

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-03640

BETWEEN

NAZEEDA MOHAMMED
(as the Legal Personal Representative of the Estate
of Zyen Mohammed, deceased)

NASEEMA MOHAMMED
(as the lawful daughter and dependant of
Zyen Mohammed, deceased)

Claimants

AND

REID LORDE

Defendant

TRINIDAD AND TOBAGO INSURANCE LIMITED

Co-Defendant

Before: Master Alexander

Appearances:

For the Claimant: Ms Indra Ramdial-Lutchman

For the Defendant

And Co-Defendants: Mr Ronnie Vinda Persad instructed by Ms Alana Bissessar

REASONS

1. On 13th March, 2010 Zyen Mohammed (“the deceased”) was driving his motor vehicle HAS 523, in a northerly direction along the Uriah Butler Highway, in the vicinity of Caroni, when it was hit violently from the rear by motor vehicle PBG 4883, owned and driven by the defendant (“Reid Lorde”). As a result, the deceased lost control of his vehicle which ran off the highway and into a ditch, thereby causing him to suffer a diffuse contusion and laceration of the temporal lobes; diffuse subarachnoid; haemorrhage with multiple skull fractures; and a bilateral pulmonary

contusion with haemorrhage. He died the next day on 14th March, 2010. The claimants (“Nazeeda and Naseema”) who are his wife and daughter respectively brought this action seeking compensation and obtained judgment by consent on 12th June, 2013 pursuant to which this assessment was conducted. The averments in their statement of claim are that the instant assessment was proceeding upon 2 bases:

- a. As regards Nazeeda - “the survival action” i.e. only in relation to damages under the Supreme Court of Judicature Act.
- b. As regards Naseema - “the dependency action” i.e. only in relation to damages under the Compensation for Injuries Act.

The evidence

2. The entirety of the evidence in this assessment is comprised of 3 witness statements, the authors of whom were cross-examined thereon: Nazeeda, Naseema and Nisar Shah. The defendant and co-defendant have adduced no evidence, documentary or otherwise.

Nazeeda’s evidence

3. Nazeeda is the lawful wife of the deceased and is claiming in a survivorship capacity. She averred that she was married to the deceased on 28th August, 1983 under Muslim rites and bore him 2 children from that union: Khaleel and Naseema. At the time of the marriage, the deceased was a salesman and continued in this field for a few years before commencing work as a taxi driver in El Socorro and environs in or about the year 1987. He drove vehicle registration HAS 523 at the material time. The deceased was the sole breadwinner of the household.
4. On Saturday 13th March, 2010 around 10:30 pm the deceased, Naseema and Nazeeda were returning home from visiting a relative’s home in Charleville and proceeding in a northerly direction along the Uriah Butler Highway when Reid Lorde’s vehicle violently collided with the deceased’s vehicle, causing him to lose control and to run off the road into a ditch. As a result, the deceased suffered severe injuries and died on the morning of 14th March, 2010 at the Eric Williams Medical Sciences Complex (“EWMSC”). His funeral took place on 15th March, 2010 at a cost of

\$3,000.00, which was paid to Muslim Funeral Services. After the accident, the deceased's vehicle was kept at the Chaguanas Police Station until it was sent to a garage in Charlieville.

5. Nazeeda testified that the deceased worked his taxi along the El Socorro Main Road and environs from Monday to Saturday, earning approximately \$1,500.00 per week (\$6,000.00 per month). From the years 1987 to 2007, the deceased's sole source of income was plying his taxi. From September 2007, he began working for DMS Dental and Medical Supplies Limited ("DMS") owned by Nisar Shah and his wife. With DMS, the deceased worked as a driver/sales representative delivering dental and medical supplies to various clients of DMS along the East-West Corridor. This second job was his means of earning extra income given the rising cost of living. It is Nazeeda's evidence that the deceased performed this job whilst still continuing to work as a taxi driver, usually carrying this job out during his slow period of the taxi job (mid mornings/afternoons). At the time of his death, the deceased was still working with DMS as well as plying taxi. He was the sole breadwinner, although Nazeeda did small jobs for short periods at different places, using her small earnings therefrom for pocket change and to buy miscellaneous personal items.

