[2022] JMSC Civ 177

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2009 HCV 05229

BETWEEN	**THE ADMINISTRATOR GENERAL FOR JAMAICA (Administrator of Estate Weston Wilson, Deceased)**	**CLAIMANT**
AND	**AIRLIFT HANDLERS LIMITED**	**1ST DEFENDANT**
AND	**MICHAEL ANGELO DALEY**	**2ND DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. 2011 HCV 05998

AND	**THE ADMINISTRATOR GENERAL FOR JAMAICA (Administrator of Estate Weston Wilson, Deceased)**	**CLAIMANT**
AND	**MERRICK MYRIE**	**1ST DEFENDANT**
AND	**NICOLE DWYER**	**2ND DEFENDANT**

IN OPEN COURT

Ms. Jacqueline Cummings instructed by Archer, Cummings & Co., Attorneys-at-Law for the Claimant

Ms. Catherine Minto instructed by Nunes, Scholefield and DeLeon & Co., Attorneys-at-law for the Defendant

Ms. Geraldine Bradford, representative of the claimant present

Heard: **March 3, 4 and October 12, 2022**

Negligence – Whether res ipsa loquitur applies – Prima facie case – Defendants in rebuttal -- Fatal Accidents Act - Law Reform (Miscellaneous Provisions) Act

WINT – BLAIR, J

[1] The claimant, The Administrator General for Jamaica, (Administrator of Estate Weston Wilson, deceased), claims that on or about October 5, 2005 the deceased was travelling along Waltham Park Road in the parish of Saint Andrew as a passenger in motor vehicle registered 8611 DX being driven by the second defendant, Michael Angelo Daley, the servant and/or agent of the first defendant, Airlift Handlers Limited; when the second defendant collided with motor vehicle registered 0136 DM being negligently driven by the second defendant, Nicole Dwyer, the servant and/or agent of the first defendant, Merrick Myrie.

[2] These actions were commenced under the provisions of the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act for the benefit of:

i. Sanjay Wilson, a son of the deceased, born on December 15, 1988;

ii. Jahmal Wilson, a son of the deceased, born on December 21, 1996;

iii. Travis Wilson, a son of the deceased, born on August 29, 1989; and

iv. Kemar Wilson, a son of the deceased, born on November 7, 1982.

[3] At the time of his death, the deceased was forty-two (42) years of age, enjoyed good health and lived a happy and vigorous life. He was employed as a ramp attendant at Airlift Handlers Limited and his net monthly income was Fourteen Thousand Nine Hundred and Two Dollars and Eighty Seven Cents ($14,902.87) per month or One Hundred Seventy Eight Thousand Eight Hundred Thirty Four Dollars and Forty Four Cents ($178,834.44) per annum.

[4] The children of the deceased were wholly dependent upon him for support and by his death have lost their means of support, and suffered loss and damage. Further, the claimant claims the following sums:

Funeral expenses	$200,000.00
Costs of Letters of Administration	$ 91,439.20
Total:	$291,439.20

[5] And the claimant claims:

(a) Damages under the Fatal Accidents Act for the dependents of the deceased;

(b) Damages under the Law Reform (Miscellaneous Provisions) Act for the benefit of the estate of the deceased.

(c) Loss of expectation of life.

(d) Costs

(e) Attorneys-at-law costs

(f) Such other and/or relief as this Honourable court deems fit.

[6] Letters of Administration were granted to the claimant by this court on June 26, 2008. In the 2009 claim, the first defendant was at all material times a company with registered offices at 110 Hagley Park Road, Kingston 11, St. Andrew and the registered owner of motor vehicle registered 8611 DX. The second defendant was at all material times the agent and/or servant of the first defendant and the driver of the said motor vehicle. In the 2011 claim, the first defendant was at all material times the registered owner of motor vehicle 0136 DM. The second defendant was at all material times the agent and/or servant of the first defendant and the driver of motor vehicle registered 0136DM.

[7] The following facts have been admitted by Miss Minto:

a. On October 5, 2005, a motor vehicle collision occurred involving the motor vehicles owned by the first defendants in each claim respectively.

b. This collision occurred along Waltham Park Road, St. Andrew.

c. That Michael Daley was operating the vehicle owned by Airlift Handlers Limited, while Nicole Dwyer was operating the vehicle owned by Merrick Myrie.

d. Michael Daley was operating the said vehicle as the servant and/or agent of Airlift Handlers Limited.

e. That Weston Wilson was an employee of Airlift Handlers Limited and was a passenger in its vehicle at the material time.

f. Weston Wilson died as a result of fatal injuries sustained in the accident.

[8] Airlift Handlers Limited denies that the collision was caused by the negligent driving of the second defendants in both actions and contends that the accident was caused solely by the negligence of Nicole Dwyer. The particulars of negligence are:

a. Driving at an excessive, dangerous and/or improper speed.

b. Failing to have any or any regard for other users of the road.

c. Failing to keep a proper lookout.

d. Failing to maintain any control of the vehicle, and driving at a speed which rendered it difficult to control the vehicle.

e. Driving onto the incorrect side of the road and there colliding with 1st defendant's vehicle.

f. Driving without any due care and attention.

g. Negotiating a corner while driving at an excessive speed.

h. Failing to see or observe in suffice [sic] time or at all the presence of the first defendant's motor vehicle along the said main road.

i. Failing to take the necessary precautions when negotiating a corner.

j. Failing to keep the vehicle to its side of the roadway, crossing over the centre and into the path of the first defendant's motor vehicle.

k. Failing to stop, slow down, swerve or otherwise so manage or control the said motor vehicle so as to avoid the said collision.

[9] Agreed documents

The Exhibits in this trial are set out below:

1. Receipt no. 13 from Karlene Whitter dated October 28, 2005 for funeral expenses
2. Death certificate
3. Grant of Administration extracted on June 26, 2008
4. Formal order on Fixed Date Claim Form –filed on December 22, 2017 - declaration of paternity
5. Invoice dated July 13, 2009
6. Payslip of Weston Wilson for period ending May 26, 2003
7. Photographs of vehicles involved in the accident
8. Judgment dated November 3, 2008 in Claim No. 2007 HCV 01855 Airlift Handlers v Richard Collins (aka David/Dave Collins and Nicole Dwyer.

