
AND	SALIESE BROWN (Personal Representative of the Estate of Alberta Tugman, mother and near relation of Demory Brown, deceased)	2ND CLAIMANT
AND	BALFORD DOUGLAS	1ST DEFENDANT
AND	ANDRE DOUGLAS	2ND DEFENDANT
AND	DEBORAH DOUGLAS	3RD DEFENDANT

IN OPEN COURT

Jeffrey Daley instructed by Betton-Small, Daley and Co. appearing for the Claimants

Racquel Dunbar instructed by Dunbar and Co. for the Defendants

Heard: September 20, 21 & 22, 2016 and March 17, 2017 and January 4, 2019

Fatal Accident – Whether Defendants liable for death of minor – Whether Claimants are dependents under the Fatal Accidents Act – Whether near relations entitled to recover reasonable actual loss – Whether Claimants can recover for loss of future earnings and loss of expectation of life under the Fatal Accidents Act.

PALMER, J

Introduction

- [1] The circumstances of this Claim surround the tragic death of sixteen (16) year old Demory Brown (“Demory”) on April 25, 2009. Demory was a passenger on the Defendant’s Toyota Coaster bus, which he had boarded in Kingston. On the journey between Spanish Town and Old Harbour, he fell through the passenger door and was killed. The Claim was commenced on November 23, 2009, by Reginald Brown, Demory’s father, and by the amended Claim Form filed on June 20, 2012, Alberta Tugman, Demory’s mother, was added as 2nd Claimant. Alberta Tugman at time of the trial was deceased and the claim is continued on her behalf by her daughter, Saliese Brown, who has been appointed the personal representative of her mother’s estate.
- [2] The bus was owned by all three Defendants but at the material time the 1st Defendant was the driver and the 2nd Defendant, his son, was the conductor. The Claim is for damages resulting from the wrongful death of Demory due to the negligence of the 1st and 2nd Defendants and they rely on the doctrine of *Res Ipsa loquitur*.
- [3] The Claimants claim pursuant to the provisions of the **Fatal Accidents Act** on the basis that they would have had a dependency in future on the income of Demory for their maintenance, income and support, and that he would have contributed at least one-third of his income to their maintenance. According to the Claim, this future dependency is based on the expected earnings of Demory Brown, who though still attending high school at the time of his unfortunate demise, was a trainee tiler and was expected by the Claimants to have earned an income in the future from his earnings as a skilled tradesman.
- [4] The Claimants claim:
- (i) *Damages for the wrongful death of Demory Brown under the provisions of the Fatal Accidents Act;*
 - (ii) *Damages for Loss of Expectation of Life;*

(iii) Earnings for lost years;

(iv) Special Damages of \$321,000.00

(v) Costs;

(vi) Interest pursuant to the Law Reform (Miscellaneous Provisions) Act;

Claimant's case

[5] Four (4) witnesses were heard from during the trial: For the Claimants, evidence was led from Tessina Taylor, Reginald Brown and Garfield Parkes, Sergeant of Police. For the Defendants, evidence was taken from Andre Douglas and the witness statement of Balford Douglas, now deceased, was admitted as an exhibit.

Tessina Taylor

[6] Tessina Taylor was a passenger on the bus on the ill-fated day and says that she boarded the bus from downtown Kingston. She knew Demory before the incident and was, in fact, a close friend of his parents. She also knew Andre Douglas. Ms. Taylor was seated to the left middle section of the bus and saw Demory on the bus from she boarded it downtown. She stated that the bus was full beyond its seating capacity with some passengers having to stand in the aisles. Demory was also standing, but he was at the doorstep of the bus for the majority of the journey from downtown.

[7] According to her evidence, after leaving Spanish Town the bus stopped and Balford Douglas was picked up. He began driving the bus while Andre Douglas began to collect fares from the passengers. The bus continued en route to Old Harbour, and when it stopped to let a passenger off at Big Lane, Demory Brown was still at the open door of the bus.

[8] After leaving Big Lane the bus was felt to go over something and Ms. Taylor says she heard a 'crushing sound'. She did not see Demory Brown fall from the bus, but it with the reaction of the other passengers, coupled with what she had felt and

heard, she concluded that Demory had fallen from the doorstep; the last place she had seen him alive.

