

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 2008/03891

BETWEEN	THE ADMINISTRATOR GENERAL OF JAMAICA (Administrator of the Est. of Leroy Turnbull, deceased)	CLAIMANT
AND	PATRICK LEWIS	1 <sup>ST</sup> DEFENDANT
AND	THE ATTORNEY GENERAL	2 <sup>ND</sup> DEFENDANT

Ms. Jacqueline Cummings instructed by Archer, Cummings & Company for the claimant.

Mrs. Trudy-Ann Dixon-Frith instructed by the Director of State Proceedings for the defendants.

**Heard 1<sup>st</sup>, 4<sup>th</sup> and 12<sup>th</sup> November 2010**

**Campbell, J.**

The deceased from the evidence was an industrious man, he had at one point operated a taxi, and burnt coal. Later he worked as a contractor, operated a restaurant and bar in Old Harbour Bay. He was a doting father, who showered his children with treats and saw to their maintenance and upkeep. He performed services for the children of transporting them to and from school. The bar and restaurant appeared to have been highly successful, however, the income so derived were not adduced into evidence, save for the meals that were provided for the children from that source.

The evidence is that at the time of his death, the deceased was employed at Gore Development Ltd. The evidence of the General Manager was that he earned, in 2004, a yearly salary of \$2,356,095.38. The deceased, having passed less than two months after his last yearly earnings, that is sufficiently proximate to determine his salary at death. The net contribution to his dependents is the datum figure, but any likelihood of increased earnings must be taken into

account, and the datum figure be increased accordingly. The estimate of the net contribution to the dependents is a question of pure fact to be determined according to the evidence.

The five children, pursuant to section 2 (2) are children for the purposes of the Act.

The multiplicand is to be determined by is quite simply to take each item of expenditure by the deceased on the dependents and add them up, and this will provide the annual dependency figure. Ms. Ferguson's evidence is that he gave her \$8000-\$10,000.00 per fortnight. The utility bill was included in this, in an event, two-third of the utility bill would be towards the children's costs. The evidence is clear that he loved and treated all his children equally. The evidence is that he would send funds to his son Ryo after he migrated to England. The evidence was that he was a loving and caring father. Ferguson would get approximately \$20,000.00 per month or \$10,000 per child. I find that the sum of \$50,000.00 would be dedicated to the maintenance of the five children.  $\$50,000 \text{ multiply } 12 = \$600,000.00$ .

Their education needs were met separately, there was evidence that that would amount to \$2,000.00 per week, also evidence that one child would get \$300.00 per day, there is also evidence that the deceased separate and apart from, these funds would give the kids pocket monies of \$250 per week. Such inconsistency as appear to exist in this area of the evidence is due to the fact that the children lived in different households. I find that each child was given lunch-money and "pocket-money" amounting to \$1,500.00 per week. This would amount to an additional \$30,000 of expenditure towards his dependents. There is abundant evidence that the father was responsible for all the tools of their education, which would be books and the attendant fees. That he would provide transportation for them to and from school. The children all pay for their transportation now, which range from \$10 - \$90, per day, the term lunch money,

it is noted includes transportation, there was no distinction made in this case. The expenditure on lunch money, etc, would not be for the entire year as schools go on break for 3 months. The annual expenditure on lunch money would be \$30,000.00 multiply 9 = \$270,000.00.

In order to obtain the annual dependency  $\$600,000.00 + \$270,000.00 = \$870,000.00$

The income tax payable on his income is 25% of  $\$2,235,663.38 = \$558,915.84$ . The deceased being an independent contractor, he may not choose to make contributions to NIS, NHT. The deceased's net annual earning would be  $\$2,356,095.38 - \$558,915.84 = \$1,797,179.44$

The next step is to determine the percentage of the deceased's net earnings which is used to maintain his dependents, the formula is  $\$870,000.00$  multiply 100

\$1,797,179.44

The annual Net annual income at death	<b>\$1,797,179. 44</b>
Less	\$870,000.00
	\$927,179.44, (spent on self or 48.4%)

### **Income at trial**

Evidence was given that the Jamaica Master Builders, make annual incremental rises which affect workers in the construction trade. I accept the General Manager's testimony of these increases that would have been applicable to the deceased's contact with the company. The Court accepted the evidence of the General Manager of Gore Development Ltd that the approved incremental increases were for 2005 9%, 2006 9%, 2007 12%, 2008 12%, 2009 18%, 2010 18%, applied to his net yearly earnings at the time of death. That is the net annual income at trial is \$3,729,477.50.

Consequently, 48.4% is to be applied to the net annual income of \$3,729,477.50. This calculates to \$1,805,052.59. This is the annual dependency at trial. Next step the annual dependency, that is, the deceased net income at death and his income at trial is to be averaged and is to be considered as the average annual net income of the deceased for the pretrial years.

Average annual dependency  $\frac{\$927,179.44 + \$1,805,052.59}{2} = \$1,366,116.05$  is the multiplicand

Deceased, 43, the youngest child was 21 years; dependency would have lasted another 12 years. A multiplier of 9 is reasonable. See **Dyer v Dyer**, where the Court reduced a multiplier of 15 a 35 year old to 11. The multiplier is to be broken down to two parts, the first represents actual number of years between the time of death and the trial.

Under the Fatal Accident Act, Pre-trial Depend \$927,179.44 by 6 = \$5,563,076.64

$$\begin{aligned} \$1,366,116.05 \text{ multiply by } 3 &= \underline{\$4,098,348.15} \\ &= \mathbf{\$9,661,424.79} \end{aligned}$$

### **Apportionment**

There are several dependent children, two parents; damages may be apportioned having regard to the ages at which they will become independent: **Kassam v Kampala Aerated Water Co. Ltd, (1965) 2 All ER 875**. The two households from which the girls come, may be treated equally the girls being of approximately the same age groupings. Both mothers being pregnant at the same time, on separate occasions, two years apart.

I would apportion the damages accordingly,

Royan, 10%; Nicardia & Georgia, 20 % each; Charissa & Paula, 25 %

Royan, \$966,142.42:

Nicardia & Georgia \$1,932,284.84 each

Charissa & Paula 2,415,356.95 each

Damages under the Law Reform Act, 1934 the benefit of the payment passes to one of the persons claiming under Lord Campbell's Act, the amount is deducted in full. See **Davies v Powell Duffryn Associated Colliers, Ltd.** (no. 2) {1942} AC 601. It follows that damages awarded under the Law Reform (Miscellaneous Provisions) Act are immediately taken away. All the dependents under the Fatal Accident Act are the same persons to be benefited under the Law reform Act.

I agree with the submission of learned counsel for the defendant that there was no evidence before me of the expenditure of the deceased on himself. We note the policy of the Court to eschew a conventional percentage as being expenditure on himself. There was no attempt to adduce evidence of the living expenses of the deceased.

### **Funeral expenses**

The evidence before the court is that the sum of \$131,000, which was a sum retained by the Gore Development Ltd. as a security for the work done by the deceased until cleared by the Engineer, was used to defray expenses for the funeral of the deceased.

Under the Fatal Accident Act

Funeral expenses .... \$131,000.00

Interest at 6% on the \$5,563,076.64 being the pre-trial portion included in the judgment, from the date of death to the 14<sup>th</sup> November 2010. Interest at 6% is also awarded on the funeral expenses of \$131,000 from the date of service of the writ.