The Evidence

[10] Leon Stephenson was called as a witness by counsel for Airlift Handlers Limited and Michael Daley. He was an eye witness to the collision. In his witness statement[1], he described the events on the night of October 5, 2005. He then was a ramp attendant employed to Airlift Handlers Limited at the Norman Manley International Airport. His employers were the cargo handlers for Air Jamaica and then Caribbean Airlines and to a lesser extent Air Canada and British Airways at that time.

[11] Ramp attendants were responsible for offloading and loading cargo and luggage, tugging the aircraft from the gate to the runway for taxiing and take off; marshalling and directing flights on landing and for take-off; and generally communicating with the cockpit for landing and take-off.

[12] On October 5, 2005, he did not conclude his duties until almost midnight. The shift should have ended at 8:00pm but its end was delayed until almost midnight due to difficulties with some flights. The crew boarded the staff bus provide by his employer for home. The bus that night was a white Toyota Hiace mini bus, driven by Michael Daley.

[13] The driver stopped to drop off staff at various locations and then turned on to Waltham Park Road heading in the direction of Hagley Park Road The witness said he was seated directly behind the driver; and was the only one in that row. There were now only a few others in the bus. Devon Smith sat in the row behind him, Ian Stephenson and Cheddie sat in the row behind Mr. Smith and Trevor Edwards and the deceased Weston Wilson sat in the back row.

---

[1] Filed on February 25, 2022

[14] The bus drove onto Waltham Park Road and approaching a church, with their driver on his correct left side of the road, he saw a Noah bus approaching from the opposite direction at a high rate of speed. As it approached it negotiated a deep right bend speeding. The witness described hearing the screeching wheels of the Noah bus and it appeared to be skidding sideways on two wheels.

[15] The witness said to Mr. Daley, "a how dis driver a drive so." By the time he said this, he saw the Noah bus "shot across the road to its right, directly towards the right side of our staff bus." He saw the Noah coming towards them and he quickly jumped to his left close to the passenger door and braced himself for the "hit." He felt Mr. Daley swerve their bus to the left to avoid the hit, but the Noah still collided directly into the right side of the staff bus pushing their bus over. It ended up against the column of the church on the left side of the road.

[16] After the collision, the witness stood up in a window of his vehicle and saw the Noah bus overturned on its left side and skating down the road. It was the early morning and the road was quiet when the collision took place.

[17] He tried to help his co-workers as best he could. Weston Wilson had been thrown from the vehicle with his head and chest against the wall of the church. Weston Wilson tried to speak to him but could not, he was bleeding from his nose and the corner of his eyes. The other passengers were also badly injured. Mr. Wilson was taken to the Kingston Public Hospital. The police arrived.

[18] The driver of the Noah bus fled the scene, five of his co-workers died in that accident, only himself and Michael Daley survived.

[19] There is no evidence before this court to contradict the account of Leon Stephenson. The claimant and Airlift Handlers Limited have obtained a judgment in default against Nicole Dwyer entered on January 23, 2018.

[20] Sanjay Wilson gave sworn testimony, his witness statement filed on February 10, 2022 was permitted to stand as his evidence in chief. He stated that he is a higgler, was thirty-three (33) years old and the son of the late Weston Wilson. He is the third child of Weston Wilson and Karlene Whitter. His siblings are Travis Wilson, thirty two (32), Jamal Wilson, twenty five (25) and Kemar Wilson, thirty nine (39). He lived with his father and Jamal Wilson at 5A Olympic Avenue, Kingston 20, St. Andrew.

[21] He said that before his father died he worked as a ramp attendant at Airlift Handlers Limited and earned Fourteen Thousand Nine Hundred and Two Dollars and Eighty Seven Cents ($14,902.87) per month or One Hundred Seventy Eight Thousand Eight Hundred Thirty Four Dollars and Forty Four Cents ($178,834.44) annually. His father used to give him Two Thousand Five Hundred Dollars ($2,500.00) per week to spend on himself. They would go out on holidays, his father helped him with his schoolwork and paid his school fees of Twelve Thousand Dollars ($12,000.00) each semester.

[22] His father's death took a severe toll on his mental health as he died right before exams which affected his performance. After that, it was his mother who maintained them and they could no longer afford the things they used to.

[23] His father enjoyed good health during his life and suffered from no mental or physical ailments that would affect his livelihood or his life expectancy.

[24] The funeral expenses amounted to Two Hundred Thousand Dollars ($200,000.00) and the cost of obtaining letters of administration in the estate amounted to Ninety One Thousand Four Hundred Thirty Nine Dollars and Twenty Cents ($91,439.20). The untimely death of his father has caused the family great suffering and caused him great distress.

[25] Jamal was eight (8) years old at the time of his father's death and was in grade four (4) at Balcombe Drive Primary School. He went on to Ardenne High School and graduated in 2013. He went overseas to college but had to discontinue his studies due to financial difficulties. Jamal began working at Payless Shoe Store at the end of 2016.

[26] In cross-examination, the court was told that his father also had a daughter by the name of Yanique Wilson. There is no other evidence related to this daughter of the deceased.

[27] Travis Wilson gave sworn evidence, his witness statement was permitted to stand as his evidence in chief.[2] He said that he is the son of the late Weston Wilson and is the fourth of four (4) sons. He lived with his mother and father from birth until his father moved to 5 Olympic Avenue, Kingston 20, St. Andrew. Before his father died he worked as a ramp attendant at Airlift Handlers earning Fourteen Thousand Nine Hundred and Two Dollars and Eighty Seven Cents ($14,902.87) per month or One Hundred Seventy Eight Thousand Eight Hundred Thirty Four Dollars and Forty Four Cents ($178,834.44) per year. His father did odd jobs to cover his expenses such as construction and other skilled labour when it was available.

[28] He saw his father every week and his father took him to school every day and sometimes would take him home. It was his father who paid his school fees of Six Thousand Five Hundred Dollars ($6,500.00) and purchased his uniform and books. He was in grade eleven (11) and was sixteen (16) years old when his father died. He attended school until age seventeen (17) as he could not afford to continue his studies after the death of his father.

---

[2] Filed February 10, 2022

[29] His father played a very active role in his life, they would play football, go on trips and he gave the witness' Five Hundred Dollars ($500.00) lunch money every day. Round trip transportation to school was Two Hundred Dollars ($200.00). During school when he had to do his homework, his father would tell him not to waste time and would explain the homework he could not understand.

