

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. T.028/94

BETWEEN

**ANDREA THOMPSON
(ADMINISTRATRIX ESTATE
DONOVAN RUDOLPH THOMPSON,
DECEASED)**

PLAINTIFF

A N D

JASMINE MAHABEER

1ST DEFENDANT

A N D

MASTER MAHABEER

2ND DEFENDANT

R.B. Manderson-Jones for the Plaintiff

**Wendell Wilkins and Christine Hudson for
the Defendant instructed by Churchill Neita Q.C.**

**HEARD: 8th and 9th January, 1996
and 7th June, 1996.**

Rackord J.

The defence in this action was struck out and interlocutory judgment entered and came before me for assessment of damages. The action was brought to recover damages under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act against the defendants, the owner and driver of the vehicle and arose as a result of a motor vehicle accident on the 19th of April 1993 which caused the death of Donovan Rudolph Thompson, a pedestrian, along Queensborough Drive, St. Andrew.

The evidence disclosed that the deceased was the father of four children:

- Andrew - born 5.2.66
- Richard - born 25.9.69
- Sephianne - born 16.4.71
- Nicholas - born 12.3.78

Their mother Marlene Badal, testified that the deceased lived with her, their four children and her parents at Corlettes Road in St. Catherine. She said that deceased was a self employed painter and carpenter and that he gave her \$2,000.00 per week for maintenance of the home. He also paid \$1,500.00 per term for Nicholas' school fees; paid for his uniform and gave him pocket money but did not know how much this amounted to; \$3,000.00 per month for rent; \$300.00 per month for electricity.

She did not know what his earnings were but that her daughter Andrea paid the funeral expenses amounting to over \$60,000.00. She tendered a receipt for \$30,000.00 which was admitted in evidence by consent. She denied under cross examination that at the time of his death that the deceased was living with his sister at David's Place, Queensborough, St. Andrew. She admitted, however, that he frequently spent time there. She denied that he did gardener work in the Queensborough area of St. Andrew and earned his income as such. She also denied that he was regularly drunk and therefore could not earn the amount she claimed he paid her and that her story was made up. She claimed they both had land for themselves at the time of his death.

On behalf of the defence, Trevor Miller testified that he knew deceased from 1986 and that at the time of his death the deceased was living at his sister's house in Queensborough, St. Andrew, same road where he (Miller) was then living.

Because of deceased alcoholic problem his family totally rejected him. He often saw him rocking side to side, struggling all over the place. He would be dressed in the same dirty clothes for days and often never appeared as if he was working. The only work he ever saw him do was a little lawn mowing in the Queensborough area using the machine of those persons who employed him. He never saw him doing painting.

He knew that gardeners in that area earned between \$150.00 to \$200.00 for mowing a lawn and would see the deceased so employed once or twice per week. It was his opinion that deceased was incapable of earning \$2,000.00 per week. When cross examined Miller stated he was at one time intimate friend of deceased sister but never knew that deceased lived at 281 Williams Boulevard Corlettes Road, St. Catherine and never knew Miss Marlene Badal.

The defendants called the Plaintiff Andrea Thompson as a witness. She said she was the daughter of the deceased and that at the time of his death her father was living at 281 Williams Boulevard, Hill Run, St. Catherine.

She signed the Inventory in her father's estate dated 31.5.93. She identified a copy which was admitted in evidence by consent.

It gave the address of the deceased as 9 David Place, Queensborough, St. Andrew and showed that deceased died, possessed of no real or personal estate.

This was the end of the defendant's case.

Mr. Wilkins submitted only Nicholas would qualify as a near relative and that his mother Marlene would not so qualify as the law did not recognise common law relationship. He further submitted that there was no evidence before Court of the pecuniary dependency of the child Nicholas and that there was no proof of the status of the plaintiff as personal representative of the estate. He questioned the credibility of the witness Marlene Badal; the source of the deceased income was speculative and there was no support of her evidence as to the sums she received from deceased. He submitted that she was not a witness of truth and that she ought not to be relied upon.

As to the defendant's case Mr. Wilkins submitted that the witness Trevor Miller was frank, forthright and open, he had no interest to serve and that Court ought to accept his evidence as to address of deceased at the time of his death. He referred to the lifestyle of deceased as given by Mr. Miller which suggested that he was a low income earner not more than \$1,200.00 per month as against that of Miss Badal which suggested the deceased earning roughly \$20,000.00 per month.

Under the Fatal Accidents Act only Nicholas would stand to benefit. More than likely the deceased earnings would increase to about \$400.00 per week or \$19,500 per annum. After deduction about 75% the balance or \$4,500. would be left for Nicholas who was fifteen years old at time of his father's death. This sum would amount to \$12,600 for three years when he attained his majority together with the sum of \$30,000.00 for funeral expenses would be the award under the Fatal Accidents Act.

Mr. Wilkins argued that since the plaintiff had failed to prove grant of Letters of Administration no award should be made under the Law Reform (Miscellaneous Provisions) Act.