6. The deceased earned monthly the sum of \$6,000.00 from plying his taxi and from DMS a gross salary of \$6,000.00 with his average net salary being \$5,543.08 per month. Nazeeda averred that from the taxi earnings, he spent a monthly average of \$1,200.00 on gasoline and about \$700.00 for maintenance. His global household expenses per month totalled \$6,700.00 which included all utility bills, medical cost and a monthly personal allowance to Nazeeda and Naseema of \$500.00 each. She testified further to having a close relationship with the deceased and to discussing everything together. The deceased was 58 years at the time of his death and in good health save and except the occasional headaches. He lived an active life, carrying out his 2 jobs and maintaining a full family life. He was also an active member of the El Socorro Nur-E-Islam Mosque and Secretary of the El Socorro 'Taxi Drivers' Association for many years.

Naseema's evidence

7. Naseema is the daughter of the deceased and is the sole claimant in the dependency action. She testified that she was 24 years old and a dependent of the deceased, having lived with him, her mother and brother in the same household. Her evidence corroborated that of Nazeeda that the deceased was the sole breadwinner of the family and paid all the bills and expenses for the general upkeep of the household. Naseema testified to being solely dependent on the deceased who provided everything for her. She confirmed the evidence of Nazeeda that the deceased gave her \$500.00 monthly for her personal use. She is well schooled having obtained her 5 passes at secondary level and doing further Islamic studies. She worked from December, 2007 to April, 2008 as a temporary employee with DMS. In June, 2008 she enrolled with the School of Business and Computer Science ("SBCS") to study a Certified Accounting Technician (CAT) course, where she successfully completed the first level. She was preparing for Level 2 of the ACCA, which would have commenced in June, 2010 when the accident occurred, leading to the death of the deceased. This caused her to no longer be able to continue with her studies. Subsequently, in June, 2010 she enrolled in a 3 month full time course in Accounting Computers and Office Skills at the School of Practical Accounting to become a Junior Accountant, which she has since successfully completed. The school assisted her to get an interview at an Accounting Firm in Chaguanas but she did not get the job. She did manage to secure a job at NM Ghany Limited in Champs Fleurs for a short period of 9 months as a Payables Clerk. Then, during that time, she applied through Service Commissions for a job and was successful, being placed at the Ministry of Education as a Clerk I, where she is currently still employed as an Acting Clerk II. She continues to reside at home with her mother, Nazeeda, and contributes to purchasing grocery items and other expenses as well as saving to continue her studies.

Nisar Shah's evidence

8. Nisar Shah is the Company Director/Manager of DMS. He corroborated the evidence of Nazeeda to wit that the deceased was "employed permanently as a Driver/Sales Representative" with his company from 3rd September, 2007 to the date of his demise on 14th March, 2010. He testified that the deceased worked from Monday to Friday "but with no fixed hours." His duties included, but were not limited to, visiting clients along the east-west corridor and delivering dental and medical supplies to various dental practitioners/clinics. He confirmed that he was aware that the deceased

was also plying taxi, hence his flexible hours. He averred that, “[H]is routine known to me allowed him to perform his duties for the Company during the slow period of plying taxi approximately mid-mornings and mid-afternoons.”

9. Nisar Shah testified also that at the time of his demise, the deceased earned a gross salary of \$6,000.00 per month with the company. He has provided a job letter dated 23rd April, 2012 signed by the directors of DMS as well as copies of the deceased’s Return of Emoluments Paid and PAYE Deduction Slips. He testified further that he has known the deceased all his life and their families were close and trusted friends. His impending retirement was June, 2011 but the deceased would have been kept on post-retirement because of his honesty and reliability in performing his job.

