

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO CV 2009-02469

BETWEEN

CHARLOTTE YVONNE CHUNG SHAH
(Legal Personal Representative of the Estate
of Nazarine Shah, deceased)

Claimant

AND

LEO RAYMOND
otherwise known as TOOLA RAYMOND
MOTOR AND GENERAL INSURANCE LIMITED

Defendants

Before: Master Alexander

Appearances:

For the Claimant:

Mr Johanna C Koorn, instructed by Mr Carlyle A Serrano

For the Defendants:

Ms Indra Lutchmin Ramdial

DECISION

I. INTRODUCTION

1. I am required in this matter to assess the damages payable to the claimant consequent upon the death of Nazarine Shah in a motor vehicle accident. The claimant brought this action in her capacity as legal personal representative of the estate of Nazarine Shah, deceased, pursuant to Letters of Administration issued by the High Court on 21st July, 2006. On the 11th July, 2005 Nazarine Shah (hereinafter “the deceased”) was standing on a pavement at the side of the Eastern Main Road, Barataria, in the vicinity of Monarch Pharmacy when motor vehicle registration number PBC 409, driven by the second defendant, mounted the pavement and collided with her. The deceased died on the same day of the accident. By claim form and statement of case filed on 8th July, 2009 as amended on 7th December, 2010 the claimant

sought to recover damages for the death of the deceased under **section 6 of the Compensation for Injuries Act Chapter 8:05** as a dependant as well as damages under the **Supreme Court of Judicature Act, Chapter 4:01** for the benefit of the estate of the deceased.

2. The defendants filed a defence on 3rd November, 2009 admitting liability but seeking to be heard on the issue of quantum. Subsequently, judgment was entered by consent against the defendants, with damages to be assessed by a master. Pursuant to the above order, this court was charged with the assessment of the claimant's damages.

II. THE EVIDENCE

3. At this assessment, the claimant gave evidence via her witness statement and under cross examination. Her evidence was in the main unchallenged. The critical points in her evidence are summarized below:

- (i) The deceased was a spinster, without child, when she died at the age of 38 years and the sole supporter of the claimant, then age 62 with attendant medical problems. The claimant began living with the deceased approximately two years before her death, having moved in a few months after the demise of the deceased's father in 2003.
- (ii) The deceased was a business woman who operated a small transport business comprising two taxis plying the San Juan/Port of Spain and San Juan/Aranguez routes. She employed two drivers, namely Tony and Dexter who were each required to give her \$250.00 every evening/night from Mondays to Saturdays and she saw to the maintenance of the cars. The claimant gave evidence that she would receive the daily sums on behalf of the deceased whenever the deceased was not at home. *“The drivers would come to the house almost every night to drop the money and if Nazarine was not at home I would receive the cash and count it to make sure that I was given the \$250.00 by each of them that they were supposed to bring to her.”*

- (iii) In her witness statement, she stated that the deceased purchased the vehicles from a car place in Arouca for \$60,000.00, which she paid in cash, but registered them in the name of Ryan Johnson, her live-in boyfriend. One month following her death, Ryan Johnson took the vehicles and the claimant has never seen him or the cars since. When pressed under cross examination about the location of the cars, she maintained that, *“No he haven’t got it I don’t know what he did with it I haven’t seen him since my daughter died.”*
- (iv) The claimant has also not seen the two drivers since the death of the deceased and claims under cross examination that they have both gone abroad, *“I went looking for them I haven’t find them and I get to know when I enquired that they all went overseas.”*
- (v) The business was owned and operated by the deceased and the proceeds used solely for the maintenance and upkeep of the deceased and the claimant, *“She run the business really for both of us, Nazarine and myself we lived by that allowance.”*

III.SUBMISSIONS BY PARTIES

4. The deceased’s gross annual income from this business was \$144,000.00. The claimant’s counsel submitted that the net annual income of the deceased was \$102,000.00. There was no explanation provided as to how this sum was arrived at and it is not accepted. The deceased was self-employed and ran a taxi business. It is important to take into account that there would have been considerable expenses associated with the maintenance of the vehicles (repairs, parts and servicing) especially since these were not new cars and given the purpose for which they were purchased and utilized. Bearing this in mind, as well as the payable sums for insuring the vehicles, income tax, national insurance and health surcharge for the drivers of the vehicles and the deceased, I find it reasonable to deduct half of the gross annual income. The sum of \$72,000.00 is therefore accepted as the net income of the deceased.
5. Counsel for the claimant submitted that the unchallenged evidence of the claimant ought to be accepted by the court namely that the vehicles were operated for the sole benefit of the deceased and claimant and that the deceased was solely responsible for the maintenance and upkeep of these cars. The court was also asked to accept that it is not unusual or implausible

that the deceased's boyfriend would fail to keep in contact with the claimant following the accident.

