

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. S.009/83

BETWEEN	GLORIA STONE (Executrix of the Estate of Edward Joslyn Stone, Deceased)	PLAINTIFF
A N D	GODFREY DYER	FIRST DEFENDANT
A N D	DERRICK DYER	SECOND DEFENDANT

R. Small, Q.C. instructed by J. V. Ricketts for Plaintiff.

W. B. Frankson, Q.C. & Lloyd Cooke instructed by Nunes, Scholefield, DeLeon & Co. for Defendant.

HEARD: 11th, 12th & 13th November, 1985,
17th & 18th February, 1986, 6th April,
15th June, 12th & 13th October and
18th December, 1987.

GORDON, J.

Between 9 and 10 o'clock on the night of the 25th March, 1982, an Escort motor car driven by Edward Joslyn Stone was proceeding along the main road at Crawford in St. Elizabeth towards Kingston. Travelling in the opposite direction towards Savanna-La-Mar was a truck driven by Earle Foster. The car collided with the right rear of the truck and the vehicles stopped. The truck was parked on its left facing Savanna-La-Mar and the car on its right, some distance behind the truck, and facing Kingston. Anthony Dennis who was in the cab of the truck said:

"I heard sound like bursting of a tyre and car hit the rear of truck. I felt impact."

The right front wheel of the Escort was blown out and the right front fender and right door of the car were damaged. The damage to the right fender commenced at a point behind the headlight. The fender was touching the right front wheel. The men from the truck assisted Mr. Stone in getting the fender off the wheel. The tyre was changed. Throughout this exercise, these men testified, the park lights of the Escort were on, two in front and two in the rear. The park lights were in the head lights and none of these was damaged.

After the wheel was changed it was discovered that the right door of the Escort could not be closed. This apparently was a result of the collision. The witnesses said Mr. Stone went towards the rear of the car, moving on the right side of the car, they were left near the door on the right side of the car and between the car and the right bank. Measurements taken afterwards showed that this car was 3' - 3' 6" from the right bank. Grass from the right bank spread on the asphalt surface of the road almost to where the car was parked.

As Mr. Stone left, the witness heard the sound of a car approaching from the Black River (Kingston) direction "at a speed". Mr. Foster described what happened next thus:

"I saw car take the bank about 1½ chains away coming towards me. I grabbed my companion and moved towards the fence and the wire held me. When I moved I had been standing on the bank beside the car and I grabbed companion and moved because I saw car coming towards us. Car passed me --- when it passed me it was travelling on the bank. It hit down a telegram post -- car turned over and rolled and came back on its wheels. It came to a stop about eight feet from the bank in the road and about one chain from the front of the Escort and on the Westmoreland side of Escort".

This car was a Morris Mini Minor and Mr. Dennis on its approach heard/sound of heavy music coming from it.

After this incident Mr. Stone was not seen. The witnesses searched for him and found him lying unconscious and bleeding, head on the road, feet on the bank about half chain from the Mini and between the Mini and the truck. No one saw when he was hit; it was a dark night. Mr. Stone was removed to the Black River Hospital by the Police. He died as a result of the injuries he sustained.

The accident occurred on a straight stretch of road quarter to half mile in length and about 100 yards from the commencement of the straight coming from the Black River direction. The utility pole struck by the Mini was about ten feet from the right rear wheel of the Escort and four feet from the road surface on the left bank. This pole

3/

was broken by the force of the impact. Blood stains on the road indicating where Mr. Stone was found after the impact were some 40 - 50 feet from the right rear wheel of the Escort. Broken glass was also observed by Sgt. Astor Morgan who visited the scene and in the presence of the defendant, Derrick Dyer, took measurements. The broken glass, broken utility pole and bloodstains were all on the left of the road going towards Savanna-La-Mar.

