

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 136 of 2021 (No.1)

BETWEEN:

GUADALUPE MENDEZ

(Joint-Administratrix of the Estate of Cpl Yassir Marcus Marcelo Mendez)

First Claimant

MARCELLO MENDEZ

(Joint-Administrator of the Estate of Cpl Yassir Marcelo Mendez)

Second Claimant

JASMINE GICHELLE PEREZ

(Administratrix of the Estate of Cpl Reynaldo Choco)

Third Claimant

AND

BRIGADIER GENERAL – BELIZE DEFENCE FORCES

1st Defendant

MINISTER OF NATIONAL SECURITY

2nd Defendant

ATTORNEY GENERAL OF BELIZE

3rd Defendant

Appearances:

Ms. Audrey Matura, for the claimants

Ms Imani Burgess, Crown Counsel and Ms Alea Gomez, Crown Counsel for
the defendants

31 July 2024

11 October 2024

JUDGMENT

Tort – Assessment of damages - Damages for loss of pecuniary support – Special damages - Funeral expenses – Loss of expectation for life under the Torts Act – Dependency damages - Principles governing claims for loss of pecuniary support – Locus standi - Cause of action – Type of loss recoverable under the Torts Act – Damages computation methodologies - Multiplicand/multiplier methodology – two-stage approach to calculating loss of pecuniary support – Conventional percentages methodology – Date used to calculate loss of dependency – Rules on interest awards on pre-trial pecuniary loss and on post-judgment pecuniary loss

[1] **HONDORA, J.:** This is my judgment on a claim for damages brought by and on behalf of the dependants of Corporal Yassir Marcus Marelo Mendez (Cpl Mendez) and Corporal Reynaldo Choco (Cpl Choco) under the Torts Act, Cap 172 (Torts Act).

I. Context

[2] Cpl Mendez and Cpl Choco were engineer officers in the Belize Defence Forces. They died in the line of duty when their Bell UH-1H helicopter crashed into the Western Lagoon, Belize District on 27 February 2020. On the fateful day, Cpl Mendez and Cpl Choco and their two colleagues were providing air support to a ground counter-narcotics operation.

[3] The first claimant is Guadalupe Mendez, Cpl Mendez’s wife. The second claimant is Marcello Mendez, Cpl Mendez’s father. In their claim form and in subsequent pleadings, both Guadalupe Mendez and Marcello Mendez were listed as the first claimant. For ease of reference, I shall refer to Guadalupe Mendez as the first claimant and Marcello Mendez as the second claimant. The first and second claimants claim damages for loss of financial support pursuant to the Torts Act, i.e., in their own right and on behalf of Cpl Mendez’s two minor children (Kyra and Yasnir) and Cpl Mendez’s mother (Edita Mendez).

[4] The third claimant, Jasmin Gichelle Perez, was Cpl Choco’s wife. She instituted these proceedings in her own right as a dependent spouse and on behalf of Cpl Choco’s parents, Pedro Choco Jr. and Silvana Eleuteria Choco.

[5] The claimants sued for (a) loss of pecuniary support under the Torts Act; (b) special damages; and (c) “damages on behalf of the [estates of the two deceased officers] pursuant to the Torts Act”. On 12 April 2022, the defendants admitted liability and by consent the case proceeded to the damages assessment stage. Thereafter the defendants objected to the claimants’ claims for damages on behalf of the estates of the two officers. With the agreement of the parties’ respective counsel, Chabot J issued an order on 5 December 2022 clarifying (i) that the

claimants' case was not based on the Administration of Estates Act, Cap 197; and (ii) that the matter fell to be determined under the Torts Act, Cap 172¹ (Torts Act).

[6] Below, I outline the legal framework governing the assessment of damages in wrongful death cases and the principles and guidelines on which I rely for my decisions on the primary issues arising for resolution in this matter, which are: whether the claimants are entitled to damages, and if so, what type of damages and in what quantum.

II. The law

[7] The law governing claims against a tortfeasor for loss of financial support following the wrongful death of a breadwinner is set out in sections 9-16 of the Torts Act.

