

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2011-01931

BETWEEN

AMARSINGH BOODRAM
(Administrator of the Estate of MOHAN BOODRAM)

Claimant

AND

JEWAN PERSAD

First Defendant

AVINASH MANGAROO

Second Defendant

MOTOR ONE INSURANCE COMPANY LIMITED

Third Defendant

Before: Master Alexander

Appearances:

For the Claimant: Mr Shawn Roopnarine

For the Second and

Third Defendants: Mr Imran Khan and Mr Prakash Maharaj, instructed by Mrs Wendy Ramnath-Panday

REASONS

1. Mohan Boodram (hereinafter “the deceased”) was 17 years when he died in an accident, after the vehicle in which he was a passenger was hit in the rear by another motor vehicle, owned and driven by Avinash Mangaroo, the second defendant. The accident took place along the Uriah Butler Highway, Chaguanas on 30th May, 2007 and the deceased died on the same day. Amarsingh Boodram brought this action, pursuant to Letters of Administration issued by the Probate Registry on 15th April, 2009, seeking to recover damages for the death of the deceased

under the **Supreme Court of Judicature Act No. 12 of 1962** for the benefit of the deceased's estate.

2. This claim is relatively recent having been filed on 23rd May, 2011. A defence on quantum was filed by the second and third defendants (hereinafter together "the defendants") on 9th September, 2011 and on the basis of the admission therein Kokaram J entered judgment on 4th November, 2011 for the claimant and referred the matter to a master for the assessment of damages. Subsequently, leave was granted to the claimant to withdraw his claim against the first defendant. The assessment took place on 5th and 9th July, 2011.
3. There were only two witnesses: the claimant and the employer of the deceased.

(a) Amarsingh Boodram (the claimant):

Amarsingh Boodram (hereinafter "Amarsingh") is the claimant and father of the deceased. He gave evidence that was in several material ways lacking in the particularity, details and exactitude required by an assessing court in a fatal accident claim; vested as it is with the responsibility for estimating the possible losses suffered and with making an informed projection of the loss of earnings during the lost years. In his evidence in chief, he states that the deceased: was 17 years when he died; had completed his CXC examinations the year before (no indication as to subjects passed, if any); was a trainee air condition technician at Lalchan's Air Conditioning and Refrigeration Services Limited; was attending afternoon classes at the Jordan Hill Presbyterian School pursuing an electrical course from 3 p.m. to 6 p.m.; planned to open his own business on completion of this course; used his free time to work with his aunt (no name provided) as a merchandiser for Holiday Snacks because he likes to have his own money; was unmarried and without children; spent most of his time working or at school and contributed to the household by giving his mother money for bills and groceries. There was no expansion of this evidence in his witness statement so as to provide this court with details to assist it with the making of an informed decision. To be noted, however, is that a large part of this evidence was unchallenged, save for his attendance at evening school (dealt with below).

4. Under cross-examination, Amarsingh confirmed the continuing education of the deceased at the Jordan Hill Presbyterian School but seemed unsure as to specific details. He did not know: what was the name of the course being pursued by the deceased; the cost of doing this course; whether the deceased had already paid for it; the exact starting time for classes or about the regularity of the deceased's attendance. He kept referring to this being information that the deceased's mother would know. It was also not clear if the deceased would receive, if successful, a certificate (or diploma or any document) at the end of this course or not and the effect, if any of this qualification on his chosen career. To be noted is the fact that a tutor/member of the teaching staff, principal or anyone with the requisite knowledge of this course was not called as a witness. When probed under cross-examination, Amarsingh admitted that the deceased worked from Monday to Saturday, leaving home at 7 a.m. and worked until 7 p.m. at night. There is a clear conflict or inconsistency here with his evidence in chief, which speaks to the deceased attending classes from 3 p.m. to 6 p.m. "on an afternoon". In addition, for the first time under cross-examination, there was evidence given by Amarsingh that the deceased used to miss classes sometimes, though no details as to the frequency of this were given. The tendency of this witness towards making imprecise and inexact statements in his evidence, both in chief and under cross examination, proved to be a source of disquiet for this court and raised questions as to his credibility and forthrightness. There is no indication as to the specific number of days or "afternoons" that the deceased attended classes and/or his regularity of attendance. This is important as he is stated to be earning an hourly rate of pay and may have implications on the calculation of his loss of earnings (discussed below).