[30] After his father's death he had to start selling clothes and working with his mother as a higgler. She was responsible for his support. His father was in very good health during his entire life and suffered from no mental or physical ailments that would affect his livelihood or life expectancy. He and his family have suffered great distress over the death of his father.

DISCUSSION

Negligence

[31] The elements of the tort of negligence are the existence of a duty of care, a breach of the duty, a causal connection between the breach and the damage and foreseeability of the particular type of damage caused.

[32] The test of whether a duty of care exists in a particular case is, as set out in the leading case of **Caparo Industries plc v Dickman** [1990] 1 All ER 568, 573-574:

> *"What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other."*

[33] The claimant pleaded negligence on the part of all four (4) defendants but called no evidence in this trial. The claimant is relying on the fact of the accident as evidence of negligence or the doctrine of res ipsa loquitur. In other words, the claimant argues that in the absence of an explanation then the proper inference to be drawn was that the 1st defendant's vehicle was not being driven with the standard of care required by law and that its driver was therefore negligent. Had the claimant pleaded res ipsa loquitur and had the defendants called no evidence this would have established a prima facie case and would have entitled the claimant to the judgment of the court.

[34] However, Airlift Handlers Limited adduced the evidence of Leon Stephenson and he explained how the collision occurred from his vantage point as a passenger in the vehicle driven by Michael Daley. This court accepts the evidence of Leon Stephenson which said that the Mr. Daley was driving on his correct side of the road and the oncoming vehicle driven by Nicole Dwyer was travelling at a high rate of speed while negotiating a deep right bend. The witness described "hearing the screeching of the wheels of the Noah bus and it appeared to be skidding sideways on two wheels." The witness said he felt the second defendant swerving further to his left. This is evidence from which I can infer that the witness was on high alert, his senses were engaged, he was able to see, hear and feel the dynamic situation he was in. The swerve further left means the vehicle was on its correct left side and was attempting to be driven closer to the left side of the road. The swerve was violent enough that it could be felt, and it was the means by which Mr. Daley tried to avoid the collision but to no avail. Given the sudden situation in which Mr. Daley found himself he had to react as best he could. I am satisfied that he exercised the requisite alertness, reaction, skill and judgment which could have reasonably been expected given the dangerous manoeuvre projected onto him by Nicole Dwyer when she failed to negotiate the deep bend. There is no evidence of any failure on the part of the

second defendant such that an inference can be drawn that he failed to exercise due care in these circumstances.

[35] The witness said that on seeing the approach of the vehicle driven by Nicole Dwyer, he exclaimed at the way it was being driven and jumped from his seat behind the driver going to the passenger door where he braced for impact. The witness himself tried to escape injury in what he saw as an inevitable collision. He tried to put himself in a position where he would suffer the least. He did so successfully for only himself and Mr. Daley survived the collision.

[36] The evidence supports the inference that the collision was inevitable despite the best efforts of Mr. Daley to avoid it and the witness not to be injured by it. It is also a reasonable inference to draw that Nicole Dwyer attempted too late to apply the brakes in order to negotiate this deep bend. She was travelling at such a high rate of speed that she could not do so safely. The screech of the tyres suggests that hard braking in the curve. The vehicle skidding sideways suggests that she failed to slow the vehicle and instead it kept going but changed direction. This attempt at braking having failed, she lost control of the vehicle which failed to keep to its correct left side of the road, raced into the right lane and into the right side of the bus driven by the Mr. Daley. The impact pushed the Toyota Hiace bus driven by Mr. Daley over onto its side and into the premises of a church.

SUBMISSIONS

[37] Ms. Cummings relied on the case of **Ng Chun Pui and Ng Wang King Administrators of the Estate of Ng Wai Yee and Attornies of Choi Yuen Fun and Ng Wan Hoi and Others v Lee Chuen Tat (also spelt as Lee Tsuen Tat)**

and Another.[3] This was a very instructive case in which the Board denied liability in favour of the plaintiffs in respect of a collision. On February 28, 1982, a coach owned by the second defendant driven by the first defendant crossed the grass between carriageways and collided with a bus being driven in the opposite direction. The first plaintiffs are the personal representatives of a passenger in the bus who was killed in that collision. The remaining plaintiffs are other passengers and the driver who were injured in the collision.

[38] In the **Ng Chun** case, the plaintiff called no oral evidence. However, the plaintiff tendered documentary evidence without objection, including a police sketch plan showing the dimensions of the road and the positions of the vehicle after the accident, which showed that the accident had occurred on the defendants' wrong side of the road…and a vehicle report showing that the defendants' coach had been in good mechanical order immediately before the accident'. [4]

[39] Given the undisputed evidence, that the collision occurred on the defendant's wrong side of the road, the court found that there was a case for the defendant to answer, as the plaintiff would have led prima facie evidence as to the defendants' negligence.

[40] The Board held that the plaintiff would have been entitled in those circumstances to rely "upon the fact of the accident as evidence of negligence, or, on the doctrine of res ipsa loquitur." [5]

[41] But the words: *rely upon the fact of the accident as evidence of negligence* were not used in a vacuum. The Board qualified their remarks as follows: -

---

[3] PC Appeal No. 1 of 1988

[4] Page 2 paragraph 1 of Ng Chun
[5] Page 2 of the Ng Chun decision - 2nd paragraph

"…in the ordinary circumstances if a well-maintained coach is being properly driven it will not cross the central reservation of a dual carriageway and collide with oncoming traffic in the other carriageway. In the absence of any explanation of the behaviour of the coach the proper inference to draw is that it was not being driven with the standard of care required by the law and that the driver was therefore negligent."

[42] It must be underscored, that there was prima facie evidence of negligence in the **Ng Chun** case, when the court called upon the defendant, to answer the claimant's case. The plaintiff did not simply rely on the mere fact of the accident. The Board emphasized that a prima facie case of negligence must be established, before the defendant, will be called upon to answer a claimant's case,[6] as the burden of proof rests on the claimant, throughout the matter.