[8] Section 9 of the Torts Act provides:

“Where the death of a person is caused by a wrongful act, neglect, or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his injury thereby, 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 was caused under such circumstances as amount in law to felony.”

[9] This section sets out the rule on liability in wrongful death cases. It should be read together with section 10, which provides:

“Every action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused, but notwithstanding anything contained in the Limitation Act, no such action shall be commenced at any time later than twelve months after the death of such deceased person.”

[10] Section 10 sets out and limits the class of ‘dependants’ for whose benefit a claim may be initiated. This section must be read together with the definitions set out in section 2 and section 16, which grants causes of action to those dependants who – at law – are deemed illegitimate.²

[11] Section 11 provides:

“Every such action shall be brought by and in the name of the executor or administrator of the person deceased, but if in any case there is no executor or administrator of the person deceased, or if, there being such executor or administrator, no such action is, within six calendar months after the death of such deceased person, brought by and in the name of such executor or administrator, the action may be brought by and in the name or names of all or any of the persons (if more than

¹ The dispute relating to the Administration of Estates Act appears to have arisen because at the material time, neither of the claimants had secured grants of probate. Both Cpl Mendez and Cpl Choco died interstate.

² Section 16(1) provides: “For the purposes of section 8 to 15 of this Act inclusive, a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately.” This legal framework addresses the injustice previously visited on dependants of a deceased breadwinner only because the claimant was born out of wedlock.

one) for whose benefit the action is hereby given, Provided that not more than one action shall lie for and in respect of the same subject matter of complaint.”

- [12] This provision lays out the rules on locus standi, the timelines within which legal proceedings may be initiated under the enactment and the number of legal actions that may be instituted against a tortfeasor. Arguably, the only person entitled to institute an action for damages in the first six months following the death of the deceased is the executor or administrator of the deceased person's estate. If no such action is instituted within six months following the death of the deceased, the dependant(s) or the executor/administrator of the deceased's estate is entitled to institute legal proceedings.
- [13] Relatedly, section 11 as read with section 13 of the Torts Act³ requires the names of all those for whose benefit the legal action is instituted to be disclosed in the claim form and/or statement of claim. Notably, in this matter, the claimants (who are also administrators of the estates of the two deceased officers) amended their claim form and statement of claim to ensure compliance with this requirement.
- [14] Section 12 of the Torts Act provides:
- “In every action such damages proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought may be awarded, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the parties for whose benefit the action is brought in such shares as the court or a jury may direct.” [Emphasis added]
- [15] This is the section with respect to which we are most concerned in these proceedings. It affirms that damages may be awarded to, and apportioned between, those for whose benefit legal action was initiated under the Torts Act. The terms of this section have been supplemented by a number of common law rules, principles and guidelines – some of which continue to evolve and have given rise to much litigation. Below, I outline those which I intend to apply in resolving the dispute between the parties.

III. Principles

- [16] I am grateful to the claimants' and defendants' counsel for their respective skeleton arguments

³ Section 13 of the Torts Act provides: “*In any such action the plaintiff shall state on the writ of summons full particulars of the person or persons for whom and on whose behalf such action is brought, and the nature of the claim in respect of which damages is sought to be recovered.*” Following the enactment of the Senior Courts Act, 2022, proceedings are now commenced via claim forms and not “writs of summons”. Consequently, consideration ought to be given to amending section 13 of the Torts Act to reflect the new terminology.

and the authorities they cited on the assessment of damages in wrongful death cases. They include the cases of: (i) **Perera v Attorney General**, Claim No. 217 of 1992; (ii) **Castaneda and Ors v Sutherland and Ano**, Claim No. 538 of 1997; (iii) **Romero & Ors v Attorney General**, Claim No. 29 of 2016; (iv) **Griffith v Chan**, Claim No. 614 of 2008; (v) **Diego & Ors v David**, Claim No. 797 of 2018; (vi) **Penner and Ors v Penner**, Claim No. 158 of 2020; (vii) **Arana v Mai**, Claim No. 322 of 2017; (viii) **Mai v Arana**, Civil Appeal, No. 33 of 2018; (ix) **Morales de Habet v Adolpho And Ors** [2004] 4 BZLR 173; (x) **Canul and Ors v Alfaro**, Claim No. 552 of 2000; (xii) **Sanchez and Ors v Gianchandani**, Claim No. 385 of 1999. The majority of these cases draw on and/or reference English, Privy Council and Jamaican jurisprudence.

