

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry, San Fernando

H.C.A. 3823 of 1995 [POS]

H.C.A. S-925 of 1995

BETWEEN

PEARL ANDREWS mother and dependant of SELWYN ANDREWS (hereinafter referred to as the deceased) who died on the 10<sup>th</sup> day of August, 1994 on behalf of herself as a dependant of the deceased and on behalf of KEVON ANDREWS (born on the 23<sup>rd</sup> day of March 1992), KEYON ANDREWS (born on the 14<sup>th</sup> day of July 1993) and KURNISHA ANDREWS (born on the 6<sup>th</sup> day of October 1994) being the lawful children and dependants of the deceased

Plaintiffs

AND

THE ATTORNEY GENERAL  
OF TRINIDAD AND TOBAGO

Defendant



Before The Hon. Madam Justice C. Pemberton

Appearances:

For the Plaintiff: Mr S. Gopaul-Gosine

For the Defendant: Mr R. Moore

2005: March 1

2005: April 8

2005: April 12

2005: April 19

2005: April 21

2005: April 25

2005: July 7

2006: January 12

2006: June 8

**DECISION**

[1] On 5<sup>th</sup> August 1995 the deceased SELWYN ANDREWS was taken into custody by the Police and housed at the Criminal Investigations Department (CID), San Fernando. Whilst there, certain events took place which caused his transfer to the San Fernando General Hospital. He died on 10<sup>th</sup> August 1995 whilst at hospital.

[2] His mother, Ms. Pearl Andrews and dependent children, Kevon Andrews, Keyon Andrews and Kurnisha Andrews brought this action against the Attorney General under the **COMPENSATION FOR INJURIES ACT Chap. 8:05** ("the Act") for damages for Trespass to the person, Negligence, Aggravated and/or Exemplary Damages, Interest and Costs. The action was defended and the matter set for trial. The trial commenced but had to be aborted. The matter came before this Court for fresh trial and after several appointments, the parties entered a Consent Order in the following terms:

- (1) Judgment is entered for the Plaintiffs as against the Defendant with respect to the Plaintiff's claim for negligence as being the cause of the death of the deceased Selwyn Andrews;
- (2) That Damages be assessed by a Judge in Chambers at the High Court of Justice, Sub-Registry, San Fernando on a date to be fixed in July 2005 by the Assistant Registrar;
- (3) That the Defendant to pay the Plaintiff's costs of this action certified fit for Advocate Attorney at Law to be taxed in default of agreement.

[3] In order to expedite matters, and taking into account the age and failing health of Ms Pearl Andrews, on 7<sup>th</sup> July 2005, I proceeded with the concurrence of Attorneys-at-Law for the parties to direct this course of action. The Directions read:

- (1) Leave granted to the Plaintiffs to amend the Statement of Claim in the manner shown;
- (2) Re-Service be dispensed with;
- (3) Plaintiff to file and serve affidavit with respect to the Assessment of Damages herein within 7 days of the date of this Order;
- (4) Leave to the Defendant to cross-examine by way of written questions.
- (5) Questions to be filed and served within 7 days of the receipt of the affidavits;
- (6) Thereafter parties to file and serve Written Submissions within 28 days;
- (7) Decision reserved;
- (8) Liberty to apply.

[4] On 12<sup>th</sup> July 2005, two affidavits were filed, one by Ms. Pearl Andrews and the other by Ms. Deborah Reid. On 25<sup>th</sup> August, the Plaintiffs filed Written Submissions. On 23<sup>rd</sup> January 2006, the Defendant filed Cross-examination questions for both Ms. Andrews bothering to seek leave of the Court. There was no response from the Plaintiffs. On 10<sup>th</sup>

March 2006, the Defendant filed its submissions, again out of time and without seeking leave of the Court. In the interests of justice, I decided to study the papers presented and now proceed to give my decision.

[5] **DEFENDANT'S SUBMISSIONS**

**FINDING OF DEATH BY SUICIDE**

I have decided to deal with the following issues before going further. It will be recalled that this Assessment of Damages proceeded on the basis of an Approved Consent Order entered into by the Parties through Counsel. The terms of this Order were set out above<sup>1</sup>. If the Order is examined one will see that judgment was entered for negligence against the Defendant. There was no trial. There was no finding of death by suicide. There was no evidence of this led by the Defendant at this stage since no affidavit was filed on its behalf. I therefore shall not consider, moreover accept the Defendant's submissions on this matter. I say no more.

