

THE HIGH COURT**[2010 No.9466]****BETWEEN****LIDIA IVANOVA****PLAINTIFF****AND****SOCIETE AIR FRANCE****DEFENDANT****JUDGMENT of Ms. Justice Irvine delivered on the 6th day of December, 2013**

1. The plaintiff in these proceedings is the mother of Maksim Ivanova ("the deceased") who was born on 13th November, 1983 and died in tragic circumstances when he was only 25 years of age. On 1st June, 2009, the deceased was travelling as a passenger on board flight AF447 from Rio de Janeiro to Paris Charles de Gaulle Airport when the aircraft, which was owned and operated by the defendant, went down and crashed into the Atlantic Ocean.

2. In its defence, the defendant quite properly admits liability for the collision which caused the deceased's death. It has also, I understand, apologised to the plaintiff for the anguish and distress which she has experienced as a result of the loss of her only child and has paid her a sum of €17,600 pursuant to Article 5 of EC/2027/1997 which must, of course, be credited to the present claim.

3. The defendant accepts that the plaintiff has the authority of Sergi Ivanova, the deceased's father to maintain these proceedings on behalf of all of the statutory dependents of the deceased and he has waived his right to any share in the damages to be awarded by the court. He, apparently, had little or no involvement in his son's upbringing, and according to the plaintiff did not provide him with financial or other support.

4. The plaintiff was born on 25th April, 1959 and is a ground operative in Aer Lingus. She came to reside in Ireland in 2005 and the deceased joined her the following year. He lived with her for the first six months he spent in Ireland and then rented a property in Swords with a couple of friends of a similar age and with whom he was living at the time of his death.

5. As a result of her son's death, the plaintiff has experienced tremendous sadness and upset apart from the fact that she has also lost the support which he used to give her in the course of her day to day activities. In the aftermath of his death, she received some professional support from within the Aer Lingus organisation. However, it was clear from the evidence that the plaintiff has not yet come to terms with the death of her only child to whom she appears to have been absolutely devoted. She is presently awaiting an appointment with a psychologist whom she hopes to attend in the near future. Hopefully she will eventually come to terms with what I appreciate must have been a catastrophic loss for her as a lone parent.

6. Notwithstanding these facts, I am curtailed in the amount that I can award to the plaintiff in respect of her mental distress. The legislature, for public policy reasons, has capped the amount of damages that can be recovered for mental distress by any dependent of a deceased person to a sum of €25,400 which I'm sure the plaintiff may view as a paltry sum having regard to the effect that her son's death has had on her life. In this case, as the plaintiff is the only statutory dependent, the deceased's father having waived his right to any contribution. I will award the entire statutory sum of €25,400 to the plaintiff as solatium.

7. In respect of the dependency claim advanced, the onus of proof is on the plaintiff to establish with some degree of probability, the extent to which the deceased supported her prior to his death and the likelihood of support of that nature continuing into the future had he not died in the accident, the subject matter of these proceedings.

8. At the date of his death, the deceased was earning approximately €40,000 gross per annum. In the personal injuries summons, the plaintiff made a claim for a dependency loss based on the following facts:-

- (a) That the deceased supported her by giving her approximately €50 per month.
- (b) It was estimated that the deceased contributed an average of €21 per week towards her holiday expenses.
- (c) That the deceased provided 12.5 hours services for her valued at €108 per week.
- (d) That the deceased drove her to a swimming pool in Sandymount, once a week saving her taxi fares of €52 per week.
- (e) That she and the deceased leased an apartment in Estonia and that they shared the annual maintenance costs of €690. They each paid the entire maintenance costs every second year.

9. In the course of her evidence the plaintiff advised the court that the deceased did not give her any regular cash contribution from his earnings and hence the claim referred to at (a) above was not pursued on her behalf. Also, the claim in respect of the cost of the plaintiff travelling from Swords to swim in Sandymount and which is referred to at (e) above was withdrawn.

