

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2014-04734

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT CHAPTER 9:01

AND

IN THE MATTER OF THE ESTATE OF RODNEY DOUGLAS

BETWEEN

Karlene Douglas

(Legal Personal Representative of the Estate of Rodney Douglas)

Claimant

AND

Gerdeen Rouse

(The Appointed Representative Claimant of the Estate of Ephrain Matthew Douglas, deceased)

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Ms. K. Pilgrim Thornhill for the Claimant.

Mr. R. Gosine for the Defendant.

JUDGMENT

1. The parties to this claim have agreed to stand on their written submissions, the main issue being one which can be readily resolved by that method. There are also affidavits which have been filed in support of the case for both parties. There are the affidavits of the Claimant of the 16th December 2014, and that of the Defendant and Risa Basdeo both of the 13th April 2014.
2. Ephrain Matthew Douglas (the deceased), age thirty nine years, a sound engineer in the employ of Machel Montano HD succumbed to the fatal injuries he sustained in a motor vehicle collision on the 11th January 2009 while a passenger in a taxi proceeding east along the Churchill Roosevelt Highway. By claim brought on the 14th December 2012, his mother Gerdeen Rouse, the appointed representative of the deceased's estate, the Defendant in the present claim brought suit against the driver/ owner of the taxi and the insurer for damages in negligence. She shall be referred to hereinafter as "the mother".
3. The Defendants to that claim admitted liability and the issue of quantum was referred to a Master for assessment. On the 13th June 2014, upon the assessment coming on for determination, the parties entered into an order by consent for damages in the sum of two hundred and eighty thousand dollars (\$280,000.00), inclusive of interest to be paid by the Defendants to the Claimant in that claim. The precise terms of that order which is before the court is not relevant to the issue that this court must decide.
4. It is to be observed at this stage that both the Claim Form and the Statement of Case in the 2012 claim seek damages under the Compensation for Injuries Act Chapter 8:05 and under the Supreme Court of Judicature Act Chap 4:01 commonly referred to as the dependant's action and the action for the benefit of the estate respectively. The consent order makes no reference to or distinction between damages payable under the two heads as pleaded and no reasons were delivered by the Master as is to be expected the order being one by consent without assessment.

5. Prior to the date of the consent order however, Rodney Douglas (hereinafter referred to as “the father”) obtained an order of paternity made on the 27th February 2014 before another Judge. That order declared Rodney Douglas to be the father of the deceased. The father however, died on the 28th June 2014, some fifteen days after the consent order was entered into but he was at no time a party to those proceedings. His daughter, Karlene Douglas (hereinafter referred to as “the sister”) subsequently obtained Letters of Administration of the father’s estate and has instituted the present claim on behalf of the estate.
6. The claim before this court seeks a declaration that the Father’s estate is entitled to one half of the sum awarded to the mother, in the sum of One Hundred and Forty Thousand Dollars (\$140,000.00).

Submissions of the Claimant

7. The Claimant submits that in order to avoid duplication in the award of damages, the court takes into account whatever award is made in relation to the estate when assessing the award under the dependant’s action. See **Davies v Powell Associated Collieries Ltd** (1942) AC 601. This of course is a well known and time honoured principle in respect of which there is no legal issue in this case. The Claimant argues however that the court having made no specific award under either head of claim the court should look to the evidence provided to the court by Risa Basdeo who was the attorney acting on behalf of the mother at the time the consent order was made. It is therefore necessary to examine the salient parts of her evidence.
8. In her affidavit, Ms. Basdeo deposes that prior to the filing of the first claim she telephoned the father who then attended her office but was not interested in the matter. This seems not to be an issue of fact in this case. As a consequence, the only person named as a dependent of the deceased in the first claim was the mother. It was pleaded that the deceased provided the sum of \$1,500.00 to his mother for the purpose of

household expenses. Ms. Basdeo then proceeds to give an account that she made in her file which purports to be the method of calculation she used for damages. She deposes that under the estate action she calculated damages to be \$280,000.00 and under the dependants action, the sum of \$204,000.00. On this basis she accepted the higher sum offered.

9. The Claimant submits that no weight should be given to the notes allegedly made by Ms. Basdeo and that the court should simply award half of what has been given as the Defendant was well aware that the father was entitled to recover as a beneficiary under the estate at the time the order was entered into. So that, the court would have had to take into account the sum awarded to the dependant from the deceased's estate in making an award under the dependant's action. As a consequence, the Attorneys having accepted the greater sum under the Estate action, the damages ought to be properly split evenly between the two beneficiaries resulting in the Claimant being awarded the sum of one hundred and forty thousand dollars by this court.

