

IN THE SUPREME COURT OF BELIZE, A.D. 2001

ACTION NO. 414

(HORTENCIA SANCHEZ
({Administratrix of the
(Estate of Jose Sanchez}
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BETWEEN (AND
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(JERRY McDERMOTT
(ORION ENTERPRISE LIMITED
Plaintiff
Defendants

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BEFORE the Honourable Abdulai Conteh, Chief Justice.

Ms. Velda Flowers for the Plaintiff.
Mr. Wilfred Elrington S.C. for the Defendants.

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JUDGMENT

This case arises out of the death of Jose Alfredo Sanchez which took place on 12th August 2000 in San Pedro, Ambergris Caye. On that date Mr. Sanchez together with Elmer Gonzalez, Roberto Acosta and Jose Velasquez, were working in the vicinity of Paradise Resort Hotel, also known as “Reef Resort” owned by the defendants, putting up some telephone poles in order to give more clearance to telephone cables that were hanging a little closer to the ground. There were five poles in all that had to be planted that day, and they had finishing planting the fourth pole; as they were in the process of planting the fifth pole, it touched some high voltage cables that were also hanging around. As a result of this contact between the pole and the high voltage cable, the other three persons, that is, Gonzalez, Acosta, Velasquez, were thrown off to the ground, but Jose Sanchez remained transfixed to the pole. He remained so transfixed until the other three could remove the pole from the high voltage cable. Sanchez had evidently been electrocuted as a result of the contact between the pole and the high voltage cable and the fact that all four persons were standing in swampy waters at the time of contact.

2. On site mouth-to-mouth resuscitation failed to revive Sanchez and he was rushed to the Clinic at San Pedro where a Dr. Rodriguez pronounced him dead on arrival.
3. As a result of Sanchez's death his mother, the plaintiff, as his administratrix, has brought the present proceedings claiming damages for herself as a dependent, pursuant to the Torts Act – Chapter 172 of the Laws of Belize 2000, Revised Edition, against the defendants for negligence and that of their agents or servants.
4. The issue in this case I believe can be put in a short compass. And it is this: *Did the deceased, Jose Sanchez, die in the course of his employment as a result of the accidental electrocution on 12 August 2000?*
5. Critical to this issue is whether the late Sanchez was in fact employed by the defendants.
6. The plaintiff avers in paragraph 4 of her Statement of Claim that Sanchez was at the material time of the accident employed by the defendants as a handyman and in paragraph 5 that it was in the course of such employment that Sanchez received instructions to plant wooden poles for the purposes of hanging telephone lines.
7. The defendants, for their part, simply denied the plaintiff's paragraphs 4 and 5 of the Statement of Claim and further deny that they had any responsibility to make arrangements to install any poles or to hang any telephone wires.
8. However, having seen and listened to the witnesses, I am satisfied that Jose Sanchez was at the material time on 12 August 2000, in the employ of the defendants when the incident happened that resulted in his electrocution and eventual death.
9. In fact, the first defendant in his testimony stated that Jose Sanchez and the other persons, that is, Acosta and Velasquez, were menial workers when they worked for them (presumably meaning the defendants) although Elmer Gonzalez was his Man Friday who did all kinds of work for him. The first defendant however admitted under cross-examination that Sanchez often did miscellaneous jobs for them.

10. Elmer Gonzalez, who testified for the plaintiff, however said that he worked for the defendants and he needed three persons to put up telephone poles on 12 August 2000. And this was how Sanchez and the other two persons came to be engaged in putting up the poles on that day. He also testified that Sanchez was working for the defendants on 12 August 2000 and that his salary was \$210.00 per week.
11. Mr. Robert Banner a Senior Inspector of the Social Security Board also testified for the plaintiff. He said that he had access to social security contributions records by employers in respect of their employees. He testified also that Sanchez was a registered employee of the Social Security Board and that the second defendant is registered as his employer.
12. From all the evidence in this case, I am satisfied that on 12 August 2000, when Sanchez met his death as a result of electrocution resulting from the pole he and others were planting, coming in contact with high voltage cable, he was in the course of his employment by the defendants.
13. In my view, the level of the employee's position makes no difference, whether a menial worker or not, to the responsibility of the employer to provide a safe system of working for his employees.
14. It is the position in law that an employer owes a duty of care to his employees such that no harm may befall them while engaged in the performance of their employment.
15. The standard of an employer's duty towards his employee is to see that reasonable care is taken; the scope of this duty extends to the provision of safe fellow-employees, safe equipment, safe place of work – see Wilson and Clyde Coal Co. Ltd v English (1938) A.C. 57 at pages 78 and 86; and also, Clerk and Lindsell on Torts, Eighteenth Edition, 2000 (Sweet & Maxwell) at paras. 7-216 and 7-217.
16. This duty is peculiar to the employer-employee relationship and it is not owed to one who is not an employee. As I have recounted however, on the evidence in this case, notwithstanding the attempts

by the defendants to dismiss the late Sanchez as a menial worker or a casual handyman, I am satisfied that the relationship of employer/employee existed between him and the defendants such as to bring into play the common law duty of care of an employer for his employee, that is ordinarily incumbent on an employer.