- [9] In cross-examination she agreed that there was a railing in front of the first row of passenger seats, separating the seats from the bus step, but denied that Demory was ever seated behind the railing or at all. She further denied that it was from that position that Demory got up and opened the door which resulted in his fall.

Reginald Brown

- [10] Reginald Brown stated that at the time of his death, Demory attended the Vere Technical High School, but that he was apprenticed to an experienced tiler, Mark Blake. He would work with Mr. Blake on weekends when work was available, which he conceded was not every weekend. When he got work, according to Mr. Brown, Demory would earn up to \$4000 per month, out of which he would contribute to the daily living expenses of his parent's respective homes. Due to the fact that his parents lived in the same community, it was the evidence that Demory traversed between both parents' homes from time to but lived with his mother at the time of his death. Demory was entirely dependent upon by his parents to send him to school, provide him with lunch money, clothing and accommodation, despite the extra pocket money he earned.

- [11] Mr. Brown's evidence is that he incurred \$323,600 in funeral-related expenses but could only provide proof of the sums paid to the funeral home. Expenses for Demory's wake and labour costs for building his vault were not substantiated by any documentation. He initially stated that the funeral home expense was covered by him but when pressed in cross-examination and shown the receipt from the funeral home he recanted to say he was mistaken in so saying. He once again reversed his position on re-examined and stated that the money had been paid by his sister but that she received it from him and Alberta Tugman. It is a part of the Defendants' case that Demory had opened the bus door without the knowledge of the driver to disembark while the bus was in motion. In relation to that Mr. Brown

denied that Demory had a brother living in the Big Lane area of St. Catherine, close to where the accident occurred, implying that he had tried to get off the bus in that area. He also denies that he ever told this to the 1st and 2nd Defendants.

Sgt. Garfield Parkes

[12] Sgt. Garfield Parkes visited the scene of the incident and saw the body that was later identified to him as Demory Parkes. He stated that when he interviewed Andre and Balford Douglas they informed him that Demory had been standing inside the bus when Balford Douglas took over driving the bus at Gutters. He stated that he was told further that Demory had been tasked by Andre to open and close the bus door as necessary for passengers. They told him that when the bus left Gutters the door was closed but somehow it opened resulting in Demory falling through to his death. The Sergeant denied that he was ever told that Demory was only standing for the earlier leg of the journey before Balford Douglas took over as the driver.

Defendants case

Andre Douglas

[13] Andre Douglas agrees that he drove the bus to the point where his father took over and states that he closed the passenger door and began collecting fares. He states that in the vicinity of Gordon Wood, not far from Gutters, he heard someone in the bus cry out "Lord Jesus, Him dead". His back was turned, and he looked around to see the passenger door that he claimed to have closed, was now open. Mr. Douglas also speaks about having felt the bus 'go over something' and based on what he heard the passengers say, he told his father to stop the bus. Insisting that he had not hit anyone, Balford Douglas did not stop immediately but eventually stopped some chains away. When he came from the bus he saw the lifeless body of Demory, known to him as Dada, lying to the side of the road.

[14] According to his witness, Demory boarded the bus from Kingston and was seated in the seat behind the passenger door. A railing separated that seat from the doorway and Demory was behind it. From that seated position Demory would have had to get from behind the railing to have access to the door. The bus was equipped with a mechanism that allowed the door to be remotely operated from the driver seat location at which point a buzzer would sound when the door opened and closed. One could, however, disable the automatic operation of the door and manually open it at the door itself.

[15] Andre Douglas denied ever standing at the door step with Demory after his father started to drive and insists that that is certainly not where he was when Demory fell from the bus. In amplification of his witness statement he stated:

Leaving downtown with a full busload of people, reach on Darling Street. His auntie stop me and ask me to call Demory. He take a while to come on the bus because he never wanted to come. When he get on the bus I know him quite well coming from school so he would be the only one that would be standing because the bus was already full. So I ask him to open the door to let off passengers if it was necessary. When I reach to Gutters there I make the first stop and my father was there waiting on me. There some passengers come off the bus there and I collect from them there. Then my father take over driving from there. Then when I get in the bus I tell him to sit because seat is there. Then I start to collect from the door front with the door close.

