IN THE SUPREME COURT OF BELIZE, A.D. 2008

CLAIM NO. 614 of 2008

RITA GRIFFITH	**CLAIMANTS**
ESTELLA MUSA	
Intended administratrices of the Estate of Ralph Balderamos 11	
RALPH BALDERAMOS 111 (a minor suing by next friend Ralph Balderamos 1	
RALPH BALDERAMOS 1	
HAZEL BALDERAMOS	
AND	
ALBERTO EFRAIN CHAN	**DEFENDANTS**
RAUL CUELLO	

Hearings
2009
20th November
30th November
4th December
2010
21st January
18th February

Mrs. Andrea McSweany-McKoy for the Claimants.
Mr. Michael G. Peyrefitte for the Defendants.

LEGALL J.

JUDGMENT

The Accident

1. On a bright sunny day, Tuesday 11th September, 2007, at about 3:00

p.m., Ralph Balderamos was driving a black Toyota Prado vehicle registration number C 21897 on the Northern Highway in Belize. In the black Prado accompanying him, were his friends, Ralph Fonseca Jr., the son of the then Minister of Home Affairs, Ralph Fonseca Sr., and Eugene Webster and Haldane Stephenson. Ralph Fonseca Jr., was in the front seat of the Prado on the passenger side, and Webster and Stephenson were seated at the back seats. The black Prado was travelling in a southern direction on the Northern Highway heading towards Belize City.

2. Alberto Efrain Chan, the No. 1 defendant, was employed by the No. 2 defendant as a driver. The No. 1 defendant, in the course of his duties, was driving a Ford truck registration number OW-A-3673 towing an unlicensed, unregistered and uninsured trailer, owned by the No. 2 defendant, in the opposite direction on the said Northern Highway going from Belize City to Orange Walk Town, in the north of Belize. The trailer contained one hundred and sixty, forty feet lengths of steel. The length of the trailer was about fifteen feet.

3. As the truck, towing the trailer, was travelling along the said highway at about 40 miles per hour, parts of the lengths of the steel were hanging outside the back of the trailer. At a location known as Mile 51 on the said highway, the No. 1 defendant, while driving the truck and trailer, saw the black Toyota Prado travelling in the opposite direction. While the No. 1 defendant was driving, the trailer containing the steel, detached or disconnected from the truck, and perilously swerved into the lane or path of the Prado and collided to

the front of the said Prado on the right hand side of the highway when travelling towards Belize City. The collision caused deadly and catastrophic consequences. Ralph Balderamos 11, born on 9th September, 1975, who became 32 years old just a couple of days before the accident, and who was the driver of the Prado, died on the spot. Ralph Fonseca Jr., who was on the front passenger seat of the Prado, also died on the spot. The two other passengers in the back seat of the Prado suffered serious injuries, but survived.

4. Ralph Balderamos 11, prior to his death, lived and worked in Florida, U.S.A. The dependants, Nos. 3, 4 and 5 claimants, also live and reside in Florida U.S.A. The deceased was born in Belize and came back to celebrate his birthday. He lived at 1970 Tindaro Drive, Apopka, Florida U.S.A.

The Claimants

5. Section 9 of the Torts Act, Chapter 172 of the Laws of Belize states that an action lies for causing death. It states:

> "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."

6. Section 10 of the same Act states, inter alia:

> "Every such action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused …."

7. Section 11 states by whom the action is to be brought. It states, inter alia, that in a case where there is no executor or administrator of the deceased person, the action may be brought by and in the name or names of all or any of the persons for whose benefit the action is given under section 10. The action is given under section 10, as shown above, to the wife or husband (not applicable to this case) and to every parent and child of the deceased.

8. This action is brought by the parents of the deceased – the fourth and fifth claimants; and the minor child of the deceased – the third claimant, represented in the action by his next friend Ralph Balderamos 1, the fourth claimant. Under Part 23 of the Supreme Court (Civil Procedure) Rules 2005, a minor may be represented by a next friend. The numbers 1 and 2 claimants are described in the claim as "intended administratrices" of the deceased. There is evidence from the witness Ralph Balderamos 1 that the No. 1 and 2 claimants are the aunts of the deceased and the administratrices of his estate.

