THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE A.D. 2024

CLAIM No. CV0324 of 2024

BETWEEN:

[1] DAMARIS MISHELL PINEDA
[2] BRANDON NOEL PINEDA
(infants by their mother and next friend
DAMARIS RUBY AYALA)

Claimants

and

[1] ALEJANDRO HERNANDEZ

First Defendant

[2] HEINRICH REMPEL

Second Defendant

[3] ROSALBA PINEDA
(in her own right and as next friend of her minor
children DANIEL PINEDA and LYANNIE PINEDA)

Intervening Parties/Applicants

Appearances:

Mr. N.V. Dujon for the Claimants

Mr. Estevan Perera for the Defendants

Mrs. Ashanti Martin and Ms. Erin Quiros for the Intervening Parties/Applicants

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2024: December 11;

2025: January 09;

February 19.

RULING

Civil Practice & Procedure – Fatal Accident Claim – Sections 9, 10 & 11 of the Torts Act – Dependency Claims Where There is No Executor – Separate Dependency Claims Brought – Whether Separate Dependency Claims Can be Filed Where There is No Appointment of an Executor to the Estate of a Deceased Person – Section 11 Proviso –

Limitation Period – Addition of Parties – CPR 19.2(3) & 19.3 – Abuse of Process – Application for Court's Approval of Settlement Involving Minors – CPR 23.12(1).

[1] **ALEXANDER, J.**: There are two applications before the court, and both are disposed of on terms as set out below.

[2] The first application was filed on 20th November 2024 by the claimants in Claim No. 324 of 2024 ("Claim No. 324") for the court to approve a consent order, settling the dependency awards of the minors in that claim. Claim No. 324 is a dependency claim of two infant children of the deceased, Mario Noel Pineda ("the deceased"), which was filed by their mother and next friend Damaris Ruby Ayala. The parties in Claim No. 324 settled the dependency awards for those infants out of court but now require the court's approval to make the payments.

[3] The second application was filed by the intervening applicants through Mrs. Rosalba Pineda who, in her own right and as next friend of the minors Daniel Pineda and Lyannie Pineda, applied for these applicants to be added as parties to Claim No. 324. Mrs. Rosalba Pineda is the lawful wife of the deceased. The second application was filed on 28th November 2024, as an urgent notice of application for joinder by Mrs. Rosalba Pineda and her minors to Claim No. 324. The purpose of the joinder application is for the court to determine the dependency of Mrs. Rosalba Pineda and her minor children simultaneously with all other dependents and so that the court would have all issues in dispute before it in a single claim.

[4] Mrs. Rosalba Pineda stated that the determination of the dependency claims of her minor children and herself is in jeopardy if the joinder application is refused, as statute does not allow for more than one dependency claim to be filed where there is no executor appointed to an estate of a deceased person. Mrs. Rosalba Pineda relies on s.11 of the Torts Act Chapter 172 R.E. 2020 and Rules 19.2(3) & 19.3 of the Civil Procedure Rules 2005 ("CPR").

[5] I decline to make both orders as sought for the reasons given below. The Torts Act prescribes how dependency claims are made and the manner of distribution of the compensation. Section 12 of the Torts Act specifically directs how the distribution of the damages for dependents of the deceased is to occur, mandating that it be divided amongst all parties for their benefit in the shares as directed by the court. Section 12 of the Torts Act contemplates a single distribution pool from which dependents are to benefit, not multiple distribution streams. All dependency claims are to be made within the statutorily prescribed limitation period of twelve months to facilitate this distribution.

[6] Contemporaneously with the joinder application, Mrs. Rosalba Pineda also filed a separate dependency claim, Claim No. 765 of 2024 ("Claim No. 765"), on behalf of herself and her minor children. Claim No. 765 was filed within the limitation, and by purported dependents, in order to preserve their cause of action.

[7] I find that it is not an abuse of process for Mrs. Rosalba Pineda to have brought the joinder application while simultaneously filing Claim No. 765. In my judgment, the claimants in Claim No. 765 are entitled to bring a claim to determine their dependency on the deceased, which must be proved to the satisfaction of the court. Moreover, as at the date of this hearing, Claim No. 765 was not assigned to a judge. The benefit of filing Claim No. 765 is validated by the present dispute, where some dependents refused to join the others in bringing a collective claim, but acted to their advantage and filed a separate dependency claim before the other dependents. Impliedly, the claimants in Claim No. 324 assumed that they were entitled to pursue their dependency claim separately and/or ahead of the other dependents rather than to adopt a collective approach.