He denies ever asking Demory to open and close the doors after he picked up his father or that he ever said that to Sgt. Parkes.

[16] In cross-examination Mr. Douglas agreed that he had Demory opening and closing the door on the journey between Kingston and Spanish Town and he would also collect fares as necessary, which runs contrary to his witness statement in which he stated that Demory had taken a seat after entering the bus downtown. He later agreed that when he stated so in his witness statement that he was not being truthful, and in fact he only took a seat after the stop at Gutters.

[17] Mr. Douglas indicated that the bus made a buzzing sound when the door was opening and closing during automatic operation by the driver, but does not make that sound when on manual. He agreed that automatic opening and closing of the door was a safer way to operate the bus (a position he reversed in further cross-examination). He also agreed that from the bus left Gutters the door was put on manual operation and he was put in charge of the door. He further admits that he was responsible for ensuring that the door was closed and that it ran freely on its track when being opened or closed. He agrees that it could be the case that the door was not closed properly at the time it moved off and that it is capable of opening on its own if not closed properly.

[18] Mr. Douglas agreed on that based on where he said he and Demory were prior hearing the outcry of the passenger, that Demory would have had to pass where he was to get to the passenger door. By contrast, he would not have had to pass him if he was standing at the door step as stated in the evidence of Tessina Taylor. He maintains that Demory was not standing at the door step but sitting, and on re-examination stated that if he passed behind him he could get to the door without touching him. Mr. Douglas also agreed that he was in charge of the door and believed it to have been properly closed when he began to collect fares.

Balford Douglas

[19] The witness statement of Balford Douglas was admitted into evidence and he states that after he was picked up he began driving the bus. While it was travelling at 30 MPH he heard someone cry out "Him Dead, Him Dead" as the bus felt as if it had gone through a pothole. He too states that after he took over driving the bus there was no one standing except his son Andre.

[20] Mr. Douglas maintained that despite the age of the bus, that the door was not defective at the time. He had a duty to ensure the safety of all the passengers in general and Demory in particular. He, however, disagrees that his failure to discharge that duty resulted in the death of Demory.

Issues

[21] The primary issues to be determined are as follows:

- (i) Are the Claimants liable through their negligence for the death of Demory Brown?
- (ii) Are the Defendants the dependents of Demory Brown pursuant to the provisions of the **Fatal Accidents Act**?
- (iii) Are the Claimants entitled to recover any damages under the **Fatal Accidents Act**?
- (iv) Can the Claimants recover for loss of future earnings and loss of expectation of life under the **Fatal Accidents Act**?

Liability for the death of Demory Brown

[22] The Claimants rely on the principle of *res ipsa loquitur* and cited the authority of ***Wing v London General Omnibus Company [1909] 2 KB 625*** at page 663 for the proposition that the principle applies where the direct cause of the accident and so much of the surrounding circumstances essential to its occurrence were within the sole control of the Defendants or their servants that *prima facie*, they had responsibility for what happened. The Defendants were the driver and conductor at the time that Demory Brown, a minor, fell from the bus and his head crushed by its rear wheel. The opening and closing of the doors, whether automatically by the Balford Douglas, the driver, or manually by Andre Douglas, the conductor, were solely within the control and management of the Claimants. It was submitted that the fact that a minor should be able to fall through the door while the vehicle was moving, was evidence that spoke for itself and could only have happened with the negligence of one or both the Defendants.

[23] Reliance was placed on the local authority of ***Jamaica Omnibus Service Limited v Hamilton (1970) 16 WIR 316***, a case in which a minor had been a passenger on

a bus was thrown through the open door of the bus as it rounded a corner and the door flew open. Fox, JA stated that the Defendant bore a duty of care to provide a vehicle safe for the use of the passengers. In discharging that duty, the Defendant must have known that in the absence of reasonable care to maintain a working locking mechanism that would not fly open due to defects, to secure the catches on the door and to guard against any unauthorised opening of the door by anyone, that it could result in the release of the catches of the door whilst the vehicle is in motion with the tragic consequences that flowed in that case. It is to be gleaned from the learned judge's reasoning that it is not a defence that the door was accessible to unauthorised persons but the Defendant must show further that the door catch was released by the unauthorised person in circumstances of the absence of reasonable care on the part of the Defendant.

