

FATAL ACCIDENT PROCEDURE

The Basis for the granting of an Award of Damages for wrongful death in Jamaica is found on two Acts of Parliament, namely the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act. The former gives a cause of action to the deceased against the person who committed the offence for the benefit of his dependents or, as the act call them his "Near Relations". The latter gives a separate cause of action to the deceased against the Offender for the benefit of his estate.

The need for the Administrator-General to act arises under the following circumstances:

- where there are minor beneficiaries;
- when the whereabouts of adults beneficiaries are unknown;
- when the adult beneficiaries are not in agreement, as to who should apply to the Court;
- when the beneficiaries request that the Administrator-General act on their behalf.

On obtaining the Grant of Letters of Administration the Administrator-General on the advice of Senior Counsel and through his Attorney-at-Law will file action under the Fatal Accidents Act and the Law Reform (Miscellaneous Provisions) Act. This is in order to claim damages on behalf of the beneficiaries, dependents or estate of the deceased.

The Administrator-General can only proceed to file Fatal Accident on behalf of the deceased relatives if he has Letters of Administration, hence the near relatives may proceed on their own.

Action must be filed within three (3) years after the death of the deceased (person or within such longer period as a Court may allow, if satisfied that the interest of justice so requires.

In making the award the Court would appoint the Administrator-General as Trustee in respect of the infant beneficiaries and give him permission to use Capital as well as Income for their Education and General Advancement until they attain the age of Eighteen (18) years. Awards to adult beneficiaries are often paid directly to them, while the Trust is administered as a regular estate.

Specimen of the documents needed before payments can be made are included in this display.

The actual method of computing damages is found in Case Law. In the Landmark decision of the House of Lords in the English Case of Cookson v Knowles Lord Diplock stated:

“as a general rule in Fatal Accident cases the damages should be assessed in two parts, the first and less speculative component being an estimate of the loss sustained up to the date of trial and the second component as estimate of the loss to be sustained thereafter.

FINAL JUDGMENT

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW**

SUIT NO. C.L. 1989/a 091

BETWEEN **ADMINISTRATOR GENERAL** **PLAINTIFF**
 FOR JAMAICA (Administrator
 of the Estates of ALLEN
 ADOLPHUS HENRY, DECEASED

A N D **TOM STROKES** **DEFENDANT**

BEFORE THE HONOURABLE MR. JUSTICE PITTER

THE 1ST day of May, 1992 and the 23rd day of September, 1992.

The Plaintiff having on the 26th day of June, 1990 obtained Interlocutory Judgment herein against the Defendant **TOM** for Damages to be assessed and the amount found due to the Plaintiff having been assessed on the 1st day of May, 1992 and on the 23rd day of September, 1992 by Mr. Justice Pitter as follows:

SPECIAL DAMAGES: \$10,000.00

GENERAL DAMAGES: \$
(I) Under the Fatal Accidents Act 88,400.00 being
 (a) \$44,200.00 to the child Jacqueline; and
 (b) \$44,200.00 to Mary Doe
(ii) Under the Law Reform (Miscellaneous Provisions) Act
 \$112,200.00

together with costs to be agreed or taxed.

NOW THEREFORE IT IS ADJUDGED that the Plaintiff recovers from the Defendant TOM STROKES The sum of \$10,000.00 Special Damages and \$196,600.00 General Damages.

DATED the 6th day of November 1992

GAYNAIR & FRASER

PER: _____
PLAINTIFF'S ATTORNEYS-AT-LAW

FILED by GAYNAIR & FRASER of Mos 9-11 Church Street, Kingston whose address for service is that of his said Attorneys-at-Law.

FATAL ACCIDENTS

THE FATAL ACCIDENTS ACT

(1845)

Cap. 125
Law
17 of 1955
Act
23 of 1979

1. This Act may be cited as the Fatal Accidents Act. Short title.

2. ---(1) In this Act-- Interpreta-
tion.
 - “benefit” means any benefit or sum of money paid or payable by a friendly society or a trade union for the relief or maintenance of a member’s dependants and includes a return of contributions; 23/1979
S.2.
 - “child” includes son and daughter, and grand-son and grand-daughter, and step-son and step-daughter;
 - “insurance money” means any sum payable in conformity with the National Insurance Act or under a contract or assurance or insurance whether made before or after the 7th day of September, 1979, and includes a return of premiums; 23/1979
S.2.
 - “near relations” in relation to a deceased person, means the wife, husband, parent, child, brother, sister, nephew or niece of the deceased person;
 - “parent” includes father and mother and grand-father and grand-mother, and step-father and step-mother;
 - “pension” includes a return of contributions and any payment of a lump sum in respect of a person’s employment; 23/1979
S.2.
 - “person” shall apply to bodies politic and corporate;
 - “personal representative”, in relation to a deceased person means the executor or administrator of the deceased person; 23/1979
S.2.

(2) For the purposes of this Act a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately; and accordingly in deducing any relationship which under the provisions of this Act is included within the meaning of the expressions "parent" and "child" any illegitimate person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father.

Action

maintain-
able
against
person
causing
death
through
neglect, etc.

3. Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then and in every such case 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 shall have been caused under such circumstances as amount in law to felony.

Mode and
manner of
commence-
ment of an
action and
assessment
of damages

4. –(1) Any action brought in pursuance of the provisions of this Act shall be brought –

(a) by and in the name of the personal representative of the deceased person; or

(b) where the office of the personal representative of the deceased is vacant, or where no action has been instituted by the personal representative within six months of the date of death of the deceased person, by or in the name of all or any of the near relations of the deceased person,

and in either case any such action shall be for the benefit of the near relations of the deceased person.

(2) Any such action shall be commenced within, three years after the death of the deceased person or within such longer period as a court may, if satisfied that the interests of justice so require, allow.

(3) Only such action shall be brought in respect of the same subject matter of complaint.

(4) If in any such action the court finds for the plaintiff, then, subject to the provisions of subsection (5), the court may award such damages to each of the near relations of the deceased person as the court considers appropriate to the actual or reasonably expected pecuniary loss caused to him or her by reason of the death of the deceased person and the amount so recovered (after deducting the costs not recovered from the defendant) shall be divided accordingly among the near relations.

(5) In the assessment of damage under subsection (4) the court—

(a) may take into account the funeral expenses in respect of the deceased person, if such expenses have been incurred by the near relations of the deceased person;

(b) shall not take into account any insurance money, benefit, pension, or gratuity which has been or will or may be paid as a result of the death;

(c) shall not take into account the remarriage or prospects of remarriage of the widow of the deceased person.

5. In every such action the plaintiff on the record shall together with the statement of claim, to deliver to the defendant, or his solicitor, full particulars of the person
Plaintiff to be required,
deliver full particulars

or persons for whom, and on whose behalf, such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

of the
persons for
Whom
damages
claimed.

Filed by **MYERS, FLETCHER & GORDON** of No. 21 East Street, Kingston, Attorneys-at-Law for and on behalf of the **Defendant** herein.

WHAT IS A FATAL ACCIDENT?

A Fatal Accident is the wrongful death (criminal or neglect) of an individual that can give rise to a cause of action for the benefits of dependents.

Examples of Fatal Accidents are:

- (1) Death by Electrocution
- (2) Motor Vehicle Accident
- (3) Death by Gunshot Wounds
- (4) Falling in a pit
- (5) Knife Wounds
- (6) Wrong Medical Treatment
- (7) Death in a Factory caused by faulty equipment
- (8) Falling from a faulty bridge
- (9) Negligence of Medical Officers