Did the Defendants fall short on their duty of care?

17. In order to succeed in a claim of negligence such as the present, the onus of course is on the claimant. In these proceedings, Sanchez the employee, is dead and could not testify. His mother and Administratrix and the plaintiff in these proceedings, was not present at the scene of the accident. The only person who testified as to the place of work and the system of work at which Sanchez met his death was Elmer Gonzalez. He testified that he worked on 12th August 2000 with Sanchez and two others. He explained the purpose of their exertions that day was to lift telephone cables away from the ground. For this they had to plant five poles in all. He said that the poles were about 30 feet tall and they were to dig holes and to plant the poles five feet deep into the ground. Mr. Gonzalez further said that they had planted four poles and it was while they were planting the fifth pole that the incident happened.
18. Significantly however, Mr. Gonzalez also said that the area they were planting the poles was very swampy and the water there was about two feet deep, and that there were as well as the high telephone cables, high voltage cables also. And that it was while they were planting the fifth pole that it touched the high voltage cables. This resulted in the electrocution of Sanchez who in fact was transfixed to the pole and had to be prised loose.
19. There is in evidence as **Exhibit HS 1**, the medical certificate of cause of death of Sanchez. This was tendered by Dr. Hugh Sanchez who certified the cause of death as due to electrocution.
20. Also tendered in evidence as **Exhibit LM 1 – 36** are photographs of the scene where the poles were being planted. These were taken and tendered by Lewis Martinez, the step-father of the late Sanchez. He visited the site soon after the incident. Clearly visibly in the pictures are scenes of a swampy area with poles near to and in some cases, almost touching overhanging cables.

21. From all the evidence, I am bound to conclude that the defendants failed in their duty to provide a safe place of work and access to it. It takes little imagination, I think, to figure out that planting rather high poles in a swampy area in close proximity of telephone and high voltage cables is an inherently dangerous place to work and an unsafe system of work. The probability of the poles coming in contact with the high voltage cables and immeasurably increasing the likelihood of electrocution cannot reasonably be discounted.
22. I therefore find that in the circumstances of this case, the defendants failed to provide a safe place of work and access to it and a safe system of work. In this they were, accordingly, negligent – see Speed v Thomas Swift and Co. Ltd. (1943) 1 KB 557.
23. I do not accept the submission by Mr. Wilfred Elrington S.C. for the defendant that because the deceased and Elmer Gonzalez, who testified for the plaintiff, had never, before 12th August 2000, been asked by the defendants to plant poles, that what they, that is, the deceased and Gonzalez (and presumably the others) did that day was outside the scope of work of the deceased. From the evidence, the deceased Sanchez, was employed as a handyman doing minor repairs, painting etc., activities of maintenance nature on the defendants' property. Surely, this could not be far removed from asking the deceased (as I find happened in this case), to help in planting poles to give a higher height to cables that overhung the defendants' property. I find that Sanchez was working within the scope of his employment when he met his death.
24. I find that in the circumstances of this case, the defendants must, or should have foreseen that requiring the workers to carry on the task of planting high poles in a swampy area and with telephone and high voltage cables in close proximity, carried with it a real risk, a foreseeable possibility of injury – O'Neill v DSG Retail Ltd. (Court of Appeal in England decision of July 31, 2002), reported in The Times of 9 September 2002.
25. I therefore find the defendants liable in negligence as employers for the death of Sanchez.

The right to action under the Torts Act

26. By sections 9, 10, 11, 12 and 13 of the Torts Act, the dependents of a deceased person, who had died as a result of another's wrong, are liable to bring an action for damages for the loss that they suffered as a result of that wrongful death.
27. However, although section 12 of the Torts Act provides for the award of damages to represent the value of the dependency for wrongful death, it does not state or give any guide as to how such damages are to be assessed. It provides in terms as follows:

“12. In every action such damages proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought may be awarded, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided among the parties for whose benefit the action is brought in such shares as the court ... may direct.”