Submissions of the Defendant

10. The Defendant submits that the method which the court must adopt is to first deduct the amount payable to the Defendant under the dependants action and thereafter divide the balance evenly between both parties after payment of all debts and funeral expenses. When this is done, the sum of \$224,000.00 is to be deducted from the award of \$280,000.00 which leaves the sum of \$56,000.00 to be divided equally so that the Claimant receives the sum of \$28,000.00.
11. It is to be noted that neither party has provided a case on point and the court is therefore left with little assistance in that regard.

Decision

12. It cannot be the case, that the Defendant having compromised the claim without specifying the quantum in relation to each type of action now asks that the court retroactively apply rules that were not applied to the assessment of damages. The point must be made that the parties to the first claim agreed on a figure and we have only one side of the basis of that agreement from Ms. Basdeo. The court is unaware as to whether the Defendants in the first claim used the same reasoning for the offer of \$280,000.00. Further, the authorities supplied all apply when damages are assessed. This is not the case here. Parties are free to agree to a settlement figure for a multitude of reasons which may be wholly unrelated to an opinion on quantum.
13. Additionally, the court notes with some concern that Ms. Basdeo was aware that the father in fact existed and did speak with him. It is reasonable to infer that the time of entry of the order the Attorneys acting for the claimant in the first claim knew that he existed. In those circumstances, the prudent thing to do was to enquire as to whether an order of paternity was in fact granted prior to the entry of the consent order. This would have been discovered with reasonable diligence, the paternity order having been made some four months prior to the date of the consent order.
14. Be that as it may, the fact remains by the date the order consent order was made, Mr. Rodney Douglas was lawfully the father of the deceased and is entitle to a one half share in the estate, the deceased having died intestate.
15. But more than that, the calculations set out by the Defendant as to how the court should rule simply cannot apply for good reason. The rule in Davies supra, could only apply to the Defendant and not to the Claimant as the Defendant was the only one named as a dependant. The Claimant's right to recover arises only from the fact that the father is a beneficiary of the estate. So that it is the Defendant who is prohibited from double recovery under both the dependants action and the estate action. It cannot therefore be just to deduct the entire amount allegedly claimed for the dependant's action before dividing the proceeds left over.

16. In any event, it is not for this court to apply the principles retroactively. That being the case, as it stands, two persons are beneficiaries under the rules of intestacy. This was the case even before the consent order was entered. There is no official pronouncement from the court as to the headings under which the award fell as is expected due to the entry of the order by consent. The usual rules of intestacy should therefore apply. The estate must be taken to comprise that which it is worth when it is being administered after payment of all lawful debts and testamentary expenses.

17. The evidence shows that the sum of \$14,050.00 was incurred for funeral expenses and that the sum of \$6,000.00 is due and owing for legal fees. The arrangement between the Defendant and her son for her care at a home is a private one and does not qualify as an expense to be credited to the estate. After lawful deductions therefore the Claimant is entitled to the sum of One Hundred and Twenty Nine Thousand, Nine Hundred and Seventy Five dollars (\$129,975.00) and the court shall so order.

Consent Orders on personal injury claims

18. It is readily apparent that the facts as set out in this case may well re-occur given the manner in which consent orders are usually entered. This position is an undesirable one for many obvious reasons not the least of which is the attendant uncertainty in the due administration of the estate by the Legal Personal Representative and potential liability to such a person. When it comes to orders made by the court after a trial or after an assessment of damages the court is duty bound to set out the quantum under each head in its reasons. However, this is not a requirement under **Part 43.7 CPR** for the entry of consent orders in claims involving death in personal injury matters. Perhaps therefore the time has come to amend Part 43.7 to provide for circumstances such as those which have occurred in this case and for the better and more efficient and certain administration of estates in those cases.

19. In the absence of specific rules which treat with the issue this court would suggest that one method of ensuring that cases are dealt with justly would be for parties involved in such claims to annex to their consent order at the date of making the order, either an advice on quantum jointly accepted by all parties or an agreed breakdown or calculation of the award as agreed under both heads. In so suggesting the court is cognizant that the practice in the profession has always been that of the preparation of an advice on quantum by Counsel as a preliminary in the filing of a personal injury claim especially one involving death. It can therefore do no harm to have a document of such a nature which is agreed put before the court so that the court may appreciate the basis of the agreement between the parties in such a claim.

20. The order of the court will therefore be as follows;

- a. The Defendant is to pay to the Claimant the sum of **One Hundred and Twenty Nine Thousand, Nine Hundred and Seventy Five dollars (\$129,975.00)** being one half share of the sum awarded to the estate of Ephrain Matthew Douglas, deceased after deductions of all debts and expenses associated with the administration of the said estate.

21. The parties will be heard on the issue of costs of the claim.

Dated the 9th day of October 2015

Ricky Rahim
Judge