

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. F-162 OF 1987

BETWEEN YVONNE FOSTER  
(Executrix estate Ivan Foster,  
Deceased) PLAINTIFF

A N D WINSTON CHONG DEFENDANT

Mr. N. Forsythe for the Plaintiff

Heard: 20th, 29th November, 1996 & 24th March, 1997.

Judgment

Pitter J.

The deceased Ian Foster, a labourer, died on the 16th May, 1986 at the age of 27 years, as a result of injuries he received in a motor vehicle accident. He is survived by his wife Yvonne and two children namely, Jermaine born the 22nd June, 1978, and Aljerrue born the 11th December, 1980. He died testate and probate was granted to the plaintiff on the 16th February, 1987.

By Writ of Summons dated 13th August 1987, action was commenced under the provisions of the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act to recover damages for the dependents of the deceased and for his estate occasioned by his death by negligence. The defendant failed to appear and Interlocutory judgment was entered in favour of the plaintiff. The matter is now before me for assessment.

The plaintiff who was 27 years old at the time of the death of the deceased, gave evidence that the deceased earned as a labourer \$250.00 per week. In addition to this he did farming which included the rearing of goats and pigs which would earn him an additional average of \$150.00 per week making his total average income \$400.00 per week. Of this sum he would contribute \$200.00 per week to the wife and children. The rest he would spend exclusively on himself.

Damages under the Fatal Accident Act.

I am satisfied by the evidence of the plaintiff that she has established her claim as being a dependent of the deceased.

I am also satisfied that the deceased contributed an average of \$200.00 per week for the maintenance of the plaintiff and her two children Jermaine and Aljerrue. I am further satisfied that the deceased would have maintained the plaintiff until her death and the children until each attained at least 18 years.

I am in agreement with Mr. Forsythe that given the age of the plaintiff, the deceased would have continued to maintain her for another 15 years. Jermaine would benefit for another 11 years and Aljurrie for another 15 years.

The award at the time of the deceased's death will be apportioned equally each receiving \$66.66.

<u>Beneficiary</u>	<u>Period</u>	<u>Amount</u>
Yvonne Foster (Plaintiff)	15 years	\$51,994.80
Jermaine	11 years	\$37,752.00
Aljerrue	13 years	\$45,062.16
	<b>total:</b>	<u>\$134,808.96</u>

It is of note that at the time of the deceased's death the consumer price index was 86.3. Currently this 998.9. The award will attract interest at the rate of 6% per annum from the 16th May 1996 to the 24th March, 1997.

Damages under the Law Reform (Miscellaneous Provisions) Act.

The deceased was at the time of his death 29 years old. No evidence was led as to his lifestyle. However, he would spend exclusively on himself \$100 per week from his income of \$250.00 per week. Added to this would be income of \$150.00 per week arising from farming which was used to provide food and other things for the family.

Taking into consideration the age of the deceased at the time of his death and the fact that he derived a stable income as a labourer and farmer, I have determined that a multiplier of 15 in the computation of the award under this head is reasonable in the circumstances.

In computing the award for lost years a surplus of \$250.00 per week is the starting point. With a multiplier of 15 the award for the lost years will be arrived at as follows  $\$250 \times 52 \times 15 = \$195,000.00$ .

For loss of expectation of life the award of \$3,000.00 is awarded.

For funeral expenses the amount of \$5,000.00 is awarded. The total award under this head is \$203,000.00.

Final judgment therefore is as follows:

Under the Fatal Accidents Act: \$134,808.96 with interest at 6% per annum from the 15th May, 1996 to the 24th March, 1997.

Under the Law Reform (Miscellaneous Provisions) Act: \$203,000.00 with interest at 6% per annum from the 15th May, 1996 to the 24th March, 1997.

Cost to be agreed or taxed.