

IN THE SUPREME COURT OF BELIZE A.D. 2005

CLAIM NO: 161

(EVA ALBERTA PEREZ CLAIMANTS/APPLICANTS
(widow and Executrix of
EULOGIO PEREZ SR, Deceased
(LUCITA REBECKAH PEREZ
(NAYALIE ELIZABETH PEREZ (a minor)
(by EVA ALBERTA PEREZ (the next friend)

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BETWEEN AND

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(SUSAN MOIR DEFENDANT/RESPONDENT

Before: The Honourable Madam Justice Minnet Hafiz-Bertram

Mrs. Sharon Pitts-Robateau for the Applicants

DECISION

1. This is an assessment of damages in respect of a fatal road accident which occurred on 27th September, 2004 on the Northern Highway, Belize District, Belize.
2. As a result of the accident, the Claimants claimed against the Defendant for damages under the **Law of Torts Act, Chapter 172** of the Laws of Belize for causing the death of Eulogio Perez Sr. on the 27th day of September, 2004.

3. The action was brought by the widow and the children of the deceased. The widow Eva Alberta Perez was then sixty nine (69) years old and the children Lucia and Nayalie were then twenty (20) years and three (3) years old respectively.
4. The deceased, Perez Sr. at the time of death was sixty nine (69) years old and a self employed contractor earning \$48,000.00 per annum. He was the primary means of support of the Claimants and by his death they suffered loss and damage.
5. By way of formal notice of 18th March, 2009 Home Protector Insurance Company Limited of No. 3808 University Boulevard, University Heights, Belize City, Belize, was duly notified that the Claimants commenced proceedings against the Defendant, Susan Moir being the insured holder of Third Party Motor Vehicle Insurance from the aforesaid insurance company in respect of motor vehicle licensed BZC-20972.
6. Judgment in Default of Defence was entered by the Claimants against the Defendant on 8th August, 2006.

Submissions by Mrs. Pitts-Robateau for the Applicant

7. Learned Counsel, Mrs. Robateau submitted in her written submissions that the method of Assessment of Damages is provided for in **Section 12** of the **Torts Act**. Learned Counsel referred to the case of **Supreme Court Claim No. 614 of 2008, Rita Griffith Estella Musa etc v. Alberto Efrain Cain, Raul Cuello**, judgment of Mr. Justice Legall, at paragraph twenty nine

which states:

..... *“on the question of damages, the court has the task of (i) estimating how long, or the period the dependants..... would have continued to benefit from the dependency, had the deceased not been killed; and (ii) what the amount of the dependency would have been in each year of that period. The former is usually referred to as the multiplier or the “amount of dependency” to use the words of Shanks J in the Belizean case of **Casteneda et al v. Sutherland v. Cisco Construction Ltd.** dated 11th February, 2000.”*

8. Learned Counsel submitted that although the cases do illustrate that the court in making the determination to the period of dependency looks at the number of years between the deceased's death and that when he would have reached the normal age of retirement, in the instant matter the court ought to be guided by the facts of this particular case. Further, that there is opinion in the case law that the facts of each case should be looked upon. That in this case the deceased was quite productive earning an income of forty eight thousand dollars (\$48,000) per annum at the time of his death which appears to have been beyond the normal age of retirement of 65.

9. Learned Counsel further submitted that in the **Griffith case** supra the court considered and compared the period of dependency ordered by the Belize Court in fatal accident cases. That in one instance a multiplier of sixteen (16) was applied as a period of dependency, where the deceased was twenty eight (28) years old at death and he had had two and three year old children and twenty six year old widow.