9. The claimants filed a statement of claim dated 9th September 2008 against the defendants for: –

> "(1) Damages on behalf of the estate and dependants of Ralph Balderamos 11 deceased pursuant to the Torts Act Chapter 172.
>
> (2) Special Damages in the sum of US $17,097.39 pursuant to section 16 (2) of the Torts Act Chapter 179 (sic)
>
> (3) Interest and damages pursuant to section 161 of the Supreme Court of Judicature Act Chapter 91.
>
> (4) And Costs."

10. The claim by the claimants is that the deceased died due to the negligence of, and breach of statutory duty by, the defendants.

The Evidence

11. The No. 1 defendant's evidence is that before driving the truck and trailer on date in question, he was instructed by his supervisor, Evello Medina, to connect or link the trailer to the truck, and to load the trailer with the steel. He said he and his supervisor tested the strength of the connection by driving the truck forwards and backwards and applying the brakes suddenly. He said the trailer was fastened tightly to the truck and he checked the connection by driving the truck and trailer with the steel therein, backwards and forwards to test the connection, and it was very good. He continued:

> "All I did to fasten the trailer to the truck was to hook it. The hook was in a good condition. The hook was not shaking after

> being hooked. The whole connection was not moving. Everything was very good – the hooking of the trailer to the truck."

12. He said after testing the truck and trailer, he was instructed to take the steel to Orange Walk Town. He began his journey to Orange Walk Town to deliver the steel, and was driving between 30 to 35 miles per hour. While driving on the said highway this is what he testified occurred:

> "The trailer detached from the truck I was driving. The trailer collided into the black Toyota Prado. There was no chain in place supporting the trailer to the truck."

13. He testified that he did not drive the truck dangerously. His evidence is that it was not unsafe to drive the truck with the connected trailer because the connection of the trailer and truck was tight and very good. He said the weight of the steel in the trailer did not cause the truck to break away from the trailer.

14. In effect, the defence of the defendants is that they were not neglectful or negligent in any way, and that all proper care and diligence were used in connecting the trailer to the truck and in towing the said trailer. The No. 1 defendant further contended that the detachment of the trailer from the truck was not due to any negligence of the defendants or the weight of the steel or due to any breach by the defendants of any statutory duties. The No. 1 defendant contended

that he had been transporting steel in the said truck and trailer for about two years; and the trailer never detached from the truck, even though sometimes more than 160 rods of steel were transported by the said truck and trailer. Implicit in the defence is that the journey itself or something on the road or the road itself could have caused the trailer to detach from the truck.

15. Two witnesses testified on behalf of the claimants, Ralph Balderamos 1, and Tirso Eugene Galvez. The No. 1, 2, 3, and 5 claimants did not testify, neither did the No. 2 defendant. The claimants, in support of their case, that the accident was caused by the negligence or neglect of the defendants, called the witness Tirso Eugene Galvez who held the position of Operations Officer and Motor Vehicles Inspector in the Department of Transport of the Government of Belize.

16. Galvez duties were mainly to inspect vehicles for licencing purposes and to determine their road worthiness. He holds an associate degree in mechanical and electrical engineering. He held his position in the Department of Transport for more than twenty years and attended court many times, and he is a professional worker in the Department of Transport. He testified that he was not a mechanic and that he did not witness the accident. He arrived at the scene of the accident, one day after it had occurred. His main function at the scene of the accident was to inspect the vehicles involved in the accident. He inspected the truck, trailer and Prado and stated, inter alia, the results of his inspection as follows:

1. "Truck - (1) there was no damage to the front or rear fenders or the top or frame of the truck. . . . .

(2) the brakes were not sufficient or efficient to bring the vehicle to a complete stop.

(3) the two inch trailer hitch ball bolted to the center of the rear bumper was not tightened sufficiently to keep the trailer in a stationary position. It could be rotated easily and freely a full 360 degrees merely with the hands. . . . .

(4) the right rear indicator was not functional.

2. Trailer - (1) The trailer is a home made trailer made with 3 inch angle iron as frame and measured 15 feet 6 inches in length, 6 feet 9 inches in width and 2 feet 7 inches in height. The trailer is a double axle with two wheels on either side, wooden flooring.