[17] The 1965 Privy Council case of **Kassam v Kampala Aerated Water Company** [1965] 2 AER 875 was cited in several of the cases referenced by the parties, such as **Griffith**, at para. 36. At the time of the decision in **Kassam**, Belize's final court was the Privy Council. To this extent, that case constituted and, in some respects, still constitutes binding authority on the computation on damages claimed by dependants in wrongful death cases. The parties did not draw my attention to any other case, which constitutes binding authority in this jurisdiction.

[18] The **Kassam** case was decided in 1965. In an appropriate case, and for the same reasons expressed by Diplock LJ in **Cookson (Widow) v Knowles** [1979] AC 556, it will be necessary for the Court of Appeal to affirm, as necessary, those principles, which should serve in this jurisdiction as:

"...guidelines as to what...is proper for the judge to take into account in deciding how to exercise the discretion confided in him by statute."

[19] In **Knauer v Ministry of Justice** [2016], UKSC 9, at page 21, the UK Supreme Court very correctly stated that

"...it is important that litigants and their advisers know, as surely as possible, what the law is. Particularly at a time when the cost of litigation can be very substantial, certainty and consistency are very precious commodities in the law."

[20] I could not have put it any better. Clarity on the nature of the legal principles and guidelines governing this area of the law, and the stability of this jurisdiction's stare decisis will enable dependants to know with a greater degree of certainty what the law is and of their entitlements, if any, should they decide to sue for pecuniary loss of support following the death of a breadwinner. It would also facilitate earlier settlement of cases and reduce unnecessarily extended and contentious litigation on the assessment of damages.

[21] Section 12 of the Torts Act is substantively similar to section 3(1) of the UK Fatal Accidents Act, 1976.⁴ From a practice perspective, the opinions expressed and guidelines provided in the decisions issued by appellate courts in England and Wales and by the Privy Council on the principles underlying the assessment of damages may, with an appropriate degree of circumspection be considered in determining those principles that should undergird similar-type claims in this jurisdiction (*Singh v Toong Fong Omnibus Co. Ltd* [1964] 3 All E.R. 925 and *Aziz Ahamad Ltd v Raghuntan Raghubar* [1967] 12 W.L.R 352 at 356). Circumspection is required given socio-economic and other structural differences between countries. In addition, recourse should be had to decisions of the Caribbean Court of Justice – Belize’s final appellate court.

(a) Principles on locus standi and causes of action

[22] As noted above, the Torts Act grants locus standi to surviving spouses, minor children and parents of the deceased. These are the only dependants permitted to sue for pecuniary loss arising from the death of a familial relation upon whom they relied for financial support during his or her lifetime (*Romero and Ors v Attorney General*, Claim No 29 of 2016, at para. 12).

[23] In the early stages of this case, this question exercised the parties and was resolved by Chabot J in her 5 December 2022 decision excluding claims made for the benefit of the estate of the two army officers. I should add that I do not exclude the existence of a cause of action under section 26(4) of the Administration of Estates Act, which enables an executor or duly appointed administrator of a deceased person’s estate to sue for damages in a matter pertaining to a cause of action that accrued to the deceased before their passing.

(b) Principle on type of loss recoverable

[24] The second principle apparent from section 12 of the Torts Act, which is affirmed by case law, restricts dependants’ claims to loss of support or services that can be quantified in money terms. In an often-quoted statement, Diplock LJ explained in *Malyon v Plummer* [1964] 1 QB 330, at page 16 E-F that:

"It has...long been established, despite these wide words [of what is now section 3(1) of the Fatal Accidents, Act, 1976 and which is similar to section 12 of the Torts Act], first: that the pecuniary loss to the persons for whose benefit the action is brought is the only damage recoverable, and, secondly, that the pecuniary loss recoverable is limited to the loss of a benefit in money or