[24] As it relates to the whether reasonable care was taken to maintain the door mechanisms, the Counsel for the Defendants submitted that the undisputed evidence is that the bus door was not defective, which came from the Claimants' own witness Sergeant. Parkes. The Court was therefore asked to find that the bus was in all relevant respects in good working order. It was also submitted that the evidence supports a conclusion that the bus was being operated in a proper and reasonable manner, at least in terms of the manner and speed in which it was being driven by Balford Douglas. Unlike in the ***Jamaica Omnibus Service*** (*supra*) case cited, the vehicle was on a flat, fairly straight road and had not been cornering or swerving when Demory Brown fell from the vehicle as the vehicle had just moved off.

[25] It was submitted for the Defendant that the evidence of Tessina Taylor could not be relied upon because apart from inconsistencies with her statement, she admits that she did not have sight of Demory Brown at all times during the journey. Ms. Taylor stated that though she had seen Demory Brown on the bus step along with Andre Douglas, that she had taken her eyes off him and did not see when he fell from the bus. In fact, it was upon the alarm of the passengers that she noticed that he was no longer at the door and it was upon her later investigation that she

learned that he had fallen from the bus. The Court was asked to find that Demory Brown was in fact seated, then got up and opened the door and jumped off when he got to where he was travelling. The submission is that it was clear that Andre Douglas and Demory Brown were not both at the bus step as Mr. Douglas was himself as surprised as everyone else when the accident occurred, a state of affairs that would not have existed had he been on the step with Demory Brown.

[26] The main issue, it was submitted for the Defendants, was whether the door was open or closed from Gutters until the passengers screamed out. The Court was invited to find that the door was closed by Andre as he began to collect fares, something he did to ensure the safety of himself and his passengers. Tessina Taylor, it was submitted could not speak to the state of the door at the relevant time just before the scream as she was not watching the door for the entire journey. Being friends with the family of the deceased, it was submitted further that her evidence ought to be assessed with care, as she may well have had an interest to serve in giving the evidence she did.

[27] It is undisputed that the Defendants were in control and management of the bus generally and the relevant bus door in particular at the time Demory Brown exited the bus. It was the primary passenger door and the Defendants as operators of the bus had a duty to take reasonable care to ensure that the door was working, that it was not opened by unauthorised persons and that it was closed while the vehicle was in motion. There is nothing to suggest that the door closing and locking mechanism was in any way defective at the relevant time as the bus was examined by the authorities after the accident and despite its age, found to be in good working order. What remains to be determined is as to whether the door was closed after the stop at Gutters and if closed, whether reasonable care was taken to ensure that it could not be operated or opened by unauthorised persons. The Defendants' case seems to be that the door was in fact closed and that Demory Brown got up and opened the door while the bus was moving, and in an attempt to disembark while the bus was moving, fell under its rear wheel.

- [28]** It is evident that Demory Brown was well known to the Defendants, and I accept that on the journey between Kingston and Spanish Town he had been standing, not only because the seats were all taken but because he was helping to man the door. Tessina Taylor gave evidence that shortly before she heard the alarm she had seen Andre Douglas and Demory Brown at the bus step together and when she heard the alarm she did not see Demory Brown. Andre Douglas gave evidence that he had been collecting fares and that because there were now available seats in the bus (as there had been none earlier) he directed Demory Brown to sit and he (Andre Douglas) would man the door.
- [29]** I believe on a balance of probabilities however that the evidence of Tessina Taylor, that Andre Douglas and Demory Brown were on the bus step the last time she saw them, is true. I accept her that he did not sit down at that time or at all during the journey. I find that the two had been standing at the bus door and that Demory Brown had been asked to continue to man the door as Andre Douglas collected the fares. That would hardly have been very different from what he had been asked to do in the earlier stages of the journey. I also find that the door was being operated manually but that it had been left open with Demory Brown standing at the bus doorway. I find that when the bus moved off Demory Brown fell through the open door and that but for the failure to either automatically or manually close the door, which the Defendants had control and management of, Demory Brown would not have fallen through to his death.
- [30]** The Defendants had a duty to ensure that the bus was safely operated and that the passenger door was closed at all times when the bus was moving. I do not find that the bus door was opened by any unauthorised person. I find that the door was open after the stop in Gutters and there was no reasonable care taken to ensure that it was closed after the stop, a duty that both Defendants had especially as Demory Brown was a minor. I also find on a balance of probabilities that the Defendants were negligent in having allowed Demory Brown, a minor, to assist in the task of operating the door and to allow him to have travelled on the bus step with the door open. I, therefore, find that the Defendants failed to discharge their

