
1952
Mar. 23-25
1954
Mar. 30

BETWEEN:

ROY McDEVITT .....SUPPLIANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

AND BETWEEN:

HELEN MARGARET McDEVITT, administratrix of the Estate of Ivan Charles McDevitt (deceased) ..... SUPPLIANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

Crown—Petition of Right—Negligence—Exchequer Court Act, R.S.C. 1927, c. 34, s. 19(c)—Ordinance Respecting Compensation to the Families of Persons Killed by Accident—C.O.Y.T. 1914, c. 19—The Public Trustee Act, S. of A., 1949, c. 85—Measure of damages pecuniary loss to family —No claim for funeral expenses—Principles in determining damages in claims under Fatal Accidents Acts—Child's share to be paid to Public Trustee of Alberta.

The actions were brought to recover damages for loss sustained by the suppliants as the result of a collision between a car owned by one of them and driven by his son and a Canadian Army truck driven in the course of his employment by a civilian employee of the Crown, whereby the car was practically demolished and the son so badly injured that he died, leaving a widow with an unborn child. The owner of the car claimed damages for the loss of his car and loss of revenue and the widow claimed funeral expenses and damages for loss of her husband.

Held: That the driver of the Army truck was negligent in failing to keep to the right of the centre of the highway, as he could safely and easily have done, and cutting over to the left of the centre without keeping a proper lookout for on-coming traffic from the south and that his negligence was the sole cause of the collision with its resulting consequences.

2. That in a claim under the Yukon Territory Fatal Accidents Act the measure of damages is not the injury to the deceased but the pecuniary loss to his family resulting from his death.

3. That in a claim under 19(c) of the Exchequer Court Act based on a provincial or territorial Fatal Accidents Act, corresponding to Lord Campbell's Act, where the fatal accident was the result of negligent operation of a motor vehicle, this Court, in determining whether a claim for the funeral expenses of the deceased should be allowed, must ascertain and apply the statutory law on the subject in force in the province or territory in which the death occurred as it stood on June 24, 1938, when the Crown was first made responsible for the negligence of its officers or servants in driving a motor vehicle. If, at that time, in an action as between subject and subject under the applicable provincial or territorial Fatal Accidents Act a claim for funeral expenses could not have been maintained, it should not be allowed in this Court even if it has become permissible in such province or territory by an amendment made since June 24, 1938, for it is not competent for a provincial or territorial legislative assembly or body to alter the extent of the responsibility of the Crown in right of Canada as imposed by Parliament. Only Parliament can do so.

4. That under the applicable law in the Yukon Territory funeral expenses for the deceased are not recoverable.

5. That where there is liability under a Fatal Accidents Act the compensation authorized by it is for the loss of pecuniary benefit or advantage to the family of the deceased as the result of his death, and not otherwise. But it is not necessary to prove actual loss at the date of his death if there was a reasonable expectation of future pecuniary benefit to a member of his family from the continuance of his life. The compensation should be proportionate to the pecuniary advantage which the persons for whose benefit the action is brought might reasonably have been expected to enjoy if the deceased had not been killed so that regard must be had to the station in life of the parties concerned. The Court should estimate what sums the deceased would have applied out of his income to the maintenance of his wife and family and also what portion of his additional savings he would or might have left to them. In this estimate regard must be had to the expectancies of life of the deceased and his family. But, of course, it is only the present value of the future benefits that should be taken into account and there must be appropriate deduction for any acceleration of devolution of estate. Moreover, the amount of the compensation must not be so large that its investment will produce an income equal to the amount of income lost, for consideration must be given to possible contingencies, such as the death by accident of the deceased prior to the expiration of his normal expectancy of life or his disability or loss of earning power or income or the remarriage of his widow or her premature death. It is thus obvious that the contingencies that must be considered are so uncertain that the extent of the loss of pecuniary benefit or advantage to the family of the deceased cannot be ascertained with certainty. At best, the evaluation of the amount of compensation must be a matter of estimate or rough calculation involving an element of conjecture or even of guess work. But while the task of determining the amount of compensation is difficult the Court must do its best to arrive at an award that is both fair and realistic with due regard to the contingencies that should be considered.