6. Counsel for the defendants submitted that the claimant's claim for lost years is severely lacking in evidence and that the two vehicles allegedly owned by the deceased were in fact owned by her then boyfriend, Ryan Johnson, in whose name they were registered. The court was asked to note and accept the claimant's evidence under cross examination that the receipts for the purchase of the vehicles were in the name of Ryan Johnson. The court was asked to note the following in particular:

- (i) No letters or documents were produced for the insurance of the vehicles;
- (ii) Ryan Johnson took the vehicles after the death of the deceased and never paid any earnings to the claimant;
- (iii) There was a marked lack of corroborating evidence as neither Ryan Johnson nor the two drivers gave evidence;
- (iv) Although one of the drivers (Tony) had gone with the deceased to buy the cars, it is the claimant's evidence that the receipts were in the name of Ryan Johnson and the vehicles were registered in his name also.

7. I had the opportunity to hear and observe the claimant give evidence under cross examination and found her to be a witness of truth. I, therefore, accepted her evidence under cross examination that the monies earned from the two taxis were delivered to the deceased's home daily and sometimes collected by the claimant from the drivers on the occasions that the deceased was absent from the home. I also accepted her evidence on a balance of probability that this money was applied for the use and benefit of the deceased and her mother as well as for the maintenance of the vehicles.

IV. THE LAW

8. The estate and dependants of a deceased person may seek and recover compensation for injuries leading to her death only by means of statutory provisions in this jurisdiction. These are discussed below.

(a) Under the Supreme Court of Judicature Act, Chapter 4:01 section 27

9. Under **section 27 of the Supreme Court of Judicature Act, Chapter 4:01** (hereinafter “**Judicature Act**”) damages can be awarded for loss of expectation of life and for loss of earnings for the lost years. The estate can also recover damages for pain and suffering (not here relevant) and special damages. I will now proceed to deal with these heads of damages.

(i) Loss of Expectation of Life

10. This is a conventional award to mark the fact that some loss has been incurred in respect of the loss of expectation of the deceased’s remaining life. As a rule, this award is not subject to inflation or to the status or age of the deceased while still living. In this jurisdiction, the ‘conventional sum’ of \$20,000.00 has been awarded in fatal accident claims since the judgment of Rajkumar J on 20th June, 2008 in *Tawari Tota-Maharaj (Administrator Ad Litem of the Estate of Arvind Tota-Maharaj, deceased) v Autocenter Ltd & Ors*¹. The sum of \$20,000.00 is therefore awarded under this limb.

(ii) Loss of Earnings for the Lost Years

11. This is an award made as damages for the deceased’s loss of earnings in the ‘lost years’ that is the years in which the deceased would be earning if she was living. In other words, it aims to compensate the deceased’s estate for the loss of the portion of the deceased’s earnings of which the estate is now deprived. The basic principle is that a claim for ‘lost years’ survives for the benefit of the deceased’s estate. The principle was first enunciated by the English Court of Appeal in *Kandalia v British Airways Board*² and approved by the House of Lords

¹ *Tawari Tota-Maharaj (Administrator of the Estate of Arvind Tota-Maharaj v Autocenter Ltd & Ors Tawari Tota-Maharaj (Administrator of the Estate of Arvind Tota-Maharaj v Autocenter Ltd & Ors* HCA No 46 of 2003

² *Kandalia v British Airways Board* [1980] 1 AER 341

in *Gammell v Wilson & Ors*³. It was subsequently adopted into and is now followed in this jurisdiction. In the case of *Mangine Ramnarine v Joseph Hospedales & anor*⁴ Best M stated that in assessing damages for the ‘lost years’ two paradigms have been utilized, which include the ‘savings only’ solution enunciated in *Pickett v British Rail Engineering*⁵ and the ‘surplus funds’ solution postulated in *White v London*⁶.