[8] The filing of Claim No. 324 was done intentionally and for the stated purpose of complying with the statutory timelines while simultaneously flouting the need for a collective approach to dependency claims. This is clear as at all material times, the dependents in Claim No. 324 were in communication with the other dependents/their counsel. Despite this, they made no mention of the existence of other dependents in their pleadings. In my view, the dependents in Claim No. 324 had a duty of candour to the court to disclose the existence of all other dependents known to them at the time of the filing of Claim No. 324,

and/or to take *reasonable* steps to inform the other dependents of the intended dependency claim and invite their participation, if possible, in a collective dependency action. Their failure to disclose the existence of Mrs. Rosalba Pineda and her minors, while approaching this court to approve a settlement between the parties in Claim No. 324, does not prevent this court from allowing the second group of dependents to be interveners in Claim No. 324 or to have their dependency on the deceased determined. Mrs. Rosalba Pineda and her minors have the same right as all dependents of the deceased to a determination of their dependency and to share in the distribution pool in section 12 of the Torts Act. The proviso in section 11 of the Torts Act does not remove this right from them. And the consent order in Claim No. 324 (yet to be approved) does not bar the determination of the dependency of Mrs. Rosalba Pineda and her minors.

[9] I therefore find, and so rule, that the dependency claim of Mrs. Rosalba Pineda and her minor children is not excluded by the section 11 proviso. On a plain reading of section 11 of the Torts Act, it is clear from the language that the section 11 proviso is operating to qualify the preceding part of the enactment and does not oust the right given to a dependent in the substantive provision to file a dependency claim. The section 11 proviso performs a limiting or qualifying function to what precedes it. Stated differently, the proviso simply limits a dependent from making multiple dependency claims via different avenues for the same relief but not from making a dependency claim where an executor/administrator fails to file the action.

[10] I refuse the application for addition of parties as there is already a subsisting dependency claim, Claim No. 765, whose distribution must come from the same section 12 distribution pool. No consent order has been entered or approved, which in any event was open to be set aside. I will, therefore, stay the distribution in Claim No. 324, pending a determination of the division of the damages payable to **all** dependents, arising from the demise of the deceased.

[11] In light of my ruling, I will order each party to bear their own costs.

[12] I will refer to the first application as "the dependency approval application" or "the Ayala application" and the second application as "the joinder application" or "the Rosalba Pineda application". The applicants in the second application will be referred to as "the intervening applicants" or as "Mrs. Rosalba Pineda and her minors".

Background and Submissions

[13] The joinder application was filed as an urgent notice of application for the intervention of the court to add Mrs. Rosalba Pineda and her minors to Claim No. 324. It was filed eight days after the Ayala application for approval of a consent order was filed. Following the convening of a hearing on 11th December 2024, where partial oral arguments were heard, and in the face of heavy resistance by the parties in Claim No. 324 to the court granting the joinder application, I directed parties and the intervenors to file affidavits and speaking notes and adjourned the hearing for continuation on 9th January 2025.

[14] When the joinder application was further ventilated on 9th January 2025, Ms. Quiros, counsel for Mrs. Rosalba Pineda, indicated that she was now relying on Rules 19.2(3) and 19.3 of the Senior Courts Civil Procedure Rules 2025 ("SCCPR")[1] which came into effect on 2nd January 2025, as these Rules were indistinguishable from the previous CPR 2005 and so applicable to the joinder application. Ms. Quiros was directed to Part 75 (sic) of the SCCPR (really Part 72 Transitional Provision) that directs how proceedings that were filed before the commencement of the SCCPR are to be conducted. In my view, the joinder application was filed under the CPR 2005, and oral submissions were heard under those Rules. The continuation of the oral hearing after the commencement of the SCCPR did not make the SCCPR the applicable regime for disposal of the present application. The joinder application proceeded under the previous CPR 2005.

[1] The Senior Courts (Civil Procedure Rules) 2025 were gazetted on 2nd January 2025.

[15] At the continuation hearing, Ms. Quiros stated that the court has the power to add a party to a claim, with or without an application. There is no disagreement among the parties as to the interpretation of CPR 19.3.

