

COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL Nos. 7/78
8/78

BEFORE: The Hon. Mr. Justice Robinson P.
The Hon. Mr. Justice Zacca J.A.
The Hon. Mr. Justice Henry J.A.

ESTATE AARON SAMUEL TATUM
ESTATE WILLIAM MAULDEN SCOTT

Mr. N. W. Hill Q.C. instructed by Messrs. C.S. Gill & Co. for Applicants

November 16, 1978

ROBINSON P.

The single issue in these appeals is whether Section 12(1) of the Succession Law precludes the grant of Letters of Administration, limited solely to the pursuit of a fatal accident claim for the benefit of dependants of a deceased person, before the expiration of 21 days from the day of the application for such a grant.

In my opinion it does not. Section 12 deals with the granting of Letters of Administration for the "administration of the estate" of a deceased person. A grant ad litem for the sole purpose of enabling the bringing of a fatal accident claim and restricted thereto, is not such a grant. Such an action is not for the benefit of a deceased person's estate. It is for the benefit of dependants of the deceased and any amount recovered in such an action, after deducting the costs not recovered from the defendant, is required to be divided among the dependants in such shares as found and directed by the Court. (See Section 4(1) of the Law of Torts Reform Law).

An award, therefore, made in a fatal accident claim does not become part of the deceased's estate and is not administered as such, See Halsbury's Laws 3rd Ed. Vol. 28 page 38. See also Leggott v Great Northern Rail Co. (1876) 1 Q.B.D. 599 at page 606 and Jeffrey v Kent County Council (1958) 3 A.E.R. 155 at page 158. It follows therefore, that a grant ad litem solely for the purpose of bringing a fatal accident claim on behalf of dependants, does not enable the grantee to administer

the estate of the deceased. Indeed, such estate, if the deceased had died intestate, remains bested in the judge of the Grand Court until administration as envisaged by Section 12, is granted. (See Section 26 of the Succession Law).

What then is the position when it is desired to appoint an Administrator ad litem? Section 13 of the Grand Court Law provides that the Grand Court shall be a superior court of record and shall possess and exercise the like jurisdiction as may be exercised by the High Court in England. And Section 20(2) provides that ...

"in any matter of practice or procedure for which no provision is made by this or any other law or by any Rules the practice and procedure in similar matters in the High Court in England shall apply so far as local circumstances permit and subject to any directions which the Court may give in any particular case -"

Section 4(1) of the Law of Torts Reform Law provides that actions brought under Section 3 (fatal accident claims) shall be brought in the name of the personal representatives of the deceased and that such actions shall be brought within 1 year of the death of the deceased. In these cases the deceased had died on 13.5.77 and so the deadline for bringing fatal accident actions was 12.5.78. It was therefore imperative that there should, before that deadline, be some personal representatives in whose names the actions could be brought. The expression "personal representatives" is not defined in the Law of Torts Reform Law. But that law is merely a consolidation of a number of laws, including the Fatal Accidents Law of 1845, Cap. 54 of the Laws of the Cayman Islands, published in revised form under the authority of the Law Revision Law. And Section 4(1) of that Law, Cap. 54, provided that the action "shall be brought by and in the name of the executor or administrator of the person deceased".

It is not unreasonable to assume, therefore, that "personal representatives" in the revised law were intended to and do have the same meaning as did the words "executor or administrator of the person deceased" in the old law. And these words are identical to the words used in the English Fatal

Accidents Acts which also require the action to be brought "by and in the name of the executor or administrator of the person deceased." (See Section 2 of The Fatal Accidents Act, 1846).

What then if there is no personal representatives in existence? The Laws of the Cayman Islands make no provision as to the practice and procedure to be followed in such a case and consequently resort must be had to the provisions of Section 20(2) of the Grand Court Law.

In England, the Fatal Accidents Act of 1864 provides that a dependant may himself or herself bring the action, but what if no such dependant is capable of bringing the action? What, for example, if the dependants were all minors?

In Tristram and Cootes' Probate Practice, 24th Edition, it is stated at page 392 that "where it is necessary for the personal representative of a deceased person to be made a party to legal proceedings (e.g. an action by or against the estate of the deceased) but the executors or other persons entitled to obtain a grant will not constitute themselves as personal representatives, application may be made for a grant of administration to a nominee, limited to bringing, defending or being a party to the action or proceedings in question. The grant will in no case be a general grant."

The example given in the above quotation is in respect of an action by or against the estate of the deceased, but an equally good example would be the bringing of an action under the Fatal Accidents Act.

In Tristram and Coote's it is further stated at page 393, that - "Application for a grant limited to an action should be made ex parte to the registrar under the provision of Section 162(1) proviso (h) of the Supreme Court of Judicature (Consolidation) Act 1925. That section provides, so far as is relevant, as follows:

"In granting administration the High Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof, ... and any such administration may be limited in any way the court thinks fit

Provided that -

(a) . . .

(b) if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the court may in its discretion, notwithstanding anything in this Act, appoint as Administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the court thinks fit."

It seems to me, therefore, that having regard to the provisions of Section 20(2) of the Grand Court Law, it was well within the competence of the learned Chief Justice to have granted the applications for the appointment of Administrators ad litem which he heard on the 10.5.78, provided, of course, that they were limited to the bringing of the fatal accident actions only, as that would in no way infringe the provisions of Section 12(1) of the Succession Law.

Had this been done, there would have been in existence "personal representatives" who could have brought the fatal accident actions before the deadline of 12.5.78.

As it appears that the Learned Chief Justice's refusal of the applications was based primarily, if not exclusively, on his view that he was precluded from granting them by the provisions of Section 12 of the Succession Law, it would not seem amiss for this court to do so, in view of the conclusions at which it has arrived.

In the circumstances, the appeals are allowed and it is ordered that the appellants be appointed Administrators ad litem with effect from the 10.5.78 the date of the hearing before the learned Chief Justice, but limited solely to the fatal accident claims contained in

5.

Causes Nos. 246 and 247, respectively, of 1978, which Causes were filed in the Grand Court before the expiration of the deadline of 12.5.78.

I agree

I agree