The second defendant said he was travelling towards Savanna-La-Mar on a straight stretch of road at about 30 m.p.h., a light suddenly flashed before him about 45 feet away blinding him momentarily, he cut his speed and kept closer to his left. On reaching about 20 feet from this light he realised it was a motor car so he swung to his left leaving the road and travelled on grassy bank passed the car hit a pole and overturned. He did not see the pole he hit, he did not see anyone in the path of the car, he did not see Mr. Foster and Dennis move out of the path of the car. It was after he came out the car he saw Mr. Stone lying on the road. He never saw Mr. Dennis or Foster that night. The park light of the Escort were not on he said. He never instructed anyone that the deceased attempted to cross the road that night. That road he knew, he traversed it often.

Mr. Frankson submitted that there was no evidence that it was the mini driven by the second defendant that struck the deceased. Further he said the Escort was parked on the incorrect side of the road at night and the driver thereof, the deceased, was liable in contributory negligence.

I find that the (1) Escort motor car driven by the deceased stopped where it was as a result of a blown out tyre followed by a collision with Mr. Foster's truck.

(2) This car could not be moved until the fender was taken off the right front tyre and a tyre in good working order replaced the deflated one.

(3) As soon as this was done it was discovered that the driver's door could not be secured.

(4) The driver set off to remedy this when he was fatally struck by the first defendant's motor car, driven by the second defendant.

Paragraph 4 of defence reads

"The defendant admits that on the date and at the place alleged a collision occurred between the deceased and the first defendant said motor vehicle"

(5) The Escort was parked with its park light on: Two of the front and two to the rear.

(6) The bright light of the Escort were not on nor were they turned on when the defendant's car approached.

(7) The second defendant drove "at a speed", travelled along the bank for about 1½ chains to the point where the car was parked, passed the car and struck Mr. Stone.

(8) The second defendant failed to keep a proper look out and to try to avoid the accident.

(a) He did not see the car until he was about 20' from it.

(b) He did not see either Mr. Dennis or Mr. Foster as they jumped out of the path of his car.

(c) He did not see Mr. Stone.

(d) He did not see the Utility pole he struck.

(9) The second defendant was solely responsible for the accident.

(10) Mr. Stone was not, when he was struck, "crossing or attempting to cross the said Crawford main road at a time and in a manner when it was unsafe so to do" as pleaded in the defence.

The deceased is the father of five children:

Wayne born 24.4.71, Glenroy born 22.12.72, Stacie born 15.9.76 are the children of his marriage to the plaintiff. Dale born on 11.10.69 and Carolyn born on 10.3.71 were maintained by the deceased. Mr. Stone was a Life Underwriter at Life of Jamaica Ltd. His performance was outstanding. He held the National Sales award, the National quality

award, a member of the Top Ten Producers club and a member of the \$1M Round Table. His performance earned him consideration for training for promotion to Unit Manager. In 1981 his gross income was \$66,613.07 with a net income of \$40,635.53. In the opinion of Mr. Wesley Parker, the Manager of the branch to which the deceased was attached, it was expected that deceased's earnings, based on his performance, would have been between \$120,000.00 and \$150,000.00 in 1985. Mr. Stone had great potential for advancement in the life underwriting field. Only 3% of life underwriters qualify for membership of the \$M Round Table and he qualified for this in the years 1979, 1980 and 1981.

On 17th February, 1986, Dr. Omar Davies, a senior lecturer in the department of Economics at the University of the West Indies, an Assistant Professor at Stamford University, U.S.A and a former director of the National Planning Agency, gave evidence of the movement of money between 1982 to that date, he made projections re the further movement due to inflation. The Consumer Price Index is based on statistics produced by the Statistical Institute of Jamaica. The Consumer Price Index is the major index used to measure inflation experienced by households. Using this index he showed that a basket of groceries bought in 1982 for \$100.00 cost in 1985 November \$201.60 an increase of 101.60%. For a person in the income group of \$50,000 per annum the increase would be 101 - 120% dependent on the individual's adjustment in lifestyle. He then expected there would be a significant increase by November, 1986.