[6] **NON-COMPLIANCE WITH ORDER 77**

Mr. Moore further submitted that I should consider only the claim made by Ms. Pearl Andrews on her own behalf since the claim for the minor children runs afoul of **RULES OF THE SUPREME COURT (1975)**. I must say that it was rather disconcerting that this issue was being addressed at this stage. The court records do not reveal that this issue was raised before now. It certainly was not a feature of the meetings of this court. In any event, Rules of Procedure are meant to govern how a party who has a claim to prosecute or defend should approach the Court. It is true that non-compliance in some instances would be fatal, but that is not the case in all instances. In any event, there is always a residual discretion in the court to allow the parties to correct the lapses.

[7] An action brought under the Act is brought "for the benefit of the dependents" of a deceased person and in this instance "by and in the name of any of the dependents" of the

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<sup>1</sup> See p. 3 *Op. cit*

deceased person<sup>2</sup>. It is obvious that the Plaintiffs, other than Ms. Pearl Andrews were minors at the time of filing of this action and certain steps ought to have been taken. It is undeniable as well that the proper course would have been to follow Order 77 and have the action for the children brought by Ms. Andrews or any other person as their next friend. Does that mean that I should not allow their claim as Mr. Moore advocates?

[8] A situation such as this is not rare. Even though this irregularity is one that cannot be waived, and I must address the issue once I am cognizant of it, the court has residual powers to save these actions<sup>3</sup>.

In keeping with proper practice, I shall stay the proceedings until a next friend is added. I shall give the appropriate directions at the end of this decision. I shall however consider the submissions and claims made by the parties.

[9] PARTIES' CASE

#### PLAINTIFFS' CASE

The Particulars filed with the Claim pursuant to the Act read:

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<sup>2</sup> See Section 4 of the Act.

<sup>3</sup> See SUPREME COURT PRACTICE 1993 ORDER 80 para. 80/2/1 which reads "...The overriding rule relating to the commencement of any civil proceedings by an infant or a patient is that he can only do so by his next friend. The words of the rule "may not" in r. 2(1) are equivalent to "shall not". Once the Court is apprised of the fact that the plaintiff is an infant, though suing as an adult without a next friend, it will stay all further proceedings unless and until a next friend is added. The words in rule 2(1) "may not" bring or make a claim" refer, not only to the commencement, but also to the continuance of any proceedings.

Accordingly, if an infant plaintiff sues as an adult, without a next friend, notice of intention to defend should be given and a summons should then be taken out under O. 12. r. 8 asking that a next friend should be added or the writ set aside, and that the solicitor of the plaintiff should pay the costs; cf *Ferne v. Gorlitz* [1915] 1 Ch. 177; *Cooper v. Dummett* [1930] W.N. 248. In view of the imperative terms of r. 2(1) above it is doubtful whether this irregularity could be waived by a notice of intention to defend being given which is not followed by a summons under O. 12 r. 8 objecting to the irregularity (see however, *Ex p. Brocklebank* (1877) 6 Ch. D. 358)."

See further para. 80/2/3 which reads: "In the Q.B.D. the name of the next friend should appear in the title as well as in the body of the writ of summons, e.g. "John Jones, an infant, by William Jones his (father and) next friend". It is also the practice to allege in the statement of claim the fact that the plaintiff is an infant suing by his next friend.

This action is brought on behalf of the Plaintiffs herein as the mother and children of the decedent respectively and the dependents of the decedent. The decedent was aged twenty-four (24) years at the time of his death. He was a nut vendor and labourer earning income of \$1,400.00 per month. He was the main support of the aforementioned dependents who by his death have lost such support. The value of the dependency was \$1,000.00 per month.

#### **DEFENDANT'S CASE**

The Defendant makes no admission as to any loss or damage ....

#### **[10] EVIDENCE**

##### **MS. PEARL ANDREWS**

Ms. Andrews deposed that she was the decedent's mother. He was twenty-four (24) years of age at the time of his death. She deposed that out of his earnings as a Mason and a Peanut Vendor he gave her between \$50.00 - \$60.00 per week for her maintenance and upkeep. This he did for many years when he worked. As a result of his death on 10<sup>th</sup> August 1994 she suffered the loss of this sum. She further deposed as at 25<sup>th</sup> August 2005, that she was seventy-six (76) years of age and not enjoying good health. She further deposed that she paid for the funeral for her son that amounted to \$4,700.00. She presented no bills but asked the court to deem it a reasonable sum.