duty of care to Demory Brown in allowing him to travel on the bus step with the door open, that they were negligent in so doing and therefore liable for his death.

Are the Defendants the dependents of Demory Brown

[31] The **Fatal Accidents Act** provides at section 3:

Whensoever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony.

[32] Having found that the Defendants are liable in negligence for the death of Demory Brown then the **Fatal Accidents Act** provides a framework under which an action for damages can be brought. Section 4 outlines who is entitled to bring such a claim:

(1) Any action brought in pursuance of the provisions

(a) by and in the name of the personal representative of the deceased person; or

(b) where the office of the personal representative of the deceased is vacant, or where no action has been instituted by the personal representative within six months of the date of death of the deceased person, by or in the name of all or any of the near relations of the deceased person,

and in either case any such action shall be for the benefit of this Act shall be brought of the near relations of the deceased person,

(2) Any such action shall be commenced within three years after the death of the deceased person or within such longer period as a court may, if satisfied that the interests of justice so require, allow.

(3) Only one such action shall be brought in respect of the same subject matter of complaint.

(4) If in any such action the court finds for the plaintiff, then, subject to the provisions of subsection (5), the court may award such damages to each of the near relations of the deceased person 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 person and the amount so recovered (after deducting the costs not recovered from the defendant) shall be divided accordingly among the near relations.

(5) In the assessment of damage under subsection (4) the court-

(a) may take into account the funeral expenses in respect of the deceased person, if such expenses have been incurred by the near relations of the deceased person;

(b) shall not take into account any insurance money benefit, pension, or gratuity which has been or will or may be paid as a result of the death;

(c) shall not take into account the remarriage or prospects of remarriage of the widow of the deceased person.

[33] For the Claimants, it was submitted that it was clear from the fact that Reginald Brown was a man of modest means who did not enjoy good health, that at some future stage he would rely on Demory for his living expenses. Reliance was placed on the authority of ***Wesley Johnson v Selvin Graham (1983) 20 JLR 124*** that even in the case of a minor deceased, the Court would find that there would have been a future dependency once the deceased was shown to be industrious and academically promising. It was submitted, relying on ***Elizabeth Morgan v Enid Foreman and Owen Moss 2003/HCV 0427*** which cited with approval the case of ***Taffe Vale Railway Co. v Jenkins 1913 AC1***, that there need not be as a condition precedent to the maintenance of an action under the Fatal Accidents Act, that the minor deceased was at the time of his death “actually earning money or money’s worth or contributory to the support of the Plaintiff”.

- [34] The Defendants' Counsel submitted however that there was no legal basis on which the Court should find that the Claimants were the dependents of Demory Brown. The evidence, it was submitted, showed that Demory Brown was a minor at the time of his death and wholly dependent on his parents for all his needs. While he did assist Mark Blake to do some tiling jobs occasionally, it was submitted that any money he received was merely pocket money. He did not have a consistent job and the assistance was hardly an apprentice job as he had at least another two (2) years in school. It was argued that the assertion that he contributed to the household expenses from the meagre earnings from the tiling assistance, was misleading as both his parents had to provide for all of his needs and there were two (2) separate households to which he would have to contribute if that assertion was to be believed.
- [35] Even on the amount allegedly earned from this tiling or even the fact that he was paid at all, was entirely speculative on the part of Reginald Brown as he never went with Demory on any of the jobs. The assistance was also occasional and of a sporadic nature, and accordingly Mr. Brown could not say how frequently jobs would come up or when Demory was asked to assist. It was submitted that the fact the Reginald Brown misled the Court on the fact of how many children he had, giving an impression that Demory was his sole child when he had two (2) older children with the 2nd Defendant was designed to support a conclusion that Demory would maintain him sometime in the future.
- [36] There are parallels between the circumstances of the case at bar and those of **Taffe Vale Co.** (*supra*) in that the deceased were both minors of similar age and a claim was made by parents pursuant to the provisions of the **Fatal Accidents Act**. However, an important distinction is that the deceased in the **Taffe** case had all but completed training as a dressmaker and was ensured of immediate employment as a dressmaker after completion of the training period. There was every reason in the circumstances for the Court to conclude that the parents of the deceased would have a future dependency on her. In the case at bar, however, there is no such evidence. Demory was still in school but there is nothing to indicate