[16] Ms. Quiros also asserted that section 11 of the Torts Act, in her view, directs the filing of only a single action for dependency (a collective claim), within twelve months of the deceased's death. Counsel's position is that statute requires the dependency of all claimants to be determined via one action and/or at the same time. If Mrs. Rosalba Pineda and her minors are precluded from being added as parties to Claim No. 324 then they would be at risk of not having their dependency judicially determined.

[17] Ms. Quiros pointed to the section 11 proviso, arguing that a refusal to add the intervenors (i.e. Mrs. Rosalba Pineda and her minors) to Claim No. 324 would severely prejudice them. It would effectively deny them the opportunity to have their dependency on the deceased determined. In any event, the intervening parties are necessary parties to Claim No. 324 as they are all dependents on the deceased. On these arguments, Ms. Quiros stated that the court ought to join the dependency claims of the intervening applicants to Claim No. 324.

[18] Ms. Quiros provided further context for the joinder application when she stated that a joint claim and settlement of all dependency claims were being discussed by all the dependents, when Claim No. 324 was filed. She also claimed that she was unaware that Claim No. 324 would be filed. She stated that it was this separate filing that forced the filing of the "urgent" application as well as Claim No. 765, which was filed before the expiry of the limitation period and to preserve the cause of action.

[19] Mr. Dujon, counsel for the claimants in Claim No. 324, resisted the application, arguing that the court ought not to delay the resolution of his claimants' dependency awards, which are settled and required only the court's approval. There is no dispute that the infants in Claim No. 324 are the children of the deceased and his dependents. Moreover, the issue of liability is not in dispute. Mr. Dujon asserted that the intervening applicants' dependency claims should proceed separately and not be tied to Claim No. 324. This

argument, however, does not change the fact that dependency claims are statutorily tied, especially given the single distribution pool in section 12 of the Torts Act. Nevertheless, I noted that there is a tacit acknowledgement here by Mr. Dujon that dependency claims can proceed collectively or independently. Further, Mr. Dujon pointed out that the intervening applicants have provided no evidence to make out their dependency in the affidavits in support of the joinder application; and it would be unfair to his claimants for the court to delay its approval of their dependency to give the intervening applicants time to put their house in order. Claim No. 324 is settled, and the settlement ought to be approved by the court.

[20] Mr. Perera, counsel for the defendants, posited that the application is an abuse of process. It ought to be dismissed, as the intervening applicants have filed a separate dependency claim, Claim No. 765, against the defendants for the same reliefs. The intervening applicants then failed to disclose Claim No. 765 to the court and parties in the joinder application nor when it first came up for hearing in December 2024. Further, the intervening applicants are in ongoing settlement discussions with the defendants, which they also have not disclosed. Mr. Perera lamented the lack of candour by the intervening applicants in this matter.

[21] In response, Ms. Quiros stated that an application for consolidation of both claims is contemplated and that a request will be made to have Claim No. 765 assigned to this court so that all issues could be disposed of together. Consolidation is not the issue before me nor is it relevant to my disposal of the current application, so that submission is ignored. Ms. Quiros stated that the intervening applicants were in settlement discussions with the claimants and defendants in Claim No. 324, when unknown to the intervening applicants, the matter was settled between the parties in Claim No. 324

[22] In my view, the existence of settlement discussions does not remove the duty of candour by applicants who approach the court. Further, the duty of candour rests on all parties. Mr. Dujon and his claimants in Claim No. 324 did not reveal the existence of other dependents of the deceased and/or that they were all engaged in settlement discussions involving all dependents.

[23] In further response, Ms. Quiros stated that she had made a request of Mr. Dujon for Mrs. Rosalba Pineda and her minors to be added to Claim No. 324 but got no answer. She also asked Mr. Perera for an undertaking that the defendants would treat with the dependency in Claim No. 765 separately and not raise jurisdictional issues, but the defendants have refused to give the undertaking. Ms. Quiros repeated that Claim No. 765 was filed within the limitation period to preserve the cause of action and so safeguard the dependency claims of the claimants in that claim. The intervening applicants would like an opportunity to have their dependency determined by the court simultaneously with all dependents or settled.