(2) The left side and rear end of the steel frame was bent

(3) The "A" frame coupler at the front end of the trailer that couples with the trailer hitch ball was very rusty and worn.

(4) Fatty human tissues and blood were located on the "A" frame coupler at the front of the trailer.

(5) The "A" frame coupler was also damaged to such an extent that it was completely incapable of being connected to the hitch ball on the truck.

(6) The trailer had no license plate or identification number, indicating that it was not registered or licensed.

(7) Only one rear light fixture was observed on the left of the trailer, and it was not in working condition.

(8) The trailer had no brake system.

(9) The trailer had no reflectors.

(10) There was no chain at the end of the trailer where it couples to the towing vehicle for extra security in the event that the trailer would unhook from the hitch ball.

3. Prado - (2) the headlamps, front indicators, front and rear fenders, top, frame, grill, engine, steering, exhaust manifold, dash board, windshield, wipers, horn, and bumper were totally destroyed and crushed into the driver's seat and front passenger seat of the vehicle.

(3) the four tires were intact and fully inflated.".

17. The witness Galvez testified that the truck had, at its rear, an apparatus called a hitch ball which is used for purposes of connecting the trailer to the truck. The hitch ball connection is secured and tightened by the use of a nut, which if secured to its full extent tightens the trailer to the truck. Galvez gave evidence that from his inspection of the truck and trailer, he found that the nut on the hitch ball was not securely tightened because there was about a quarter of an inch of treading on the nut which was not used, but should have been used to fully tighten the nut to secure the hitch ball. He testified that if the nut was tightened properly, it would not loose. He further testified that the weight of the steel in the trailer created a strain on the connection of the trailer to the truck.

18. I have to bear in mind that this witness did not see the accident and his observations are based on his inspection of the vehicles one day after the accident. Did anyone interfere with the vehicles between the date of the accident and when he inspected the vehicles? The witness testified that the hitch ball and the nut were not tightened properly. But could the severe impact of the accident have caused the hitch ball and nut to appear as if they were initially not properly tightened? In looking at Galvez's evidence, I bear these matters in mind. Galvez also said that something may be working on a vehicle and after the accident it may not work.

19. It may be recalled that the defendant testified that the trailer was fastened tightly to the truck and that he tested the connection with the steel in the trailer by driving the truck and trailer forwards and backwards and applying brakes suddenly and the connection was very good.

20. Travelling with the defendant on the truck at the time of the accident was a labourer, Mr. Angel Vasquez, who testified on behalf of the defendant. He testified as follows:

> "Mr. Chan, and the supervisor tested the trailer. I was not there when they tested it. I do not know who hooked the trailer behind the truck. I do not know what condition the hook was in."

Negligence and Neglect

21. The No. 1 defendant was transporting on the highway 160 lengths of steel in a trailer connected to a truck. He admitted that all he did to fasten the trailer to the truck was to hook it. He also stated in evidence that he carried the said amount of steel in that trailer for about two years and the trailer never loosed before. It seems to me that since the trailer was used for that period of time transporting steel, that in addition to hooking the trailer to the truck, the No. 1 defendant should have used some other supporting means to strengthen the connection of the trailer to the truck, especially

knowing the length of time the trailer was used to transport steel. Perhaps an iron or steel chain should have been used to strengthen and fortify the connection of the trailer to the truck, bearing in mind he was transporting so many lengths of steel. The defendant admitted in evidence that no such chain was used.

22. Moreover, the No. 2 defendant being the employer of the No. 1 defendant who was transporting the steel in the course of his employment, should have ensured that such chain was used, in addition to hooking the trailer to the truck, to fortify and strengthen the connection of the truck to the trailer. In my view this was a serious omission on the part of the defendants. If an iron chain had been so used, this accident may not have occurred.

23. Considering the evidence in this case, were the defendants negligent, neglectful or acted in default under section 9 of the Torts Act above? Was there a duty on the part of the defendants to exercise reasonable care to prevent injury to other persons using the road? The evidence in this case shows clearly that the defendants had a duty to exercise reasonably care. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons: see ***Glasgow Corporation v. Muir 1943 A.C. 448, at p 457; Donoghue v. Stevenson 1932 A.C. 562 at p 580***; and ***Fardon v. Harcourt Livington 1932 A.E.R. 81***.