10. Further, the same multiplier of sixteen was applied in the ***Moralez De Habet v Adolpho et al BLR Vol IV p 173*** case where the age of the deceased and his widow and children were pretty much on par.
11. Mrs. Robateau then referred to the case of ***Marilyn Perrera et al v. The Attorney General, Supreme Court Action No. 217 of 1992*** where a multiplier of thirteen years was applied. The deceased husband was thirty five (35) years old, widow thirty (30), children ages three, seven, ten at the time of his death.
12. Learned Counsel further relied on the case of ***Jose Damian Sanchez et al v. Peter Gianchandi Supreme Court Action no. 385 of 1999*** where the deceased was forty five, had six children, ages two to ten at the time of his death and a multiplier of six was applied.
13. Mrs. Robateau submitted that in the ***Castenada v. Cisco Construction Limited 2 B.L.R 92*** case the court used an approach whereby it arrived at a total dependency of all dependents and an average dependency of 14.2 which was reduced by the court to 12 as the multiplier after it took into consideration contingencies and lump sum payment.
14. Learned Counsel submitted that in this case the deceased youngest dependent daughter was 2 at the time of his death and the eldest dependent daughter was 18, a student who completed her studies as a dental technician at age 21. The deceased Eulogio Perez's widow and dependent was 69 years old at the date of the deceased's death.

15. Learned Counsel submitted that after considering the multiplier applied in various Belizean cases the learned judge arrived at a multiplier of 11 in the **Griffith case** taking the view that the three dependents would all be equally dependent for that period. The court looked at deceased's age at death, that of his son, college prospects, age of parents, possible length of their lives. Mrs. Robateau submitted that in the case at hand, a multiplier of six (6) ought to be used.

16. Mrs. Robateau further submitted that the age of the youngest dependent who was 2 on the death of the deceased varies greatly from that of his other dependent child who was 18 at the date of his death. That the widow was 69 at date of death. That, though the Court ought to consider applying a relatively low multiplier given the age of the deceased this ought to be tempered by the recognition that the deceased was healthy and productive at the date of his death, so that the consideration of contingencies and vicissitudes of life would be deferred to beyond the normal age of retirement.

17. Further, the court would need to consider what the prospects were for the deceased beyond the date of his death when he might have retired from his business as an electrical contractor. That the court might apply the lowest multiplier for the eldest child dependent, at least 3 which was the period she remained in her tertiary level education. That in the case of the youngest child dependent the court ought to apply a multiplier much higher, at least 7 as in the **Perrera's case**. Learned Counsel submitted that this child would be dependent until age 18, at very least 16 years but this has to be dramatically adjusted downward as the

contingencies and vicissitudes of the life of the deceased would be taken into account. That at least 6 ought to be considered. In respect to the dependent widow of the deceased, Learned Counsel submitted that a multiplier of 7 ought to be considered as the deceased was a healthy electrical contractor beyond retirement age.

18. As for the estimate of dependency, Learned Counsel submitted that the starting point is “the annual value of the material benefits provided for the dependents out of the earnings of the deceased at the date of his death. That is adjusted by inflation or possibilities of increase as well decrease in income or employment and that as a child grew amount or portion of deceased income spent on him might increase or lower dependent on future circumstances. Learned Counsel relied on the case of ***Harris v. Emperor, Motors Ltd* 1 WLR 65** where his Lordship, O Connor LJ, said that the court had worked out a simple solution to the problem of calculating the net dependency under the Fatal Accidents Act. His Lordship indicated a modern practice is to deduct a percentage from the next income figure to represent what the deceased would have spent exclusively on himself. The percentage has become conventional where the family unit is husband and wife at 33%.

19. Mrs. Robateau further relied on the case of ***Morales De Habet*** where Mr. Justice Legall considered the judgment of Barrow J, as his Lordship then was, who said that the treatment in **McGregor on damages 6th Ed, at para 1766** indicates that a pattern has developed of expressing the annual dependency as a percentage or as a fraction of the deceased actual earning. This

has become, as a conventional figure, 66 and 2/3 percent of earnings for the dependency of a wife and 75 percent of earnings for a widow and children.

20. Learned Counsel submitted that in the absence of specific evidence of how much the deceased actually spent on himself the conventional application of 75% should be applied. That the income of the deceased was \$48,000.00 and 75 percent for his dependent widow and two children would be \$36,000.00 which ought to be awarded to the dependent wife and youngest child for a period of last three years.