Issues

[24] I have identified the following as the main issues arising for resolution on the applications:

i. Whether in circumstances where there is no executor appointed to an estate of a deceased person only a single dependency action for all dependents is allowed to be filed? As a corollary question, what is the purpose and/or function of the section 11 proviso?
ii. Whether Mrs. Rosalba Pineda and her minors are entitled to be added as claimants to Claim No. 324 where the matter is settled between those parties but awaiting the court's approval of the infants' dependency awards?
iii. Whether the joinder application is an abuse of process?

The Legal Framework

[25] The law and pertinent rules that would frame the discussion of the above issues are:

The Torts Act

9. 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.

10. 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, but notwithstanding anything contained in the Limitation Act Cap. 170, no such action shall be commenced at any time later than twelve months after the death of such deceased person.

11. Every such action shall be brought by and in the name of the executor or administrator of the person deceased, but if in any case there is no executor or administrator of the person deceased, or if, there being such executor or administrator, no such action is, within six calendar months after the death of such deceased person, brought by and in the name of such executor or administrator, **the action may be brought by and in the name or names of all or any of the persons** (if more than one) for whose benefit the action is hereby given.

Provided that not more than one action shall lie for and in respect of the same subject matter of complaint.

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 jury may direct.** [My Emphasis.]

CPR 19.2

(3) The court may add a new party to proceedings without an application, if -

(a) **it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings**; or

(b) **there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue**.

…..

(6) The court may add, remove or substitute a party at the case management conference.

CPR 19.3

(1) The court may add, substitute or remove a party on, or without an application.

(2) An application for permission to add, substitute or remove a party may be made by -

(a) an existing party; or
(b) **a person who wishes to become a party.**

….

(6) Where the court makes an order for the removal, addition or substitution of a party, it must consider whether to **give consequential directions** about-
(a) filing and serving the claim form and statements of case on any new defendant;
(b) serving relevant documents on the new party; and
(c) the management of proceedings;
and subject to such directions, Rule 19.2(2) applies. [My Emphasis].

Analysis

Whether in Circumstances Where There is No Executor Appointed to an Estate of a Deceased Person Only a Single Dependency Action for all Dependents is Allowed to be Filed? As a Corollary Question, what is the Purpose and/or Function of the Section 11 Proviso?

[26] I consider the primary issue affecting the determination of both applications to be procedural, namely the manner of binging a dependency claim. It is a double-barrelled issue, given the existence of the section 11 proviso. I have set out at my paragraph 25 above section 11 of the Torts Act. It clearly stipulates who can bring a dependency claim in a wrongful death scenario, and the limitation for making that claim. It then provides a proviso, limiting the applicability of the section.

[27] Section 11 of the Torts Act makes crystal clear that all dependents are entitled to file a claim for the determination of their dependency. This right is given to dependents whether through the executor/administrator of the estate of the deceased or, if the executor fails to file the action within the statutory timelines, dependents have the authority to file a joint action and/or any dependent can make a claim to determine his dependency.

[28] A plain reading of section 11 of the Torts Act shows that the action that is filed by an executor is a collective claim to be made on behalf of all dependents. A similar right is given to dependents to bring an action collectively, where an executor fails to do so. Apart from the collective right of action, a right is also given to any of the persons claiming to be a dependent to file an action to determine his benefits where the executor fails to act.

[29] The substantive part of this section 11, therefore, gives a right of action to dependents, in the absence of a formal appointment of an executor/administrator or, if there is no dependency action filed by an executor within six months of the demise of the deceased. This is stated thus: "the action may be brought by and **in the name or names of all or any of the persons** (if more than one) for whose benefit the action lies." The dependents may, therefore, bring their claims collectively in the names of *all* dependents or individually that is "any of the persons" claiming a dependency from the deceased's wrongful death can file the action. It means that in circumstances where there is no executor or the executor fails to act, a dependent retains the right to file an action to determine his dependency. This right of a dependent to file a claim is made subject to the proviso to that section.

[30] In my view, the statutory right in the substantive part of section 11 of the Torts Act is both a collective right and an individual right. The section 11 proviso and its impact on the right given to dependents in section 11 must next be determined.

The Section 11 Proviso

[31] The section 11 proviso mandates that "not more than one action shall lie for and in respect of the same subject matter of complaint". The phrase "the subject matter of the complaint" refers to the wrongful death, giving rise to the cause of action.