[43] The Board discussed the application of the doctrine of res ipsa loquitur defining it as:

"…no more than the use of a latin maxim to describe a state of the evidence from which it is proper to draw an inference of negligence. Although it has been said in a number of cases, it is misleading to talk of the burden of proof shifting to the defendant in a res ipsa loquitur situation. The burden of proving negligence rests throughout the case on the plaintiff. Where the plaintiff has suffered injuries as a result of an accident which ought not to have happened if the defendant had taken due care, it will often be possible for the plaintiff to discharge the burden of proof by inviting the court to draw the inference that on the balance of probabilities the defendant must have failed to exercise due care, even though the plaintiff does not know in what particular respects the failure occurred…

---

[6] **Ng Chun Pui v Lee Chuen Tat** [1988] RTR 298 **at page 3** - first paragraph and **page 4**, second paragraph under the quote in **Henderson v Henry** [1970] Ac at page 301, and **page 4, last paragraph** under the quote in **Lloyd v West Midlands Gas Board**

…

So in an appropriate case the plaintiff establishes a prima facie case by relying upon the fact of the accident. If the defendant adduces no evidence, there is nothing to rebut the inference of negligence and the plaintiff will have proved his case. But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the accident. Loosely speaking this may be referred to as a burden on the defendant to show that he was not negligent, but that only means that faced with a prima facie case of negligence the defendant will be found negligent unless he produces evidence that is capable of rebutting the prima facie case. Resort to the burden of proof is a poor way to decide a case; it is the duty of the judge to examine all the evidence at the end of the case and decide whether on the facts he find to have been proved and on the inferences he is prepared to draw he is satisfied that negligence has been established. In so far as resort is had to the burden of proof the burden remains at the end of the case as it was at the beginning upon the plaintiff to prove that his injury was caused by the negligence of the defendants."

[44] Ms. Cummings also cited **Baker v Market Harborough Industrial Co-operative Society Ld. Wallace v Richards (Leicester) Ld**.[7] This was a case in which a collision between two (2) vehicles proceeding in opposite directions occurred in the centre of a straight road during the hours of darkness. Both drivers were killed, the inference in the absence of any other evidence was that each driver was committing the same acts of negligence and both were equally to blame.

---

[7] [1953] 1 W.L.R. 1472

[45] The evidence led by the plaintiff included the evidence of the investigating police officers concerning the position of the vehicles at the time of the collision, using the measurements taken and the physical markings on the road. There was also eye-witness testimony as to the movements of the vehicles leading up to the accident. There was also evidence that the road was twenty-one (21) feet wide and therefore wide enough for both vehicles to pass safely and that it was a perfectly straight road. There was evidence that the two (2) vehicles collided in the centre of the road. Lord Justice Romer accepted the findings of the trial judge Sellers J whose decision was affirmed on appeal that:

> *"it was clearly established that these vehicles came together with the offside of one vehicle against the offsite of the other in the center of the roadway." and …that " the two vehicles overlapped by some two or three feet at least in what must have been practically a straight head-on collision."*

[46] Based on this evidence, the court drew the inference that both drivers were to be blamed equally.

[47] In the case at bar, there is no evidence from the claimant, save that the deceased was a passenger in a vehicle, and a collision occurred. It is noted that the claimant already has a judgment against Nicole Dwyer.

[48] There is agreed evidence exhibited in this trial. These are photographs of the damaged vehicles. The photographs show, that there was no damage to the front of the Airlift Handler's vehicle. Instead, the damage was to the right side of its vehicle. The damage was confined to the front of the vehicle operated by Nicole Dwyer. There is no evidence led by the claimant to support an inference, that both drivers encroached, or that the accident occurred in the centre of the road, or that both drivers must be negligent.

[49] In addition, the case is distinguishable on its facts from **Baker** as the witness Leon Stephenson was a passenger in the first defendant's vehicle and was able to give evidence as to how the collision took place.

[50] The final case was the case of **Igol Coke v Nigel Rhooms et al**[8] in which Constable Coke was travelling in a police service vehicle driven by Constable Anderson. There was a collision at the junction of the Spanish Town by-pass and March Pen Road. Constable Coke filed a claim against Mr. Rhooms, Constable Anderson, the Commissioner of Police[9] who is the owner of the service vehicle and the Attorney General pursuant to the Crown Proceedings Act. Constable Coke alleged negligence on the part of Constable Anderson and Mr. Rhooms. Each driver denied negligence in his defence and blamed the other for causing the collision.

[51] The **Igol Coke** case turned on its specific facts, and the conduct of the case which led to neither driver, in a two (2) vehicle accident being found negligent, and the passenger walking away empty handed.

[52] At paragraph 24, the court of appeal in **Igol Coke** adopted the decision of **Hummerstone and Another v Leary and Another**[10] and the following passage:

> ***"When once the state of facts was proved, as it was, from which the reasonable inference to be drawn was that prima facie one, if not both drivers had been negligent, the Plaintiffs were entitled to call***

---

[8] [2014] JMCA Civ 54

[9] Removed at a case management conference

[10] [1921] 2 KB 664, at page 667,

the Defendants for an answer, and the proper time at which to decide whether on the evidence one defendant, or the other defendant, or both of the defendants were liable was at the close of the whole case. *That the plaintiffs did prove such a state of facts is clear. The collision took place in broad daylight, there was no other traffic in the road, and there was nothing to indicate inevitable accident. If the learned judge was right, then if all that the plaintiffs could have proved was the collision itself, which under such circumstances as these would raise a presumption of carelessness on the part of one or both drivers, each defendant would be entitled to judgment because the plaintiffs would have failed to prove which driver was to blame." (Emphasis supplied)*

[53] The trial ended with a no case submission being upheld. Constable Coke appealed. On appeal, the court of appeal held that in assessing the competing submissions, the doctrine of res ipsa loquitur had to be examined. The court of appeal reviewed the case of **Shtern v Villa Mora Cottages Ltd and Another**[11] where Morrison, JA summarised the relevant principles of res ipsa loquitur[12] as follows:

> *"[50] As regards the question of proof of a breach of the duty of care, there is equally no question that the onus of proof, on a balance of probabilities, that the defendant has been careless falls upon the claimant throughout the case (see Clerk & Lindsell, op. cit., para. 8-149; see also,* ***Ng Chun Pui v Lee Chuen Tat*** *[1988] RTR 298, per Lord Griffiths at page 300). But the actual proof of carelessness may often be*

---

[11] [2012] JMCA Civ. 20

[12] (supra), at paragraph 50

problematic and the question in every case must be "what is a reasonable inference from the known facts?" (Clerk & Lindsell, op. cit., para. 8-150).