12. Such damages for future loss of earnings are assessed locally by the application of the multiplier – multiplicand method.

Multiplicand or datum figure:

13. The multiplicand or datum figure is based on the deceased’s net income, that is the income which would have remained at the disposal of the deceased after deduction of her ‘living expenses’ had her life not been brought to a premature end. This is arrived at by deducting the deceased’s living expenses from his/her net earnings. The term ‘living expenses’ refers to that portion or percentage of the deceased’s net earnings which she would have spent exclusively on herself, to maintain herself at the standard of life appropriate to her situation. In *Harris v Empress Motors Limited*⁷ Lord Justice O’Connor stated this principle thus:

[T]he ingredients that go to make up “living expenses” are the same whether the victim be young or old, single or married, with or without dependants. The sum to be deducted as living expenses is the proportion of the victim’s net earnings that he spends to maintain himself at the standard of life appropriate to his case. Any sums expended to maintain or benefit others do not form part of the victim’s living expenses and are not to be deducted from the net earnings.

³ *Gammell v Wilson & Ors* [1981] 1 AER 578

⁴ *Mangine Ramnarine v Joseph Hospedales & anor* HCA No S-953 of 1984

⁵ *Pickett v British Rail Engineering* [1979] 1 AER 774 at page 781 which states that, ‘the amount to be recovered in respect of earnings in the lost years should be that amount after deduction of an estimated sum to represent the victim’s probable living expenses during those years. ... because the basis in principle, for recovery lies in the interest which he has in making provision for dependants and others and this he would do out of his surplus.’

⁶ *White v London* [1982] 1 AER 410 which states, “the loss of which has to be measure is the amenity of earning more than is needed to have a reasonably satisfying and potentially enjoyable life, taking into account in each case the particular circumstances of life of the particular deceased person.”

⁷ *Harris v Empress Motors Limited* [1984] 1 WLR 212 at page 228. Here LJ Connor identified two methods to calculate the lost years, namely ‘savings only solution’ and ‘available surplus method.’ He preferred the available surplus method which required the court to take into account the standard of living of the deceased and his net income and to deduce what would be the surplus after deducting his expenditure on himself.

14. This principle was re-stated and applied in a recent decision of Rajkumar J in July, 2010 in *Alice Lee Poy John v Securiserive Limited*⁸ and is one with which I wish to associate myself for the purposes of this assessment. See also *Maureen Samuel (LPR of the Estate of Stephen Duncan) v Susan Salraj*⁹. Thus, in the case at bar, any sums expended exclusively to maintain or benefit others or as savings do not form part of the deceased's living expenses. This means that such sums are not deductible from the deceased's net earnings for the purpose of **section 27(1) of the Judicature Act**.
15. Further, in *Tawari Tota-Maharaj* (supra) Rajkumar J adopted and applied the English principle as stated under their Fatal Accidents Act that the amount of living expenses is assessed conventionally at no more than 1/3 of net earnings. Similarly, for the purpose of this assessment, I will assess the deceased's living expenses as no more than 1/3 of her net earnings.¹⁰ In so doing, I have considered that the deceased would have had to maintain herself at a standard of life appropriate to her situation, including the taking of a short holiday and/or the spending of modest amounts on social activities and entertainment. In the instant case, the evidence is that the deceased's net annual income was \$72,000.00 so 1/3 of this sum is \$24,000.00. Applying the 1/3 net earnings principle then it would mean that the sum of \$48,000.00 would be the multiplicand figure to be used. I note that there was no evidence that the deceased's income would have been greater at the date of trial than it was at the time of death, so damages would be assessed on the quantum of the deceased's net income at the time of her death.
16. In addition, I was guided by and applied the principle enunciated in *Pickett v British Rail Engineering Limited*¹¹ as adopted into this jurisdiction and re-stated by Rajkumar J in *Tawari Tota-Maharaj* (supra) that, “[D]amages for the loss of earnings during the lost years should be assessed justly and with moderation.”

⁸ *Alice Lee Poy John v Securiserive Limited* CV2008-01892 at page 5

⁹ *Maureen Samuel (LPR of the Estate of Stephen Duncan) v Susan Salraj* HCA No 2656 of 1998 delivered by Dean Armorer J on 7th June, 2002.