[11] I have alluded already to the history of these proceedings and state that the only evidence for my consideration was the affidavit as filed by Ms. Andrews.

##### **[12] DEBORAH REID**

Ms. Reid deposed that she was the mother of the infant children Kevon, Keyon and Kurnisha Andrews. She was Mr. Andrews's common-law wife. She put the value of her children's dependency at \$800.00 per month. She continues to suffer that loss.

[13] The only evidence for my consideration was that as filed by Ms. Reid.

[14] The Defendant did not file any affidavits seeking to put their case before me. In other words, I had no other evidence to counter that filed by the Plaintiffs. In fact I received no assistance from the Defendant in that regard. It was left therefore to me to weigh the evidence, determine the facts and arrive at a conclusion.

[15] **WRITTEN SUBMISSIONS AND LAW**

#### **PLAINTIFF'S SUBMISSIONS**

Mr. Gopaul Gosine used the figure \$1,400.00 for the Deceased's total monthly earnings as per the Statement of Claim. He urged me to accept the value of the dependency in the range of \$50.00 - \$60.00 per week. He suggested a multiplier of eleven (11) representing the years of the actual loss. He calculated the loss as \$27,500.00. He further submitted that a further three (3) years should be added, based on Ms. Andrews's age and present health. The total claim he puts at \$35,000.00 plus interest at 12% from the date of filing of the Writ of Summons.

[16] He submitted further that I should allow the full claim of \$4,700.00 being funeral expenses on the basis that the amount claimed is reasonable and that this ought to attract a rate of interest of 6% from 19<sup>th</sup> August 1994 to date. No Authorities were cited as the basis of these submissions.

[17] **DEFENDANT'S SUBMISSIONS**

This was disputed. Using the dicta of Moosai J. in **VEDA MOHAN v CIL**<sup>4</sup>. Mr. Moore felt that the figure claimed should be discounted by \$10.00 per week. Further he said that the multiplier should be reduced to nine (9) for the reason that the contingencies of life, "possibilities that the deceased might have died earlier than expected ...". Mr. Moore then embarked upon a voyage into the realm of speculation and sought to introduce facts and arrive at conclusions unsupported by evidence. We all should operate on the basis that a

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<sup>4</sup> **VEDA MOHAN v CARIBBEAN ISPAT LIMITED HCA 924 of 1990**

person is innocent until proven guilty. There is no evidence of any conviction of the deceased and details as adverted to and conclusions arrived at, such as those stated in Mr. Moore's Submissions must be refrained from at all costs. Based on these unsupported facts Mr. Moore submitted that Ms. Andrews's entire claim should amount to \$23,760.00. Mr. Moore further reduced the claim for the Funeral Expenses to \$3000.00, which he claims, is reasonable. This contention was unsupported by any evidence.

[18] **ANALYSIS AND CONCLUSIONS**

Whilst I fully endorse the reasoning and conclusions of my brother Moosai J. in the **MOHAN CASE**<sup>5</sup>, this case is immediately distinguishable. That claim was pursued under Section 27 of the **SUPREME COURT OF JUDICATURE ACT Chap. 4:01** for the benefit of the estate of the deceased and an action for compensation under The Act. Both sides agreed that the award under the Act would be considerably less. The court did not therefore calculate the damages under the Act.

[19] This is **NOT** the claim here. This is not a case brought on behalf of the estate but an action for compensation under The Act for the death of the deceased caused by the Defendant's neglect, as per the Consent Order. I must stress that since liability is **NOT** in issue, I must confine myself at this stage to the rules to be used to assess quantum.

[20] In any event, I think that the sum of \$50.00 per week as the value of Ms Andrews' dependency is reasonable and I so determine.

[21] As far as the multiplier is concerned, I see no reason to deprive Ms. Andrews of the actual loss of her dependency of eleven (11) years. I accept Mr. Gopaul Gosine's submission that for a further claim of three (3) years is reasonable. I soundly reject Mr. Moore's contentions and I determine that the multiplier to be used is fourteen (14), eleven (11) years pre-trial loss and three (3) years post-trial loss.