Mr. Small sought leave to recall Dr. Davies, should it become necessary. Mr. Frankson did not demur. The plaintiff's case was closed subject to the recall of Dr. Davies. On 18.2.86, Mr. Frankson sought an adjournment because the defendant was absent. When the case next came before the Court on the 6th April, 1987, Mr. Forte holding for Mr. Frankson craved an adjournment because Mr. Frankson was ill in bed. On 15th June, 1987, Mrs. Forte again sought an adjournment based

on the continued illness of Mr. Frankson. Mr. Small objected as the delays caused additional hardship to his client and the leader of the defence team had a junior who should proceed. The adjournment was granted. This case next came on for trial on the 12th October, 1987. The defendant, Mr. Derrick Dyer, was present and he testified. Thereafter the defence closed its case. It was now one year and eight months since Dr. Davies gave evidence on the movement of money. Mr. Small sought to recall him as earlier indicated and Mr. Frankson objected. Dr. Davies was recalled and he said there was a further movement in the movement of money. A basket of groceries that cost \$100.00 in March, 1982 cost \$225.00 in July, 1987. His evidence in effect was that there was a marginal increase of 5% on the projected figure of 120% he gave for November, 1986.

The details of expenditure given by the plaintiff accounting for the dependency were not challenged by the defence. The plaintiff stated she did not see the prospect of her marrying again as good. "If marriage does come it would not be for now. These days you do not find a father image easily", she said. At the time of his death her husband operated, albeit illegally, a minibus which supplimented his intake by over \$200.00 weekly. This minibus was given by the plaintiff to her mother-in-law with the intention that revenue from it should go to assist in maintaining Dale and Carolyn, the children outside the nuclear family.

I have always found the calculation of awards challenging. In this case, I am grateful to counsel for their industry and assistance: Mr. Small has been particularly helpful.

Mr. Stone was a bright young man on the threshold of a prosperous career as a life underwriter at 35 years old, he had another 25 - 30 years, given the excellent state of his health, as a wage earner. As he progressed he would have had to abandon his minibus operations; I do not include the earnings from this source in my

calculations. I have determined that a multiplier of 15 years is appropriate in this case.

I have considered the evidence of Dr. Davies on the movement of money over the years and the indications of the Consumer Price Index. I find that based on the evidence the deceased would have developed his potential and been in the \$150,000 p.a. income bracket had he survived to this date. This figure is within that given by Dr. Davies based on the earnings of the deceased at the time of his death viz \$66,000.00. In arriving at the amount of the dependency for the first year I use the unchallenged figures given by the plaintiff.

Rent	\$ 2,700
Helper	2,400
Electricity	2,040
Boiling gas	240
Gardener	780
Grocery	13,000
Vacation	2,000
Entertainment	3,120
X-mas	1,000
	<u>\$28,540</u>

By increasing this amount annually by 10% for 5½ years from the date of death to allow for the increase in the cost of living and the fall in the value of money I arrive at the sum of \$200,476. Bearing all the factors aforementioned in mind I award a multiplicand of \$62,000 p.a. for the remaining 9½ years viz \$589,000.00.

Dale and Carolyn are children not of the nuclear family. They fall to be considered under the provisions of the Fatal Accident Act. The plaintiff in evidence said the deceased remitted sums for their maintenance monthly in addition he bought clothes for Dale and toys at Christmas. She was unable to say much about Carolyn's fortune but the evidence certainly indicates that the deceased visited Westmoreland on duty and indeed was on his way from that parish when

he came to an untimely end. It may be fairly assumed that on his visits he would, when he could, visit these other children who resided in the parish and they would be recipients of his bounty. Mrs. Stone said he was a conscientious father and a good provider.

Mr. Small invited me to make separate awards for these children and that they should be higher than the awards made to the plaintiff's children. I have carefully tabulated calculations of the dependency of the nuclear family. The figures submitted for these other children are not as precise and I am invited to delve in the uncertain realm of speculation. It is an unfortunate fact of life in Jamaica that children born outside of marriage invariably do not fare as well as those born within.