24. The evidence reveals that the trailer swerved in the path of the Prado. In ***Morales De Habet v. Adolpho Medina et al Vol. 1V Belize Law Reports p 173*** the defendant was driving a truck that was hauling a trailer on the Northern Highway heading in the direction of Orange Walk Town situated at the north of Belize when the truck swerved into the path of the vehicle driven by De Habet causing a collision. Habet died on the spot. Barrow J, as he then was, held that the defendant was negligent. The Learned Judge quoted Clerk and Lindsell on Torts as follows:

> "Where an accident happens on the defendant's wrong side of the road, it is an indicator, not necessarily conclusive, of negligence on the part of the defendant. What that fact does is to call for an explanation from the defendant."

25. This is a general statement of the law and it was applied in a situation where the defendant had swerved his vehicle and caused the accident. In this case before me there is no evidence that the No. 1 defendant swerved the vehicle he was driving; but I think the principle of <u>De Habet</u> is that in cases of a motor vehicle accident occurring on the side of the road of the person injured, the defendant has to explain it. The explanation of the defendant is, as we have seen above, that he tightened properly the trailer to the truck and he tested it; but this is not an explanation which negatives negligence, because as I said the defendants should have strengthened the connection by using an iron

or steel chain, bearing in mind he was transporting so many lengths of steel.

26. But before deciding the issue of negligence, the court must bear in mind, the well known and often articulated views of Lord Pearson with respect to the burden of proof in the celebrated ***Henderson v. Harry E. Jenkins 1969 3 A.E.R. 756 at p766***.

> "In the action for negligence, the plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the defendants. That is the issue throughout the trial, and in giving judgement at the end of the trial the judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the defendants and if he is not satisfied the plaintiff action fails."

27. I am of the view that the defendants failed to discharge their duty to exercise reasonable care when using the highway to prevent injury to the deceased, because of the defendants failure and neglect to use an iron or suitable chain to hold and strengthen the connection of the trailer to the truck, and by the No. 2 defendant's neglect and failure to ensure that such a chain was used for that purpose. I therefore find that both defendants were neglectful and negligent and caused the death of the deceased. Moreover I find that the No. 2 defendant was vicariously liable for the neglect and negligence of his employee, the No. 1 defendant, who at the time of the accident was acting in the

course of his duties and as servant or employee of the No. 2 defendant.

Damages

28. Section 12 of the Torts Act states how damages are to be assessed in a case such as this. The section states:

> "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 amongst the parties for whose benefit the action is brought in such shares as the court or a jury may direct."

29. On the question of damages, the court has the task of (i) estimating how long, or the period the dependants, in this case the No. 3, 4 and 5 claimants, 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 "period of dependency" and the latter as the multipland or the "amount of dependency" to use the words of Shanks J in the Belizean case of ***Castenada et al v. Sutherland*** v. ***Cisco Construction Ltd. dated 11th February 2000.***

The Period of Dependency

30. The starting point is to estimate the period of dependency or as it is often called the multiplier. The court in its duty to make that estimate is really undertaking the onerous task of determining what will happen in the future. To determine the estimate of the number of years that a dependency would last, the court has to consider the number of years between the date of the deceased death, and the date at which he would have reached the normal age of retirement. The court is to make a decision on future events; and it has not been surprisingly said, that in most cases the exercise is "a matter of speculation and may be conjecture:" see ***Kassam v. Kampala Aerated Water Co. Ltd. 1965 1 W.L.R. 668 at page 672***.

31. It falls within the ambit of speculation because, not only is there the possibility that the deceased might not have lived to retirement age, but also because injury or illness may have prevented him from engaging in gainful employment. Moreover, there is no certainty that the dependants themselves would live throughout whatever period of dependency is estimated by the court. The dependants may die, not long from now, or may live throughout the period. The court has to consider all the possibilities that may occur in the future before deciding on the period of dependency.