Determination

21. The affidavit evidence of Eva Perez sworn to on 19th May, 2010 submitted for the assessment of damages shows that the date of birth of Lucita Rebeckah Perez the daughter of the deceased is 1st December, 1985. At the date of death of her father she was 18 years old and was still attending University. She therefore would have continued to be a dependent of the deceased until age 21 when she would have completed her education.

22. The wife of the deceased, Eva Perez who was born on the 3rd July, 1935 was also a dependent of the deceased. She was 69 years old at the date of death of her husband.

23. At paragraph 4 of the affidavit, Eva Perez said that :

I also brought this action as a Plaintiff in my capacity as the next friend of infant daughter who is the adoptive child of my deceased husband Eulogio Perez Sr. and myself. She was

aged??? At the date of death of my husband and a dependent of his. I annex and exhibit hereto marked "EP3 copy of certificate pertaining to said infant Nayalie Elizabeth Perez. Prior to and up to and at the time of his death myself and our two aforesaid daughters were solely dependent on my husband.

24. A perusal of the Adoption Certificate of Nayalie Perez shows that she is not the adopted daughter of the deceased. In fact she was adopted after the death of the deceased. The deceased died in September, 2004 and Nayalie was adopted by Eva Perez, widow on the 26th June, 2008. As such, Nayalie is not an adopted daughter of the deceased pursuant to **section 8** of the **Torts Act** and is not entitled as a dependent under the said Act.
25. Eva also deposed that at the date of her husband's untimely death he engaged in business as an electrical contractor with yearly income of \$48,000.00. I accept this evidence. I also accept her evidence that her husband enjoyed good health and that he was their sole provider and means of support and so they suffered loss and damage.

Multiplicand

26. I agree with Learned Counsel that a conventional approach should be adopted in this case and 75% of the deceased income should be used as the multiplicand. As such, I quantify the value of the loss of dependency to the widow and daughter as \$36,000. per annum which is 75% of the deceased net income.

Multiplier

27. The court appreciates that Learned Counsel has done a considerable amount of research in this case in order to get some guidance as to the approach to be taken in the assessment of damages. None of the authorities cited by Mrs. Robateau however, dealt with a deceased person over the age of 65 which is the normal retirement age that the Courts in Belize use as a norm. The deceased, at the time of his death was 67 years old. I therefore, find these cases of no assistance in arriving at a multiplier.

28. I am in agreement with Learned Counsel that each case must be decided on its own facts and merits. Since the deceased was in good health and was still working at age 67, I am inclined to stretch the normal retirement age from 65 to 68 years in this particular case which is outside of the norm. As such, the deceased would have continued to support his wife and daughter for another year as at the time of death he was 67 years old. It is therefore, unnecessary for me to consider all the factors raised by Learned Counsel in her submissions. Because of the age of the deceased, I consider that a multiplier of one year is appropriate in this case.

Damages

29. Since the multiplicand is \$36,000. and the multiplier is 1 then the total amount is \$36,000. Since the deceased died in 2004 and the action was brought in 2005 the Applicants are entitled to 6% interest per annum on the said amount. 6% of \$36,000 is \$2,160 bringing the total amount to \$38,160.00.

30. The widow in her evidence deposed that she incurred funeral and burial expenses in relation to her deceased husband Eulogio Perez Sr., including the (traditional) wake of about \$6,000.00. She said that she received a portion thereof, \$3,500.00 from Home Protector Insurance. As such, I award \$2,500.00 for funeral expenses.

31. The total amount of damages awarded is as follows:

	\$ 36,000.00	lump sum payment
	<u>\$ 2,160.00</u>	Interest at 6% per annum
Total	<u>\$ 38,160.00</u>	

32. I award costs to the Applicants in the sum of \$ 3,000.

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Minnet Hafiz-Bertram
Supreme Court Judge

Dated 23rd day of September, 2010.