5. Amarsingh also gave evidence under cross-examination that the deceased had extra money that he used to give his mother and brother but, on the other hand, was the recipient of monies from Amarsingh to travel. To be noted further is that when pressed under cross-examination, he stated that the deceased used to buy drinks, something to eat, soft drinks and clothes with his money but subsequently became defensive and stated the deceased did not smoke, drink or "lime" but was always at home, work or church. I was able to see and hear Amarsingh under cross-examination and to note the several inconsistencies in his evidence. It was apparent that he was not very familiar with many details of the deceased's life. He even admitted that the pieces of information being solicited by counsel for the defendants were within the purview of the

deceased's mother, not him as he was always at work. Despite this, on the evidence that came out under cross-examination, I did not conclude that Amarsingh was manufacturing evidence to support his claim or was trying to be dishonest with this court. It was clear that he did not have the precise details being sought by counsel under cross-examination to provide the necessary assistance to the assessing court and, unfortunately, the deceased's mother was not a party to or witness called in this matter.

(b) The Employer:

6. Ashward Lalchan (hereinafter "Lalchan") was the employer of the deceased. Lalchan gave evidence in chief and viva voce evidence. In his witness statement, he states that he is the owner of Lalchan's Air Conditioning and Refrigeration Services Limited, in business over 25 years. He states further that the deceased was a trainee air condition technician since 26th April, 2007, earning a weekly salary of \$400.00, which would have increased after the training period. The targeted date for completion of this training was July 2007. The proposed increase in salary would be \$20.00 per hour from the current \$10.00 per hour earned as a trainee. It is his evidence that the deceased worked 40 hours per week, earning \$1,600.00 per month with occasional overtime (details of which were not provided and for the purpose of this assessment are not considered). He states further that the deceased was only working at his company for a month prior to his death and he would have kept him on as a permanent employee. He claims that the deceased was always regular and punctual in his attendance but provided no record of this. He described the deceased as one who was "ambitious", willing and learned quickly noting, "I found that he caught on quickly and was proving himself to be a very good and efficient worker. I was very impressed and would have kept him on as a technician." It is also his evidence that he was aware that the deceased attended afternoon classes pursuing an electrical course at Jordan Hill Presbyterian School. Under cross-examination he stated that the deceased had transportation provided by the secretary of the company (who lived next door to him) and as such did not have to incur travelling costs every day.

7. Counsel for Amarsingh submitted that the fact of the deceased's employment is not disputed by the defendants but rather the fact that the salary would have increased. This was clear from the defence that stated, "[T]hese Defendants deny paragraph 15 of the Statement of Case since there

is no basis for the statement that the deceased's income was likely to increase. The job letter is not admitted since these Defendants cannot be certain of its bona fides." Counsel for Amarsingh has asked this court to note that with the exception of a likely increase in salary to be earned by the deceased, the defendants did not challenge the evidence of Lalchan and Amarsingh; have led no evidence contrary to or by way of independent evidence or in cross-examination to suggest or dispute the deceased's income or that he was attending classes and pursuing an electrical course. In response, counsel for the defendants submitted that the deceased's employment and salary were disputed as seen in their defence and it was up to Amarsingh, as the claimant, to prove by credible evidence those facts in support of his damages claimed. See *Andre Marchong v T&TEC and Galt and Littlepage Limited*¹. The court was asked to look at the lack of supporting documentation or records of Lalchan and to treat the evidence as incredible and not to accept that the deceased was employed with him at all.

