

**Felicia Andrina George  
Administratrix of the Estate of  
Hughes Williams (Deceased)**

*Appellant*

v.

**Eagle Air Services Limited**

*Respondent*

FROM

**THE COURT OF APPEAL OF  
THE EASTERN CARIBBEAN (ST LUCIA)**

-----  
JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL  
ON THE ASSESSMENT OF DAMAGES

Delivered the 15<sup>th</sup> July 2009

-----  
Lord Mance  
Lord Neuberger of Abbotsbury  
Sir Jonathan Parker

-----  
*[Delivered by Lord Mance]*

1. In its opinion delivered 12<sup>th</sup> May 2009 the Board advised Her Majesty that Mrs George's appeal should be allowed, and that judgment should be entered in her favour against the respondent for damages to be assessed. The Board, having invited and had the assistance as amici curiae of Mr Guthrie QC and Mr Daniel Lewis instructed by Messrs. Charles Russell, concludes that it can and should undertake the assessment of damages itself, rather than remit this to the High Court in St. Lucia.

2. The Board starts from the evidence, substantially unchallenged, given by Mrs George at trial. On behalf of the estate of Mr Williams, three heads of claim were advanced: (i) loss of expectation of life, (ii) funeral expenses and (iii) lost years. On behalf of Mrs George and her five children by Mr Williams, there was also advanced (iv) a claim for loss of dependency. The Board takes these heads of claim in turn.

*Loss of expectation of life*

3. Article 609 of the Civil Code permits the making of a conventional award for loss of expectation of life. The abolition in England of such awards by the Administration of Justice Act 1982 s.1(20(A) has been held by the Eastern Caribbean Court of Appeal to have no effect in St Lucia: *Masthurin v Augustin* (HCVAP 2007/041, 2 June 2008). In submissions dated 3<sup>rd</sup> October 2000, Mr Montplaisir appearing for Mrs George argued for an increase in the sum then standard under this head of \$1,500 to \$2,500 in order to accommodate inflation. In *Jallim v Ghirawoo* (2003/0483, 17 February 2005), the Eastern Caribbean Court of Appeal indicated obiter, in relation to an accident occurring in October 2002, that in its view “in 2005 the time had come to uprate the conventional award to \$3,500”. Bearing in mind that the present case relates to an accident in 1990, the Board considers that it should take the amount of \$2,500 for which Mr Montplaisir contended.

*Funeral expenses*

4. Mr Montplaisir sought an award of \$5,000. Mrs George does not appear to have given any evidence in support, although the sum claimed may be said to be relatively modest. In *Jallim v Ghirawoo* expenses of \$12,785 were accepted, although seeming “on their face somewhat extravagant”. In the absence of any specific evidence, the Board will however only award \$3,000.

*Loss of earnings in the lost years*

5. Mrs George’s evidence was that Mr Williams earned \$2,500 per month with the respondent, although she did not know whether this was gross or net, and that he also did other private work on cars. She gave unchallenged evidence that Mr Williams contributed a total of \$2,341 to the family each month. The respondent did not put before the court evidence, which it obviously had, as to whether the sum of \$2,500 was gross or net. Only now have Messrs. Ince & Co., instructed by the respondent’s insurers, sent to the Board a letter dated 2 June 2009 from

the respondent's liquidator asserting that the sum was gross, that deductions of \$350 per month were made for tax and national insurance and that a handwritten schedule of figures enclosed with the letter shows the position in 1989 and 1990. Not only was there no such evidence at trial, but it does not impact on Mrs George's evidence as to the amount she received each month, bearing in mind her further evidence that Mr Williams did part time work.

6. The Board will accordingly take as Mr Williams' net earnings each month a sum of \$2,500, which (on the basis of Mrs George's evidence that Mr Williams gave her \$2,341 a month may even be under-stated). Assessing damages as at 12<sup>th</sup> July 1993, this gives a loss to date of \$570,000 (228 months x \$2,500). Mr Williams would by now have been 57, and would have had a further 8 years of working life ahead of him. Taking Ogden Table 9, the relevant multiplier is 7.03. Applying this to annual earnings of \$30,000 (\$2,500 x 12), the total future loss of earnings is \$210,900.

7. From these sums it is necessary to make deductions for the sums which Mr Williams would have spent on himself. On Mrs George's evidence he was in 1990 keeping only \$69 (or 3% of \$2,500) each month for himself. Mr Montplaisir accepted that this would have increased as the children grew older, and suggested a deduction of 25% once the children reached an average age of 13 on 12<sup>th</sup> July 2009. Taking these percentage deductions gives the following awards: (a) 12<sup>th</sup> July 1990 to 12<sup>th</sup> July 1993: Lost earnings of \$390,000 less 3% = \$378,300, plus (b) 12<sup>th</sup> July 2009 to 12<sup>th</sup> July 2009: lost earnings of \$180,000 less 25% = \$135,000. 12<sup>th</sup> July 2009 to retirement: \$210,900 less 25% = \$158,175. This gives a total claim for loss of earnings of \$671,475.

#### *Dependency claim*

8. This overlaps with the lost years claim. Double recovery can however be avoided by taking the latter as the starting point in circumstances where the children's dependency is over. In *Gammell v Wilson* [1982] AC 27, Lord Edmund-Davies cited in this connection Lord Atkin's statement in *Rose v Ford* [1937] AC 826, 835, that "If those who benefit under the [Law Reform (Miscellaneous Provisions) Act] and the Fatal Accidents Acts also benefit under the will or intestacy of the deceased personally, their damages under those Acts will be affected". In the present case, it is not therefore appropriate to make any separate dependency award.

### *Interest*

9. *Jallim v Ghirawoo* illustrates what the Board is informed is the usual practice of the Eastern Caribbean Court of Appeal, to award interest at 6% per annum in personal injury claims. That gives the following sums: (a) on loss of expectation of life for 19 years:  $\$2,500 \times 19 \times 6\%$  p.a. =  $\$2,850$ ; (b) on funeral expenses:  $\$3,000 \times 19 \times 6\% = \$3,420$ ; and (c) on past loss of earnings for 19 years:  $\$513,300 \times 9.5 \times 6\% = \$292,581$ . The total interest to 12<sup>th</sup> July 2009 is thus  $\$298,851$ .

### *Conclusion*

10. In the result the Board will humbly advise Her Majesty that the damages payable to Mrs George by the respondent should be assessed at  $\$676,975$ , to which should be added interest of  $\$298,851$ , making a total award of  $\$975,826$ .