

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. 1978 - M.050

BETWEEN	ELSADA MORGAN	PLAINTIFF
	(Administratrix Estate	
	GLADSTONE MORGAN deceased)	
A N D	JAMAICA PUBLIC SERVICE CO. LTD.	FIRST DEFENDANT
A N D	CECIL JACKSON	SECOND DEFENDANT

Clinton Hines and Mrs. E. Hines for Plaintiff

Goffe for First Defendant.

Crafton Miller and Mrs. Earle-Brown for Second Defendant.

Heard on: April 25, 26, 1983, March 26, 27, 1984
and January 29, 1985.

ORR J:

In this action the plaintiff seeks to recover damages under the Fatal Accidents Act and Law Reform (Miscellaneous Provisions) Act in respect of the death of her son Valentine Morgan who died as a result of injuries received when a pole which he climbed fell with him.

In March 1977, the Jamaica Public Service Company Limited (hereinafter referred to as the J.P.S.) were relocating electrical lines on the main road from Dovecot to Bellevue in St. Catherine. This was necessary because lands in the area were being sub-divided and the sub-dividers wanted to construct a road and a pole was located in the path of the road.

The J.P.S. engaged the services of J&G Electrical Contractors Limited, to carry out the job of relocating the poles. The deceased was employed as a linesman by J&G Electrical Contractors Limited and was under the supervision of Mr. Cecil Jackson, the second defendant who was a foreman of the company.

On the 29th March 1977 the deceased climbed the pole and removed the wires and conductor without mishap. On the following day he climbed again but on this occasion the pole toppled with him

and caused the fatal injuries.

The J.P.S. operates under the provisions of the Electrical Lighting Act and Regulations made pursuant to the Act.

Regulation 1 provides that a wooden pole shall be set in the ground to a depth of at least one sixth of its total length.

J.P.S. has marks on the poles indicating the size and length and these marks are usually placed about ten (10) feet from the end planted in the ground. Thus on a 30 feet pole, the marks would be approximately 5 feet above ground.

Regulation 6 provides inter alia, that every over-head line including its poles or supports shall be duly and efficiently supervised and maintained by the owners in keeping with the requirements of the regulations.

It is clear beyond doubt that at the time the pole fell it was not planted in the ground at the prescribed depth. The pole was 30 feet in length.

The plaintiff testified that after the accident, Mr. Jackson, the second defendant indicated on his hand the depth of the hole. She showed a length of a little above her wrist to the fingertips. Under cross-examination she said that she saw the hole and estimated the depth at about one foot.

Mr. Waite of the J.P.S. gave an estimate of "maybe 24 inches" and Mr. Jackson gave his opinion that it had been planted at a depth of 11 inches. This he observed after the pole had been uprooted.

Mr. Waite at the time of trial, was Parish Supervisor of Maintenance and Construction. He had been employed with the J.P.S. for twenty-two (22) years and was both qualified and experienced in his field. He indicated in detail the procedure and precautions which should be observed before climbing of a pole is undertaken.

It was his opinion that the pole had originally been planted at the prescribed depth. However he observed that the subdividers had constructed a road and the pole fell in the roadway.

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Land had been excavated to build the road and by so doing earth had been removed from around the pole and this was the reason why the pole was only at a depth of 2 feet.

Although the pole was not properly planted at the time it fell, he considered that the pole would have been stable had it been "piked" - one of the precautions he recommended.

Mr. Jackson, despite his previous experience as a linesman with J.P.S. for seven years, on his own admission took none of the precautions. He merely carried out a hammer test to see if the pole was solid. This test could not determine the stability of the pole. In addition, although he was unsure of ^{the} depth of the pole from the marks thereon, he took no measures to ascertain whether the pole was in fact correctly planted.

From the evidence I find that the pole fell because it was not properly planted at the time the deceased climbed it.

Mr. Jackson is clearly negligent for not having taken the necessary precautions to ensure that the pole was properly planted before the deceased climbed it.

The plaintiff claimed against Mr. Jackson as servant or agent of the J.P.S. Both defendants denied this in their defences filed and asserted that the work was being carried out by J&G Electrical Contractors Limited to whom Jackson was employed.

Nothing emerged from the evidence to contradict this defence and no amendment was sought by the plaintiff to accord with the factual situation. In the circumstances Mr. Jackson, although negligent, will have a Judgment entered not against him, but in his favour.