[51] The court may also infer carelessness in cases covered by the so-called "doctrine" of res ipsa loquitur. In the seminal case of ***Scott v The London and St Katherine Docks Co.*** *(1865) 3 H & C 596, 601, in which bags of sugar being lowered by a crane from a warehouse by the defendants' servants fell and struck the plaintiff, Erle CJ said this:*

> *"But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose from want of care."*

[52] In ***Ng Chun Pui v Lee Chuen Tat****, Lord Griffiths considered (at page 300) that the phrase res ipsa loquitur was "no more than the use of a latin maxim to describe a state of the evidence from which it is proper to draw an inference of negligence". While the operation of the rule does not displace or lessen the claimant's burden of proving negligence in any way, its effect is that –*

> *"…in an appropriate case the plaintiff establishes a prima facie case by relying upon the fact of the accident. If the defendant adduces no evidence there is nothing to rebut the inference of negligence and the plaintiff will have proved his case. But if the defendant does adduce evidence that evidence must be evaluated to see if it is still reasonable to draw the inference of negligence from the mere fact of the accident."*

[53] Lord Bridge then went on to adopt dicta from two earlier cases as to the true meaning and effect of the maxim. The first is ***Henderson v Henry E Jenkins & Sons*** *[1970] RTR 70, 81 – 82, in which Lord Pearson observed that "…if in the course of the trial there is proved a set of facts which raises a prima facie inference that the accident was caused by negligence on the part of the defendants, the issue will be decided in the plaintiff's favour unless the defendants by their evidence provide some answer which is adequate to displace the prima facie inference". The second is* ***Lloyde v West Midlands Gas Board*** *[1971] 1 WLR 749, 755, in which Megaw LJ said that the maxim does no more than describe a "common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances…a plaintiff prima facie establishes negligence where (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; but (ii) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety".*

[54] The principle was applied in ***Ward v Tesco Stores Ltd****. While shopping in the defendant's supermarket, the plaintiff slipped on some yoghurt, which had been spilt on the floor, and was injured. In the plaintiff's action for negligence against the defendant, evidence was given that spillages occurred about 10 times per week and that the staff of the supermarket had been instructed that, if they saw any spillages on the floor, they were to stay where the spill had taken place and call someone to clean it up. In addition, the floor of the supermarket was given a "general clean-up" daily, it was polished twice per week and it was brushed five or six times per day. However, the defendant called no*

evidence as to when the store floor had last been brushed before the plaintiff's accident and there was therefore no evidence before the court as to whether the floor had been brushed a few moments before the accident, or an hour, or possibly an hour and a half.

[55] The trial judge found the defendant liable and it was contended on its behalf on appeal that he had erred, because it had been for the plaintiff to prove that the spillage had been on the floor for an unduly long time and that there had been opportunities for the management to clean it up, which they had not taken. In a judgment with which Megaw LJ agreed, Lawton LJ referred (at page 222) to the relevant principles as enunciated in what he described as "the classical judgment" of Erle CJ in ***Scott v The London and St Katherine Docks Co.****, and then went on to apply it to the case before him in this way:*

> *"In this case the floor of this supermarket was under the management of the defendants and their servants. The accident was such as in the ordinary course of things does not happen if floors are kept clean and spillages are dealt with as soon as they occur. If an accident does happen because the floors are covered with spillage, then in my judgment some explanation should be forthcoming from the defendants to show that the accident did not arise from any want of care on their part; and in the absence of any explanation the judge may give judgment for the plaintiff. Such burden of proof as there is on defendants in such circumstances is evidential, not probative. The trial judge thought that prima facie this accident would not have happened had the defendants taken reasonable care. In my judgment he was justified in taking that view because the probabilities were that the spillage had been on the*

floor long enough for it to have been cleaned up by a member of the staff."

[56] However, in ***Hall v Holker Estate Co Ltd****, Sir Mark Potter P (with whom Arden and Hughes LJJ agreed) issued the following cautionary note (at para. [33]):*

"The judgments in Ward v Tesco do not of course relieve the claimant of the overall burden of proof. He must show that the occurrence of the accident is prima facie evidence of a lack of care on the part of the defendant in failing to provide or implement a system designed to protect the claimant from risk of accident or injury."

[57] Res ipsa loquitur therefore applies where (i) the occurrence is such that it would not normally have happened without negligence (the editors of Clerk & Lindsell, op. cit., para. 8-152 provide an illustrative short-list from the decided cases: "bales of sugar do not usually fall from hoists, barrels do not fall from warehouse windows, cranes do not collapse, trains do not collide and stones are not found in buns"); (ii) the thing that inflicted the damage was under the sole management and control of the defendant; and (iii) there must be no evidence as to why or how the accident took place. As regards this last criterion, the editors of Clerk & Lindsell (op. cit. para. 8-154) make the important point, based on ***Henderson v Jenkins & Sons****, that "Where the defendant does give evidence relating to the possible cause of the damage and level of precaution taken, the court may still conclude that the evidence provides an insufficient explanation to displace the doctrine"."*

[54] The court of appeal in **Igol Coke** decided that in a case where there is evidence as to how or why a collision took place res ipsa loquitur has no application. The

court said that the matter does not end there as the trial court must determine in a case where there are several defendants whether any of the defendants are liable and the extent of any liability.

[55] In **Igol Coke**, Constable Coke did not implicate Constable Anderson but this was not enough to say that Constable Anderson had no case to answer. The trial judge in such a case should, once a state of facts was proved from which the reasonable inference to be drawn was that prima facie one or both drivers had been negligent, should call on the defendants to answer and decide on the evidence whether one or more defendants was liable at the close of the whole case.

[56] The court of appeal made a distinction in **Igol Coke** between cases in which there was no evidence as to how the collision occurred and those in which there was evidence which the claimant can present. In the latter case, it must be evidence from which liability could properly be inferred, in the absence of an explanation.

[57] In the case at bar, only Airlift Handlers Limited has defended the matter and has placed the blame squarely at the feet of Nicole Dwyer, who has not defended the claim.

[58] In each case cited by Ms Cummings, the claimant was required to lead evidence, amounting to a prima facie case on negligence, before the defendants were called to answer the claimant's case.