10. In respect of the claim referred to at (b) above, the plaintiff maintained in the course of her evidence that the deceased provided her with extensive services which included teaching her English, assisting her with computer technology, shopping, painting, the assembly of furniture, moving house and bringing her to and from work. It is estimated that in respect of all of these services that the deceased spent approximately 12.5 hours per week providing support of this nature. The weekly value of these services was computed by the plaintiff's actuary at €108 per week. In addition, in the course of her evidence, the plaintiff stated that her son also took her out to do her shopping on a regular basis and that he often contributed €25 - €35 towards her groceries.

11. The plaintiff also maintains a claim on the basis that the deceased regularly contributed to her foreign holidays. She stated that the deceased had given her €1,200 towards a holiday to Mexico for her 50th birthday in 2009 and that he also gave her a contribution of €1,000 in January of the same year to allow her travel to India. She said that she paid for all of her smaller holidays herself such as the one she took to Egypt in 2007 and to Dubrovnik in 2008. Based on this evidence the court was asked to assume that the deceased, had he lived, would have continued to contribute approx €21 a week from his net income towards his mother's holiday expenses during their joint lives at least up to the date upon which he might marry.

12. The plaintiff also claims compensation for the loss of the value of the deceased's alleged contribution towards the costs of keeping an apartment in Estonia which was rented by her from the State for a five year period for the first time in November 2004 and more recently in 2009. In addition to the cost of the rent, the plaintiff told the court that the ancillary bills pertaining to this apartment such as her electricity bill, cost her about €690 a year and that this cost was shared between herself and the deceased as they both used the apartment when they returned home to Estonia each year. That loss of the deceased's contribution of €345 per annum has led to a further alleged loss of €7 per week.

13. In respect of the value to be attached to the dependency claim, the court heard evidence from Mr. Nigel Tennant, Actuary, on behalf of the plaintiff and also from Mr. Joseph Byrne, Actuary on behalf of the defendant. Mr. Tennant felt that the appropriate multiplier to use, assuming the plaintiff was on the top tax rate was that of €833 while Mr. Byrne was of the view, based on an income of approximately €32,000 per annum, the appropriate multiplier was €790. They were each agreed that the respective multipliers assumed that the plaintiff's losses would only continue until such a time as the deceased might have been expected to marry and during the currency of their joint lives. Mr. Tennant, however, did capitalise the plaintiff's alleged losses to demonstrate the extent of her claim if the deceased had not married and had continued to support her during the currency of their joint lives.

14. In relation to the claim advanced in respect of the deceased's likely contribution to the plaintiff's holiday expenses, I have come to the view that the sum claimed is excessive. I accept the plaintiff's evidence that the deceased paid a significant sum towards the cost of a holiday in Mexico for her 50th birthday in 2009. I am sceptical, in the absence of any documentary evidence that the deceased would have given this present to his mother in April 2009 if he had also given her a sum of €1,000 towards a trip to India only four months earlier in the same year. Even if he did give his mother a present of both these expensive holidays in the same year, I think it is highly likely that 2009 was a special year being that of the plaintiff's 50th birthday. I do not accept that it is probable, as alleged on the plaintiff's behalf, that the deceased would have contributed a sum of €1,000 a year from his relatively modest salary in Aer Lingus to his mother's annual holidays until such as he married. I nonetheless believe that the deceased might have contributed occasionally to the plaintiff's holiday costs had he not died so prematurely and I believe it would be appropriate to value his likely continued contribution in this regard at €7 per week. I will attach Mr. Byrne's multiplier, which I believe to be the appropriate one having regard to the plaintiff's own income, which entitles the plaintiff to an award of €5,530 under this head of loss.

15. I find it hard to accept that in circumstances where the deceased was not living with his mother that he would have provided her with services which amount to actual support for which compensation should be awarded for a period of in excess of 12 hours per week. While I have no doubt the deceased would have helped his mother with her English, it doesn't appear to me that this was done in any structured way and was probably done in the normal course of socialisation. I accept also that the deceased probably helped the plaintiff with her computer skills during his lifetime but I think it is probable from the evidence that the plaintiff is reasonably computer literate at least at this point in time and that the deceased would no longer have been giving her instruction as to how to use her computer even if he might occasionally have been in a position to repair it had it broken down or required some type of servicing.

