

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 489/2006

BETWEEN **MAUDI SIMMS** **CLAIMANT**
(Administratrix of Estate: George
Edward Simms, deceased)

AND **PETER LECKY** **DEFENDANT**

Miss Marion Rose-Green and Miss T. Mott instructed by Marion Rose-Green and Company for Claimant.

HEARD: 22nd October 2009 + 4th October 2010.

G. SMITH, J.

1. On the 18th day of September, 2003, the deceased, George Simms, died tragically as a result of a motor vehicle accident along Spanish Town Road in the parish of St. Andrew. He is survived by his widow MAUDI SIMMS and his two adult daughters ANDREA MARIE SIMMS who was born on February 9, 1964 and JOAN SIMMS who was born on May 31, 1973.
2. Letters of Administration was granted to his widow by the Supreme Court of Judicature of Jamaica on the 14th day of February, 2005 and she has brought a claim for damages and consequential loss to the estate on the basis of the negligence of the Defendant Mr. Peter Lecky.
3. The Claimant claims:
 - (a) Damages under the Fatal Accidents Act, 1976 for three dependents namely herself (widow) and two adult children;

(b) Damages under the Law Reform (Miscellaneous Provisions) Act; and

(c) Special Damages.

4. The Claim for damages under the Fatal Accidents Act is brought under Section 4(1). Under Section 4(4) of the 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 the case of *Davies v. Powell Duffryn Associated Collieries Ltd.*, [1942] 1 All ER 657, Lord Wright commented at p.665 that "...this is a hard matter of pounds, shillings and pence..." The Court is nevertheless expected to come to a conclusion as to the appropriate level of damages to be awarded in the circumstances.

5. Under the Law Reform (Miscellaneous Provisions) Act, Section 2(1) states:

"Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate."

It is settled law that the personal representatives can recover damages that the deceased could have recovered and which were a liability on the wrongdoer at the date of death. *Rose v. Ford* [1935] 1 K.B. 99.

6. Miss Marion Rose-Green submitted that the Claimant was entitled to the following:

- (i) General Damages (pain and suffering and loss of amenities) - \$1,000,000.00.
- (ii) Damages under the Fatal Accidents Act and Law Reform (Miscellaneous Provisions) Act - \$756,000.00.
- (iii) Special Damages - \$440,048.29.
- (iv) Loss of Expectation of Life - \$150,000.00.
- (v) Interest and Costs.

Submissions for Pain and Suffering

7. The deceased GEORGE SIMMS sustained the following injuries as is evidenced by the Post Mortem Report:

- (a) Bilateral fracture in the posterior fossa of the skull;
- (b) The proximal end of spinal cord was oedematous;
- (c) Face was oedematous;
- (d) Fractured skull;
- (e) Abrasions on the right lateral side;
- (f) Left ribs fractures, from three (3) to eleven (11);
- (g) Right ribs fractures, eight (8) and nine (9) with intercostal haematoma;
- (h) Ruptured lungs; and
- (i) Left above-knee amputation.

In support, of the claim of pain and suffering and loss of amenities Counsel for the Claimant relied on the case of ***Elizabeth Morgan v. Enid Foreman and Owen Moss*** Claim No, HCV 0427 of 2003 (unreported) where in October 2004, the Claimant was involved in an accident and died on the day following the accident. An award of \$50,000.00 was made by the Court for pain and suffering and loss of amenities. Counsel submitted that in the present case Mr. George Simms died 8 days after his accident and in addition to his other severe injuries to his head, chest and feet his left leg had been amputated above his knee. The other case which Counsel sought to rely on was Privy Council Appeal No. 27 of 2004 ***Inez Brown ("near relation" of Paul Reid deceased) v. David Robinson and Sentry Service Co. Ltd.*** where the deceased was shot and injured and lived for several months after the incident. The trial judge assessed damages for pain and suffering at \$2,000,000.00. This sum was not allowed by the Privy Council and was sent back to the Court of Appeal for final assessment.

This latter case in my view can be distinguished from the instant case as the facts are dissimilar and the period for which the deceased survived was of a much longer duration. In that case the deceased sustained a gun shot wound which resulted in him being a paraplegic and doubly incontinent and he survived for over three months after he received his injuries.

What has to be borne in mind in cases where the injured person has died is that he is not condemned to a life of suffering as is the case where the victim has survived. It is my view that an award of **\$500,000.00** for pain and

suffering and loss of amenities in the circumstances would be an adequate sum.