The evidence disclosed that there was ample opportunity for inspection of the pole by the J.P.S. which would have caused the incorrect planting to have been discovered.

Mr. Waite stated that prior to the commencement of the work an officer from J.P.S. would have to attend on the site and

make a drawing of the work to be done. He was of the opinion that it would have been obvious to such an officer having regard to the position of the marks on the pole, that it was not planted at the proper depth.

I find that the J.P.S. failed to maintain the pole as required by Regulation 6 supra. This failure constitutes a breach of a statutory duty which caused or materially contributed to the injury to the deceased. See Bonnington Castings Limited v. Wardlaw [1956] 1 All E.R. 615. The J.P.S. is liable for the injury.

Alternatively the J.P.S. is liable for the negligence of J&G Electrical Contractors Limited, the independent contractor.

The J.P.S. has a statutory power to supply electricity. The exercise of this statutory power created a duty not to cause unnecessary danger. This duty is non-delegable and thus the J.P.S. cannot escape liability.

Further, despite the protestations to the contrary by Messrs. Waite and Jackson, I hold that the relocation of electrical wires is an "extra hazardous or dangerous operation". The J.P.S. as the employer is vicariously liable for the negligence of the contractor in this operation. See Honeywill and Stein v. Larkin Bros. 1934 1KB 191.

I find that the deceased was not contributorily negligent. He had climbed the pole the previous day without mishap. Mr. Jackson asserted that the deceased had not been ordered to climb the pole in question. However he did not order the deceased to desist from climbing. Indeed he showed more concern for his equipment than for the deceased's safety.

RE DAMAGES

(a) UNDER THE FATAL ACCIDENTS ACT

I hold that the following are the dependants:

1. Elsada Morgan - mother of the deceased;
2. Rudolph Morgan - father of the deceased;
3. Patrick Morgan - brother of the deceased;
4. Maria - daughter of the deceased;

Both attorneys for the defence submitted that Mrs. Elsada Morgan was not a dependant. This submission over-looks the provisions of the Fatal Accidents Act. The Act does not refer to dependants. Section 4(4) states that 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 death of the deceased person.

The evidence discloses that Mrs. Morgan suffered and will suffer pecuniary loss as a result of the death of the deceased.

I assess the salary of the deceased at \$50.00 per week at the time of his death and the dependency at \$35.00 per week. Total \$1,820.00 per annum.

In arriving at a multiplier I take into account the age of the deceased approximately twenty-five (25) years at the time of death, the possibility of his marriage and the resultant effect of the dependants.

For each parent I apply a multiplier of 5 years;

Patrick			2 years;
Maria			<u>16</u> years;
		TOTAL	28 years

Divided by 4 gives an average of 7 years.

Using the average of seven years as the multiplier, I appropriate the damages as follows:

Elsada Morgan	-	\$ 1,522.00
Rudolph Morgan	-	1,522.00
Patrick Morgan	-	910.00
Maria	-	<u>8,786.00</u>
TOTAL		\$12,740.00

(b) UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT.

- (i) Special Damages - Funeral expenses agreed at \$1,000.00;
- (ii) Loss of expectation of life: \$2,000.00;
- (iii) Lost years.

The decision of the House of Lords in Gammell v. Wilson [1981] 1 All E.R. 578 has been followed by other judges. I see no reason to differ from my brethren. On the principles enunciated therein, I assess the surplus available to the deceased after deduction for his living expenses at \$30 per week or \$1,560.00 per annum.

I apply a multiplier of 14, \$1,560 x 14 = \$21,840.00.

It appears that Maria would be the beneficiary of the estate by virtue of the Status of Children Act. Accordingly, the award to her under the Fatal Accidents Act will be deducted from the damages.

Damages are therefore assessed as follows:

Under the Fatal Accidents Act:

	\$12,740.00	
Less	<u>8,786.00</u>	
	3,954.00	\$ 3,954.00

Under the Law Reform Act:

	1,000.00	
	2,000.00	
	<u>21,840.00</u>	
	\$24,840.00	\$24,840.00
TOTAL		\$28,794.00

There will therefore be judgment for the plaintiff against the first defendant, the J.P.S. for \$28,794.00 with costs to be agreed or taxed and judgment for the second defendant Jackson against the plaintiff with costs. Costs to be paid by the first defendant. Such costs to be agreed or taxed.