16. I accept much of the plaintiff's evidence as to the nature and extent of her relationship with her son prior to his death. I think it is likely that he helped her with her shopping given the fact that he had a car. I have to say I am surprised at the plaintiff's assertion that her son contributed to the cost of her groceries having regard to her own income unless, like many mothers of adult children living outside of home, she was happy to give him an evening meal on a regular basis. Indeed, in her evidence on the first day of the hearing, when asked by her own counsel why her son came over, she laughed and said he came over to get fed. Having regard to the fact that the plaintiff regrettably has been denied the opportunity of continuing to have regular meals at home with her son, she no longer incurs the financial costs associated with this activity. Accordingly, I believe that any potential loss arising from any contribution he may have made to her grocery bill has effectively been negative by his unfortunate death.

17. I am not satisfied that the plaintiff's evidence supports a claim for support which should be valued at 12.5 hours per week. I believe that much of the time that the plaintiff spent with her son was spent in the type of normal engagement that occurs between a parent and a grown up child who comes to visit. However, I do accept that the deceased spent a good deal of time with his mother on a regular basis. After all, he lived close by and she lived on her own. They also worked for the same organisation. Further, I think they may have enjoyed a closer bond than many mothers and their sons as a result of the fact that the plaintiff reared him on her own and he had no sisters or brothers. I also think it is likely that the deceased did give his mother a reasonable amount of support in relation to her day to day living, possibly because she did not have what I will describe as "a man about the house" to do some of the work which is often done where a woman has a male partner. Neither did she have any other children who might have shared in supporting her needs as a parent.

18. I accept the plaintiff's evidence that her son helped her to move house on one occasion and that once or twice she needed his help to assemble furniture. He also helped her with some tiling and painting. However these types of services are not ones which are provided regularly. People do not buy large pieces of furniture that require assembly very often. Neither do they move house frequently so I have to be circumspect as to the extent of any award I make in relation to this type of support. I do, however, accept the plaintiff's evidence that the deceased cut the grass for her in the summer months on a regular basis.

19. Having regard to all of the evidence as to the services provided by the deceased for the plaintiff prior to his death, I believe it is reasonable to conclude that were it not for his death, he would have continued, in the course of their joint lives up to the time of his likely marriage, to have provided his mother with an average of 7 hours services a week.

20. As for transportation, the plaintiff's evidence was that approximately once a week the deceased may have driven her to and/or from work or to do her grocery shopping. Accordingly, I will place a weekly value of €20 per week on this service.

21. As for the relatively modest claim in respect of the deceased's contribution to half of the costs associated with maintaining the apartment in Estonia, excluding rent, no bills or documentation were produced to the court to support the validity or quantum of this claim. It would have been a relatively straightforward matter to have obtained such documentation. Further, the court had no proof, beyond a ball statement given by the plaintiff that the deceased discharged these outgoings every second year. In these circumstances I am not satisfied that the plaintiff has discharged the burden of proof to establish this claim.

22. Having regard to all of the foregoing circumstances, I will award the following sums in respect of the various categories of claim, namely:-

Holidays

€7 per week x €790 (multiplier) €5,530

Household Services

7 hours per week @ €8.60 per hour x €790 (multiplier) €47,834

Travel

€20 per week x €790 (multiplier) €15,800

Solatium €25,400

Total €94,564

23. From the aforementioned sum must be deducted the value of the assets which passed to the plaintiff following the death of her son. She received a sum of €1,900 and the value of this sum, taking into account the accelerated benefit which attaches thereto is the sum of €2,375.

24. Also to be deducted from the claim is the payment which has already been made by Air France. This sum of €17,600 attracts interest at Courts Act rate of 8% as all past losses have been calculated on this basis. Taking the interest into account, the sum to be deducted is €24,700.

25. The final award will therefore be in the sum of €67,490.