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<sup>5</sup> **Op. cit**

[22] I must have regard to the method to be used to calculate the loss suffered. I must look to the pre-trial loss and then to the post trial loss<sup>6</sup>. In this case, I take the date of the Consent Order as the dividing line. The length of time between the date of death and the Consent Order was 10 years 7 months 3 weeks or 551 weeks. The value of the pre-trial award would therefore be \$50 x 551 which is **\$27, 550.00**.

[23] In keeping with the established principles, I must take into account the decreasing value of the dollar in making the award for post trial loss. There was no evidence of inflation tendered by Ms. Andrews and so the multiplicand would remain at \$50.00 per week. Therefore the post trial award based is assessed at \$50.00 x 156 resulting in a figure of **\$7,800.00**.

[24] **FUNERAL EXPENSES**

I think the sum suggested as funeral expenses is reasonable and is allowed. Therefore Ms Andrews is entitled to the sum of **\$4,700.00**.

[25] **INTEREST**

The **SUPREME COURT OF JUDICATURE ACT (Am)**<sup>7</sup> (the "SCJ ACT") gives the court the discretion to award interest at the rate of 12% per annum. The **SCJ ACT** gives the court the discretion to award interest at such rate as it thinks fit on the whole or part of the debt or damages and for the whole or any part of the period and the date when the cause of action arose and the date of judgment. I have decided that the award of interest should reflect the fact that the matter had not gone to full trial.

[26] The authorities are clear<sup>8</sup>. Interest can only be awarded on Pre Trial Loss. In that regard my award of interest is as follows:

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<sup>6</sup> See **COOKSON v KNOWLES [1978] 2 All E.R. 604 applied in SOUTHERN CONTRACTING CO. LTD. v ESTHER DIARAM AND OTHERS C/A #49/89 (T&T); MAUREEN SAMUEL v SUSAN SURAJ H.C.A. 2656 of 1998**

<sup>7</sup> **Chap. 4:01 as amended by ACT 46 of 2000.**

<sup>8</sup> **Op. cit. f. n. 4**

- (a) On funeral expenses of \$4,700.00 interest at the rate of 4% per annum from 19<sup>th</sup> August 1994 until 25<sup>th</sup> April 2005 and thereafter at the rate of 8% per annum from 26<sup>th</sup> April 2005 until payment.
- (b) On the pre trial loss of the dependency of \$27,550.00 interest at the rate of 4% per annum from the date of death of Selwyn Andrews 10<sup>th</sup> August 1995 until 31<sup>st</sup> December, 2000 and at the rate of 6% per annum from 1<sup>st</sup> January 2001 until the date of the Consent Judgment 25<sup>th</sup> April 2005 and thereafter at the rate of 10% per annum from 26<sup>th</sup> April 2005 until payment.

[27] I shall now turn to examine the claims made by the other dependents, **KEVON ANDREWS, KEYON ANDREWS, KURNISHA ANDREWS**. Mr. Gopaul-Gosine approached the value of the dependency for each child separately. Mr. Moore so certain that the children were disentitled by his submission did not share with me his thoughts on the issue. I am therefore left to grapple with this with only Mr. Gopaul-Gosine's assistance.

[28] The children's mother Deborah Reid deposed that at the time of the father's death she received from him the sum of \$800.00 for their maintenance and upkeep. There was no evidence as to how much the deceased actually earned as a Peanut Vendor and Mason so that there is no standard to measure the veracity of this figure.

[29] **MULTIPLIER**

At the time of their father's death, Kevon was three (3) years five (5) months old; Keyon was two (2) years one (1) month old; Kurnisha was *en ventre sa mere*.

[30] I have no evidence of any of the children's potential for self-support during their minority or support continuing after they have attained 18 years. There is no evidence before me to suggest that their father would not have supported them to age 18 and it is reasonable to expect that he would have done so. I have adjusted the post trial period so as to reflect that the children are being compensated in a lump sum. The adjustment also takes in to account the fact that no interest can be awarded on this figure. The usual measurement in

cases such as these does not exceed 16. In keeping with this and again, bearing in mind that the matter did not go to trial, I have determined the multipliers in respect of each minor dependent as follows:

Kevon Andrews – Pre-trial period - 10 years 7 months 3 weeks  
Post trial period – 3 years 6 months.

