

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. W 352 OF 1983

BETWEEN	VALDA WRAY (Administratrix of the Estate of Headley Wray, deceased)	PLAINTIFF
A N D	CLIFFORD ANDERSON	FIRST DEFENDANT
A N D	RICHARD SCOTT	SECOND DEFENDANT

Mr. John Vassell instructed by Messrs Dunn, Cox and Orrett for plaintiff.
Defendants unrepresented.

HEARD: July 30, 1986; November 9, 1987; November 30, 1988.

PANTON, J.

Headley Wray died on September 30, 1981, as a result of injuries sustained in a collision between the motor cycle he was riding and a mini-van owned by the second defendant and negligently driven by the first defendant. The accident occurred at Georgia Crossing in the parish of St. Mary.

The deceased was thirty-eight years old at the time of his death. Surviving him are his wife and four children. He died intestate. The plaintiff is administratrix of the estate of the deceased and brings this action for the benefit of herself as widow, the children, and the estate.

The first of the four children is Renford who was born on August 18, 1963. He is not the child of the plaintiff and did not reside in matrimonial home.

The children of the marriage are Tanya Lewis, born on October 7, 1976; Headley, born on June 23, 1980; and Hedeta, born on November 30, 1981. It will be observed that Hedeta was born after the deceased had died. The child Tanya was born to the plaintiff before her marriage to the deceased who subsequently accepted and maintained her as his daughter.

Learned attorney-at-law for the plaintiff has submitted that the Court should disregard the Law Reform (Miscellaneous Provisions) Act except for the funeral expenses, and concentrate instead on the Fatal Accidents Act. Under the latter Act, the action is brought for the benefit of the near relations of the deceased. In this case, the near

relations are the plaintiff and the four children. By Section 4 (4) of the Act the Court is empowered to "award such damages to each of the near relations as the Court considers appropriate to the actual or reasonably expected pecuniary loss caused to him or her by reason of the death of the deceased"

The cases, most of which are referred to in Harris v. Empress Motors Ltd. (1983) 3 A.E.R. 561 indicate that in computing the loss, the Court should approach the matter thus -

1. Find the multiplier;
2. Find the probable net earnings over the period between death and trial;
3. For the future years, assess a multiplicand - that is, net salary - and apply to it the balance of the multiplier;
4. Calculate the level of dependency of the near relations;
5. Add interest to the amount the near relations would have lost between death and the date of judgment.

So far as the Law Reform (Miscellaneous Provisions) Act is concerned, an award is usually made for the loss of expectation of life, funeral expenses, other special damages and the "lost years". The multiplier used under the Fatal Accidents Act is the same for the purpose of the Law Reform (Miscellaneous Provisions) Act.

In determining the pecuniary loss referred to earlier, it is important therefore to ascertain -

- (a) the earnings of the deceased; and
- (b) the extent of the dependency of the near relations.

So far as (a) is concerned, it is necessary to determine the earnings at the time of death and to estimate the earnings at the time of trial and also partially into the future.

The evidence as to the earnings of the deceased, who was a colporteur, came from the plaintiff and one Rev. Levi Davidson who had recruited him. The latter witness sounded a caution in relation to the figures he was presenting, as the individual who was really privy to the earnings of the deceased was, he said, a Pastor Barrett who was at the time of the trial off the island.

The plaintiff testified that the deceased earned "about \$13,000"; in addition he cultivated a two acre plot and from the produce his family was able to save in expenditure about \$200.00 per month on food. On the Plaintiff's testimony, therefore, the earnings of the deceased would have been in the region of \$15,400.00 per year. I am regarding this sum as net earnings.

Rev. Davidson's evidence was that the salesmen were paid on a commission basis of fifty percent of gross sales. An average salesman, he said, would sell about \$30,000.00 per year. However, without substantiating it, Rev. Davidson said that the annual sales of the deceased at the time of his death were about \$60,000.00 to \$70,000.00. This would give him earnings of approximately \$35,000.00 at the time of his death.

I find that Rev. Davidson is, perhaps unwittingly, exaggerating the sales and thereby inflating the earnings of the deceased. On the state of the evidence, I prefer that given by the plaintiff and find that at the time of his death the deceased was earning approximately \$15,400.00 net per year when the produce from his small domestic farm is included. In relation to the probable earnings of the deceased at the time of the trial Rev. Davidson testified that he would have then been selling over \$100,000.00 per year. His earnings would therefore have been over \$50,000.00 per year. Here again I find that there has been exaggeration and I should think that a more realistic sales figure would probably not have exceeded \$75,000.00, resulting in earnings of about \$37,500.00.

I shall deal with the estimate of future earnings later.