There is evidence that each child received \$100.00 each month, presents at Christmas, clothes, toys and Carolyn \$50 at Xmas. In addition it is reasonable to assume that on his visits to Westmoreland he would make additional contributions and gifts. Taking these factors into account an award of a dependency of \$300.00 per month for each child should not be out of proportion in the circumstances.

I therefore award Dale \$19,800 and Carolyn \$25,200.

Under the Fatal Accident Act I award: for General Damages \$782.476.

Apportioned thus:

Dale	\$19,800
Carolyn	25,200
Wayne	32,634
Glenroy	39,627
Stacie Ann	58,275
Mrs. Stone	606,940
	<u>\$782,476</u>

The award to Mrs. Stone which is in fact \$658,940 has been reduced by \$52,000 representing sums she received from her husband's employers in the years 1983, 1984 and 1985.

Mr. Small invited me to consider awarding as special damages sums spent by the deceased on specific members of his family, for school fees, pocket money, taxi fares, medical expenses and presents. Glenroy was asthmatic and he required frequent treatment and Wayne suffered from the residual effects of Meningitis. It will be noted that I have not deducted from the multiplicand of \$28,540, that portion normally regarded as living expenses of the deceased himself. I am of the view that one is off-set by the other and the upward adjustment of the multiplicand absorbs any difference there may be.

The practise is to award a nominal sum for loss of expectation of Life under the Law Reform (Miscellaneous Provisions Act). I award the sum of \$3,000.00 under this head.

In computing the award for loss of earnings in the "lost years" counsel referred to Gammell v. Wilson 1982 A.C. 27; Harris v Empress Motors Ltd. 1983 3 All E.R. 561. This latter case details the principles on which assessment should be based. The multiplicand used was a sum representing a percentage of the deceased's net earnings which he would have spent exclusively on himself. The percentage would be between 25% and 33% of the deceased's net earnings dependent on the size of his family.

In Jamaica Public Service Co. Ltd. v. Elzada Morgan et al S.C.C.A. 12/85 (unreported) Carey, J.A. referred to the judgment of O'Connor L.J. in Harris' case (supra) and said:

"The experience in the United Kingdom has plainly led the courts to adopt this mathematical formula. But we are not dealing with English Conditions in this Jurisdiction and I would be slow to adopt a formula suited to English Conditions but not yet tested in the Jamaica Milieu.

We have no statistical accumulation of data in this country to show what percentage of salary or wages, young apprentices spend on themselves, or for that matter settled married men with families. Plainly we have not yet arrived at a percentage to which the courts may resort as is suggested in the case cited.

The question for a trial judge required to assess damages in this highly speculative area, is to discover

on the available evidence what proportion of his net earnings a (deceased) workman spends exclusively on himself, to maintain himself at the standard of life appropriate to his situation."

Mr. Stone had in four years as a life underwriter accumulated \$15,000 in the Life Underwriters Credit Union. He also had \$17,000 saved in Commercial banks. He was saving towards buying a house and a motor car. A successful life underwriter, he had to dress and look the part, he also had to entertain. The minibus he operated provided some \$10,400 annually, this Mr. Small submitted went to savings.

A non-smoker and a regular jogger, he was in good health at the time of his death.

I assess the surplus available to the deceased at \$25,000 per annum and award the sum of \$25,000 X 15 = \$375,000 under this head.

In fine there will be judgment for the plaintiff in the sum of \$782,476.00 under the Fatal Accident Act with interest at 3% from 25th January, 1983 to date.

For Funeral expenses	\$ 6,000
For loss of expectation of life	3,000
Loss of Future earnings (Lost years)	375,000

Under the Law Reform (Miscellaneous Provisions) Act.

I appoint the executrix of the deceased's estate, the plaintiff, Mrs. Gloria Stone, the trustee for the infant dependents.

There will be costs to the plaintiff to be taxed if not agreed.