8. In his viva voce evidence, Lalchan claims his business was in existence for 30 years but did not produce any documents or records to support that the deceased was employed with him or of the weekly salary being paid. There was no record of National Insurance or Health Surcharge deductions. To be noted is his evidence that he did not know that such deductions had to be made. This evidence was unconvincing coming as it did from a businessman, in operation for 30 years and the employer of other employees. To be noted also is the fact that there were no pay slips, payment vouchers or any evidence of monies paid in cash or anything showing that the deceased signed for receiving same. Lalchan also produced no records or documentation in support of his claim that the deceased would have been paid an increased salary after training or to show that the higher hourly rate is what other employees were being paid. In his oral evidence, he also claims that employees who reported to work had to sign in for duty but didn't think the deceased did. When pressed under cross-examination, he stated that the deceased's time would have been recorded by the secretary in a diary but produced no record of this. Counsel for the defendants has asked that this evidence be deemed as incredible since someone on probation as a trainee would normally be monitored in terms of attendance and punctuality to determine his suitability for permanent employment. To my mind, it is precisely this fact of

¹ *Andre Marchong v T&TEC and Galt and Littlepage Limited* CV2008-04045

being a trainee why I do not find it hard to accept the evidence of Lalchan as to a more informal and less stringent monitoring of the deceased than would have characterized other permanent employees. Whilst the lack of documentary evidence provided by Lalchan was a source of concern, there was nothing before me that contradicted his viva voce evidence as to the salary he paid his trainees or permanent workers.

9. I am satisfied on the evidence before me that the deceased was indeed a trainee with the company; regularly attended work and earned \$10.00 per hour which would most likely have been increased at the end of the probation period. I also accept Lalchan's evidence that the deceased was a good worker, ambitious and progressive with whom he was impressed and who would have been kept on by the company. I have no evidence before me to the contrary and Lalchan did not come across as a witness who was a stranger to the truth or showing any tendencies towards inexactitudes. In fact his evidence, even in the face of a lack of documentation, was firm and unshaken under cross-examination. I am satisfied that there was sufficient evidence led as to the prospects for employment of the deceased; the character of the deceased and his overall propensity for hard work to assist this court. I bear in mind that when an estate claim is made the starting point is the amount of wages which the deceased was earning of which there is evidence before this court. I am also satisfied that the net salary of the deceased was \$1,600.00 per month and that this would reasonably have been expected to increase after training ended in July, 2007.
10. The aspect of the evidence with which I am absolutely not satisfied is the electrical course and any likely impact on the future career of the deceased. I note that Amarsingh sought to give evidence that the deceased had indicated he wanted to be a businessman and to open his own business. I have no sufficient evidence of this before me or anything that would cause me to project such a conclusion. To be noted is the fact that the deceased's father (Amarsingh) was a labourer; the absence of evidence as to the deceased's passes after sitting CXC examinations as well as the silence with regard to his progress in or the level of certification/qualification (if any) of this electrical course.

The Law

11. Where there is an estate claim, damages are 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 and special damages. See **section 27 of the Supreme Court of Judicature Act, Chapter 4:01** (hereinafter “**Judicature Act**”). Generally in assessing damages for the loss of earnings during the lost years, a court is required to do so in a just and moderate manner.² To be noted is that there is no claim in respect of a dependency in this matter.

(i) Loss of Expectation of Life

12. This is a conventional award signifying the occurrence of some loss suffered and it is generally not influenced by inflation or the age and status of the deceased while still living. The sum of \$20,000.00 is awarded under this limb.³

(ii) Loss of Earnings for the Lost Years

13. To compensate the estate for the years in which the deceased would have been earning if he was living, an award of damages called “loss of earnings in the ‘lost years’” is made. This award is purely compensatory in nature and aims to make reparations to the deceased’s estate for the lost portion of the deceased’s earnings. The basic principle followed in this jurisdiction is that a claim for ‘lost years’ survives for the benefit of the deceased’s estate, as enunciated in *Kandalia v British Airways Board*⁴ and approved in *Gammell v Wilson & Ors*⁵.