28. The courts have, however, evolved a particular method for assessing the value of the dependency, or the amount of pecuniary benefit that the dependent could reasonably expect to have received from the deceased in the future.

This amount is calculated by taking the present annual figure of the dependency, whether stemming from money or goods provided or services rendered, and multiplying it by a figure which is based upon the number of years that dependency might reasonable be expected to last. These figures are respectively, the multiplicand and the multiplier. Sometimes adjustments are made to the sums arrived at through this method of calculation of the dependency, such as for example, to take account of the fact of the immediate award of a lump sum for dependency instead of periodic payment over the years. See generally **McGregor on Damages 16th Ed. (1997) Sweet & Maxwell**, para. 1761 et seq.

29. The plaintiff particularized her dependency on the deceased in her Statement of Claim. She also testified that the deceased, Sanchez, was her son and that he was born on 24 July 1981. She testified

that during his lifetime from his earnings at work he contributed to support her by giving her money and clothes for her three other children. She said that Sanchez gave her \$50.00 every week and clothes worth \$100.00 every three months.

30. It is therefore reasonable to find that the plaintiff has a well founded expectation of pecuniary benefit from the continuance of the life of Sanchez, her son. In other words, she is entitled to the value of her dependency on her son.
31. I have however for the purposes of the award of damages to the plaintiff in this case, decided that the formula confirmed in the decision in the case of Cookson v Knowles (1978) 2 All. E.R. 604 is a more helpful guide. That is, first, the pecuniary loss which it could be estimated had been sustained by the plaintiff from the date of death of her son, Sanchez, that is 12 August 2000, until the date of trial of this action, that is, 28 July 2003. Secondly, the pecuniary loss which it is estimated that the plaintiff would sustain from the trial onwards.
32. Assessment of a continuing dependency as Lord Diplock stated in Cookson v Knowles supra, is more difficult and will inevitably be artificial and prone to inaccuracy. I will therefore, advisedly refrain from the complex calculations and deductions that would otherwise attend the valuation of dependency for the award of damages, because the extent of the plaintiff's dependence on her son in this case, is relatively small. But I bear in mind that Sanchez was only 19 years old when he died and the length of the plaintiff's dependence on him can only be conjectural.
33. But putting the best estimates I could on the pecuniary benefits the plaintiff testified she received from her deceased son who died at a rather young age, I have determined that the damages awardable to her are as follows:

First, the pecuniary loss which she has sustained from the date of the death of her son (12th August 2000) until the date of the trial of this action (28th July 2003), the pre-trial loss. This works out at approximately $\$50.00 \times 101 = \$5,050.00$. I therefore award this sum of \$5,050.00 as her pre-trial loss. This sum will carry interest at 6% per annum, working out at \$5,353.00.

Secondly, the pecuniary loss which it is estimated the plaintiff/dependent would sustain from the trial onwards, the future loss. This I calculate as the present annual value of the plaintiff's dependency and multiplying it by the number of years that dependency might reasonably be expected to last. I think, in the circumstances of this case, and given the age of the deceased at the time of his death, I will multiply the present annual value of the dependency by a multiplier of 10. I therefore estimate the future loss of dependency as follows: $\$50.00 \times 52 \times 10 = \$26,000.00$. I accordingly award this sum of \$26,000.00 representing the future loss of dependency to the plaintiff.

34. Accordingly therefore, pursuant to section 12 of the Torts Act, I award the sum of \$31,353.00.00 as representing the loss of dependency of the plaintiff resulting from the death of her son, Sanchez.
35. I have in the circumstances left out of reckoning the value of the clothes the deceased periodically is said to have provided for his siblings. The evidence on this is too sketchy to amount to proof or to be readily quantifiable.
36. The plaintiff has also claimed the sum of \$2,079.75 as special damages representing funeral expenses and transportation. Although there is no proof of this even after pleading it, I think it is a reasonable sum covering both funeral expenses and transportation costs. No doubt, there must have been funeral expenses and cost of transportation. Accordingly, I award the sum of \$2,079.75 as special damages to the plaintiff.

I also award the costs of these proceedings to the plaintiff in the sum of \$3,000.00.

37. I therefore enter judgment for the plaintiff as follows:
 - i) \$2,079.75 as special damages. This sum to carry interest at the rate of 6% from 12th August 2000 until 3rd August 2001, when the writ in this action was issued;

- ii) The sum of \$31,353.00 for the loss of dependency;
- iii) Costs in the sum of \$3,000.00.

A. O. CONTEH
Chief Justice

DATED: 21st May, 2004.