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6. That the child's share of the damages should be paid to the Public Trustee of Alberta to be held by him in trust for the child under the powers vested in him by The Public Trustee Act of Alberta.

PETITIONS OF RIGHT to recover damages for loss sustained by the suppliants resulting from the negligence of a servant of the Crown.

The petitions were tried together before the President of the Court at Whitehorse in the Yukon Territory.

C. Becker, Q.C., and *R. S. Matheson* for suppliants.

G. Van Roggen and *A. J. MacLeod* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT now (March 30, 1954) delivered the following judgment:

These two petitions of right were tried together at Whitehorse in the Yukon Territory. They arose out of a collision between the suppliant Roy McDevitt's car driven by his son Ivan Charles McDevitt and a Canadian Army truck owned by the Crown and driven in the course of his employment by Charles N. Novak, a civilian employee of the Crown. The collision occurred on September 17, 1951, at about 2.30 p.m., at a point on the Alaska Highway about 4 miles south of Mile 630 inside the Yukon Territory. As the result of the collision the suppliant Roy McDevitt's car was practically demolished and its driver Ivan Charles McDevitt so seriously injured that he died a few hours afterwards in the hospital at Whitehorse leaving his widow the suppliant Helen Margaret McDevitt with her then unborn child.

On December 17, 1951, the said child was born and his name registered as Ivan Charles McDevitt. On March 20, 1952, Letters of Administration of the property of Ivan Charles McDevitt deceased were granted by the District Court of Northern Alberta to the suppliant Helen Margaret McDevitt and the said Letters of Administration were sealed with the seal of the Territorial Court of the Yukon Territory on April 23, 1953.

The petitions were brought under section 19(*c*) of the Exchequer Court Act, R.S.C. 1927, chapter 34, which, as amended on June 24, 1938, provides as follows:

19. The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:—

(c) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment;

In his petition the suppliant Roy McDevitt claimed $4,200 damages for the loss of his car and loss of revenue. In her petition the suppliant Helen Margaret McDevitt claimed $387.88 for funeral expenses and $50,000 damages for the loss of her husband. This claim was made under An Ordinance Respecting Compensation to the Families of Persons Killed by Accident, C.O.Y.T. 1914, chapter 19, as amended, which will be referred to as the Yukon Territory Fatal Accidents Act.

In each action the respondent counterclaimed for $3,939 for damage to the Army truck.

It was admitted that at the time of the collision Charles N. Novak was a servant of the Crown and acting within the scope of his employment, so that the only issues are whether he was guilty of negligence and whether the damage to the car and the death of Ivan Charles McDevitt resulted therefrom. The onus of proof is, of course, on the suppliants.

There is no dispute about certain facts. It is established that at the time of the collision Ivan Charles McDevitt was driving his father's car from Lower Post in British Columbia to Watson Lake and was on a stretch of the Alaska Highway that was a few miles inside the Yukon Territory and that Charles N. Novak was driving the Army truck towards Lower Post. For purposes of convenience I shall refer to the stretch of road from Lower Post to Watson Lake as running from south to north and McDevitt's right side of the road as east of its centre. The location of the collision is also settled. This is shown on a series of sketches, Exhibit 9, prepared by Mr. Dalziel. It occurred on a rise in the road about 360 feet south of a culvert at the bottom of a valley. The grade from the culvert to the point of collision was not a steep one but became steeper further south. The collision occurred on a slight curve or bend in the road towards the east. The road had been cut out of the side of a hill so that east of it there was a bank

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of earth and south of it a slope down into the valley of about 150 feet. At the point of the collision the road was about 38 feet wide including both shoulders, the west one being wider than the east and east of the east shoulder there was a ditch between it and the bank. It was also established that the gravel on the road was well packed and that it had been recently graded. It was a hot sunny day and the road was very dusty. This was common in such weather.