32. The son of the deceased is 12 years old. The other two dependants – the mother and father of the deceased, – are 61 and 56 years respectively. The mother was born on 3rd September, 1948 and the father was born on 27th August, 1953. I have to estimate the life

expectancy of the parents of the deceased. In this exercise, I am not fortunate to have access to life expectation tables prepared by actuaries, as may be available to other courts. I have to also consider that there is a chance that the parents may die before the deceased would have reached retirement age. The deceased was born on 9th September, 1975. He was 32 years old when he died. From the evidence it seems he would have wanted his son to attend college or university.

33. It would be helpful to consider, for comparative purposes, the periods of dependency ordered by the court in Belize in fatal accident cases. In ***Canul v. Alfaro et al No. 552 of 2000 (unreported)*** the deceased was 28 years when he died. His dependants were two young daughters, three years and two years old, and his widow was 26 years old. A multiplier of 16 was used as the period of dependency. In ***Morales De Habet v. Adolpho et al Belize Law Reports Vol. v p 173*** the deceased was 29 years old when he died. His dependants were two children, who were four years and two years old. His widow was 29 years old at the time of his death. The court used a multiplier of 16 being the period of dependency.

34. In ***Perriera v. The Attorney General No. 217 of 1992*** where the deceased husband was 35 years at the time of his death, and his widow was 38 years old. His three children were aged 10, 7 and 3 years at the time of his death. The multiplier used was 13 years. In ***Sanchez v. Gianchandani 385 of 1999*** the deceased father was 45

years old when he died. He had six children, aged, 2, 7, 11, 12, 15; and 16. The multiplier used was 6.

35. In ***Casteneda v. Cisco Construction Limtied Vol. 2 B.L.R. 92*** a multiplier of 12 was used, where the dependants were a widow and four children. The age of the deceased and the dependants were not stated in the report, but the court considered a total dependency of all the dependents to be 57 and used an average dependency of 14.25. The court took into consideration contingencies and a lump sum payment and reduced that average to 12 which was used as the multiplier. In ***Kandammy Murilidaran v. Tropical Air Services Ltd. No. 96 of 1992*** the deceased was 25 years old at the date of his death. His widow was also 25. A multiplier of 12 was used.

36. Before making a decision on the multiplier, I must also bear in mind the views of the Privy Council in ***Kassam v. Kampala Aerated Water Co. Ltd.*** above. In that case the deceased father died in a traffic accident leaving eight dependants, aged from three years to twenty-three years. The judge had, for all the dependants whose age varied, used one multiplier of 15. The Privy Council held that that was wrong because the eight dependants would not all be equally dependent for the 15 year period. Lord Guest led the criticism of the Judge:

> "A more serious criticism can, however, be made of the fact that he has taken for all the dependants, aged as they were from 23 to three years, the period of dependency at 15 years, the estimated remainder of the

> deceased's working life. This is plainly wrong as the eight dependants would not all be equally dependent for the 15 year period. The elder boys would soon become self-supporting, the girls would probably get married or go into employment, and the younger children would in time grow up and earn their own living. In fact only the youngest, Nazma, would be dependent for the whole period of 15 years. This indicates to their Lordships that the judge's basis of calculating a £10 a week dependency over a 15 year period is erroneous, and that his award for this reason cannot stand."

37. Considering the age of the deceased at death, the age of his son, the fact that the deceased might have wanted his son to attend college or university, the age of the parents of the deceased and the possible length of their life; and considering also the views of the Privy Council in ***Kassam*** quoted above, the contingencies of life and that the dependants would be paid a lump sum, I quantify the continuing period of dependency to be 11 years, or as it is usually called 11 years purchase, or a multiplier of 11; for I believe that the three dependants would all be equally dependant for the eleven year period.

The Amount of Dependency

38. Having arrived at the period of dependency, I must move to consider the amount of the dependency or the multipland. The starting point in any estimate of the amount of the dependency is the annual value of the material benefits provided for the dependants out of the earnings

of the deceased at the date of his death. In arriving at the estimate, I have to consider the question of inflation. In addition, I have to consider the possibility that the earnings of the deceased might have increased resulting in him providing a higher amount for the dependants. On the other hand, his earnings might have decreased because of economic recession or unemployment or periods of unemployment. I must also consider the possibility that as the son of the deceased grew up or became older, the proportion of the deceased earnings spent on him might increase or fall depending on future circumstances.