¹⁰ In *Maureen Samuel v Susan Salraj* (supra) the court's deduction for 'living expenses' of the deceased was 2/3 of his net income to enable him to at least have a decent standard of living. This was not applied in the instant case as there was no evidence that her standard of living was high and/or she expended a large portion of her earnings solely on herself.

¹¹ *Pickett v British Rail Engineering Limited* [1980] AC 136 at 153-154

17. Finally, I was also mindful of the principle cited in *White v London Transport Executive*¹² that, “*in this day and age the ordinary working man’s life would not be regarded by him as reasonably satisfactory and potentially enjoyable if he cannot afford a short holiday, a modest amount of entertainment and social activity and, depending on his particular circumstances, a car.*”

The Dependency Claim:

18. In issue is what proportion of the deceased’s notional net earnings is to be attributed to the dependency in calculating (a) the loss from the date of death to the date of trial and (b) the multiplicand on which to base the estimate of future loss? In *Cookson v Knowles*¹³ the English Court of Appeal set out guidelines to assess damages in fatal accidents cases, including that because of inflation, awards for fatal accidents are to be divided into two parts –

- i. **pre-trial loss**, which is the actual pecuniary loss estimated that the dependants have already sustained from the date of death up to the date of trial and which is calculated arithmetically like special damages; and
- ii. **post-trial loss**, which is the loss estimated that the dependants will suffer from the trial onwards, calculated by taking the datum figure and then applying the appropriate multiplier.

19. The measure of damages is to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value, subject to the element of reasonable future probabilities. See *Davies v Powell Associated Collieries Ltd*¹⁴ where Lord Wright stated at page 617 that, “[T]here is no question here of what maybe called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities.” See also the case of *Cookson v Knowles* (supra).

20. In arriving at the datum or basic figure, an important fact to consider is the permanence of the deceased’s employment. Counsel for the claimant has submitted that regard must be given to

¹² *White v London Transport Executive* [1982] QB 489 at 499

¹³ *Cookson v Knowles* [1978] 2 AER 604

¹⁴ *Davies v Powell Associated Collieries Ltd* [1942] AC 601

the increased transport charges or taxi fares since the demise of the deceased as well as the likelihood of the addition of new taxis or the deceased venturing into an additional or a new area of transport. Further, it was noted that in her witness statement, the claimant gave evidence that the deceased was, “*a business woman up to the time of her death and had been so for many years before that. At the time of her death my daughter was in the transport business; she ... had expressed to me her intention to expand her business and increase the number of cars which she owned to a fleet of cars.*”

21. With respect to the pre-trial loss or pre-assessment earnings, which refers to what the deceased earned at the time of death up to the time of assessment, the deceased died on 11th July, 2005 and the assessment took place on 21st September, 2011 that is, a period of 6 years, 3 months and 2 days. In *Tawari Tota-Maharaj* (supra) Rajkumar J, following the Cookson principle cited above, awarded pre-assessment earnings for the 7 year period between the death and the assessment as well as post-assessment earnings. In so doing, he applied different multiplicands for the two periods in that case namely 7 and 11 respectively. It is to be noted that the deceased in *Tawari Tota-Maharaj* (supra) was 19 years at the time of his death and pursuing his degree in engineering at the University of the West Indies and 28 years at the time of assessment. The instant case involves the assessment of damages for an older deceased namely 38 years at time of death and 44 years as at the assessment. Further, counsel for the claimant submitted that in the present case, the income that the deceased would have earned in both periods would have remained the same. This is accepted.

Multiplier or number of years purchase:

22. The multiplier or number of years purchase is based on the age and expectation of the working life of the deceased. In the instant case and as stated above, the deceased was 38 years at the date of death and ran her own transport business. Counsel for the claimant submitted that prior to this, the deceased also owned 51% shares in a family business Dream Foods Limited incorporated in June, 1994, which she controlled and managed. Whilst this was pleaded in the statement of case, there was no evidence to substantiate this before me as the witness statement was silent thereto save and except that the claimant stated that the deceased was a business woman before the transport business. I also note that in the statement of case this family business was stated to no longer be operational. In the

circumstances, I paid little regard to this aspect of counsel's submissions, save that it served to show that the deceased was involved in business prior to the transport business.