Although many persons were called as witnesses there were only two that were actually in the collision, namely, Craig Forfar, who was riding in the front seat with McDevitt, and Charles N. Novak, the driver of the Army truck. Neither could give evidence of the actual impact for it happened in a cloud of dust. They were able to testify only on what happened immediately prior to the collision and in such testimony there was conflict. I shall first summarize the evidence of Craig Forfar. He had left Watson Lake with McDevitt about noon or 12.30 p.m. to go to Lower Post to meet a friend there. They all stayed at Bob Kirk's cabin and then went to Christie's cafe for lunch. They then left Lower Post to go back to Watson Lake at about 1.30 p.m. There were three persons in the front seat, McDevitt, Earnest Frank next to him and Forfar nearest the right side. Before they left Forfar noticed one of Smith's trucks pulling out of Watson Lake. It was hauling a trailer—called a lowboy—carrying a heavy load of pipe. McDevitt left about 15 or 20 minutes after the lowboy. He was travelling about 30 to 35 miles per hour before he caught up to it. It was very dusty as he got close to it and he slowed down. He was on the right hand side of the road. Forfar was looking out into the ditch. The car was travelling right near it as it was following the lowboy. The next thing Forfar knew he was in the hospital at Whitehorse. But he was definite that before he was hit McDevitt was on his right hand side of the road right on the crown of the ditch. Forfar was watching the car going down the hill. It had not gone down as far as the culvert when it was hit by something. Forfar was not shaken on his cross-examination. The dust left behind by the lowboy was so heavy that McDevitt slowed down. They could see only a couple of car lengths ahead and could not see

the lowboy through the dust. Driving in the dust was like driving in a fog where the driver will use the right hand ditch as a guide. McDevitt had not attempted to pass the lowboy. He had caught up to it and proceeded into its dust cloud just before the accident. They were going down the hill and getting near the bottom when the collision happened.

Conflicting evidence was given by Charles N. Novak, the driver of the Army truck. He operated from the maintenance camp at Watson Lake and was engaged in hauling gravel for the 6-mile stretch of the Alaska Highway from Mile 626 to Mile 632. At the time of the collision his truck, which had a 4-wheel drive, was empty. He had just dumped a load of gravel and was returning south to the steam shovel for his next load. He had stopped for a drink of water at the culvert just south of Mile 630 at the foot of the hill and had started up again. He then saw the trailer coming around the bend. He was in third gear at the time. He then shifted into fourth gear and was going 14 miles per hour. He passed the trailer as he started up the rise. The dust behind it was pretty thick. It was like hitting a sack of flour. He said that he was on his right side of the road as he passed. The dust cloud created by the lowboy was 15 to 20 feet behind it coming in a sort of spin or roll. He could see that there was 4 feet of clearance between his truck and the edge of the road. The next thing he knew after he hit the dust cloud was that an object hit him. He did not know whether it was a car or a truck. It was not more than a second after he hit the dust cloud. He insisted that he was on his right side of the road when he entered the dust cloud and that he maintained that position. He did not observe the shoulder on his right but he was not worried about sinking in it in view of the fact that his truck was empty. He did not see any car coming to warn him before they hit. He could see the right side of the road but could not see more than 4 to 5 feet ahead of him. When the impact happened he was hit in the stomach by his steering wheel and the next thing he knew was that he was stopped on the other side of the road with the nose of his truck in the ditch. He remembered nothing about the course of his vehicle after the impact. He was in fourth gear at the time. When he came to after the impact he