39. At the date of his death, the deceased was aged 32, and was employed as a service technician at Walgreens Pharmacy Inc. in Orlando Florida U.S.A. The 4th claimant gave evidence that the deceased worked at Walgreens for twelve years. According to the US Individual Tax Return 2006, tendered in evidence, the deceased gross salary was US $56,999 US per annum. The said Tax Return gives the deceased "adjusted Gross Income," which I consider to be his net income, as US $41,263. There is evidence from the 4th claimant that the deceased did private work, maintaining industrial machines and related services from which he earned an additional US $18,000 per year. When asked in cross-examination whether he had any document to prove this additional income, he replied in the negative, and asserted that he knew the deceased earned the additional income.

40. This witness had disclosed an income tax return to prove the annual salary of the deceased at Walgreens, but with respect to the additional

income, all the court has is the statement from the witness that he knows of this additional income. How the witness came to the knowledge that the deceased earned the specific amount of US $18,000 per year was not given in evidence. I accept the evidence that the deceased did private work, and must have earned an income in addition to his annual salary; but I do not, for the reasons above, accept the specific amount of US $18,000 claimed by the witness.

41. There is further evidence that the deceased spent approximately US $2200 each month out of his salary to pay his mortgage and utility bills. He also paid US $7175 per year for his son's tuition at the Claudia Academy in Florida. There is evidence that beginning next year the tuition will increase to $9000 US per year. The fourth claimant testified that the deceased took care of the financial and other needs of his son. Apart from the tuition fees, the deceased also had medical coverage and dental coverage for him and his son at a cost of US $2003.30 and US $120 respectively per annum. Details of the other needs, such as food, clothing, recreation, and so on were not given by this witness. Such details would have given the court a better idea of the amount of dependency in relation to the son.

42. The 4th claimant also testified that the deceased had promised to take care of him and the 5th claimant in their advanced age or retirement. Each year according to the 4th claimant the deceased paid about US $3000 for vacation for his parents and he assisted them financially with respect to their maintenance and health care. Once again details

of expenditure with respect to the maintenance and health care were not given by the witness.

43. The No. 4 claimant at the date of the hearing said in evidence that he was not retired, but was unemployed. In his witness statement dated November 2009 he swore that he was a businessman. The court is not aware of the nature of his business and financial returns, if any, therefrom. His wife, the mother of the deceased, is employed as a clerical assistant in the health industry, but once again her salary and benefits, if any, and the duration of her employment, were not given.

44. I have no evidence of the average weekly or monthly financial contribution the deceased made for the maintenance of his son and his parents. Since the death of the deceased, the son has been residing with the parents of the deceased. Prior to his death, the son resided with his father. The deceased paid a mortgage, so it may appear that he lived with his son in his own home rather than a rented property.

45. I have to determine the multipland or the amount of dependency for the dependants at the date of death. I have to determine what percentage of the deceased net income he would have spent exclusively on himself and deduct that from the net income, and the remainder would be the multipland. Mrs. McSweaney McKoy, in an impressive argument, urged the court to accept a multipland of two thirds of the deceased yearly net income, on the premise that the deceased would have spent exclusively on himself one-third of the said income. Reliance was placed in support of this argument on

views expressed by O Connor LJ in ***Harris v. Empress Motors Ltd. 1983 3 A.E.R. 561, at p 566*** where his Lordship said that the court had worked out a simple solution to the problem of calculating the net dependency under the Fatal Accident Acts in cases where the dependants were wife and children. His Lordship continued:

> "In times past the calculation called for a tedious inquiry into how much housekeeping money was paid to the wife, who paid how much for the children's shoes etc. This has been swept away and the modern practice is to deduct a percentage from the net income figure to represent what the deceased would have spent exclusively on himself. The percentage have become conventional in the sense that they are used unless there is striking evidence to make the conventional figure inappropriate because there is no departure from the principle that each case must be decided on its own facts. Where the family unit was husband and wife the conventional figure is 33%."

46. In Morales De Habet above Barrow J, as His Lordship then was, said:

> "The treatment in McGregor on Damages, 16th ed., at paragraph 1766 indicates that a pattern has developed of expressing the annual dependency as a percentage or as a fraction of the deceased's annual earnings. This has become, as a conventional figure, 66 and 2/3 percent of earnings for the dependency of a wife alone, 75 percent of earnings for a widow and children."

