

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

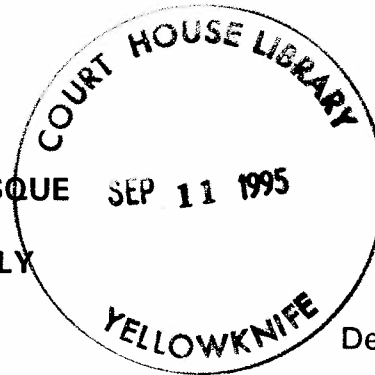
BETWEEN:

TAQIALOO SATAA STOKES

Plaintiff

-and-

JEAN PIERRE LEVESQUE  
and  
ANDREW CSICSELY



Defendants

REASONS FOR JUDGMENT

Pre-trial determination of point of law respecting damages awarded pursuant to the Fatal Accidents Act R.S.N.W.T. 1988, ch F-3

Heard at Yellowknife on June 14, 1995

Reasons filed: August 4, 1995

Counsel for Plaintiff: A. Crawford

Counsel for Defendants: A. Wright

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TAQIALOO SATAA STOKES

Plaintiff

-and-

JEAN PIERRE LEVESQUE  
and  
ANDREW CSICSELY

Defendants

REASONS FOR JUDGMENT

In this action brought pursuant to the provisions of the *Fatal Accidents Act* R.S.N.W.T. 1988, ch F-3, the court is requested by both parties to determine a point of law prior to trial, as permitted by Rule 242. The issue is whether the statute allows a parent to recover damages for loss of care, guidance and companionship resulting from the wrongful death of a young child.

2

For purposes of this application, the parties agree that the facts are as follows. Adamie Sataa, a 6 year old boy, was walking along a road in Iqaluit enroute to his school when he was struck by the defendants' motor vehicle and killed. The defendants admit liability for the boy's tragic death. The defendants also admit the contents of paragraph 10 of the statement of claim: "The child was a normal, curious,

healthy, active and loved child, in whom his mother had the normal expectations and hopes of future support, enjoyment and companionship". The child's mother is the plaintiff in this action. No particular evidence of prospective damage is offered by the plaintiff beyond her bare assertion set forth in paragraph 10 of the statement of claim.

3 Historically, at common law in England and Canada, courts did not require a tortfeasor to pay damages to the family or relatives of the deceased person. The injury or loss suffered by the surviving dependants or family members was not recognized at common law as a legal wrong committed by the tortfeasor. Beginning in 1846 with the passage of *Lord Campbell's Act* in England, and later in the Canadian provinces and territories with the enactment of wrongful death statutes patterned on *Lord Campbell's Act*, the English parliament and the Canadian legislatures overcame this deficiency in the law.

4 Relevant provisions of the *Fatal Accidents Act* R.S.N.W.T. 1988, ch F-3 remain essentially as those contained within *Lord Campbell's Act*:

2. Where the death of a person is caused by a wrongful act, neglect or default that, if death had not resulted, would have entitled the person injured to maintain an action and recover damages in respect of the injury, the person who would have been liable if death had not resulted is liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to culpable homicide.

3. (1) An action brought under this act  
(a) shall be for the benefit of the spouse, parent or child of the person whose death was caused by a wrongful act, neglect or default; and  
(b) subject to section 8, must be brought by and in the name of the executor or administrator of the deceased.

(2) In an action brought under this Act, a judge may award damages that are proportional to the injury resulting from the death of the deceased to the persons for whom and for whose benefit the action is brought.

5

From the outset, courts have interpreted the wording of s.3(2), or similar wording, as allowing damages to be awarded as compensation for pecuniary loss only, i.e., loss of the financial benefits the survivor or survivors would have received if the deceased person had lived. For this reason, actions under Fatal Accidents legislation are often termed "dependants actions". Blake v. Midland Railway (1852) 18 Q.B.35, St. Lawrence & Ottawa Railway v. Lett (1885) 11 S.C.R. 422, Grand Trunk Railway v. Jennings (1888) 13 App. Cas. 800 (P.C.), Barnett v. Cohen [1921] 2 K. B. 461, Beauchamp v. Entem Estate (1986) 51 Sask. R. 99 (Q.B.), Mason v. Peters (1980) 30 O. R. (2nd) 409 (H.C.), Danchuk v. Murray (1979) 14 B.C.L.R. 270 (S.C.), Louis v. Esslinger [1981] 3 W.W.R. 350 (B.C.S.C.), Smith v. Cook (1981) 33 O.R. (2nd) 567 (H.C.), Farnham v. Glass (1978) 8 Alta L.R. (2d) 81 (T.D.).