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saw that the front left wheel was off his truck. He climbed out of it and rushed over to the car. Then two vehicles came, one from Watson Lake, which he sent back to notify the Royal Canadian Mounted Police, and the other from Lower Post with Robert Kirk in it. He arrived 10 or 15 minutes after the accident. He and Kirk put Forfar on an airfilled mattress which Kirk had in his car and put a pillow under McDevitt. Then Constable Deer arrived about half an hour after the accident. Novak did not observe any of the tire marks made by the car or the truck prior to the collision. On his cross-examination he said that he had walked down to the culvert, saw the lowboy after he had started up again and passed it about 150 feet south of the culvert. He kept to his own side of the road but could not tell how near he was to the right hand side or to the edge. The hill curved to his left but he denied that he had cut to his left because of the curve. He was still on the up grade when they hit. He did not notice the debris on the road. He did notice the gouge marks but could not tell whether they were all on the east half of the road. He had not tried to apply his brakes.

While there is this conflict in what might be called the most nearly direct evidence on where the vehicles were at the time of the collision there is a considerable amount of what might be called physical evidence which strongly supports Forfar's statement. Evidence of what they saw after the collision was given for the suppliants by Robert W. Kirk, who arrived on the scene just a few minutes after the collision, Corporal Curtis B. Sullivan of the Royal Canadian Mounted Police, who took measurements, Jack Christie and George C. Dalziel and for the respondent by Constable Bertram A. Deer of the Royal Canadian Mounted Police who got there soon after Kirk and before Corporal Sullivan. He looked after the injured persons and then helped Corporal Sullivan with the measurements. I shall state the evidence of these witnesses by topics without giving it in detail.

There can be no dispute about the positions of the car and the Army truck when they had come to rest after the collision. These were described by several witnesses and are shown on the photograph, Exhibit 5. The car had been swung around sideways so that it was almost at right angles

to the highway, pointing slightly south. It had been pushed back so that its rear wheels were almost at the ditch that was east of the east shoulder of the highway. Its front wheels were on the travelled portion. The whole of the car was east of the centre of the road. The truck had gone about 85 feet from what appeared to be the point of impact between the two vehicles and ended up with its front in the ditch east of the road at an angle facing south-east with its left front rammed and embedded into the bank east of the ditch. And, of course, it was wholly on its wrong side of the road.

The evidence on the gouge marks in the road made by the Army truck after its collision with the car was also consistent. These started from where the point of impact must have been and went diagonally to where the truck ended up in the ditch. There is no doubt that they were made by the truck. They could have been caused by its axle after the left front wheel had been knocked off or, as is more likely, by something at the front of the truck or hanging down from under it, such as the differential housing. But whatever may have caused the gouges the significant fact is that all the gouge marks were to the east of the centre of the road. All the witnesses who saw them were agreed on this fact.

And the witnesses were agreed on the location of the broken glass and other debris, including parts of the car's battery, which must have fallen on the road at the spot where the two vehicles collided. This was not in a large area and was generally near the first gouge mark. All the debris was east of the centre of the road and one witness, Constable Deer, added that he did not observe any glass on the other side of the road.

The evidence on the tire marks made by the truck prior to the collision is largely confined to one witness, Robert Kirk, who was the first person to arrive at the scene after the collision. He got there about 10 minutes afterwards. He said that he could see the marks made by the truck tires. They had started on the hill cutting over to the driver's left. He could follow them for quite a distance, for 150 feet north of the car. The truck driver had gradually cut to his left and the marks were well over the centre of the road at the time of the collision. On his cross-examination

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he said that he had looked forward and saw the tire tracks coming gradually on an angle for 150 feet. He said that he could still follow them after the impact and also saw the gouges on the road. The other witnesses were not able to give any evidence on this point by reason of the fact that by the time of their arrival on the scene the truck tire marks had become obliterated.

There was more evidence regarding the car tire marks. This indicates that they were well over on the east side of the road. Kirk said that they were 2 or 3 feet inside the centre of the road and Dalziel put them farther east. His statement was that they were 3 or 4 feet east of the centre of the road and continued in a straight line without any sign of swerving.