47. The teachings of their Lordships in the above mentioned cases were with reference to dependants who were spouses and children of the deceased. The dependants in this case before me are the elderly parents and a minor son, of the deceased. I do not think that their Lordships intended that the conventional percentage of two thirds should apply in the context of dependants who are aged parents and a minor son of the deceased. And the reason may be that parents, perhaps unjustifiably, do not attract generally the same amount of financial maintenance and support from their children, as the wife and children would receive. Persons tend to pay more financial support for their spouses and children, rather than to their parents. And their Lordships did enter a caveat to the conventional figure to the effect that "each case must be decided on its own facts.".

48. It would have been a simple exercise to arrive at the multipland if I had evidence of the specific amount the deceased would have spent exclusively on himself. We know from the evidence that the deceased spent approximately US $2200 per month for his mortgage and utility bill – US $26,400 per year. He also spent an amount on his medical and dental care as we saw above. In ***Morales De Habet*** there was, as in this case, no evidence to indicate what sums were spent on the different aspects of living expenses. In that scenario, the court in ***De Habet*** followed the conventional approach and used a multipland of 75% of the deceased net income where the dependants were a widow and two children. For the reasons given above, I do not think that the

conventional figure should be used where the dependants are the parents and son of the deceased.

49. Considering all the matters mentioned above, including my finding that he must have earned some income from his private work, I decide that the deceased would have spent exclusively on himself fifty percent of his net annual income earned at Walgreens, resulting in an amount of dependency of fifty percent of that income. His net annual income at Walgreens at the time of death was US $41,263. Fifty percent of that is US $20,631.50. The amount of dependency or the multipland is US $20,631.50 per year. The multiplier of 11 must be divided between the date of the accident and the judgment, that is 2 years and 5 months, and the future years would be 8 years and 7 months.

50. The Nos. 3, 4, and 5 claimants/dependants are entitled to damages using a multiplier of 11 and a multipland of US $20,631.50 per annum as follows:

US $20,631.50 x 2 years, 5 months	=	US $49,859.41
Plus interest of 6% per annum on the total	=	US $2,991.56
US $20,631.50 x 8 years, 7 months	=	US $177,086.87
	Total	US $229,937.84
		or
		BZ $459,875.68

51. In accordance with section 12 of the Torts Act, the damages are to be divided between the dependants in the following shares:

Ralph Balderamos III	(child of deceased)	70%	= US $160,956.48 or BZ $321,912.96
Ralph Balderamos 1	(father of deceased)	15%	= US $34,490.67 or BZ $68,981.34
Hazel Balderamos	(mother of deceased)	15%	= US $34,490.67 or BZ $68,981.34

52. I accept for loss of expectation of life the amount of BZ $3,500. I also accept the funeral expenses claimed in the amount of BZ $31,394,78 representing the funeral, burial plot, transportation of the body from Belize to the U.S.A. and the cost of the Memorial Service. I do not make an award for telephone calls or attorney fees. I therefore award against the defendants to the Nos. 3, 4, and 5 claimants the additional sum of BZ $34,894.78 for loss of expectation of life and funeral expenses to be paid by the defendants.

53. **Conclusion**

I therefore make the following orders:

1. The defendants shall pay to the Nos. 2, 3 and 4 claimants/dependants the sum of US $229,937.84 or BZ $459,875.68 damages for causing the death of the deceased by negligence and neglect.

2. The said damages shall be divided amongst the said dependants in the following shares:

(a) Ralph Balderamos III (child of deceased) 70% = US $160,956.48
or BZ $321,912.96

(b) Ralph Balderamos 1 (father of deceased) 15% = US $34,490.67
or BZ $68,981.34

(c) Hazel Balderamos (mother of deceased) 15% = US $34,490.67
or BZ $68,981.34

3. The defendant shall pay to the Nos. 3, 4 and 5 claimants the sum of BZ $34,894.78 for loss of expectation of life and funeral expenses.

4. I award costs to the Nos. 3, 4, and 5 claimants, to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
18th February, 2010