[32] To be considered, therefore, is whether Parliament by this section 11 proviso intended to or actually did take away the right given to a dependent in the main provision, to file an action to determine his dependency, where an executor failed to act or, as in the current

proceedings, where some dependents have stolen a march and filed a non-collective dependency action? I find helpful at this stage to define the term "proviso" to get an understanding of its purpose and/or function in an enactment.

[33] In **Local Government Board** v **South Stoneham Union,**[2] Lord Macnaghten described a proviso as "a qualification of the preceding enactment which is expressed in terms too general to be quite accurate". A proviso is, therefore, a legislative device that operates to qualify, make conditional or limit the rights given in the preceding part of the enactment. A proviso does not control the construction of the main provision in the statute. It qualifies it.

[34] The learned authors of **Statutory Interpretation**[3] have explained how a proviso is meant to function thus:

> "Enactments containing provisos must be construed as a whole and **it is not permissible to separate the principal part of the enactment from the proviso**. Nevertheless, the ordinary reader would not expect the proviso to control the construction of the main provision. Warnings have from time to time been given **against allowing a proviso to exercise an undue influence over the construction of the main section**." [My Emphasis].

[35] I have already stated above that the right to file a dependency action is, on a clear interpretation of the substantive part of section 11 of the Torts Act, both a collective and an individual right, where an executor/administrator fails to act. Therefore, a proviso is not used to remove a statutory right in the main provision nor is it a separate or standalone enactment. Its scope is affected by the substantive or main provision, with the proviso operating to qualify any ambiguity in the main enactment. This was stated in the case of **Thompson** v **Dibdin**,[4] which though not of similar facts as the present matter before this court, does provide useful guidance on the function of provisos.

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[2] [1909] AC 57 at 62 (HL); see also Jennings v Kelly [1939] 4 AER 264; as well as the article titled "Proviso in Legislative Drafting" in Journal of the Indian Law Institute Vol. 34, April-June 1992 No. 2.
[3] Statutory Interpretation by Sir Rupert Cross, Professor John Bell and Sir George Engle, Oxford University Press, 2006, 3rd Ed.
[4] [1912] AC 533.

[36] In **Thompson**, Lord Ashbourne stated:

> "… A proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso, … It is not a separate or independent enactment. **The words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context**."[5] [My Emphasis].

[37] It seems to me, therefore, that the section 11 proviso, engaged in the current proceedings, operates as a *limiting* mechanism, to prevent a dependent from filing "more than one action" regarding the same subject matter or same wrongful death. In my judgment, the section 11 proviso operates to *limit* an individual dependent, or dependents collectively, from filing a joint claim, whether via the executor or together with other dependents, and then bringing an individual dependency action. It is this mischief or multiplicity of actions that are addressed by the section 11 proviso. The section 11 proviso did not strip away the right of "any of the persons" claiming a dependency to bring an action to determine his dependency. In my view further, Parliament does not act in vain and would not with one hand give a right to a dependent(s) in a main provision and then, by the sleight of the hand, strip the dependent(s) of this right via a proviso.

[38] In effect, the section 11 proviso actually codifies the common law and the rule in **Henderson** v **Henderson**[6] that prohibits a multiplicity of claims being filed, where a relief that could have been sought in one action was not but then is sought by the bringing of another action. Essentially, a dependent is prohibited by the section 11 proviso from seeking compensation for the deceased's death collectively with other dependents (through the executor or jointly as dependents) and then simultaneously through the bringing of his own individual action.

[39] The section 11 proviso did not and cannot take away the right given to a dependent in the substantive part of the section to bring his claim. This is supported by section 12 of the Torts Act, which stipulates that all dependents have the right to benefit from the

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[5] Thompson supra, at page 544.
[6] Henderson v Henderson (1843) 3 Hare 100.

damages resulting from the death of a deceased, with such shares to be "divided amongst the parties" as directed by the court. The section 12 damages would depend on the dependents proving their dependency collectively or individually but not by bringing multiple actions.

[40] The intervening applicants in this matter did not bring a claim to determine their dependency prior to Claim No. 765. Their application for a joinder or to be intervenors is not a previous action that is captured by the **Henderson rule** that stated:

> "… the court requires the parties to the litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case."

[41] The joinder application is their attempt to have a collective determination of their dependency, it is not double litigation or re-litigation or piecemeal litigation. Failing the obtaining of the order for joinder, by consent or otherwise, any dependent retains the right to a determination of his dependency.