14. Damages for future loss of earnings are assessed by applying the multiplier/multiplicand method. To arrive at a datum figure, clear, cogent and relevant evidence is required. It is a claimant’s responsibility to assist the court with this process of arriving at a fair and just award. This court notes that, up to the time of his death, the deceased was a trainee technician. There is no evidence of any sterling academic performance or otherwise in subjects taken at secondary school level. What is clear and has not been refuted by the defendants is that the deceased is

² *Pickett v British Rail Engineering Limited* [1980] AC 136 at 153-154 per Lord Salmon

³ *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 per Rajkumar J

⁴ *Kandalia v British Airways Board* [1980] 1 AER 341

⁵ *Gammell v Wilson & Ors* [1981] 1 AER 578

hardworking, sufficiently so as to impress his employer to want to keep him on permanently, at a higher salary range.

15. Generally, the datum (or multiplicand) figure is based on the deceased's net income that is the sums remaining at the disposal of the deceased after deduction of his 'living expenses'. The 'living expenses' covers any sums expended exclusively on the deceased, to maintain himself at the standard of living appropriate to his age and circumstances. To be noted is that, "[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." See **Harris v Empress Motors Limited**⁶ where this was stated by O'Connor LJ as well as the principle that the smaller the salary, the larger proportion of earnings that would be spent on oneself. To be excluded from living expenses are any sums expended to maintain or benefit others or as savings, so would not be deducted from the deceased's net earnings. The O'Connor principle has been re-stated and applied in several decisions emanating from our local courts. See **Maureen Samuel (LPR of Stephen Duncan) v Susan Salraj**⁷ and **Alice Lee Poy John v Securiserve Ltd**⁸.
16. The amount of living expenses is assessed usually at no more than 1/3 of net earnings.⁹ Counsel for the defendants has pointed the court, however, to several cases where the local courts have deducted a higher percentage to enable the deceased to have a decent standard of living:
- **Maureen Samuel (supra)** where after hearing the evidence, 2/3 of the deceased's salary was deducted to enable him to have a decent standard of living.
 - **Vishnu Ramsingh v Denzley Butcher**¹⁰ where the court awarded two rates of salary based on the fact that the deceased's salary as a teacher would have increased. Based on the

⁶ *Harris v Empress Motors Limited* [1984] 1 WLR 212 at page 228 where LJ Connor identified two methods to calculate the lost years – (i) 'savings only solution' and (ii) 'available surplus method' and stated he preferred the latter, 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.

⁷ *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.

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

⁹ This has been adopted from the English principle as stated in their Fatal Accidents Act.

higher salary of \$4,000.00 the court awarded a multiplicand of \$1,200.00 i.e. 30% of the deceased's salary, thereby deducting 70%.

- ***Donna Bideshi v The Attorney General***¹¹ where 2/3 of the deceased's income was deducted as living expenses.

17. The court was asked to deduct 2/3 of the net earnings of the deceased, given the deficiencies in the evidence and since in the context of the modest salary (\$3,200.00 gross) the deceased would have expended more on himself, leaving a smaller surplus for his estate, if any. I note the evidence that the deceased lived a relatively simple life. Thus, for the purpose of this assessment, I will assess the deceased's living expenses as no more than 1/3 of his net earnings.¹² In so doing, I have considered also that the deceased would have had to maintain himself at a standard of life appropriate to his situation, including the taking of a short holiday or the spending of modest sums on social activities and entertainment. I also bear in mind Amarsingh's defensive remarks under cross-examination that the deceased did not smoke, lime or drink but only went to church, classes and work. Even if this were accepted, the deceased would have had consequential expenses from these activities inclusive of purchasing clothes or attending functions and may have bought a car. In this regard, I was mindful of the principle cited in ***White's case***¹³ 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.*" I also bore in mind that the deceased's earnings would have been subjected to statutory deductions.¹⁴ Consideration was also given to the fact that any award for lost years should not exceed any sum that would have remained at the disposal of the deceased after meeting living expenses. See ***Lloyd Norton Jeffers v John Jagan***.¹⁵ Thus, 1/3 of net earnings to be deducted is deemed to be reasonable in the circumstances.