Keyon Andrews – Pre-Trial period – 10 years 7 months 3 weeks  
Post trial period – 4 years 3 months

Kurnisha Andrews - Pre trial period – 10 years 5 months 3 weeks  
Post trial period – 6 years 9 months

[31] **MULTIPLICAND**

The Statement of Claim as amended put the value of the entire dependency at \$1,000.00. Ms. Reid testified that the deceased's contribution to the children was \$800.00 per month. Mr. Gosine submitted that I should split that amount three ways so as to arrive at the multiplicand of \$266.00 per child. I have to consider that Kurnisha was not born at the time of the demise, but it is not unreasonable to assess her award on the same basis as that of her brothers. This broken down amounts to \$53.20 per week, which is a fair and reasonable figure given the nature of work pursued by the deceased. Doing the best that I can, I accept that figure as the multiplicand for each child as a moderate and fair assessment of the value of the dependency.

[32] **THE AWARD AND INTEREST**

Bearing in mind the discussion with respect to the award of interest and taking into account the diverse birth dates for each of the children, I now make the following award for each child:

NAME	PRE-TRIAL/CONSENT ORDER- Date of death 10 <sup>th</sup> August 1994 to 25 <sup>th</sup> April 2005	POST-TRIAL/CONSENT ORDER – 26 <sup>th</sup> April 2005 until 18 <sup>th</sup> birthdays discounted to take into account Consent Order and Lump sum payment
KEVON ANDREWS born on 23 <sup>rd</sup> March 1992	53.20x551= \$29,313.20 with interest at the rate of 4% per annum from 10 <sup>th</sup> August 1995 until 31 <sup>st</sup> December 2001 and thereafter at the rate of 6% per annum until 25 <sup>th</sup> April 2005 and thereafter at the rate of 10% per annum from 26 <sup>th</sup> April 2005 until payment.	\$8,616.40 53.20 x 52 x 3 = \$8,299.20 53.20 x 6 = \$ 319.20 (3 years 6 months plus 10 years 9 months to total 14 years 3 months)
KEYON ANDREWS born on 14 <sup>th</sup> July 1993	53.20x551= \$29,313.20 with interest at the rate of 4% per annum from 10 <sup>th</sup> August 1995 until 31 <sup>st</sup> December 2001 and thereafter at the rate of 6% per annum until 25 <sup>th</sup> April 2005 and thereafter at the rate of 10% per annum from 26 <sup>th</sup> April 2005 until payment.	\$11,225.20 53.20 x 52 x 4 = \$11,065.60 53.20 x 3 = \$ 159.60 (4 years 3 months plus 10 years 9 months to total 15 years)
KURNISHA ANDREWS born on 6 <sup>th</sup> October 1994	53.20x543=\$28,887.60 with interest at the rate of 4% per annum from 10 <sup>th</sup> August 1995 until 31 <sup>st</sup> December 2001 and thereafter at the rate of 6% per annum until 25 <sup>th</sup> April 2005 and thereafter at the rate of 10% per annum from 26 <sup>th</sup> April 2005 until payment.	\$17,077.20 53.20 x 52 x 6 = \$16,598.40 53.20 x 9 = \$ 478.80 (6 years 9 months plus 10 years 9 months to total 17 years 6 months)

[33] **AGGRAVATED AND/OR EXEMPLARY DAMAGES**

The issue here is whether an action such as this would attract an award of either of the two or both heads of damages. Aggravated damages are usually awarded to a plaintiff who it is felt ought to receive extra compensation for the injury to his feelings and dignity or mental suffering. The categories of cases for which exemplary damages are awarded were laid out in **ROOKES V BERNARD**. The types of actions, which will attract an award, include defamation, assault, conversion, intellectual property infringements, false imprisonment, malicious prosecution, trespass to goods and trespass to land or to the person. It is noted as well that these are common law actions and not those grounded in statute. Further, since the aim of the award of aggravated or exemplary damages is to assuage the feelings and dignity of the injured person, it is unlikely that a claim arising out of death, for the benefit of defendants would be an appropriate one in which to make such an award<sup>9</sup>.

Thus whilst the Defendant's admitted actions are disturbing, they cannot influence the award to be given to the parties, which must be based exclusively on the value of the dependency in accordance with the parent statute. Unless the Statute permits these awards, I cannot consider granting them.

The Plaintiffs Dependants' claim for aggravated and/or exemplary damages therefore fails.

[34] **CONCLUSION**

This case was a most unfortunate display of the intransigence that too often features in the administration of justice. I say no more now but to give my Order.