23. In ***Graham v Dodds***¹⁵ Lord Bridge in a House of Lords' decision stated that in fatal accident cases there was uncertainty as to what might have happened to the deceased after the date of his death had he survived and accordingly, "*the multiplier had to be selected as at the date of death and the number of pre-trial years for which special damages were awarded then deducted from the multiplier.*" Counsel for the claimant submitted that this principle is not applicable to the present case as the deceased was a healthy, vibrant and enterprising individual whose business was in an area that continues to be in high demand and likely to remain so. This is accepted.
24. In ***Peter Seepersad v Theophilus Persad and Capital Insurance***¹⁶ the Privy Council awarded a multiplier of 16 to a plaintiff who was aged 37 as at the date of trial and the board took into account the rate of interest payable in Trinidad and Tobago. This approach was followed in ***Gillian Roxanne Isaac v Shaun Solomon and anor***¹⁷ where the trial judge took account of the prevailing interest rates in Trinidad and Tobago and awarded a multiplier of 16 to a 37 year old claimant.
25. On the basis of these cases cited above and the case of ***Christopher v Rampersad***¹⁸, counsel for the claimant submitted that a multiplier of 20 would be appropriate given that the deceased owned her own business and would not have faced retirement from an employer but by choice. I consider this to be an excessively high multiplier and so unreasonable in the circumstances of this case. I re-state the injunction in ***Pickett*** case (supra) that damages for loss of earnings during the lost years must be assessed justly and with moderation. Whilst I accept that the process of estimating this award is fraught with uncertainties, including of illness, death and unemployment, there are several guidelines that can be used. In this regard, I note the caution sounded by Rajkumar J that, "*[T]he award is not susceptible to precise mathematical calculation but constitutes a Court's best effort at projecting from the evidence into the future and estimating as*

¹⁵ *Graham v Dodds* [1983] 1 WLR 808 per Lord Bridge of Harwich

¹⁶ *Peter Seepersad v Theophilus Persad and Capital Insurance* [2004] UKPC 19

¹⁷ *Gillian Roxanne Isaac v Shaun Solomon and anor* CV2007 - 04400

¹⁸ *Christopher v Rampersad* HCA S1063 of 1966 delivered on 16th July, 2001 per Colin Kangaloo J (as he then was).

best as it can what the Deceased's prospects would have been. It is a process, however, that is necessarily uncertain."¹⁹

26. Apart from the above cited principles and cases, I also had regard to the case of **Mallett v McMonagle**²⁰ where Lord Diplock stated that, "[I]n cases such as the present where the deceased was aged 25 and the appellant his widow about the same age Courts have not infrequently awarded 16 years ... of dependency. It is seldom that this number of years purchase is exceeded." Additionally, I considered the case of **Young v Percival**²¹ where the court found that a multiplier of 16 was too high and applied a multiplier of 14 in respect of a deceased aged 29.

27. In arriving at an appropriate multiplier in the present case, I have taken into account the above cited principles and cases as well as –

- the age of the deceased at the time of her death;
- the fact that she was a self-employed business woman;
- the nature of her business was service oriented and the transportation service locally was one that was then and continues to be in high demand;
- her retirement would have been by choice, not mandatory;
- the current fluidity in interest rates locally (currently on the decline) and/or the decreasing value of the dollar; and
- the vicissitudes and contingencies of life.

28. As stated above, the multiplier of 20 as sought by the claimant was done so on the basis of **Christopher v Rampersad**²² where a multiplier of 20 was used in respect of a plaintiff who had suffered personal injuries and was at the date of trial 18 years old and would have had a life expectancy of 70 years and a working life of 52 years if he were self-employed. The case of **Christopher v Rampersad** (supra) can be distinguished from the present case since (like the **Peter Seepersad** case (supra)) it dealt with personal injuries and not a fatal accident. I accept, however, that these two cases provide useful guidance in assessing the lost years.

¹⁹ Alice Lee Poy John CV2008-01892 at page 11

²⁰ *Mallett v McMonagle* [1970] AC 166 at 177 per Lord Diplock at page 565(b)

²¹ *Young v Percival* [1974] 3 AER 677 at 681

²² *Christopher v Rampersad* HCA S1063 of 1966 delivered on 16th July, 2001 per Colin Kangaloo J (as he then was).