And there is also the evidence of W. Lennox, the driver of the truck hauling the lowboy, that he had seen McDevitt's car behind him through his rear-view mirror and that he had not tried to pass.

While Corporal Sullivan could not say whether the point of impact was east of the centre of the road, since all tire tracks had become obliterated by the time he arrived on the scene, I am convinced that it was. In my judgment, the evidence points strongly to the conclusion that at the time of the collision McDevitt was driving well on his right side of the road a fair distance behind the lowboy and that Novak, the driver of the Army truck, had veered over to his left and was on his wrong side of the road when the truck hit the car and I so find. It seems clear to me that as he was approaching the bend in the road to his left with the steep slope down into the valley on his right he cut to his left and went over to his wrong side of the road without proper regard to what traffic might be following the lowboy in the wake of the dust cloud thrown up by it through which he could not see. This action was, under the circumstances, negligence on his part and, in my judgment, the sole cause of the collision with its resulting consequences. There was some suggestion by Dalziel that the truck was going at a high rate of speed and Lennox, the driver of the lowboy, estimated it at from 25 to 30 miles per hour. But Novak said that his truck was in fourth gear and that he was travelling at not more than 14 miles per hour. I do not put Novak's negligence on the basis of

excessive speed *per se*. His negligence consisted in failing to keep to the right of the centre of the highway, as he could safely and easily have done, and cutting over to the left of the centre without keeping a proper lookout for oncoming traffic from the south. He had plenty of room on his right. If he had any doubt in his mind about the cliff he should have slowed down until he could see where he was going. If he had done so and kept further to his right, as he should and could have done, there would not have been any collision.

Moreover, I find that there was no negligence on the part of Ivan Charles McDevitt. It was pleaded by way of defence and in support of the respondent's counterclaim in both petitions that McDevitt was operating a motor vehicle while his ability to do so was impaired by alcohol. There is no evidence to support such a plea or allegation and I reject it as unfounded. Forfar said that McDevitt never had anything to drink that day and that he was sober in his manner and actions. Kirk said that he had had a glass of beer at his house at Lower Post and that he was perfectly sober. Constable Deer did not smell any liquor on the injured persons. It was also pleaded and alleged that McDevitt was travelling at an excessive rate of speed. There is no evidence to support this. On the contrary, the evidence indicates that he slowed up because of the dust cloud and that the lowboy was a fair distance ahead of him although I do not believe that it was half a mile ahead. In any event, the speed at which McDevitt was travelling could not have contributed to the accident.

On the evidence, I find that the suppliants have succeeded in bringing their claims within the ambit of section 19(*c*) of the Exchequer Court Act and that the responsibility of the Crown to the suppliants is engaged accordingly.

The amount of the suppliant Roy McDevitt's claim may easily be determined. His car was a 1951 Dodge Coronet Sedan which he had bought new at Dawson Creek. It had cost him $4,000 at Watson Lake. It was almost totally demolished as the photographs show. He had used it for taxi and pleasure purposes and had gone from 24,000 to 25,000 miles. He put its depreciation at from $700 to $800 but I put it higher because of its use as a taxi and its hard usage due to the condition of the roads. The suppliant had

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tried to sell it as salvage but without success. Some parts may still have salvage but it cannot be great. I put the loss of the car at $3,000. In addition, the suppliant claimed that he had lost revenues from its use for about 5 weeks while a new car was being obtained. He put this gross loss at from $350 to $400 with a net loss of $300 which he later reduced to $200. This would be a fair amount. I, therefore, find $3,200 as the amount of damages and that the suppliant Roy McDevitt is entitled to recover this amount.

The amount of the damage to the Army truck was proved at $3,939. I understood counsel for the respondent to abandon the counterclaims for this amount. But whether he did so or not, it is obvious, in view of my finding that there was no negligence on Ivan Charles McDevitt's part, that the counterclaims must be dismissed.