No case submission

[59] It was the submission of Ms. Minto that the claimant has not adduced any evidence to establish a claim in negligence against the first or second defendants. Ms. Minto in her submissions argued that there was no case to answer. She argued that the claimant has the legal and evidentiary burden to

establish negligence from the outset. There is no evidence of negligence on the claimant's case although the pleadings set out in detail the matters which the claimant alleged caused the collision. The claimant pleaded that one of the driver's encroached and therefore it cannot be said that the claimant does not know how the collision occurred. She relied on **Glenford Anderson v George Welch**[13] and **Adolph Allen v Orandy Moving and Storage Company Ltd**.[14]

[60] Secondly, the fact that the deceased was a passenger does not cause a shifting of both legal and evidential burden to the defendants. The burden is on the claimant throughout the trial. Counsel cited **Dwight Walker v Winston Smith**[15] and **David Rickards v Andrew McCreath and Ors.**[16]

[61] Thirdly, res ipsa loquitur requires that the claimant establish a prima facie case of negligence. In the case at bar, the claimant has established merely that an accident occurred. A prima facie case of negligence is established when there is enough evidence to entitle though not compel the tribunal of fact to find in favour of the claimant, if there were no further evidence to be given. (See **Jeffrey Johnson v Ryan Reid**[17] and **Desmond Bennett v Jamaica Public Service Company Ltd and Another**[18]). In the case of **Claudia Henlon v Sharon Martin**

---

[13] [2012] JMCA Civ 43, at para 26

[14][2017] JMSC 73, at para 73 and 74

[15] Suit No CL 1997/W018

[16] [2020] JMSC Civ. 78

[17] [2012] JMSC Civ. 7, at para 8

[18] [2013] JMCA Civ. 28

Pink[19] the definition of prima facie case was set out by this court at paragraph 52:

> *"Prima facie case: A case which calls for some answer from the defendant will arise upon proof of (1) the happening of some unexplained occurrence; (2) which would not have happened in the ordinary course of things without negligence on the part of somebody other than the claimant and (3) the circumstances point to the negligence in question being that of the defendant, rather than that of any other person.*[20]

[62] It is my view and here I agree with Ms Minto's submissions that in the instant case, if the witness Leon Stephenson was in a position to advance evidence of the circumstances surrounding the accident based on his vantage point his ability to see and assess the manner of the driving of Nicole Dwyer, it illustrates a sufficiency of knowledge. As a consequence, if the "facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts as established, negligence is to be inferred or not.[21]" The more credible and probable of the facts raised is a matter for the court. Therefore, in light of the foregoing I find that the case at bar is akin to the situation in **Igol Coke** and that the doctrine of res ipsa loquitur does not apply.

[63] The court finds that the evidence adduced by the defendants has discharged their evidential burden of proof and rebuts the prima facie case of negligence. I

---

[19] [2017] JMSC Civ. 144

[20] Charlesworth & Percy on Negligence, 10th edn, 2001 p. 351

[21] Barkway v South Wales Transport Co. Ltd [1950] 1 All E.R. 392 at 395 per Lord Porter

also find that the claimants have therefore failed to prove that the death of Weston Wilson was caused by the negligence of the either Airlift Handlers Limited or Michael Daley jointly and/or severally. The balance of probabilities favours these defendants. The claimant's action in negligence therefore fails.

THE LAW

Fatal Accidents Act

[64] Where a person is injured as a result of the wrongful act, neglect or default of another, the common law allows the injured party to sue the person who has committed the wrong and to obtain damages. If an injured person expires as a result of those injuries wrongfully inflicted; at common law an action in tort for personal injuries also expires. Since 1955 however, statute law has provided that the claim against the person who caused the injury survives the death of the injured person. Section 2(1) of the Law Reform (Miscellaneous Provisions) Act provides that: "*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, for the benefit of, his estate.*"

[65] Section 3 of the Fatal Accidents Act makes provisions in similar terms. If the injured person dies, his personal representatives can maintain an action for the benefit of his estate and claim damages on behalf of his dependants to recover any balance of loss which it can be proved that they have sustained.

[66] The rights conferred by the Fatal Accidents Act on the dependants of the deceased person shall be in addition to and not in derogation of any rights conferred for the benefit of the estate of the deceased. The effect of the statute is such that a sum recovered under Law Reform (Miscellaneous Provisions) Act shall be taken into account in assessing damages under the Fatal Accidents Act.

It is, therefore, right, in assessing damages under the Fatal Accidents Acts, to take into consideration and deduct any pecuniary advantage which has resulted to the beneficiaries.

[67] The Fatal Accidents Act prescribes in section 4(2) that:

> *"Any such action shall be commenced within three years after the death of the deceased person or within such longer period as a court may, if satisfied that the interests of justice so require, allow."*

[68] Mr. Weston Wilson died on October 5, 2005. The instant claim was filed on October 6, 2009. The claim has not been commenced within the limitation period and there is no judgment or order before this court which indicates that a longer period was permitted for the filing of the claim. The claim pursuant to the Fatal Accidents Act is statute barred.

The Law Reform (Miscellaneous Provisions) Act

[69] The other aspect of the claim relates to the Law Reform Miscellaneous Provisions Act ("hereinafter called LRMPA"). Actions brought under this Act are for the benefit of the deceased's estate.

[70] Section 2 states that:

> *"2.---(1) 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:*
>
> *Provided that this subsection shall not apply to causes of action for defamation."*

[71] From this section, it is clear that the law will allow damages claimed for (1) special damages, (2) loss of expectation of life, (3) funeral expenses and (4) lost years/ loss of future earnings. I will address each head in turn. It should be noted that funeral expenses can be recovered under this head or under section 4(5) of the Fatal Accidents Act. However, I will deal with the expenses claimed as special damages.

Special Damages

[72] It is trite law that special damages must be specifically proven. The claimant provided agreed documentary evidence, for the funeral expenses which have satisfied me on a balance of probabilities that these were expenses incurred. I will make an award of Two Hundred Thousand Dollars ($200,000.00) for funeral expenses.

