

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA  
CLAIM NO. ANUHCV2009/0579

BETWEEN:

IRMA SMITH  
(Widow and Co-Administrator of the Estate of Ophiel Nathaniel Smith  
Aka Nathaniel Smith)

MARINUS SMITH  
(Co-Administrator of the Estate of Ophiel Nathaniel Smith aka  
Nathaniel Smith)

Claimants

AND

OMARI PHILLIP  
VAUGHN JACKSON t/a Tropical Express Rentals

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Ms Kathleen Bennett for the Claimants

Mr. Raimon Hamilton for the Defendants

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2010: December 10<sup>th</sup>;

2011: February 22<sup>nd</sup>; April 15<sup>th</sup>  
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## ASSESSMENT OF DAMAGES

- [1] **MATHURIN, M:** This is an uncontested assessment of damages, judgment in default of defence having been entered against both defendants on the 12<sup>th</sup> April 2010. The unfortunate history that gave rise to this claim is an accident in which Mr. Nathaniel Smith who was 39 years old, was fatally injured by the first named Defendant (Mr. Phillip) when he was driving his vehicle on Jonas Public Road on the 4<sup>th</sup> October 2008. Mr. Smith died later on the same day.

### SPECIAL DAMAGES

- [2] The Claimants have claimed the sum of \$25,011.00 as special damages and have attached the relevant receipts for funeral expenses and obtaining Letters of Administration. I accept that evidence and the award is made accordingly.

### GENERAL DAMAGES

- [3] The Claimants also seek to recover damages for loss of earnings in the lost years and for loss of expectation of life. At the time of his passing, Mr. Smith was earning the sum of \$1,200.00 per week and it is claimed frequently worked overtime at a rate of time and a half. It is claimed that a substantial part of his income was spent for the benefits of his dependants and this would have continued had he not died. It is also claimed that he contributed substantially to the payment of medical treatment for his ill daughter.

- [4] The principles in calculating the award for loss of earnings was stated as follows in the **Pickett** case as follows;

*“ The loss to the estate is what the deceased would have been likely to have available to save, spend or distribute after meeting the cost of his living at a standard which his job and career prospects at the time of death would suggest he was reasonably likely to achieve.”*

Additionally, the court must make the best estimate based on the known facts and prospects at the time of death.

- [5] The judgment of Benjamin J. in the **Anna Modeste et al v Jacobs et al** (GDAHCV2000/0583) addressed in detail the manner in which the court determines the annual salary which is the multiplicand used for calculating the lost earnings. He referred to Lord Scarman in **Gammel v Wilson** who confirmed the approach taken by Lord Wilberforce in **Pickett's** case;

*“the amount to be recovered in respect of earnings in the “lost years” should be after deduction of an estimated sum to represent the victim's probable living expenses during those years. I think that this is right because the basis, in principle, for recovery lies in*

*the interest which he has in making provision for dependents and others, and this he would do out of his surplus."*

- [6] Benjamin J also referred to Connor LJ in the unanimous Court of Appeal judgment in **Harris v Empress Motors Ltd** (1983) 3 All ER 561

*"However, where the deceased expended the whole or part of his net earnings on living expenses (such as rent, mortgage, interest, rates, heating, electricity, gas, telephone etc and the cost of running a car) for the joint benefit of himself and his dependents, a proportion of that expenditure (the exact proportion being dependent on the number of dependents) should be treated as expenditure exclusively attributable to his living expenses and thus deductible from his net earnings in making the assessment under the 1934 Act; for example, where the only dependent is the deceased's wife one-half of the expenditure for their joint benefit should be deducted from his net earnings, but where there is a wife and two dependent children, one quarter of the expenditure for the family's benefit should be deducted from his net earnings."*

- [7] Mrs. Irma Smith, widow of Mr. Smith, in support of the assessment of damages filed an affidavit herein on the 2<sup>nd</sup> December 2010 where she attested that her husband was employed by Antigua ERA Services as Technical Manager earning \$5,800.00 per month. This is supported by a letter from the company stating that Mr. Smith earned \$1,200.00 per week and a monthly overtime amount of \$1,000.00 per month. She further states that her husband contributed about 85% of his income for the benefit of the household, a sum she speculated would have continued until her daughter's passing. The household comprised Mr. and Mrs. Smith and their two children, Nathan, 3 and Nelma, 7. Sadly, her daughter Nelma passed on the 26<sup>th</sup> December 2009, almost 15 months after Mr. Smith. There is no indication as to how the 15% surplus of Mr. Smith's salary was spent.

- [8] Counsel for the Claimant submits that the value of the dependency should be calculated at 85% until the passing of Nelma 15 months later and thereafter at 70%. My difficulty with this is that in the absence of any evidence, Mr. Smith is assumed to be part of the household he supported to the tune of 85% and there is nothing to suggest otherwise. In these circumstances, I am guided by the principles above and calculate the dependency at 75% until the death of Nelma and thereafter at 66.33%. Further, in consideration of the authorities presented, I find a multiplier of 14 to be reasonable

- [9] Accordingly, the dependency is calculated as follows;

For the period until Nelma's death;      \$4,350.00 x 1yr+1mth = \$65,250.00

For the period after Nelma's death      \$3,866.66 x 12yrs+11mths = \$599,332.30

Total award discounted for the vicissitudes of life  
and the fact that the amount is being awarded as  
a lump sum

\$65,250.00 + \$599,332.30 less 10%  
= **\$598,124.07**

- [10] The Claimants also seek an award for loss of expectation of life. Counsel submits that in **Yvonne Thomas v James Mitchell et al** (GDAHCV2005/0391) the parties agreed to an award of \$7,000.00. Absent an agreement between parties however, I would have to be guided by authorities in the jurisdiction. Unfortunately I have not been presented with any authority specifically. I have observed that this is traditionally a modest award and have monitored its development over the years. Georges J. encapsulated its development in **Bertha Compton v Dr Christina Nathaniel et al** (SLUHCV2000/0031) as follows;

*"In order to accommodate inflation the standard sum under that head has progressively been uprated and indeed in **Jallim v Ghirawoo** (2003/0483, 17til February 2005) the 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 \$3,500.00. Bearing in mind that the **George v Eagle Air Services Ltd** case related to an accident in 1990 the Board considered \$2,500.00 appropriate. In light of the prevailing trend as well as the decision of Shanks J in **Plummer et al v Conway Bay Ltd** Suit No. 1041 of 2000 increasing an award to \$3,000.00 which was subsequently upheld by the Court of Appeal and affirmed by the **Privy Council** (No. 81 of 2006) I would myself award a like amount under that head which in fact accords with that suggested by counsel for each side."*

I find that an appropriate award in the circumstances would be \$4,000.00.

- [11] Interest is awarded on the judgment sum of \$627,175.07 until satisfaction at the rate of 6%.
- [12] The Claimants seek prescribed costs on the claim however given Rule 12.13 which permits a Defendant to be heard on the issue of costs, I will adjourn the matter for that purpose to the 6<sup>th</sup> May 2011 at 9:00am.



**CHERYL MATHURIN  
MASTER**