I now come to the assessment of damages for the suppliant Helen Margaret McDevitt. The remedy given to her and her infant son by the Yukon Territory Fatal Accidents Act is entirely different from that which the deceased Ivan Charles McDevitt would have had if he had survived the collision. The measure of damages is not the injury to the deceased but the pecuniary loss to his family resulting from his death. But before I set out the general principles to be applied I shall first deal with the specific claim of $387.88 for funeral expenses. There was no dispute about its amount. After the suppliant's right to the claim had been questioned by me counsel for the suppliant stated that he was satisfied that he could not maintain it. In my judgment, he was right. The principle to be applied by this Court on the subject may be put briefly.

In a claim under section 19(*c*) of the Exchequer Court Act based on a provincial or territorial Fatal Accidents Act, corresponding to Lord Campbell's Act, where the fatal accident was the result of negligent operation of a motor vehicle, this Court, in determining whether a claim for the funeral expenses of the deceased should be allowed, must ascertain and apply the statutory law on the subject in force in the province or territory in which the death occurred as it stood on June 24, 1938, when the Crown was first made responsible for the negligence of its officers or servants in driving a motor vehicle. If, at that time, in an action as between subject and subject under the applicable

provincial or territorial Fatal Accidents Act a claim for funeral expenses could not have been maintained, it should not be allowed in this Court even if it has become permissible in such province or territory by an amendment made since June 24, 1938, for it is not competent for a provincial or territorial legislative assembly or body to alter the extent of the responsibility of the Crown in right of Canada as imposed by Parliament. Only Parliament can do so: *Vide Tremblay* v. *The King* (1); *The King* v. *Armstrong* (2); *Gauthier* v. *The King* (3); *The Queen* v. *Nisbet Shipping Co. Ltd.* (4).

In this case the applicable law of the Yukon Territory is that of the Northwest Territories as it stood on June 13, 1898, except as altered by competent legislative authority: *vide* Yukon Act, R.S.C. 1927, chapter 215, section 33. The decisions in cases under Lord Campbell's Act would therefore govern. These held that funeral expenses were not a pecuniary loss resulting from the death of the deceased within the meaning of the Act and were not recoverable: *vide Dalton* v. *South Eastern Railway Co.* (5); *Clark* v. *London General Omnibus Company, Limited* (6). The fact that such claims became subsequently admissible in England under the Law Reform (Miscellaneous Provisions) Act, 1934, s. 2(3) does not affect the question, for there has been no similar amendment of the applicable Yukon Territory Act. And even if there had been such amendment it would not, for the reasons mentioned, have made any difference unless it had been made prior to June 24, 1938. The claim for the funeral expenses must, therefore, be disallowed.

There have been many decisions dealing with the principles to be applied in determining the quantum of damages in claims under Lord Campbell's Act, 1844, or its corresponding Acts in various parts of Canada, which may be referred to generally as Fatal Accidents Act, but it will be sufficient to cite the following namely, *Grand Trunk Railway Company of Canada* v. *Jennings* (7); *Johnston* v.

(1) [1944] Ex. C.R. 1.
(2) (1908) 40 Can. S.C.R. 229 at 248.
(3) (1918) 56 Can. S.C.R. 176 at 180.
(4) [1953] .SC.R. 480.
(5) (1858) 4 C.B. (N.S.) 296; (1858) 27 L.J.C.P. 227.
(6) (1906) 2 K.B. 648.
(7) (1888) 13 A.C. 800.