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<sup>9</sup> See **THADDEUS BERNARD AND AIRPORTS AUTHORITY OF TRINIDAD AND TOBAGO V NIXIE QUASHIE CIV. NO. 159 of 1992 per de la Bastide C.J. at page 5** – “The normal practice is that one figure is awarded as general damages. These damages are intended to be compensatory and to include what is refined to as aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received.

Under this head of what I have called “mental suffering”, are included such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.

## ORDER

1. That the Defendant do pay to **PEARL ANDREWS** damages assessed as follows:
  - i. Funeral expenses in the sum of \$4,700.00 plus interest at the rate of 6% per annum from 19<sup>th</sup> August 1994 until 25<sup>th</sup> April 2005 and thereafter at the rate of 8% per annum from 26<sup>th</sup> April 2005 until payment.
  - ii. Damages pursuant to the **COMPENSATION FOR INJURIES ACT CHAP. 8:05** for Pre-trial loss in the sum of \$27,550.00 together with interest at the rate of 6% per annum from the date of the death of Selwyn Andrews 10<sup>th</sup> August 1995 until 25<sup>th</sup> April 2005 and thereafter at the rate of 10% per annum from 26<sup>th</sup> April 2005 until payment; for post- trial loss in the sum of \$7,800.00.
2. There shall be a stay of execution of this Order of thirty (30) days.

### IT IS FURTHER ORDERED AS FOLLOWS:

3. That the Defendant do pay to the Plaintiffs Kevon Andrews, Keyon Andrews and Kurnisha Andrews damages assessed as follows:
  - (a) **KEVON ANDREWS**

Pre trial Damages in the sum of \$29,313.20 together with interest at the rate of 4% per annum from 10<sup>th</sup> August 1995 until 31<sup>st</sup> December 2001 and from 1<sup>st</sup> January 2002 at the rate of 6% per annum until 25<sup>th</sup> April 2005 and at the rate of 10% per annum from 26<sup>th</sup> April 2005 until payment.

Post trial damages in the sum of \$8, 618.40.
  - (b) **KEYON ANDREWS**

Pre trial Damages in the sum of \$29,313.20 together with interest at the rate of 4% per annum from 10<sup>th</sup> August 1995 until 31<sup>st</sup> December 2001 and from 1<sup>st</sup> January 2002 at the rate of 6% per annum until 25<sup>th</sup> April 2005 and at the rate of 10% per annum from 26<sup>th</sup> April 2005 until payment.

Post trial damages in the sum of \$11,225.20.

(c) **KURNISHA ANDREWS**

Pre trial Damages in the sum of \$28,887.60 together with interest at the rate of 4% per annum from 10<sup>th</sup> August 1995 until 31<sup>st</sup> December 2001 and from 1<sup>st</sup> January 2002 at the rate of 6% per annum until 25<sup>th</sup> April 2005 and at the rate of 10% per annum from 26<sup>th</sup> April 2005 until payment.

Post trial damages in the sum of \$17,077.20.

4. That the Plaintiffs do file and serve the documents required pursuant to Order 77 within 7 days of the date of this Order.
5. That the action be stayed pending the filing and service of the documents as per paragraph 4.
6. Thereafter the Defendants do pay the sums into Court to be disbursed by the Registrar in the following manner:
  1. Within 21 days after deposit of funds to pay to the next friend the sum of \$30,000.00 to be divided equally among the said minor children for their care, maintenance and support;
  2. That the remaining sums be placed on trust for the said minor children by the Registrar of the High Court who is directed to invest same in the Trinidad and Tobago Unit Trust Corporation in the Second Scheme until each of the minor children shall reach their respective ages of majority whereupon he/she shall make application for the payment of the principal sum and any accrued interest thereon. In the meantime, the quarterly interest accruing therefrom is to be paid to the Next Friend for the benefit of the said minor children.

7. Liberty to apply for a variation of this Order during the minority of the said children should circumstances warrant same.
8. The costs of this Assessment be paid by the Defendant to the Plaintiffs to be certified fit for Counsel and to be taxed in default of agreement.
9. Thereafter there shall be a stay of execution of this Further Order of 30 days from the date of filing of the documents as per paragraph 4 of this Order

Dated this 8<sup>th</sup> day of June 2006.

C.PEMBERTON  
HIGH COURT JUDGE