The Lost Years

8. The deceased was sixty nine (69) years old at the date of the accident and was said to be in very good health at the time of the tragic accident and that he also had a happy and vigorous life. In the case of *Dyer and Dyer v. Stone* [1987] 27 JLR 268 Forte J.A. (as he then was) said that in this area consideration must be given to the following:

- (a) The age of the deceased at the time of his death;
- (b) His condition of health;
- (c) Normal retiring age of the country in which the deceased was employed;
- (d) How long in all circumstances he would be expected to continue working;
- (e) The age of the widow;
- (f) The probability of her seeking employment, hence diminishing the scope of her dependency;
- (g) The ages of the children, in so far as they may be reaching the age of majority, thus decreasing the number of years in which they would have been dependent on the deceased;
- (h) The probability of the deceased continuing to support the children beyond the age of majority, eg. if they pursue higher education.

The evidence adduced is that the deceased was 69 years old. The normal age of retirement in Jamaica is 65 years old. However the deceased was still employed at the time of the accident and was said to be in a very good health. His children were adults, therefore in all the circumstances a multiplier of two (2) years would in my view be satisfactory.

9. Using all the relevant annualized expenditure of which there is evidence and based on the submissions by Counsel the monthly expenditure for the deceased is \$29,075.10, so a total of $(29,075.10 \times 12)$ **\$348,901.20** is to be awarded each year to the widow as total expenditure on the household. A percentage has to be deducted from this figure indicating the amount of money the deceased spent on himself monthly. The multiplicand for the calculation of loss of earning for lost years has been computed by Counsel as 75 (%) percent of the annual average income, thus affording the deceased 25 (%) percent of his salary to be spent on himself. This in my view is a reasonable submission that I am in agreement with. Therefore when computed the figure for the contribution to household expenses has to be reduced by 25 (%) leaving a total of \$21,806.33 per month and thus $(21,806.33 \times 12)$ **\$261,675.96** annually is awarded to the widow. The sum of $(\$261,675.96 \times 2)$ **\$523,351.92** will be awarded for the lost years.

Loss of Expectation of Life

10. In *Yorkshire Electricity Board v. Naylor* [1968] AC 529 Lord Morris of Borth-y-Gest at p.545 clearly enunciated the principle in respect of Loss of Expectations of Life when he stated:

"It is to be observed and remembered that the prospects to be considered and those which were being referred to by Viscount Simon L.C. in his speech were not the prospects of employment or of social status or of relative pecuniary affluence but the prospects of a 'positive measure of happiness' or of a 'predominantly happy life'."

The Courts in quantifying damages under the head usually award a conventional sum.

In ***Morgan v. Foreman and Moss*** Claim No. HCV 0427/2003 (unreported)

Sinclair-Haynes J. stated:

"In England a perusal of the authorities cited in Kemp and Kemp, *The Quantum of Damages* Volume 3 covering a period 1983 to 1991 the British Courts considered the sum of £1,500 as the conventional sum for Loss of Expectation of Life. A conversion reveals an amount of \$150,000.00. I am of the view that \$150,000.00. is today a very moderate award in light of the massive devaluation of the dollars. It should be remembered that the conventional figure ought to be moderate, as opposed to nominal and should take devaluation into consideration."

Counsel for the Claimant asked the Court to make an award of \$150,000.00

under this head and accordingly the Court will award the sum as prayed.

Special Damages

11. Based on the evidence presented and substantiated by the claimant I will make an award of **\$330,248.29** for administration expenses, funeral expenses and medical expenses.

A further sum of **\$8,800.00** is awarded for the transportation costs for the trips by the widow to and from the hospital to visit the deceased.

Additionally, an award of **\$100,000.00** for the Attorney's Costs and **\$1,000.00** for the Police Report.

There will be no award in respect of the claim of \$42,000.00 for the return trip from Canada. The reason for this decision is that once the widow bought a round trip ticket to visit Canada, she would have had to return to Jamaica, since she was on vacation there at the time.

The total award under this heading is **\$440,048.29**.

Interest

12. The question of the award of interest and its rate and period will be guided by Section 3 of the Law Reform (Miscellaneous Provisions) Act which stipulates that:

".....in any proceeding tried in any Court of Record for the recovery of debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit or the whole or any part of the period between the date when the cause of action arose and the date of the judgment."

In the Jamaican case of **Central Soya Jamaica Ltd. v. Junior Freeman** [1985] 22 JLR 152, Rowe P. set out the following guidelines for the award of interest as:

- (1) Interest on Special Damages should be awarded at a rate of 3% per annum from the date of the accident to the date of judgment;
- (2) Interest should be awarded on general damages at the rate of 3% from the date of the service of the claim to the date of judgment.

13. Accordingly, Judgment for the Claimant as follows:

General Damages awarded in the sum of **\$1,023,351.92.**

(a) Interest on General Damages at the rate of 3% per annum from the 30th day of September, 2007 to ^{30th} September 2010.

(b) Damages for Loss of Expectation of Life - **\$150,000.00.**

(c) Special Damages of **\$440,048.29** with interest on Special Damages at the rate of 3% per annum from the 18th day of September, 2003 to ^{30th} September 2010.

14. Costs to be taxed or agreed.