Discussion

10. Counsel for the defendant and co-defendant, Mr Persad, argued that the evidence in this matter was patently unsatisfactory and somewhat unreliable. He was critical of the evidence provided by way of TD4 Slips, arguing that these did not reflect the deceased’s earnings from his taxi, so this court should assume that he paid no taxes on this. Mr Persad also submitted that Nazeeda has failed to furnish sufficient proof of the employment of the deceased by DMS. He contended that as employer, Nisar Shah brought no such proof of the deceased’s income or indeed of any other independent record of income. Further, the TD4 slips bear no evidence that they were submitted to the Board of Inland Revenue. Mr Persad asked this court to find as a fact that the limited evidence, adduced in the form of TD4 slips, was of a self-serving nature and capable of being authored by anyone and was not suggestive of being independent documents and/or copies of documents that had been submitted during the deceased’s lifetime. Counsel submitted further that the TD4 slips do not constitute evidence of the deceased’s employment or income and directed the court to the learning in *Lalchan Ramoutar and CL Singh Transport Services Limited v Lenore Duncan*¹ where the Court of Appeal found, “... the information contained in the tax form to be an unreliable basis for an award of damages for the lost years since the judge had some difficulty in accepting the Respondent’s evidence in this regard” as the “form was insufficient to discharge the burden of proof required.” Mr

¹ *Lalchan Ramoutar and CL Singh Transport Services Limited v Lenore Duncan and Others* CA No 126 of 2010 Narine JA; CV2008-01078

Persad further invited the court to consider the evidence of this particular employment, bearing in mind that the families of the deceased and alleged employer were close friends. The stringent critique of this evidence was noted by this court (discussed below).

11. After the deduction of the vehicle expenses, the deceased earned \$600.00 - \$700.00 per week from the operation of the taxi, which would be applied to meet the other expenses and allowances. After the deduction of all the expenses, the deceased had left over \$300.00 - \$500.00 per month, which was saved (this represents the available surplus). Of note also is that there was no evidence of the constructive loss of the deceased's vehicle.
12. Mr Persad has asked this court to find that Naseema's dependency on the evidence was at most 10 months. It is accepted that the evidence demonstrated that Naseema began working and receiving an income in January, 2011 (some 9 months after the death of the deceased) and as such the parameters of her dependency on the evidence was within 10 months. She has provided no evidence of dependency beyond that 10 month period immediately after the deceased's demise.

The Law

The survivorship action: Nazeeda's claim

13. Where there is an estate/survivorship claim, the heads of damages under which this claim can be made and an award given are:
 - damages for loss of expectation of life;
 - damages for loss of earnings for the lost years;
 - funeral and related expense.

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**. 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

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

(i) Loss of Expectation of Life

14. This is a conventional award reflective of the fact that some loss has been suffered in respect of the normal expectation of the deceased's remaining life. It is generally not influenced by inflation, the age or status of the deceased while still living. The sum of \$20,000.00 is awarded under this limb.³ This attracts no interest.

(ii) Loss of Earnings for the Lost Years

15. To compensate the estate for the years in which the deceased would have been earning if he were 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 *Kandalla v British Airways Board*⁴ and approved in *Gammell v Wilson & Ors*⁵.
16. 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 Nazeeda'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 taxi driver. Nazeeda has adduced evidence that he was also "permanently employed as a sales representative" with DMS. She has called Nisar Shah, his alleged employer and a close family friend, to corroborate this evidence. Nisar Shah produced a job letter signed by himself and another family member. The evidence adduced was not corroborated by any other independent source or records, save the TD4 slips, and so was unsubstantiated and fraught with uncertainties. This was due to the several deficiencies in terms of proof. The concerns of this court with this evidence are many and include: failure to provide copies of his pay cheques; lack of independent evidence corroborating income; reference to the deceased's occupation as a "taxi driver" only on the application for the Grant of Letters of Administration, which is a statement made on oath.

