

THE HIGH COURT OF BELIZE, A.D. 2004

CLAIM NO. 271 OF 2004

BETWEEN

**(ASHALY ALARCON
(JENNEL ALARCON
(WITHNEY ALARACON (Infants by
(their next friend Ashaly Alarcon
(LISA ALARCON
(CRISTAL ALARCON
(ELROY BAINTON
(SHANINE BAINTON
(TANISHA BAINTON
(MONICA BAINTON**

**1st CLAIMANT
2nd CLAIMANT**

**3rd CLAIMANT
4th CLAIMANT
5th CLAIMANT
6th CLAIMANT
7th CLAIMANT
8th CLAIMANT
9th CLAIMANT**

**(
(AND**

**(
(THE ATTORNEY GENERAL OF BELIZE
(COMMISSIONER OF POLICE
(PC #820 SHELDON ARZU**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision:

31st January 2023

Appearances:

Ms. Sheena Pitts Counsel for the Claimants.

Ms. Alea Gomez for the Defendants.

KEYWORDS: Torts - Wrongful Death - Assessment of Damages - Dependent - Proof of Paternity - Recovery of Funeral Expenses - Loss of Expectation of Life

JUDGMENT

1. What has happened in this matter is nothing less than a travesty. This Claim has languished since 2004. In 2017, it was resuscitated. Following a default judgment and various minor applications, an Application for assessment of damages was made in 2018. The Court accordingly gave directions and written submissions were made.
2. At Counsel's behest time was allowed for additional affidavits to be filed to assist the assessment. None were filed but the matter was never brought back to the Court's attention once that filing period had expired.
3. The entire system failed these parties. The then Marshal said nothing,
4. but the matter somehow showed in the Case Management System as completed. Then Counsel never communicated with the Registrar or the Court about delivery of a decision until December 2022.
5. By this time, the file had gone missing and had to be reconstructed with what the Claimant was able to provide. This exercise proved to be difficult as some documents, particularly exhibits, appeared to be missing entirely. Notwithstanding, this is the assessment.
6. The Court reminds that this assessment is not a value being placed on the life of the deceased rather it is the value, as best as the Court could calculate, being placed on what the deceased may have been able to bestow on his dependents had his life not been taken.

The Claim:

7. This Claim was brought by for damages pursuant to **Section 9 of the Torts Act** which reads:

“Where the death of a person is caused by a wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his injury thereby, the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.”

8. Such a claim can only be brought for the benefit of the wife, husband, parent, or child of the deceased (**Section 10**). For ease of reference, we will refer to this select group of persons as the dependents of the deceased. Before the Court can begin to access damages, each Applicant must be proven to be a dependent.

The Dependents:

9. All of the Claimants say they are children of the deceased. The **Family and Children’s Act Cap 173** outlines what is evidence and proof of paternity. **Section 38** states as follows:

“(1)Where, pursuant to section 13 of the Registration of Births and Deaths Act, or to the corresponding provisions of any former enactment, the name of the father of the child to whom the entry relates has been entered in the register of births (whether before or after the commencement of this Act), a certified copy of the entry delivered by the Registrar under his hand in accordance with section 43 of that Act or sealed in accordance with section 44 of the said Act shall be prima facie evidence that the person named is the father of the child:

Provided that the provisions of this section shall apply only where both the mother and the person acknowledging himself to be the father of the child consented to the entry.

(2) Any instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall, if executed as a deed or by each of those persons in the presence of an attorney-at-law or other person authorised in that behalf, be prima facie evidence that the person named is the father of the child.

(3) An order made by the court under section 85 shall be prima facie evidence of paternity in any subsequent proceedings, whether or not between the same parties.

(4) Subject to section 37 (1), a declaration of paternity under section 40 shall be conclusive proof of paternity for all purposes.

(5) An order made by the court under section 85 shall be prima facie evidence of paternity for all purposes.

(6) The Minister may from time to time, by Order published in the Gazette, declare that subsection (5) applies with respect to orders made by any court or public authority in any specified country outside Belize or by any specified court or public authority in any such country.”