that the tiling assistance was an apprenticeship or that he was even training to be a tiler. There are duties involved in tiling, such as carrying tiles, grout and thin-set, that do not involve learning how to lay tiles and there is no evidence from Mark Baker for example that assists in that regard. I agree with Counsel for the Defendants that the Court is left to speculate as to what he did, what he earned from it, how often he worked and the prospects of him making a living from it or pursuing it as a living in the future. It is clear that Demory was almost entirely reliant on his parents for all his needs and that whatever little he earned from the tiling assistance was more pocket money than earnings that contributed to the maintenance of the Claimants.

[37] Section 2 of the Act defines 'near relation' of a deceased person to include parents, which the Claimants are, and that by virtue of that designation they are entitled to bring their claim. The Fatal Accidents Act, however, contemplates one of two (2) circumstances in which a 'near relation' may be entitled to bring a claim. The first being where at some stage before, at the time of death or foreseeable future there existed or would likely exist a relationship of dependency between the deceased and the near relation. The other is for the actual or reasonably expected pecuniary loss caused to him by reason of the death of the deceased. Relevant to this case, the Act contemplates that account may be given to funeral expenses in respect of the deceased if incurred by the near relation of the deceased person.

[38] Firstly, the Claimants make the assertion that they ought to be treated as dependents of the deceased minor. There is no evidence to support a contention that Demory Brown maintained his parents from his meagre pocket money. There is also insufficient evidence to do anything more than to speculate as to how industrious he was as there is little as to the frequency of his tiler assistance. There is also little to guide the Court as it relates to his academic acumen so as to conclude that he was promising. But even so, there is even less evidence to support a contention that after he completed school, that he would have been inclined to maintain his parents especially when one considers that he has older siblings. I do not find that the circumstances of this case are such to allow the Court

to conclude that either Claimant falls into the category of dependency with the deceased minor.

[39] The Act does, as earlier mentioned, make accommodation for actual pecuniary loss of the near relations as a result of the death of the deceased, to include funeral expenses. There is no question in my mind that the Act contemplates actual loss incurred by near relations as separate from the entitlement as purported dependents to recover for the reasonably expected future pecuniary loss. There was a discrepancy that occurred regarding who paid for the funeral expenses to bury Demory Brown, but I accept the evidence of Mr. Brown that the cost was paid on his behalf. I also accept his evidence as to the expenses paid for Demory's wake, to concrete the vault and for the death certificate. No documentary evidence was tendered in support of those figures but I accept that they were duly incurred and that the figures were reasonable.

Loss of future earnings and of expectation of life

[40] The Claimants seek an award of damages for loss of future earnings and expectation of life pursuant to the **Fatal Accidents Act**. The submission made on the behalf of the Defendants in response to this is that this could not be pursued under this Act and I am inclined to agree with that submission. It is clear that the scheme of the **Fatal Accidents Act** is designed to address reasonable actual or future pecuniary loss by a near relative resulting from the death of the deceased. A claim for loss of future earnings and expectation of life is more appropriately brought pursuant to the **Law Reform (Miscellaneous Provisions) Act** for the benefit of the deceased minor's estate. There is no indication that either of the Claimants act for the estate of the deceased or that any claim under the **Law Reform (Misc. Prov.) Act** was pleaded. I, therefore, see no basis on which to proceed to assess damages on that basis, though I have accepted that liability rests with the Defendants.

Conclusion

[41] Judgment is therefore given for the Claimants in the sum of \$323,600 being the total of their funeral expenses, with interest at 3% from April 25, 2009. Costs are awarded to the Claimants to be taxed if not agreed.