Further, as at the date of the assessment, the instant deceased would have been 44 years old. Her working life, if she were to have worked to 65, would have been 21 years. This period of working life must be discounted to take into account illness, the possibility of unemployment and other contingencies of life. In the circumstance of the present case, I considered it appropriate to apply a multiplier of 15 over both periods (i.e. a pre-trial multiplier of 6 and a post-trial multiplier of 9).

V. SPECIAL DAMAGES

29. In *Gammell* (supra) it was held that the cost of obtaining a grant of letters of administration is not recoverable. Counsel for the claimant submitted that in this jurisdiction, the practice has been to award such expenses and referred the court to the cases of: *Mangine Ramnarien (Administratrix of the Estate of Dolly Partap otherwise Dolly Dookharan) v Joseph Hospedales*²³; *Deosahai Bedaisee (Administartor of the Estate of Indra Bidaisee, deceased) and Ors v Ramdial Transport Ltd and anor*²⁴; *Vena Joel (administratrix of the Estate of Kirwyn Emile Isidore Joel, deceased) v Allison Montrichard (formerly Allison Lyder) and anor*²⁵

30. The following items of special damages have been accepted by the defendants and are allowed:

Funeral expenses	=	\$8,469.18
Burial apparel	=	\$500.00
Wake expenses	=	\$500.00
Police report	=	\$ 50.00
Certified copy of PBC 409	=	\$ 20.00
estimated cost of letters of administration	=	<u>\$7,700.00</u>
		\$17,239.18

²³ *Mangine Ramnarien (Administratrix of the Estate of Dolly Partap otherwise Dolly Dookharan) v Joseph Hospedales* HCA S-953 of 1984

²⁴ *Deosabai Bedaisee (Administartor of the Estate of Indra Bidaisee, deceased) and Ors v Ramdial Transport Ltd and anor* HCA No 2541 of 2002

²⁵ *Vena Joel (administratrix of the Estate of Kirwyn Emile Isidore Joel, deceased) v Allison Montrichard (formerly Allison Lyder) and anor* HCA No 3516 of 1993

31. The claimants have also pleaded and particularized in her amended statement of case other claims for special damages which are itemized and dealt with below:

Cost after funeral expenses on 12th July, 2005

This claim was made in the sum of \$1,000.00 for refreshments during the 40 days observance following the death and cremation. No receipts were provided in support of this claim. To my mind, such bills could have been made available and in their absence I am not prepared to allow this cost. This claim is disallowed.

Loss of deceased's clothing (pants suit and sandals)

This claim was made in the sum of \$550.00. In her witness statement, she states that one side of the sandals that the deceased was wearing was left at the scene of the accident. No explanation was given as to why it was not retrieved. Nevertheless, it is reasonable to expect that the deceased was clothed at the time of the accident and that this loss was possible. The sum claimed is not unreasonable. Further, providing receipts may have been a challenge and, in the circumstances, I am prepared to allow this claim in the sum of **\$550.00**.

• **Loss of school ring 10kt gold (St Dominic's Convent)**

In the amended statement of case, the claim for the deceased's lost school ring was made in the sum of \$950.00. In the submissions, the sum of \$900.00 was claimed for this item. In her witness statement, the claimant gave evidence that the deceased was wearing jewellery and listed the said items and cost. No mention was made of the school ring and its cost in her evidence. Further, it is my view that documentary evidence could have been provided in support of this claim. On the purchase of such an item, a receipt is usually issued and, moreover, records of its purchase may be available. Given the failure of the claimant to furnish the requisite evidence in support of this claim, or an explanation for this failure and especially given the silence in her witness statement and the conflicting sums claimed, his claim is disallowed.

Loss of other jewellery

This claim was for the loss of several items of jewellery worn by the deceased at the time of the accident including a gold anklet for \$650.00; a 10kt gold bracelet for \$3,000.00; 2 pairs of 10kt gold round stoppers earrings at \$175.00 per pair; 1 pair 10kt gold diamond studded stopper earrings for \$400. 00. The claimant gave evidence that the deceased loved jewellery and always wore these items and was wearing same on the day of the accident. She also stated that she was shown the receipts for the purchased of these items by the deceased. No receipts were in evidence before this court. There being no documentary or other evidence to support this claim, it is disallowed.