In reply Mr. Manderson-Jones submitted that word "wife" in the Law Reform Act was not defined and ought to include common law wife and that Marlene Badal should be regarded as near relative.

With respect to the submission about the grant of Letters of Administration, Attorney for the plaintiff pointed out that interlocutory judgment having been entered, that fact had been admitted and that the Court was only asked to assess damages. With this the Court agreed.

On the question of deceased income Mr. Manderson-Jones submitted that the witness Marlene Badal was a witness of truth and that her evidence ought to be accepted. He questioned the credibility of the defendant's witness Mr. Miller and suggested his evidence was unreliable.

On Miss Badal's evidence deceased earned \$173,000.00 per annum while on Mr. Miller's he could earn \$1000.00 per week or \$52,000.00 per annum. Based on the amount Miss Badal's evidence Counsel suggested in great detail the computation of damages. He further suggested that the sum of \$500,000.00 should be awarded for loss of expectation as the conventional sum of \$5,000.00 which was awarded in the past bore no relationship to realities.

Under the Law Reform (Miscellaneous Provisions) Act he asked for awards under the following heads:

| | | |
|--------------------------------|---|-----------------------|
| Future Loss | - | \$993,687.50 |
| Actual loss | - | \$310,397.25 |
| Interest | - | \$25,410.05 |
| Funeral expenses | - | \$30,000.00 |
| Loss of expectation of life | - | <u>\$500,000.00</u> |
| | | \$1,857,494.70 |

Under the Fatal Accidents Act Counsel for plaintiff acknowledged that there was no specific evidence of the amount spent on the child Nicholas Thompson. Based on Miss Badal's evidence he submitted the sum of \$183,373.56 to be the actual loss of dependency from date of the action 18.4.93 to date of trial 8.1.96. The defendant's birthday was 1st of March. He would be eighteen years old on 12.3.96 - dependency from two months = \$11,200.00 making a total of \$196,573.56 with interest at 3% totalling of \$212,665.61.

In respect to the computation Mr. Wilkins referred to three cases from the Supreme Court:

Suit C.L. 1988 A/181 Administrator General of Jamaica v Fitzroy Thomas et al;
SCCA No. 75789 Parish Council v Anor v June Goulbourne; Suit No. C.L. 1988/C165
Louise Gilmour v Loven Llewellyn.

He also referred to an article on the subject by Mrs. Sandra Minott
Phillips Attorney-at-Law published in Jambar September 1990.

He submitted that no adjustment should be made for inflation for the
period between date of accident and date of trial. He suggested that for
contingencies a reasonable multiplier would be 7 and not 14 as suggested by
Mr. Manderson-Jones. Not more than \$5000.00 should be awarded for loss of
expectation of life.

Apart from giving sums of money she received from the deceased Miss Badal
gave no evidence of the source of his income. She said he was a painter and
did little carpentry. She did not know how much he earned; denied he was
gardener who was regularly drunk. To her knowledge, the relationship between
deceased and his sisters was very good.

The evidence of this witness is in stark contrast to the evidence of
Mr. Miller who had known deceased since he went to live in Queensborough area
of St. Andrew since 1986. From then up to the time of his death he knew the
deceased to be living with his sisters on David's Place in Queensborough. He
saw him regularly over that period, often observed his condition and his life
style and the relationship with his sisters.

Despite the evidence of Miss Andrea Thompson that deceased lived in
St. Catherine the copy inventory prepared by her and admitted in evidence gave
his address as David's Place, Queensborough, St. Andrew and that he had neither
real or personal property.

With all these conflicts I find great difficulty in accepting Miss Badal
as a witness of truth. The figures she gave to the Court appears to have been
just picked out of the air, nothing substantiated them. I cannot act upon them.

Even if sometime in the distant past the deceased lived with Miss Badal
and provided for the family in the manner she testified, this surely was not
so in years leading up to the time of his death.

In fact, it appears he had abandoned his family in St. Catherine or more likely they abandoned him. Mr. Miller never, knew or even heard of them despite the fact that he was friendly with the deceased sisters.

Mr. Miller's evidence on the other hand had the ring of truth. He had no interest to serve. By his lifestyle the deceased was obviously a low income earner whose only occupation was on occasional gardener who could earn between \$150.00 to \$200.00 per job. He never saw deceased over the years doing any painting or carpentry.

I am prepared therefore to use the sum of \$200.00 as the earning of deceased per day for three days per week - total of \$600.00 per week or \$31,200.00 per annum.

From his lifestyle it appeared he consumed all of this himself, none left over.

Based on this conclusion no award can be made under the Fatal Accidents Act for the benefit of Nicholas the only relevant near relative.

Under the Law Reform (Miscellaneous Provisions) Act, the following awards are made:

| | | |
|-----------------------------|---|--------------------|
| Loss of Expectation of Life | - | \$5,000.00 |
| Funeral expenses | - | <u>\$30,000.00</u> |
| | | <u>\$35,000.00</u> |

There shall be interest at the rate of 3% per annum from the 19th April, 1993 to date of Judgment.

Cost to the plaintiff to be agreed or taxed.