[42] In the Court of Appeal decision of **Cooper** v **Williams et al**,[7] involving a fatal accident claim that was settled in favour of an infant but without including the deceased's widow, Lord Denning in interacting with a similar, but not replicative, provision in the Fatal Accidents Act 1846[8] stated that:

> "I am satisfied that if one of the dependants brings an action under the Fatal Accidents Act (which is the only action that can be brought) it is the duty of that person (just as it is clearly the duty of the executor or administrator) to take all reasonable steps to see that all those dependants of the deceased person who desire to claim for their loss are informed of the action and named as persons on whose behalf it is brought."

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[7] [1960] C. No. 1112; [1963] 2 Q.B. 567.

[88] Fatal Accidents Act, 1846, s.2 provides "… Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought …". Section 3 states. "Provided always … that not more than one action shall lie for and in respect of the same subject matter of complaint. …" [My Emphasis].

Lord Denning's comment in **Cooper** must be viewed in the context of the language of sections 2 and 3 of the UK Fatal Accidents Act 1846 being slightly different to section 11 of the Torts Act, as the latter actually makes provision for dependents to bring a collective action as a group in the absence of action being taken by an executor/administrator as well as it gives any dependent the right to file a claim to determine his dependency. Nevertheless, Lord Denning's pronouncement is helpful, on the steps to be taken when a collective statutory action is required for wrongful death complaints.

[43] In my view, the resistance of the parties in Claim No. 324, in facilitating a collective action, does not exclude the dependency action of Mrs. Rosalba Pineda and her minors. Dependents in a wrongful death action ought to understand that they cannot out race other dependents, in the context of the section 12 distribution pool that all dependents must share in or benefit from.

[44] Respectfully, I do not agree with the interpretation advanced by Ms. Quiros concerning the section 11 proviso to wit that Rosalba Pineda and her minors are somehow stymied from having their dependency determined because of the non-collective approach of the applicants in Claim No. 324. Therefore, I will order that Claim No. 324 be stayed to allow the defendants the opportunity to assess the share of the damages due to the intervening applicants, in the context of all dependents.

Whether Mrs. Rosalba Pineda and her Minors are Entitled to be Added as Claimants to Claim No. 324 Where the Matter is Settled Between Those Parties but Awaiting the Court's Approval of the Infants' Dependency Awards?

[45] There is nothing that bars the granting of the order for addition of parties but for several reasons, I decline to make the order. To be clear, the power of the court to make an order for the addition of a party to proceedings before it is not disputed.

[46] The intervening applicants' request to be added to Claim No. 324 would normally be favourably considered where it is "desirable" to do so. The desirability of adding a party would arise where issues involving the new party are connected to the dispute before the court or the addition is necessary to enable a court to resolve all disputes in the proceedings before it. The Rules also empower the court, when adding parties to proceedings, to give consequential directions for filing and serving the claim and other documents as well as for case management of the matter.

[47] Regarding Claim No. 324, the pleadings were closed, and the matter was settled in principle without any case management conference being convened. However, the final consent order requires the court's approval. Given the stage of the proceedings, where there is no final order[9] entered, there is nothing that bars the court from adding parties to the claim if the addition is required to resolve all issues before it. The court retains full discretion to make consequential orders including on the pleadings in such cases.

[48] In my view, Mrs. Rosalba Pineda and her minors, who are dependents of the deceased, are entitled as of right to apply to be named as parties in Claim No. 324 or as dependents on whose behalf this claim ought to have been brought since there was no executor in the present case. A dependent's right under section 11 of the Torts Act is clearly categorised as the right (i) to file an action in his own name (if he is the only dependent); or (ii) if there are more than one dependent to file an action on behalf of himself and other dependents or (iii) to have an action be filed on his behalf by other dependents. The choice/decision of the parties in Claim No. 324 to proceed through a non-collective dependency action is not detrimental to a dependent's right to have his dependency determined. It is an inconvenience and does not fulfil the overriding objective of the Rules that require counsel to help the court to manage its resources efficiently, in realising a just resolution of matters before it. It is also for this purpose that the parties in Claim No. 324 owed a duty of candour to the court and ought to have disclosed the existence of other dependents.

[9] Claim No. CV163 of 2022 [2] Byron Lee Canto v Minister of Natural Resources, Petroleum & Mining et al where it was held that unless a final order exists, an order for addition of parties is available.