Administration Expenses

[73] Exhibit 5 indicated the cost of obtaining the Letters of Administration[22] from this court. The invoice in the sum of Ninety One Thousand Four Hundred Thirty Nine Dollars and Twenty Cents ($91,439.20) has been agreed. The sum of Ninety One Thousand Four Hundred Thirty Nine Dollars and Twenty Cents ($91,439.20) will be awarded under this head.

Gross Earnings

[74] The payslip[23] is dated May 26, 2003. It indicates a gross monthly earning of Twenty Four Thousand Four Hundred Thirty Two Dollars and Sixty Nine Cents

---

[22] Exhibit 3

[23] Exhibit 6

($24,432.69) and an amount for overtime and holiday pay. The net earnings total are Fourteen Thousand Nine Hundred and Two Dollars and Eighty Seven Cents ($14,902.87) per month with gross taxable earnings of One Hundred Seventy Three Thousand Three Hundred Forty Dollars and Eighty Two Cents ($173,340.82).

[75] At the date of his death[24] Weston Wilson was forty two (42) years old. Had he survived and been employed in the same post or promoted, no doubt there would have been an increase in his income. There was however no evidence presented to this court as to any likely promotion or what increased earnings were attained by persons of the same department as his. There is therefore no evidence other than the pay advice from 2003 to assist the court as to what his gross earnings would presently be. Where this is the case, the court may assume that the national minimum wage would be applicable.[25]

[76] I have nonetheless given due consideration to the submission and I am of the view that any award that the court makes as to lost earnings must be calculated on the admitted evidence of the deceased's known earnings at the time of death. There is no room for speculation, any estimate should be weighed fairly, reasonably and with a sense of proportion. I am fortified in my opinion by the views expressed by Lord Fraser in the case of **Cookson v Knowles**[26], where he opined that:

---

[24] Exhibit 2

[25] Douglas v KSAC and Ors (Consolidated) 18 JLR 338

[26] [1979] AC 556 at 575

"*The court has to make the best estimates that it can having regard to the deceased's age and state of health and to his actual earnings immediately before his death, as well as to the prospects of any increases in his earnings due to promotion or other reasons. But it has always been recognised, and is clearly sensible, that when events have occurred, between the date of death and the date of trial, which enable the court to rely on ascertained facts rather than on mere estimates, they should be taken into account in assessing damages."*

Lost years

[77] In the case of the **Administrator General of Jamaica (On behalf of the Near Relations and Dependents and Dependents and as Administrator Ad Litem of the Estate of Clive Brown, Deceased) v Jamaica Pre-Mix Limited et al**)[27], Anderson J, noted that lost years, is a calculation of the loss to the estate by virtue of the loss of earnings of the deceased during the lost years, being years between retirement and death. It is the loss arising from the death of the deceased and is calculated as at the time of death of the deceased. There was no evidence as to the retirement age of the deceased, however the court will apply the expected age of retirement.

[78] The age of the deceased at death was forty two (42) years as obtained from the death certificate tendered into evidence as an exhibit. Based on his industry and known state of health, it is expected that Weston Wilson would have continued to be a part of the labour force at least until retirement at the age of sixty five (65).

---

[27] [2013] JMSC Civ 149

The Multiplier-Multiplicand Approach under the Law Reform (Miscellaneous Provisions) Act

[79] This head seeks to calculate the loss of income to the deceased's estate during the lost years; (this refers to the years the deceased would have lived but for the act of the defendant). In calculating this formula, account must be taken of not only the amount which the deceased spent exclusively on himself but also his contribution to shared family expenses. This is a three (3) stage process of:

(i) Determining the multiplier – This is the period or number of years for which earnings have been lost;

(ii) Calculating the amount of the loss in weekly, monthly or annual terms; and

(iii) Calculating the present capital value of that future loss.

[80] In **Alphonso v Deodat Ramnath**,[28] Singh, JA of the Eastern Caribbean States CA. (at p 192) as follows:

> *"In determining the multiplier a court should be mindful that it is assessing general and not special damages. That it is evaluating prospects and that it is a once-for-all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the plaintiff is getting a lump sum instead of several smaller sums spread over the years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working life but for the accident*.

[28] (1997) 56 WIR 183

[81] In **Carlton Brown v Manchester Beverage Limited and Patrick Thompson**[29] in which there was a 45-year-old claimant, the court employed a multiplier of 8. In the case of the **Administrator General for Jamaica (Administrator – Estate of David Benloss, deceased) v People's Favourite Baking Company Limited and anor**,[30] my learned sister, G. Fraser, J also applied a multiplier of 8. It is my view that a multiplier of 8 is not unreasonable in the circumstances.

The Multiplicand

[82] My learned sister, Lindo, J in the case of **Brenda Hill And Administrator General Of Jamaica v The Attorney General of Jamaica**[31] said as follows:

> *[29] The Jamaican Court of Appeal in G. Dyer & D. Dyer v Stone (1990) 27 JLR 268 at 276 outlined the method of ascertaining the loss of earnings to the estate of the deceased. The first guideline is to ' ascertain from credible evidence what the net income of the deceased was at the date of death… secondly,.. to estimate the deceased's net income being earned at the date of trial by persons in a position corresponding to that the deceased held at the time of his death or by persons in a position to which the deceased might reasonably have attained. The average of these two levels of net income may fairly be considered as the average annual net income of the deceased for the pre-trial years… from the two, deducting living expenses and arriving at the multiplicand.'*

---

[29] Suit No. B027/90, unreported, judgment delivered on July 8, 1994

[30] [2017] JMSC Civ. 11

[31] [2014] JMSC Civ. 217

[31] There are different methods of assessment of the multiplicand. These are:

a. the "item by item approach", which is used when specific amounts can be attributed to what the deceased contributed to each dependant and to this other loss such as perks from employment is added

b. Earnings minus living expenses which is used where it is difficult or impossible to ascertain the expenditure on each dependant, and

c. The percentage approach where the court may assess the dependency as a per cent of the net earnings of the deceased in the case of a widow and children or where the widow is the only dependant: (Harris v Empress Motors Ltd [1983) 3 All ER 361.

[32] The percentage approach was rejected by the Court of Appeal in Jamaica Public Service Co. v Elsada Morgan, (1986) 44 WIR 310 as it was thought that economic conditions in Jamaica are not as sophisticated as in England to ensure that such mathematical calculations would be reflective of current social realities and it was noted that the court should not be bound by a fixed formula and that the court reserves the right to vary the method used to suit the needs of each case."