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Great Western Railway (1); *Royal Trust Co.* v. *Canadian Pacific Railway* (2); *Humphreys* v. *London* (3); *Pash* v. *Registrar of Motor Vehicles* (4); *Drewry et al* v. *Towns* (5); *Nance* v. *British Columbia Electric Railway Co.* (6). The effect of these decisions may be summarized briefly. Where there is liability under a Fatal Accidents Act the compensation authorized by it is for the loss of pecuniary benefit or advantage to the family of the deceased as the result of his death, and not otherwise. But it is not necessary to prove actual loss at the date of his death if there was a reasonable expectation of future pecuniary benefit to a member of his family from the continuance of his life. The compensation should be proportionate to the pecuniary advantage which the persons for whose benefit the action is brought might reasonably have been expected to enjoy if the deceased had not been killed so that regard must be had to the station in life of the parties concerned. The Court should estimate what sums the deceased would have applied out of his income to the maintenance of his wife and family and also what portion of his additional savings he would or might have left to them. In this estimate regard must be had to the expectancies of life of the deceased and his family. But, of course, it is only the present value of the future benefits that should be taken into account and there must be appropriate deduction for any acceleration of devolution of estate. Moreover, the amount of the compensation must not be so large that its investment will produce an income equal to the amount of income lost, for consideration must be given to possible contingencies, such as the death by accident of the deceased prior to the expiration of his normal expectancy of life or his disability or loss of earning power or income or the remarriage of his widow or her premature death. It is thus obvious that the contingencies that must be considered are so uncertain that the extent of the loss of pecuniary benefit or advantage to the family of the deceased cannot be ascertained with certainty. At best, the evaluation of the amount of compensation must be a matter of estimate or rough calculation involving an element of conjecture or even of guess work. But while the task of determining the

(1) [1904] 2 K.B. 250.
(2) (1922) 3 W.W.R. 24.
(3) [1935] 3 D.L.R. 39.
(4) (1949) 57 M.R. 130.
(5) (1951) 59 M.R. 119.
(6) [1951] 3 D.L.R. 705.

amount of compensation is difficult the Court must do its best to arrive at an award that is both fair and realistic with due regard to the contingencies that should be considered.

With these general principles in mind I proceed to the facts. Immediately prior to his death Ivan Charles McDevitt was working with his father, the suppliant Roy McDevitt, in what may be called the Watson Lake Hotel business. In addition to the hotel business there was also a trading post, a filling station and a taxi service. The business had flourished and greatly expanded since 1950 when the father took over the business. The son had been with him since then, keeping the books and generally acting as manager. The son was receiving $350 per month with the understanding that he was to come in as a third partner in the business. The suppliant Helen Margaret McDevitt also lived with her husband at Watson Lake Hotel. At the time of his death Ivan Charles McDevitt was between 26 and 27 years of age and his wife between 30 and 31 years. According to the expectancy of life tables in Exhibit 11, McDevitt's expectancy was between 40 and 41 years and his wife's between 36 and 37 years. While the agreement between McDevitt and his father was not in writing I see no reason for questioning it. His financial prospects for the future were excellent.

Under the circumstances, the suppliant Helen Margaret McDevitt is entitled to substantial damages for herself and her infant child. In my judgment, $30,000 would be a fair and realistic award, of which $25,000 will be for her and $5,000 for Ivan Charles McDevitt her infant child. The suppliant and her child are living in Edmonton and the child's share should be paid to the Public Trustee of Alberta to be held by him in trust for the infant Ivan Charles McDevitt under the powers vested in him by The Public Trustee Act, Statutes of Alberta, 1949, chapter 85.

There will, therefore, be judgment in the first petition that the suppliant Roy McDevitt is entitled to recover $3,200 and costs and that the counterclaim of the respondent is dismissed with costs. And there will be judgment in the second petition that the suppliant Helen Margaret McDevitt is entitled to recover the sum of $30,000 and

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costs and that the counterclaim of the respondent is dismissed with costs and that out of the said sum of $30,000 the sum of $5,000 is to be paid to The Public Trustee of the Province of Alberta in trust for the infant Ivan Charles McDevitt as stated. Since the two petitions were tried together there will be only one set of counsel fees.

Judgment accordingly.