³ *Tavari Tota-Maharaj (Administrator of the Estate of Arvind Tota-Maharaj v Autocenter Ltd & Ors Tavari Tota-Maharaj (Administrator of the Estate of Arvind Tota-Maharaj v Autocenter Ltd & Ors* HCA No 46 of 2003 per Rajkumar J

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

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

17. This court accepts, however, that the deceased was a taxi driver and may have also worked with DMS, whether permanently or temporarily, the evidence was insufficient to clearly establish. In the mind of this court, it is not unheard of or unreasonable for someone to hold 2 jobs, particularly as both involved driving. Deliveries for DMS could have been done in his spare time or slow periods. The fact that the deceased and his family were close with his employers and their family does not discredit the evidence of him being employed with them. I, therefore, am prepared to hold that he did work with DMS. If indeed he were employed with DMS, since his age was 58 at his demise, he would have had 2 working years before retirement. I accepted his employer's evidence that he would have kept him on and also considered that, pre-accident, the deceased was of good health save for occasional headaches. I further bear in mind that the deceased was self-employed and could have maintained his job for a working life of up to 65 or even 70. I find it pertinent at this stage to note that the Court of Appeal in *Steve Bishop v Ramnanan Maharaj*⁶ reduced a multiplier of 6 for a 53 ½ year old man to a multiplier of 4, noting that he was a bus driver employed with the Public Transport Service Corporation and was diabetic so a retirement age of 60 would have been more appropriate than 65. The instant deceased operates his own vehicle as a taxi and has no serious health problems, and so can be distinguished from *Bishop*.

18. I also considered *Mario's Pizzeria Limited v Hardeo Ramjit*⁷ where the respondent at the time of the assessment was 49 years and a multiplier of 9 was allowed by the Court of Appeal. At 1st instant, the master in that case had allowed a multiplier of 5 years in circumstances where there was no evidence of the age of retirement and on the basis that retirement was likely to be in about 10 years. Given the imponderables of life and usual considerations, I was of the view that it was reasonable to apply a multiplier of 4 in the circumstances of the present case. This was influenced by the undisputed evidence that the deceased was age 58 and would have worked until 65 years, retiring in at least 7 years. In my view, it is only reasonable that the deceased, who was 58 years at his demise and in relative good health, would have been expected to have a normal working life expectancy of up to at least 65 years.

⁶ *Steve Bishop v Ramnanan Maharaj* CA Civ 124 of 1985

⁷ *Mario's Pizzeria Limited v Hardeo Ramjit* Civ App No 146 of 2003 unreported (Kangaloo JA)

19. Mr Persad has invited this court to accept the clear evidence of the claimants that the deceased had left over \$300.00 - \$500.00 per month remaining, which was saved and to premise the deduction of a multiplicand on a “savings plus module”. The multiplicand, having regard to the totality of the evidence, would be the average monthly savings that is \$400.00 (\$4,800.00 (\$400.00 x 12 months)). Using the savings plus module then **Damages for the lost years = \$14,400.00 [\$4,800.00 x 3]**. Counsel has submitted that if the available surplus module is applied in preference to the savings plus module, the multiplier would remain at **3**.
20. This court was minded to apply the available surplus module. This means that as regards the multiplicand, the court is required to make a finding of fact whether Nazeeda has proven on a balance of probability the alleged income from DMS. This court condemns the shoddy presentation of Nazeeda’s case, particularly as the deceased was paid by cheques yet none was advanced in proof of payment. Nevertheless, it notes that Nisar Shah, the employer, attended court and his sworn evidence was unchallenged. Based on the totality of the evidence, this court accepted that the deceased earned a net monthly salary of \$5,543.08 while employed with DMS. Generally, the datum (or multiplicand) figure is based on the deceased’s net income that is the sum 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.” In this matter, Nazeeda has set out to the court specifically the amounts spent monthly by the deceased as his personal expenses. The court accepts the amounts as stated being \$800.00 on personal expenses and \$150.00 on shoes. See *Harris v Empress Motors Limited*⁸ where this was stated by O’Connor LJ as well as the principle that the smaller the salary, the larger the 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

⁸ *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.

has been re-stated and applied in several decisions emanating from our local courts: see *Maureen Samuel (LPR of Stephen Duncan) v Susan Salraj*⁹ and *Alice Lee Poy John v Securiserve*¹⁰.