[83] In the instant case there is no evidence as to what the deceased's personal and exclusive expenses were or indeed what provisions he would have made for his family. There was also no evidence from anyone in a similar occupation to that of the deceased to indicate what the likely salary would be at the time of trial. The percentage approach was deemed the only suitable course given the state of the evidence.

[84] The sums given by Travis and Sanjay Wilson as lunch money for them cumulatively represent more than the total earnings of the deceased for the

month. There was evidence of the deceased doing odd jobs when they were available. This was in a bid to supplement his income. In **Dyer and Dyer v Stone**[32] it was made clear that where the annual expenditure, as in this case, appears to be greater that the annual income then the expenditure should be brought in line with the annual income.

[85] In determining the multiplicand, I acknowledge the principles enunciated in **Cookson v Knowles**[33] and **Alphonso v Ramnath**[34] at page 183, ante, that for the purpose of arriving at the multiplicand, the basis should be the least amount the plaintiff would have been earning if he had continued working. The formula is (annual expenditure) x (percentage of dependency) x (multiplier).

[86] I am prepared to use the 25%:75% approach of deceased's expenses to family expenses on the authority of **Harris v Empress Motors Ltd**[35] in which O'Connor LJ stated:

> *"In the course of time the courts have worked out a simple solution to the … problem of calculating the net dependency under the Fatal Accidents Acts in cases where the dependants are wife and children. In times past the calculation called for a tedious inquiry into how much housekeeping money was paid to the wife, who paid how much for the children's shoes, etc. This has all been swept away and the modern practice is to deduct a percentage from the net income figure to represent what the deceased*

---

[32] (1990) 27 JLR 269

[33] (supra)

[34] (supra)

[35] [1984] 1 WLR 212 at 216–7

would have spent exclusively on himself. The percentages have become conventional in the sense that they are used unless there is striking evidence to make the conventional figure inappropriate because there is no departure from the principle that each case must be decided on its own facts. Where the family unit was husband and wife the conventional figure is 33% and the rationale of this is that broadly speaking the net income was spent as to one-third for the benefit of each and one third for their joint benefit … Where there are children the deduction falls to 25%."

Loss of expectation of life

[87] Weston Wilson was gainfully and steadily employed as a ramp attendant up to the time of his death. He was the sole bread winner for his family. His children[36] are Kemar Wilson born on November 7, 1982; Sanjay Wilson, born on December 15, 1988; Travis Wilson, born on August 29, 1989; Jamal Wilson, born on December 21, 1996. All of the children of Weston Wilson save Kemar Wilson would have been minors at the date of death. The age of Yanique Wilson is unknown. There is no challenge by the defendant to the fact of these dependents.

[88] It appears that the main or sole source of income was the salary paid to him by Airlift Handlers Limited. His son Travis Wilson gave evidence of odd jobs to supplement his salary however no figures are before the court. I have accepted this evidence to be truthful and will rely upon it as far as it can assist the court in its computations.

[36] Exhibit 4

[89] In the case of **Yorkshire Electricity Board v Naylor**[37] Lord Morris of Borth-y-Gest giving the governing principle in this area of damages said:

> "*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*'."

[90] The law is clear that in assessing damages under this head, the court takes into account the prospects of having a happy and normal life. The evidence was that Weston Wilson enjoyed good physical and mental health. On his payslip it is noted that he was credited for having no absences with incentive pay.

[91] As, expressed in the case of **Benham v Gambling**,[38] the court ought to consider the 'slide in the value of the local currency' and a 'moderate figure is to be chosen.' It is settled that a conventional sum is to be awarded. However, there has been some controversy as to what a conventional sum is. It appears that this sum is to be considered on a case by case basis and is calculated at the discretion of the court.

[92] It is to be noted that the age of the deceased is not a factor to be considered in granting this award: **Tyler Horatio Wedderburn (Personal Representative of**

---

[37] [1968] AC 529

[38] [1941] AC 157

Estate Amanie Dominic Wedderburn) v The Attorney General and Police Constable Vernon Ellis[39].

[93] In the case of **The Attorney General of Jamaica v Devon Bryan (Administrator of Estate of Ian Bryan**),[40] the court awarded a conventional sum of One Hundred and Twenty Thousand Dollars ($120,000.00) for loss of expectation of life. In the case of **Ainsworth Blackwood Snr. (Administrator of Estate: Ainsworth Blackwood Jnr. Deceased) v Naudia Crosskill and Glenmore Waul**,[41] Fraser J, awarded the sum of One Hundred and Eighty Thousand Dollars ($180,000.00) under this head of damages.

[94] Having regard to the cases cited, I believe the sum of One Hundred and Twenty Thousand Dollars ($120,000.00) is reasonable for loss of expectation of life. Applying the Consumer Price Index for August 2022, this sum updates to One Hundred Eighty Nine Thousand Fourteen Dollars and Fifty Three Cents ($189,014.53).

[95] Disposition

Law Reform (Miscellaneous Provisions) Act:

i. Gross Annual Income at death ($173,340.82 x 12):	$2,080,089.84
ii. Net Annual Income at death ($14,902.87 x 12):	$ 178,834.44
iii. Self-expenditure at time of death (25% of net income):	$ 44,708.61

[39] [2013] JMSC Civ. 153

[40] [2013] JMCA Civ. 3

[41] [2014] JMSC Civ. 28

iv. Loss of Expectation of life:		$ 189,014.53
iv.Multiplicand:		$1,446,571.91
	Total award to the estate:	$3,939,219.33

Orders:

1. Judgment entered for Airlift Handlers Limited and Michael Daley

2. The following awards are made by the court:

Special Damages

a. Funeral expenses of $200,000.00 awarded to the claimant to against Merrick Myrie and Nicole Dwyer.

b. Administration expenses of $91,439.20 awarded to the claimant against Merrick Myrie and Nicole Dwyer.

General Damages

2. Damages under the Law Reform (Miscellaneous Provisions) Act of $3,939,219.33 awarded to the claimant against Merrick Myrie and Nicole Dwyer.

3. Costs awarded to the claimant against Merrick Myrie and Nicole Dwyer to be taxed if not agreed.

4. Costs awarded to Airlift Handlers Limited and Michael Daley to be taxed if not agreed.