¹⁰ *Vishnu Ramsingh v Denzley Butcher* HCA 1742 of 1993

¹¹ *Donna Bideshi v The Attorney General* HCA 1918 of 1999

¹² 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 his standard of living was high and/or he expended a large portion of his earnings solely on himself.

¹³ *White v London Transport Executive* [1982] QB 489 at 499

¹⁴ In *Cooper v Firth Brown* [1963] 2 AER it was stated that NIS and Health Surcharge would have to be deducted.

¹⁵ *Lloyd Norton Jeffers v John Jagan* HCA 519 of 1977

18. With respect to the post-trial loss, a multiplier has to first be determined. I bore in mind that the deceased was 17 years at his demise, in good health and could reasonably be expected to have a normal working life expectancy of up to 60 to 65 years. At the date of the trial, the deceased would have been 22 years old and his life expectancy would have been at least 38 years. Counsel for Amarsingh argues that based on the viva voce evidence of Amarsingh and Lalchan, the deceased who had intentions of opening his own business would have most likely done so. The court was asked to note Lalchan's evidence under cross-examination, in particular, that most employees would usually leave and establish their own businesses after they had gained sufficient experience. No names of former employees who had done so or other documentary record was provided by Lalchan. The percentage of workers who had left his company to form their own businesses was also not before this court. Yet this court was asked to accept this as "normal behaviour" and given this trend and the ambition and drive of the deceased, he would have gone into his own business and his working life would have been extended to enable him to have a longer retirement life, with higher earnings from the passage of time. As stated above, such carte blanche pronouncements are not accepted given the dearth of evidence as to such alleged trends. In the face of the insufficiency of the evidence, I am prepared to accept only that the deceased would have at least gone on to hold a permanent position at Lalchan's company.

19. In determining an appropriate multiplier, I was guided by several cases:

- ***Christopher v Rampersad***¹⁶ where a multiplier of 20 was used in respect of a plaintiff who was at the date of trial 18 years and would have had a life expectancy of 70 years and a working life of 52 years, if he was self-employed.
- ***Veda Mohan v Caribbean ISPAT Ltd***¹⁷ where a multiplier of 14 was awarded for a deceased who died at age 23.
- ***Bachan Pragg v Felix Gomez***¹⁸ where a multiplier of 14 was awarded for a 20 year old.
- ***Ivan Ramjit v Richard Canhigh***¹⁹ where a multiplier of 16 was awarded for a 25 year old school teacher.

¹⁶ *Christopher v Rampersad* HCA S1063/1996

¹⁷ *Veda Mohan v Caribbean ISPAT Ltd* HCA924/1990

¹⁸ *Bachan Pragg v Felix Gomez* HCA 4314/1983

20. Further, the case of *Andre Marchong* (supra) was also informative where with respect to a 27 year old claimant; a multiplier of 21 was applied, but is distinguished as it was a personal injuries case. With the instant case at bar, I find it reasonable to apply a multiplier of 18 to this 22 year old deceased with a working life expectancy of at least 38 years, that is 5 for pre-trial loss and 13 for post-trial loss.

21. The deductions for pre-trial and post-trial losses are reflected below:

Pre-Trial Loss

Earnings for June – July, 2007 (as trainee) = \$3,200.00 (i.e. \$1,600 per month x 2 months)
\$3,200 less 1/3 = \$2,133.00

August, 2007 – October, 2012 (permanent appointment) = \$3,200.00 x 62 months
\$198,400.00 less 1/3 = \$132,266.67

Total Pre-Trial Loss = \$134,399.67

Post-Trial Loss

(\$3,200 x 12) x 13 = 499,200.00
\$499,200 less 1/3 = \$332,800.00
Total Post-Trial Loss = \$332,800.00