21. The court accepts that the deceased earned \$6,000.00 per month from plying his taxi and \$5,543.08 net monthly from DMS. As set out in the cross examination of Nazeeda, the deceased's expenses (household, personal, medical, gas and vehicle maintenance) totalled an average \$6,466.00 per month. Further, the deceased gave Nazeeda and Naseema \$500.00 per month each as their personal allowances, totalling the deceased's expenditure to \$7,466.00. I, therefore, accepted the sum of \$4,077.08 [(6,000 + 5,543.08) – 7,466.00] as the deceased's available surplus. A multiplicand of \$48,924.59 (4,077.08 x 12) is, therefore, applied to a multiplier of 4. The court also accepts Nazeeda's submission with respect to pre-trial loss up to 26th February, 2014.

Pre-trial loss (3.95 years) 48,924.96 x 3.95 = \$193,249.80

Post trial loss (0.05 years) 48,924.96 x 0.05 = \$2,446.25

22. The funeral and related expenses have been agreed at \$3,000.00. Under **s.27 of the Supreme Court of Judicature Act**, Nazeeda may recover any other item of special damages. She has provided no evidence of the cost of the police report or loss of use or of the cost of the certified copy. These are disallowed. She has conceded that the administration expenses are irrecoverable. As for the total constructive loss of the deceased's vehicle, she has provided no evidence.

Dependency action

23. The dependency action is brought under the **Compensation for Injuries Act**. Based on the evidence, any dependency would appear to have been for at most a 10 month period. The

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

evidence in support was found to be not cogent and without proper foundation. Naseema's evidence (which was at variance with Nazeeda's) was as follows:

Electricity	=	\$200.00 per month
WASA	=	No knowledge except that the deceased sometimes paid this
Phone bill	=	\$300.00 per month
Groceries	=	\$1,500.00 - \$2,000.00 per month
Repairs around house	=	\$5,000.00 per year [\$417.00 per month]

The total average expenses were \$2,667.00 per month. Applying a 1/3 proportion of such joint expenses to Naseema, the sum expended in relation to her was \$889.00. However, Nazeeda gave evidence of \$1,500.00 per month in medical expenses for both Naseema and she. Assuming that their need was equal, the result would be the sum of \$750.00 towards Naseema. In addition, Naseema gave unchallenged evidence in her witness statement that the deceased gave her \$500.00 as a monthly allowance. Thus the multiplicand for such dependency would be \$2,139.00 monthly. The total dependency would be \$21,390.00 [\$2,139.00 x 10 months]. This award would attract an interest rate of 6% per annum from 13th March, 2010 to the date of the award.

Interest and costs

24. As a rule, interest is not awarded on future loss see *Jefford v Gee*¹¹. 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 6%. With respect to the issue of costs, this was assessed on the prescribed basis in the sum of \$27,443.12, approximately 55% of the value of the claim. It was also borne in mind that Part 67.5 (4) vests the court with the discretion to limit the award of costs, including by awarding a percentage only of the costs by taking into account Part 66.6 (4), (5) and (6) and/or Appendix C of Part 67.

Order

25. For the above reasons, it was ordered on the 14th October, 2014 that the defendant and co-defendant do pay damages as follows:

¹¹ *Jefford v Gee* [1970] 1 AER 1202

(i) The 1st claimant (Nazeeda):

(a) Damages for the lost years as follows:

- a. pre-trial loss in the sum of **\$193,249.80** with interest at the rate of 6% per annum from 13th March, 2010 to 14th October, 2014;
- b. post trial loss in the sum of **\$2,446.25**

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

(c) Special damages in the sum of **\$3,000.00** with interest at the rate of 6% per annum from 13th March, 2010 to 14th October, 2014.

(ii) The 2nd claimant (Naseema):

(d) Damages for the dependency in the sum of **\$21,390.00** with interest at the rate of 6% per annum from 13th March, 2010 to 14th October, 2014.

(iii) Costs assessed in the sum of **\$27,443.12**.

Dated 14th October, 2015

Martha Alexander

Master