Loss of Ray Ban sunglasses

This claim was pleaded in the amended statement of case but no evidence provided to substantiate it. The witness statement was silent with respect to this claim. It is, therefore, disallowed.

Loss of Nokia cell phone (flip)

The sum of \$2,600.00 was claimed for loss of this item but no documentary or other evidence was supplied to support this loss. This claim is also disallowed.

Loss of cash on person

The claimant gave evidence that, *“Nazarine lost \$1,000.00 in cash on the day of the accident because we found in her pocket an ATM slip dated 11th July, 2005 (the day she died) for a \$1,000.00 withdrawal.”*

There is insufficient evidence before me to support this claim that the deceased had this money on her person at the time of the accident or whether (some or all) may have been put to some other use between the withdrawal and accident. This claim is disallowed.

(b) Under the Compensation for Injuries Act, Chapter 8:05

32. The claim under this Act is made for the benefit of the dependants of the deceased. As a rule, damages are awarded to the dependants of the deceased who fall within the relationship of consanguinity as set out in **section 2(1) of the Act** and the extent of the dependency must be ascertained. In determining the extent of the dependency, any likelihood of increased earnings

not due merely to future inflation must be taken into account and the datum figure adjusted (increased) accordingly. This was set out in *Roughhead v Railway Executive*²⁶ and in the case of *Cookson* (supra). In the local case of *Maureen Samuel v Susan Salraj* (supra) Dean Armorer J stated that in assessing the dependency claim, the court is bound by the principle in *Cookson v Knowles* (supra) where the House of Lords prescribed the division of the award into two parts i.e. pre-trial and post-trial loss.²⁷

33. The measure of damages is to be based on the reasonable expectation of pecuniary benefit or the benefit reducible to money value, subject to the element of reasonable future probabilities. To be considered in arriving at the datum or basic figure is the permanence of the deceased's employment as seen in *Cookson* (supra). See also *Davies v Powell* (supra)
34. In the instant case, the deceased died intestate leaving behind the claimant, who resided with her and for whom she provided, as the sole dependant.
35. The claimant gave evidence that the deceased paid a rent of \$2,000.00 monthly for the accommodations they shared. She also received from the deceased the following support:

Personal allowance	=	\$1,000.00 per month
Groceries and electricity	=	\$1,500.00 per month
Cell phone	=	\$ 200.00 per month
Occasional advancements for -		
▪ Christmas	=	\$3,000.00 annually
▪ Eid and other occasions		
such as birthdays	=	\$1,500.00 annually
Rent	=	\$12,000.00 annually (1/2 share)
ANNUAL TOTAL	=	<u>\$48,900.00</u>

²⁶ *Roughhead v Railway Executive* (1949) 65 TLR 435

²⁷ *Maureen Samuel v Susan salraj* (supra) page 20

In the instant case, the value of the dependency is \$48,900.00 yearly. I now turn my attention to finding an appropriate multiplier.

36. In assessing damages for loss of dependency arising from a fatal accident case, the issue that arises is whether the multiplier or number of years' purchase should be calculated from the date of death or from the date of trial/assessment. In *Graham v Dodds* (supra) the House of Lords stated that the multiplier was to be selected as at the date of death. In the present case, the award to be made under the **Compensation for Injuries Act** would be:

Pre-assessment loss:	48,900 x 6	=	\$293,400
Post-assessment loss:	48,900 x 9	=	\$440,100
<hr/>			
\$733,500			

37. To be noted is the principle laid down in *Davies v Powell* (supra) that the assessing court is to avoid duplication when determining damages to dependants by taking into account the awards made to the deceased's dependants. The practice is to deduct the award made under the **Compensation for Injuries Act** where the dependants are the same as those under the deceased's estate. See also *Maureen Samuel v Susan Salraj* (supra) where Dean Armorer J re-stated and applied this principle. As a rule, damages are not usually awarded under this head if it is a smaller sum than that which falls to be awarded under the **Judicature Act**.