⁴The 1976 Act was preceded by the Fatal Accidents Act, 1846. The terms of section 3 of the 1976 Act remained broadly similar to those set out in the 1846 Act. Section 12 of the Belize Torts Act is similar in all material respects to section 3 of the UK Fatal Accidents Act, 1846. This explains the nature of language contained in the Torts Act and why it is important that consideration be given to an amendment that uses simple and easy to understand language on the law and legal principles regulating this area.

money's worth, which if the deceased had survived, would have accrued to a person within the defined relationship to the deceased, and would have arisen from that relationship and not otherwise."⁵ [Emphasis added]

[25] This means that an executor or administrator of an estate of a deceased person may sue on behalf of and for the benefit of dependents (see *Penner*, at para. 5). In addition, neither the dependants nor administrators/executors of estates may sue for loss of happiness and companionship. These claims fall outside the Torts Act. Buckley LJ in *Hay v Hughes* [1974] EWCA Civ J1017-8 rightly noted that such claims cannot be quantified in monetary terms and consequently cannot support a claim for damages in a wrongful death case (see also *Davies v Powell Duffron*, 1952, A.C. 601, at 617; *Taff Vale Railway v Jenkins* 1913 A.C.1, at p. 4).

(c) General principles on heads of damages

[26] In this jurisdiction, in wrongful death cases, dependants can sue for, and per practice courts have, in appropriate cases, granted special and general damages. With respect to special damages, in addition to funeral expenses, there appears to have emerged a 'practice' enabling claimants to sue for and recover damages for loss of expectation of life under the Torts Act.

[a] Special Damages

(i) Funeral expenses:

[27] Section 16(2) enables claimants to sue for the deceased's funeral expenses (see *Griffith* at para 52 and *Alarcon and Ors v Attorney General and Ors*, Claim No. 271 of 2004, at para. 23⁶).

[28] Section 16(2) of the Torts Act provides:

"For the purposes of an action brought under sections 8-15 of this Act inclusive, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought." [Emphasis added].

(ii) Damages for loss of expectation of life:

[29] In this jurisdiction, the earliest or one of the earliest cases in which damages for loss of expectation of life was awarded to dependants under the Torts Act is the 2005 decision in the case of *Canul v Alfaro*, Claim No. 552 of 2000, at para. 40. In that case \$3,500 was awarded

⁵ Section 3(1) of the Fatal Accidents, Act, 1976 (UK) is similar in all material respects to section 12 of the Torts Act.

⁶ For reasons explained by Young J, the decision in that case, which was filed in 2004 was delivered in 2023. That constituted an unfortunate state of affairs.

for loss of expectation of life to dependants under a claim initiated pursuant to the Torts Act. And so too in the later cases of **Griffith v Chan** and **Williams v Rodriguez and Ano**, Claim No. 542 of 2016. Regrettably, these cases did not shed light on the relevant section of the Torts Act that grants dependants a cause of action for damages for loss of expectation of life.

[30] A claim for loss of expectation of life may exist under section 26.4 of the Administration of Estates Act⁷ in a case in which a deceased person initially survived an accident but later died as a result of their injuries. In such a situation, an executor or administrator of the deceased's estate may sue (or continue a case initially filed by the injured party) for loss of expectation of life. The quantum of damages will represent lost earnings for the years lost because of the injury. Those damages are due to the deceased's estate. In my view, an award for loss of expectation of life finds no foundation on any of the provisions of the Torts Act.

[31] In the High Court case of **Arana v Mai**, Abel J awarded the dependants the sum of \$20,500 for the loss of expectation of life and ruled that the previous awards of \$3,500 were no longer adequate. Curiously, Abel J's decision on this head of damages cited and was based on the House of Lord's decision in **H. West & Son Ltd and another v Shephard** [1963] UKHL 3 (May 1963⁸), which was a personal injury case.