At this stage I propose to look at and determine the level of the dependency of the near relations. At the time of his death, the deceased was responsible for the payment of the rental of \$80.00 per month for the house in which they lived; he gave his wife approximately \$600.00 per month to attend to the needs of herself and the three children within the matrimonial home, to purchase food and to pay for electricity. To this is to be added the contribution of approximately \$200.00 per month that came from the farm. This makes a total of \$880.00.

I shall deduct an amount of \$150.00 from this as representing the cost of the food that the deceased himself consumed. This is in keeping with the evidence of the plaintiff which I accept. To the balance of \$730.00, I shall add \$100.00 which is the monthly amount that the plaintiff said was given by the deceased to his son Renford who was 18 years old in 1981.

The total dependency at the time of death is therefore \$830.00 per month out of a monthly income of \$1,283.00, that is 64.69%. I shall therefore assess the level of dependency as being 65% at the date of death.

Having determined the earnings and the amount of the dependency, I shall now make the awards under the Fatal Accidents Act.

The first task is to fix the multiplier. I accept the submission of the learned attorney-at-law for the plaintiff that 14 would be an appropriate multiplier. The deceased was in steady employment, with a settled life style and he was only 38 years old with a reasonably comfortable future it seems.

The next task is to calculate the net earnings of the deceased over the period 1981 to the present. On the basis of the net earnings of \$15,400.00 per year at death and the estimate of \$37,500.00 gross at the time of trial, I estimate that the net earnings of the deceased during this period would have been about \$20,700 per annum. I do not see any significant change in the contribution of the farm over the period. The \$20,700.00 would be made up thus: \$18,000.00 from his job as a colporteur and \$2,700.00 from the farm.

When multiplied by the 7 years that have passed since death, the figure is \$144,900.00.

For the future years, I shall use a multiplicand of \$28,000.00 (\$25,000.00 from his regular employment and \$3,000.00 from the farm). When multiplied by the remaining 7 years in the multiplier, a figure of \$196,000.00 is arrived at.

The total net earnings over the full period of the multiplier would therefore be \$340,900.00.

It will be recalled that the level of the dependency is 65%. That produces an overall figure of \$221,585.00 for the dependents, which is the total award that I am making under the Fatal Accidents Act.

Between the date of death and the judgment, the amount of the dependency is \$94,185.00 calculated thus -

$$\$144,900.00 \times 65 \div 100.$$

Interest at 3% will be awarded on that amount for the period 30th September, 1981 to 30th November, 1988.

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

Loss of expectation of life \$3,000.00

Special Damages \$5,100.00 (as pleaded)

Interest at 3% is awarded on the Special Damages for the period 30th September 1981 to 30th November, 1988.

So far as the lost years are concerned, I shall still make an award even if it is of academic interest only. In that regard I shall use a multiplicand of \$25,000.00 which represents the average net annual earnings of the deceased for the entire 14 years in contemplation. It is necessary to calculate the amount that the deceased would have spent exclusively on himself in order to arrive at the surplus that would have been available for expenditure on others.

The plaintiff testified that if food was included the deceased probably spent \$500.00 each month on himself. Of course to this figure must be added a portion of the rent as that was part of his living expenses. I shall estimate that he would have had to pay at least \$40.00 per month for rental.

That would make a total of \$540.00 per month; that is, 42% of his earnings at the time of his death was being spent exclusively on himself.

The surplus that he would have had left would therefore be 58%. I do not envisage that there would have been much change in this position during the period of the multiplier; hence I shall regard this surplus of 58% as one that would have continued for the full period of the multiplier.

The total earnings would therefore be $\$25,000 \times 14 = \$350,000.00$.
The surplus = 58% of $\$350,000.00 = \$203,000.00$.
The sum for the "lost years" is therefore $\$203,000.00$.

This being less than the amount awarded under the Fatal Accidents Act, and there being no intention to reward the dependents twice the award under the Law Reform (Miscellaneous Provisions) Act will merge with that under the Fatal Accidents Act.

In summary, the operative awards are as follows:-

Fatal Accidents Act - \$221,585.00; to be apportioned as follows -

Renford	\$5,000.00	;	his dependence would have been for a limited period.
Tanya	\$23,400.00	;	at the rate of \$150.00 per month until she is 18 years old.
Headley	\$30,600.00	;	at the rate of \$150.00 per month until he is 18 years old.
Hedeta	\$32,400.00	;	at the rate of \$150.00 per month until she is 18 years old.

Plaintiff \$130,185.00

TOTAL \$221,585.00

Interest at 3% on $\$194,185.00$ from 30.9.1981 to 30.11.1988.

The Law Reform (Miscellaneous Provisions) Act.

Loss of expectation of life - $\$3,000.00$

Special damages - $\$5,100.00$

Interest at 3% on Special Damages from 30.9.1981 to 30.11.1988.