VI. INTEREST

38. As a rule, interest is awarded at the discretion of the judge. The governing principle is that interest should only be awarded to a claimant for being kept out of money which ought to have been paid to him/her. Thus, interest is not awarded on future loss. See *Jefford v Gee*²⁸. Another case on point is *Harbutt's v Wayne Tank Company*²⁹ which stated the principle thus, "[t]he basis of an award of interest is that the defendant has kept the plaintiff out of his money: and the

²⁸ *Jefford v Gee* [1970] 1 AER 1202

²⁹ *Harbutt's v Wayne Tank Company* [1970] 2 WLR 212

defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly.” Awards under the heading of the lost years also do not attract interest. See **Ramnarine v Hospedales** (supra).

39. Lord Salmon MR in **Jefford** (supra) stated that when dealing with fatal accidents cases, damages are awarded in a lump sum and it is treated as damages inflicted once and for all at the time of the accident. If such a case is not settled out of court, then the plaintiff's advisers should issue and serve the writ and the defendants should make payment. From that time onwards, it can be said that the dependants are kept out of their money and in these circumstances interest should be awarded from the date of service of the writ.

40. Counsel for the claimant pointed the court to several local cases involving fatal accidents where interest was awarded.

- In **Tawari Tota-Maharaj** (supra) Rajkumar J awarded interest on the funeral expenses from the date the expenditure occurred at 12% per annum to judgment and on the loss of earnings at 6% from the date the writ was filed to judgment.
- In **Maureen Samuel v Susan Surajh** (supra) Dean Armorer J awarded interest on the special damages at 3% from the date of filing of the writ to 28th September, 2000 (the date of the amendment of the Judicature Act) and from 29th September, 2000 at 6% until judgment. Interest was awarded for the same periods on the general damages at 6% and increased to 12%.
- In **Deosahai Bedaisee** (supra) Rajkumar J awarded interest on the special damages including funeral expenses, cost of obtaining letters of administration, loss of clothing from the date of death to the date of filing the writ at 3% and thereafter at 6%.

VII. CONCLUSION

Interface between the Judicature Act and the Compensation for Injuries Act -

41. The right of action under both **the Judicature Act** and the **Compensation for Injuries Act** are distinct and independent. See *Davies v Powell* (supra). Thus, it is incumbent on an assessing court to ensure awards of damages are not duplicated. In so doing, the court is required to take into account when assessing damages for the benefit of the dependants under the **Compensation for Injuries Act** any benefit flowing to the dependants from the estate of the deceased under **the Judicature Act**. This was confirmed by Best M in *Ramnarine v Hospedales* (supra).
42. The usual practice is to deduct any amounts awarded under the **Compensation for Injuries Act** from the award made under **the Judicature Act**. In the instant case, the claimant is the mother and sole beneficiary of the deceased under the estate and only dependant of the deceased.
43. Under **the Judicature Act**, damages would be payable to the claimant as follows:
 - a. Special damages of \$17,789.18 as set out above.
 - b. Damages in the conventional sum of \$20,000.00 for loss of expectation of life.
 - c. Damages for the lost years divided into the pre-assessment period and post-assessment period using a multiplier of 6 years and 9 years respectively –

Award for pre-assessment period

\$48,000.00 x 6 years = \$288,000.00

Award for post-assessment period

\$48,000.00 x 9 years = \$432,000.00

Total lost years: \$720,000.00

TOTAL AWARD UNDER THE JUDICATURE ACT: \$757,789.18

44. Under the **Compensation for Injuries Act**, I accept the submissions of counsel for the claimant that as this sum will be deducted from the award made to the estate; there is nothing to be gained from pursuing this claim given that the award to the estate, under the **Judicature Act**, is larger.

The breakdown of the award to the estate is as follows:

Special damages	=	\$17,789.18
Conventional award	=	\$20,000.00
Lost years	=	<u>\$720,000.00</u>
		\$757,789.18

THE ORDER

45. It is ordered that the defendants do pay to the claimant:

- a) Special damages in the sum of \$17,789.18 with interest at the rate of 6% from 11th July, 2005 to 30th April, 2012.
- b) A conventional award of \$20,000.00.
- c) Damages for lost years in the sum of \$720,000.00.
- d) Costs in the sum of \$101,807.84.
- e) Stay of execution of 28 days.

Dated 30th April, 2012

Martha Alexander

Master of the High Court (Ag)

Judicial Research Assistant: Ms Kimberly Romany