[32] On 8 February 2024, Abel J's decision on this head of damages was upheld on appeal (see **Mai v Arana**, Civil Appeal No. 33 of 2018). However, there was no discussion on whether the award was enabled by any provision in the Torts Act. Similar awards were made in, among others, **Penner**, at para. 10⁹; and **Diego**, at page 2,¹⁰ and **Alarcon and Ors v Attorney**

⁷ Section 25.4 of the Administration of Estates Act provides: "On the death of any person after the commencement of this Act, all causes of action...vested in him shall survive...for the benefit of [] his estate."

⁸ It should be noted that the **H. West & Son Ltd and another v Shephard** was a personal injury and not a fatal accident/wrongful death case.

⁹ In her September 2020 decision in **Penner**, Young J ruled: "The sum of \$20,500.00 is awarded for each parent for loss of expectation of life. This is not intended to be the value placed on a life; it is only a nominal show of respect for that life. This sum is to be shared equally amongst all their children. There was no claim for funeral expenses." [Emphasis added]

The learned judge did not provide an explanation for her decision relating to the basis in law of the cause of action for damages for loss of expectation of life exercised by a claimant for the benefit of the deceased's children in a wrongful death case brought under the Torts Act. In addition, there was no explanation for the decision that the \$41,000 awarded under this head of damages be shared equally between "all the children" after ruling in para. 6, 8 & 9 that two of deceased's seven children who were over 18 years of age had no locus standi or a cause of action under the Torts Act.

¹⁰ In her June 2019 decision in **Diego**, Young J ruled: "A rounded sum of \$20,500.00 will be awarded for loss of expectation of life based on **Edgar Arana v Adelardo Jose Mai** Claim No. 322 of 2017 where Abel J recognized the need to increase the conventional

General and Ors, Claim No. 271 of 2004, at para. 25 (a case decided on 31 January 2023). I shall return to this issue below.

[b] Damages for loss of pecuniary support

[33] Section 12 of the Torts Act has given birth to a number of principles and guidelines used to determine (a) whether a claimant is entitled to damages for loss of pecuniary support; (b) the computation of damages; (c) the apportionment of damages between the dependants; and (d) interest awards. These sub-principles include:

- (a) what is termed “the conventional” multiplicand/multiplier methodology.
- (b) the determination of the multiplicand (i.e., the annual pecuniary loss suffered by a dependant, including in situations where the loss was for services (calculable in money terms) previously rendered by the deceased to and for the benefit of a claimant/dependant and in relation to which the claimant/dependant had a reasonable basis to expect would have continued but for the death of the deceased).
- (c) the determination of the multiplier (i.e., whether the period of the alleged financial dependency should be calculated from the date of death or date of trial and the factor(s) that should determine the period of dependency and whether one or more of the relevant factors relate to the dependant(s) or the deceased).
- (d) the two-stage damages’ assessment methodology, i.e., an assessment of (i) damages due from the date of death to the date of trial; and (b) damages representing future loss of financial support (i.e., post-trial).
- (e) the use of what is termed the “conventional” percentages formula used to apportion the amount of damages assessed representing the annual loss of support to one or more of the dependants in whose name(s) or for whose benefit the claim was initiated.
- (f) interest to be awarded on the pre-trial pecuniary loss and on the post-trial pecuniary loss.

[34] I will expand on these principles below and indicate which of these I shall use in my decision on the assessment of damages due to the claimants.

figure to a sum which although nominal only, showed greater respect for the value of human life. I wish to associate myself with that decision.”

(d) Principles relating to section 12 claims

(i) Multiplicand/multiplier methodology

[35] This damages computation methodology involves the determination of (a) the annual loss in monetary terms suffered by a claimant (**the multiplicand**) and (b) the number of years the claimant would have benefited from the financial support provided by the deceased (**the multiplier**). The two figures are multiplied with the resulting figure representing the amount of damages to be awarded to a claimant. As such, the **Multiplicand x the Multiplier = Damages to be awarded**.