6

The courts have stated that the claimant must demonstrate a reasonable probability that he or she would have received a pecuniary benefit from the deceased had the death not occurred. A mere speculative possibility is insufficient. Barnett v. Cohen, supra; Alaffe v. Kennedy (1973) 40 D.L.R. 429 (N.S.T.D.); Nickerson v. Forbes (1955) 1 D.L.R. (2d) 463 (N.S.C.A.); Louis v. Esslinger, supra; Gorrill v. Ross (1980) 22 B.C.L.R. 140 (S.C.); Leopold v. Knight (1980) 44 N.S.R. (2d) 654 (T.D.)

7 Demonstrating a reasonable probability of pecuniary benefit is a difficult if not impossible task when the deceased is very young at the time of death.

"It is clear, I think, that every attempt to assess such damage involves prophetic speculation as to the future. In the case of very young children whose age and conduct has been insufficient to indicate with any clearness their future earning capacity or practical utility to their parents as contributors to the family welfare, there is little in the way of established data upon which a prognostication of future benefits and losses can be predicated even if the contingencies of life and death and sickness be disregarded as, of course, they cannot. And accordingly, the cases are many in which such claims have been dismissed as revealing a mere speculative possibility of benefit...MacDonald J., in Nickerson v. Forbes, supra at p. 468-469

8 Often, as in the present case, there are no facts from which the court can draw an inference that the parent would have enjoyed a pecuniary benefit had the child lived. Thus a pecuniary loss, particularly a prospective one, is difficult to prove in such cases.

9 Non-pecuniary losses cannot be awarded to a surviving claimant unless the statute specifically permits such an award. Reidy v. McLeod estate (1986) 54 O.R. (2d) 661 (C.A.), Wenden v. Trikha (1991) 116 A.R. 81 (Q.B.), Rowe v. Hanna (1989) 71 Alta L.R.(2d) 136 (Q.B.).

10 Some of the provincial legislatures have amended the statute to allow for recovery of damages for loss of guidance, care, and companionship in wrongful death lawsuits. Nova Scotia's legislation, for example, allows recovery of both pecuniary and non-pecuniary damages including:

"an amount to compensate for the loss of guidance, care and companionship that a person for whose benefit the action is brought might reasonably have expected to receive from the deceased if the death had not occurred." *Fatal Accidents Act*, R.S.N.S. 1989, ch.163, s.5(2)(d).

11 Ontario, Manitoba and New Brunswick have enacted similar amendments.

12 The Alberta statute was recently amended to allow recovery of damages for bereavement or grief and also loss of care, guidance and companionship in an amount established in the legislation:

(2) If an action is brought under this Act, the court without reference to any other damages that may be awarded and without evidence of damage, shall award damages for grief and loss of the guidance, care and companionship of the deceased person of

...

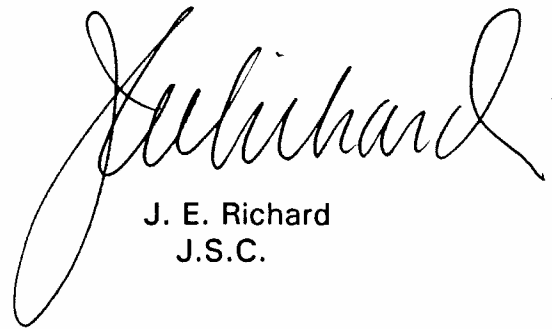
(b) \$40,000 to the parent or parents if

(i) the deceased is a minor child,... *Fatal Accidents Amendment Act*, 1994, S.A. 1994, ch-16. s.5

13 The Northwest Territories statute has not been amended to specifically provide for recovery of non-pecuniary losses, neither grief/bereavement/sorrow nor loss of care, guidance and companionship, nor any other non-pecuniary loss.

14 In this jurisdiction, therefore, non -pecuniary losses suffered by a parent (i.e., all emotional injuries - shock, grief, sorrow, and loss of affection, love, guidance, care, support, companionship, comfort and protection) upon the death of a young child are

not compensable in an action under the *Fatal Accidents Act*. Whether such losses should be actionable in this jurisdiction is for the legislature to decide. For an excellent discussion of the need for legislative reform, see "Non-Pecuniary Damages in Wrongful Death Actions", Report for Discussion No. 12, June 1992, and Report No. 66, May 1993, Albert Law Reform Institute.



J. E. Richard  
J.S.C.

CV 042

---

IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

---

BETWEEN:

TAQIALOO SATAA STOKES

Plaintiff

-and-

JEAN PIERRE LEVESQUE  
and  
ANDREW CSICSELY

Defendant

---

Reasons for Judgment of the  
Honourable Mr. Justice J.E. Richard

---