Special Damages

22. In this jurisdiction, the practice has been to allow the recovery of the cost of obtaining a grant of letters of administration. See *Deosahai Bedaisee (Administartor of the Estate of Indra Bidaisee, deceased) v Ramdial Transport Ltd.*²⁰ Special damages were claimed as follows:

Letters of Administration = \$7,857.00
Funeral Home Expenses = \$7,475.00
5 Nights Wake @ \$1,000.00 per night = \$5,000.00

¹⁹ *Ivan Ramjit v Richard Canhigh* HCA 151/1987

²⁰ *Deosahai Bedaisee (Adm'tor of the Estate of Indra Bidaisee, deceased) v Ramdial Transport Ltd* HCA No 2541 of 2002

Travelling	=	\$1,500.00
Police Report and Travelling	=	<u>\$ 150.00</u>
TOTAL		\$21,982.00

22. Counsel for Amarsingh submitted that these items of special damages were not challenged by the defendants, no cross-examination on any of these items took place; and no rebuttal evidence was called. These items, therefore, remained unchallenged and based on the recent Court of Appeal Decision in *Great Northern Insurance Company and Ors v Ansola*²¹ this court was obliged to award the sums as claimed. To be noted is the comment of the Court of Appeal in the *Great Northern Insurance Company* case (supra) at page 32, paragraph 97 that:

From these cases it seems clear that the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff's claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason.

(a) **Cost of Letters of Administration** was claimed in the sum of \$7,857.00. There is no evidence in support of this claim as the receipt in support was struck out. Counsel for the defendants submitted that this expense is not a loss or damage for the benefit of the deceased's estate in reliance on the case of *Deonarine v Narine*. It is to be noted, however, that in several recent cases in this jurisdiction, the expense was allowed: *Mangine Ramnarine (Adminstratrix of the Estate of Dolly Partap otherwise Dolly Dookharan) v Joseph Hospedales*²² and *Deosahai Bedaisee (Administratrator of the Estate of Indra Bidaisee, deceased) v Ramdial Transport Ltd and anor.*²³ In the present case scenario, however, the receipt having been struck

²¹ *Great Northern Insurance Company v Ansola* CACiv 169/2008

²² *Mangine Ramnarine (Adminstratrix of the Estate of Dolly Partap otherwise Dolly Dookharan) v Joseph Hospedales* H.C.S.953/1984

²³ *Deosahai Bedaisee (Administratrator of the Estate of Indra Bidaisee, deceased) v Ramdial Transport Ltd and anor* H.C.2541/2002

out and the maker not being called to tender same into evidence, this claim is not allowed for insufficiency of proof.

- (b) **Funeral Expense** was claimed and supported in the sum of \$7,475.00 and is allowed.
- (c) **Wake/Travelling/Police Report Expenses** were claimed in the sum of \$6,650.00 without any proof being furnished. To be noted is that there was no evidence led of travelling or obtaining a police report. These claims are disallowed.

Interest

23. As a rule, interest is not awarded on future loss see *Jefford v Gee*²⁴. Thus, post-trial loss, which is a future award, and loss of expectation of life bear no interest. See also *Maureen Samuel (supra)*. Interest will be awarded on pre-trial loss and special damages at the rate of 3%.

24. It is ordered that the second and third defendants do pay to the claimant:

(a) Damages for the lost years as follows –

- Pre-trial loss in the sum of **\$134,399.67**, with interest at the rate of 3% per annum from 30th May, 2007 to 26th October, 2012; and
- Post-trial loss in the sum of **\$332,800.00**.

(b) Loss of expectation of life of **\$20,000.00**.

(c) Special damages in the sum of **\$7,475.00** with interest at the rate of 3% per annum from 30th May, 2007 to 26th October, 2012.

(a) Costs assessed in the sum of **\$43,694.62**.

Dated 26th October, 2012

Martha Alexander
Master

²⁴ *Jefford v Gee* [1970] 1 AER 1202