10. This means that any of the Applicants who are unable to prove paternity as above cannot be considered dependents under the Torts Act and are excluded from bringing a claim. Whether or not they could share in the deceased’s Estate is another matter which is not an issue here.
11. There were birth certificates presented for all the Claimants. Jennel and Cristal were born in 1999 and 1990 respectively and proven to be children of the deceased. Ashaly, Lisa and Withney were also proven to be children of the deceased and were born in 1998, 1991 and 2002 respectively.
12. The birth certificates presented for the four Bainton Claimants had no father’s name entered. There was no other evidence provided as required in **Section 38 of the Families and Children’s Act** above. Accordingly, Elroy, Shanice, Tanisha, and Monica are excluded as dependents.

The Assessment:

13. The state of this evidence left much to be desired. There was no proof of what the deceased earned up to the time of his death save for what was stated in the Affidavit of Briony Ysaguirre, who claimed to be his common law spouse. That Affidavit had no exhibits attached to support the statements made by this deponent.
14. She said he was a part time security guard with Sunset Disco in Caye Caulker for which he earned \$225.00 weekly. He earned an additional \$500.00 weekly as a fisherman and \$50.00 to \$75.00 per week by doing odd carpentry or plumbing jobs.

The Court chooses to use \$50.00 per week as it would not have been every week that he would have had an odd job to do.

15. This totals approximately \$3,200.00 monthly or \$38,400.00 annually. Of this sum, 25% would be paid on income earned after deduction of a personal allowance of \$19,600.00. He would have had \$33,700.00 at his disposal per year.
16. There is no indication of what his education level was, his possibilities for advancement or increased salary at his job or his ability to earn more being self-employed. The Court will therefore use this sum throughout the period for which damages would be assessed.
17. The deceased has been proven to have five dependents. There is also evidence that he provided for four other persons to some extent. The Claimants have asked that the Court express the amount of dependency as a percentage as was done in *Morales De Habet v Adolfo Medina et al [2004] 4 BZLR 173* and *Aditya Canul et al v Francis Alfaro, Supreme Court Action No. 552 of 2000*.
18. Counsel proposed 66% as the amount he would have spent on his dependents. At that time, she was making submissions in relation to nine Claimants rather than the five proven. The Court will use 50% as what he would reasonably have spent on his dependents or \$16,850.00 per year.

Period of Dependency:

- 19. The deceased was 35 years old when he died as evidenced by his death certificate. He would have had twenty good years ahead of him before retirement. At the time of his death, his youngest dependent was 2 and the eldest was 13.

- 20. Counsel impressed a multiplier of 16 years as was used in the *Morales De Habet* case above, but that case involved a widow as well as children. The widow was considered as having a dependency of some 36 years as opposed to 14 and 16 years for the children.

- 21. The Court must consider that a lump sum is being ordered which could be invested to make a good yield. There being no widow the Court considers 1 year to be appropriate.

The Calculation:

22. $\$19,600.00 \times 14 = \$274,400.00$

less 15% for the uncertainties of time $-41,1607.00 = \$233,240.00$

This sum will attract interest at 3% per annum until payment is made in full. The Court has chosen 3% to compensate for the inordinate delay in bringing this matter to final determination.

Funeral and other Expenses:

- 23. The Claimants have asked for funeral expenses, however, this Claim was brought on behalf of minors. They could not have themselves incurred this expense. The Court in accordance with **Section 16(2) of the Torts Act** cannot allow this claim. That Section provides:

(2) "For the purposes of an action brought under Sections 8 to 15 of this Act inclusive, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought."

24. The \$28.00 claimed as having been expended on obtaining a Grant of Administration is also rejected as this Claim was brought by the Dependents themselves and not an administrator.

25. The Claimants are awarded a rounded sum of \$20,500.00 for loss of expectation of life based on *Edgar Arana v Adelardo Jose Mai Claim No. 322 of 2017* where Abel J recognized the need to increase the conventional figure to a sum which, although nominal, only showed respect for the value of human life.

IT IS ORDERED:

1. Damages for loss of Dependency are awarded to the First, Second, Third, Fourth and Fifth Claimants in the sum of \$233,240.00 with interest at 3% per annum from the date of the filing of the Claim until payment in full.
2. Damages for loss of expectation of life are awarded in the sum of \$20,500.00.
3. These damages are to be apportioned as follows: Christal and Lisa 16%, Jennel 21%, Ashaly 22%, and Whitney 25%.
4. Costs are awarded on the prescribed basis. I will rely on Counsel to calculate.

**SONYA YOUNG
HIGH COURT JUDGE**