[49] In the present proceedings, however, any order for the intervenors to join Claim No. 324 would require amendments to the pleadings to set out the particulars of their claims and then parties will have to await the outcome of the intervenors' dependency. A consent position has already been arrived at for the initial group of dependents in Claim No. 324. Instead of a settled claim, that matter would now have to be placed on the litigation track. However, and relatedly, these intervening applicants have already filed Claim No. 765 to determine their dependency.

[50] On the present factual scenario, I do not consider it desirable to grant the joinder application and I decline to make the order. The intervening applicants are not disadvantaged, as their dependency can be determined in Claim No. 765.

Whether the Joinder Application is an Abuse of Process?

[51] I do not find that the joinder application is an abuse of process because Mrs. Rosalba Pineda and her minors have also filed Claim No. 765.

[52] Mrs. Rosalba Pineda and her minors are entitled to make a claim as dependents, whether collectively with other dependents or as filed in Claim No. 765. Given that the section 12 distribution pool, from which their claim is to be satisfied is the same from which the dependents in Claim No. 324 must share, the intervening applicants are entitled to ask also for consideration of their dependency simultaneously with the claimants in Claim No. 324. This does not make their application an abuse of process nor does it offend the **Henderson** rule. The defendants' liability is not in issue so they cannot justly argue that the attempt by Mrs. Rosalba Pineda and her minors to have a collective disposal of their claim is oppressive or an abuse of process or that it subjects the defendants to a second action or even piecemeal litigation. The joinder application does not fall into the category of abuse of process cases identified by the Court of Appeal in **Davies** v **Carillion Energy Services Ltd et al**.[10]

[10] [2018] 1 WLR 1734.

[53] Further, if as in this case the joinder is not consented to or the order is refused, Mrs. Rosalba Pineda and her minors are entitled to ask the court to hold its approval of the consent order until their dependency claim is considered. It is unfortunate that the parties, on advisement of their counsel and in light of the overriding objective, did not find appropriate to have a collective disposal of the dependency claims. Regrettably, the approach by counsel and parties in these proceedings does not help the court in furthering the overriding objective to do justice to all parties.

[54] In the circumstances, I find that the joinder application raises a procedural complaint and is not an attempt to bring a separate action simultaneously with Claim No. 765 or to have a multiplicity of claims before me. By their joinder application, the intervening applicants seek a collective consideration of their dependency claims with dependents in Claim No. 324, which they are within their right to do.

[55] I, therefore, accepted the submissions of Ms. Quiros that there is one distribution pool and/or one set of damages for the accidental death of the deceased and finding themselves in the procedurally perplexing bind, where one set of dependents stole a march on the other dependents, they were forced to make the application and filed Claim No. 765 to preserve their cause of action. I disagree with Ms. Quiros though that, in the present circumstances, the section 11 proviso excluded Mrs. Rosalba Pineda and her minors' rights to bring and have their dependency claim considered separately. In my view, the joinder application falls outside the section 11 proviso, which in any event does not exclude their rights as dependents. Therefore, I could find nothing wrong with the procedural steps taken by Mrs. Rosalba Pineda and her minors to get a collective consideration of their dependency via the joinder application. The resistance of Mr. Dujon and Mr. Perera to the collective approach to bringing the dependency action is unfortunate.

[56] Finally, liability is not in dispute in this matter nor is there a dispute as to what constitutes the subject matter of complaint. It is understood that Mrs. Rosalba Pineda and her minors will have to prove their dependency in the ordinary way, but they are entitled to share in

the distribution pool once dependency is established. As their dependency action is likely to affect the distribution pool in section 12, I find no harm in the final order sought in Claim No. 324 awaiting the outcome of the pending dependency action.

[57] In light of my findings above, I do not find it necessary to deliberate further on the issue of abuse of process.

Costs

[58] I have considered the general rule that obtains in making costs orders. Having declined to grant the orders sought in both applications, I will order parties to bear their own costs.

Disposition

[59] It is ordered as follows that:

1. The application for joinder is refused with parties to bear their own costs.
2. The approval of the dependency claims of the infants is stayed, with the distribution to await the outcome of the pending action in Claim No. 765 with no order as to costs.
3. The court seized of Claim No. 765 is to be apprised by the parties in that claim of this order in Claim No. 324.

Martha Alexander
High Court Judge