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LEGAL TOPIC: COMPENSATION UNDER THE SUPREME COURT OF JUDICATURE ACT FOR WRONGFUL DEATH

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INTRODUCTION:

Where a tort (A Legal wrong such as Negligence) results in a fatal injury, an award may be made to the Estate of the Deceased in accordance with **section 27 of the Supreme Court of Judicature Act Chap 4:01** which provides as follows:

(1). Subject to the provisions of this section, on the death of any person after 24th December 1936, all causes of action subsisting against or vested in him shall survive against or, as the case may be, for the benefit of, his estate; but this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other.

(2). Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated



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without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3). No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—

(a) proceedings against him in respect of that cause of action were pending at the date of his death; or

(b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4). Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

HEADS OF DAMAGES AWARDED:

Two of the leading local cases involve the deaths and Medical Negligence claims, of two former very popular and celebrated local icons – Mr. Russell Tesheria a former giant in the Insurance industry and late Husband of former Government Minister Karen Tesheria; and Mr. “Smokey” Mc Kenzie of Smokey & Bunty fame. According to **Teshera v Gulf View Medical Centre Ltd. and Roopchand TT 2015 HC 116** and **Lisa Ann Mc Kenzie, Ornella Mc Kenzie and Daniella Mc Kenzie v Medcorp Ltd and Cancer Centre of The Caribbean Ltd TT 2019 HC 14**, the Estate of the Deceased may recover damages under four main heads: Damages for Pain and Suffering, Loss of Expectation of Life, Loss of Earnings and Special Damages.

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(i) Damages for pain and Suffering:

In an action by the Personal Representative of the Estate of the Deceased, damages may be awarded in respect of the pain and suffering borne by the Deceased up to the time of his death. However, these awards are generally small as the death will so often follow quickly upon his injuries and even where death does not follow quickly after the injury, the Deceased may be in a vegetative state until his death. In cases where death was immediate or almost immediate, it is unlikely that the Court may award damages under this head as it is difficult to prove that there was pain and suffering of the Deceased. **Deonath Ramkissoon and Denecia Sookram v The Eastern Regional Health Authority CV2008-02135**, quoted Parker LJ's statement in the case of **Hicks v Chief Constable of South Yorkshire Police [1992] 1 AER 690**: "*When unconsciousness and death occur in such a short period after the injury which causes death no damages are recoverable. The last few moments of mental agony and pain are in reality part of the death itself*".

(ii) Loss of Expectation of Life:

Where the death is caused by the Defendant, the loss of life expectation has resulted from the Defendant's wrong and damages are awarded for this loss. There is a standard award of **Twenty Five Thousand Dollars (\$25,000.00)** under this head for the loss of expectation of life, as was stated in **Tota Maharaj v Auto Centre Ltd. HCA 46 of 2003**, which said case was used as guidance in **Lisa Ann Mc Kenzie, Ornella Mc Kenzie and Daniella Mc Kenzie v Medcorp Ltd and Cancer Centre of The Caribbean Ltd (supra)**.

(iii) Loss of Earnings ("The Lost Years"):

The purpose for an award for loss of earnings is to account for the earnings that the Deceased would have earned from the time of his death to the time that he would have normally retired, bearing in mind that a deduction must be made for living expenses which he would have expended both on himself and what he would have expended on his dependents. This calculation would be the multiplicand. The Multiplier would then have to be determined, that is the number of years for which it is likely that the Deceased would have continued

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earning. The Product of the Multiplier and the Multiplicand would then form the award under this head of damages.

➤ **The Multiplicand**

In relation to determining the Multiplicand, Justice Appeal Mendonca in **Presidential Insurance Company Ltd. and Zimmer v Cardenas TT 2017 CA 26** stated: “In assessing the claims for the lost years, the usual approach is to determine the multiplicand and the multiplier. The multiplicand is arrived at by determining the net sum the deceased likely would have earned during the lost years. By the net sum, I am referring to the gross earnings of the Deceased less an appropriate deduction for income tax, if any, and other statutory deductions. From the net sum, there is a further deduction to reflect what the deceased would have likely spent on his living expenses, since that expenditure cannot constitute part of his estate.”

Furthermore, in **Rackal v La Pierre and Trinidad and Tobago Housing Development Corporation TT 2017 HC 192** it was stated that in calculating the Net Earnings for the purpose of determining the multiplicand, the following items are usually deducted from the Gross income:

- i. The expenses incurred in earning the income
- ii. Tax liability
- iii. National Insurance Contributions
- iv. Health Surcharge

As stated in **Presidential Insurance Company Ltd. and Zimmer v Cardenas (supra)**, a further deduction must be made from this sum to account for what the Deceased may have spent on himself had he been alive. Generally, this deduction would be one-third (1/3) however a higher deduction of two-thirds (2/3) is sometimes made depending on the circumstances of the case. In **Rackal v La Pierre and Trinidad and**

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Tobago Housing Development Corporation (supra) a deduction of one-third (1/3) was found to be fair. The Court considered that the Deceased was a relatively young, married woman with a family and would have been faced with all the expenses in looking after a home and children.

➤ **The Multiplier**

The Multiplier would be based on the age and the expectation of the working life of the Deceased. In **Tesheira v Gulf View Medical Centre Ltd and Roopchand (supra)** it was determined that the Deceased, who died at the age of fifty-three (53) on 13th April 2004, would have worked and earned an income until his retirement age of sixty (60). He suffered from no immediate life-threatening actions and enjoyed an active sports life. It was considered that the company at which he worked encountered financial hardship and collapsed in 2009, however it was also stated the Deceased had good earning potential and would have found suitable employment elsewhere had it become necessary. The Multiplier in this case was assessed as five (5) representing the year from when the Deceased died to the year when the company at which he worked began to collapse.

Total Loss of Earnings: Loss of earnings are then to be divided into the Pre-Assessment Period and the Post-Assessment Period, as was done after the multiplier and multiplicand were determined for Claims for Damages under the Estate of the Deceased in **Mohammed et al v The Mayor Alderman and Burgesses of Arima and Attorney General CV2012-03422.** However, interest is typically only awarded on the Pre-Assessment Period.

(iv). Special Damages:

According to **McGregor on Damages 19th Edition,** the Personal Representative of the Estate of the Deceased would be entitled to receive earnings lost and medical expenses incurred up to the time of the Deceased's death. Funeral Expenses are also recoverable under Section **27(2)(c) of the Supreme Court of Judicature Act of Trinidad and Tobago** as set out hereinabove. In assessing these damages, the test is that of reasonableness: **Hart v Griffiths-Jones [1948] 2 All ER 729.**

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In the two leading cases cited, the Courts made awards in the Teshiera case in the sum of EIGHTEEN MILLION AND THIRTY FOUR THOUSAND, SEVEN HUNDRED AND SEVENTY TWO DOLLARS AND THIRTY THREE CENTS (\$18,034,772.33) and in the Smokey & Bunty case in the sum of TWO MILLION TWO HUNDRED AND SIXTY SEVEN THOUSAND, NINE HUNDRED AND EIGHTY FOUR DOLLARS AND TWENTY SEVEN CENTS (\$2,267,984.27TT) and an additional sum of ONE HUNDRED AND NINETY SEVEN THOUSAND, THREE HUNDRED AND NINETY SEVEN UNITED STATES DOLLARS (\$197,397.00USD) being Costs for the Funeral in Miami and Medical treatment at Jackson Memorial Hospital in Florida.

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