[36] This methodology, which is based on English caselaw and practice, has a long history and is used to calculate damages under the UK Fatal Accidents Act. In *Malyon v Plummer* [1963] EWCA Civ J0325-1, Lord Diplock explained the multiplicand/multiplier methodology as follows:

“Because in **most cases** the most reliable guide as to what would happen in the future if the deceased had lived is what did in fact happen in the past when he was alive, the common and convenient way of making the first estimate where the deceased at the time of his death was the breadwinner of the family is (a) to ascertain what annual benefit in money or money's-worth in fact accrued to the person for whom the action is brought from the deceased and arising out of the relationship before the death of the deceased, (b) to assess the extent (if any) to which that benefit would be likely to have increased or diminished in value in the future if the deceased had lived, (c) to assess the number of years for which that benefit would have been likely to have continued if the deceased had not been killed by the tortious act of the defendant, and (d) to apply to the annual benefit, assessed under (a) and (c) and generally called "the dependency", the appropriate multiplier derived from (c), allowance being made for the present receipt of a capital sum in respect of annual losses which would be sustained in the future. But the fact that it is convenient to have recourse to the past for guidance as to what would have been likely to happen in a hypothetical future which owing to the death of the deceased will never occur, must not blind one to the fact that one is estimating a loss which will be sustained in the future.”

[Emphasis added]

[37] However, as shown by the case of *Stanley v Saddique* [1991] 2 WLR 459, this is by no means the only methodology used or on which dependants may base their claim or on which a judge may base their judgment on a claim for damages in a wrongful death case. In this regard, see the case of *L (A Child) v Barry May Haulage* [2002] P.I.Q.R. Q3 in which the court departed from the multiplicand/multiplier methodology. In Belize, the case of *Romero* (para. 15) discussed the application of the multiplicand/multiplier approach and that expressed in *Stanley* and opted

for the former.

[38] In this jurisdiction, the multiplicand/multiplier methodology has been used in several cases initiated under the Torts Act. Consistent with current precedent and the parties' submissions, I shall use this approach in my assessment of the damages due to the claimants.

(ii) Principle on the two-stage approach

[39] Many common law jurisdictions use the two-stage methodology to calculate damages for loss of financial support. This methodology requires damages to:

“...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 an estimate of the loss sustained thereafter” (per Diplock in **Cookson**, at page 4).

[40] Based on the domestic caselaw cited in the parties' written submissions, it is fair to say, there is yet to emerge in this jurisdiction a consistent practice on this aspect of calculating damages in wrongful death cases.

[41] In most of the cases brought to my attention, the court used a one-stage approach, i.e., the court calculated the multiplier from the deceased's date of death and multiplied that with the annual pecuniary loss suffered (multiplicand) to arrive at an aggregate figure determined to be the pecuniary loss suffered (see **Sanchez**, at page 6; **Perera**; (ii) **Castaneda**, at page 3; (iii) **Canul**, at para. 31; (iv) **Chan**, at para. 29).

[42] The case of **Romero** (para. 25) used a two-stage approach and determined the multiplier from the date of death. The latter approach was broadly consistent with that used in cases like **Cookson**. I shall return to this issue below.

[43] The merits of a two-stage approach lie in the degree of accurateness at least of the damages suffered between the date of the deceased's death and the date of trial. In these proceedings, the parties have opted for the two-step methodology, and rightly so in my judgment. This methodology, which accords with more established precedent and practice is the one I shall use in these proceedings.

(iii) Principle on use of percentages to apportion damages

[44] The third principle on the calculation of damages, which is arguably now firm precedent in this jurisdiction is that in the case of a dependant spouse where there are no children, that spouse's pecuniary dependency is calculated at 66.6% of the deceased's net income. And where there

are children and/or other dependants, the widow/widower and children's pecuniary dependencies are calculated at 75% of the deceased's net income (see *de Habet v Medina* [2004] 4 BZLR 173.¹¹ The use of percentages is, of course, a guideline and not a rule of law. Judges may depart from these guidelines in appropriate cases and in the interests of justice (see for example, Lord Diplock's statement in *Wright v British Railways Board* [1983] 2 AC 773).¹²

[45] O'Connor LJ explained the use of percentages quite well in *Harris v Empress Motors Ltd*, [1983] 3 All ER 561 as follows:

"In the course of time the courts have worked out a simple solution to the...problem of calculating the net dependency under the Fatal Accidents Acts in cases where the dependents are wife and children. In times past the calculation called for a tedious inquiry into how much housekeeping money was paid to the wife, who paid how much for the children's shoes etc. This has all been swept away and the modern practice is to deduct a percentage from the net income figure to represent what the deceased would have spent exclusively on himself. The percentages have become conventional in the sense that they are used unless there is striking evidence to make the conventional figure inappropriate because there is no departure from the principle that each case must be decided upon its own facts. **Where the family unit was husband and wife the conventional figure is 33 per cent** and the rationale of this is that broadly speaking the net income was spent as to one third for the benefit of each and one third for their joint benefit... **Where there are children the deduction falls to 25 per cent.**" [Emphasis added]

[46] This is the methodology used and advocated for by the parties to this matter and, in my view, correctly so and which I shall use in my computation of the damages due to the claimants under section 12 of the Torts Act.

(iv) Principle on the date used to calculate loss of dependency (date of death or date of trial?)

[47] The fourth principle, which has been the subject of much controversy pertains to the date from which the dependency period should be calculated.

¹¹ In *de Habet*, Barrow J held: "The treatment in *McGregor on Damages*, 16th ed., at para. 1776 indicates that a pattern has developed of expressing the annual dependency as a percentage or as a fraction of the deceased's annual earnings. This has become, as a conventional figure, 66 and 2/3 percent of earnings for the dependency of a wife alone, 75 percentage of earnings for a widow and children."

¹² In *Wright v British Railways Board*, Lord Diplock stated: "...a guideline as to quantum of conventional damages or conventional interest thereon is not a rule of law, nor is it a rule of practice. It sets no binding precedent; it can be varied as circumstances change or experience shows that it does not assist in the achievement of even-handed justice."

[48] In **Cookson v Knowles**, and **Graham v Dodds** [1983] 1 WLR 808, the House of Lords held that the date from which the dependency period (multiplier) should be calculated is the date of the deceased's death and not the date of trial. After much criticism in decisions issued by the lower courts¹³ the UK Supreme Court (UKSC) overturned its ruling in **Cookson** in its 2016 decision in the case of **Knauer v Ministry of Justice**. In doing so, the UKSC acknowledged that the **Cookson** rule, which required the multiplier to be calculated from the date of death rather than the date of trial generally resulted in under-compensation (see para. 7-11 and 27) and was consequently unjust on claimants in fatal accidents cases as compared to claimants in personal injury cases.

[49] The UKSC noted, and in my view correctly, that:

“It is the aim of an award of damages in the law of tort, so far as is possible, to place the person who has been harmed by the wrongful acts of another in the position in which he or she should have been had the harm not been done: full compensation, no more and certainly no less. Of course, there are some harms which no amount of money can properly redress, and these include the loss of a wife or husband. There are also harms which it is difficult to assess, especially those which will be suffered in the future, but the principle of full compensation is clear.”

[50] Both parties in this case submitted that the correct approach to computing the date from which the multiplier should be determined is that laid in the much criticised and now overturned **Cookson** case, i.e., the argument went – the relevant date is the date of death and not the date of trial. I respectfully disagree.

[51] The rule established in **Cookson** no longer represents the law in England and Wales. In this jurisdiction, the Cookson rule was followed, no doubt, in consideration of the provisions of section 25 of the Senior Courts Act (and the similar predecessor enactment¹⁴), which provides:

“Subject to rules of court, the jurisdictions, powers and authorities hereby vested in the Court shall be exercised as nearly as possible in accordance with the law, practice and procedure for the time being in force in the High Court of Justice in England.”

[52] English law and practice on this point has changed because the UKSC acknowledged that the

¹³ In this regard, see for example (i) **Yvonne White (Widow and Administratrix of the Estate of David Charles White deceased) v ESAB Group (UK) Limited** [2001] EWHC J1010-6 – (paras. 27-30 and 43-45) (ii) **A Train & Sons Limited v Maxine Emma Fletcher (Executrix of the Estate of Carl Fletcher Deceased)** [2008] EWCA Civ 413. See also para. 9 of the Knauer decision in which the UK Supreme Court acknowledges the efforts taken by trial judges to avoid the unjust result occasioned by the **Cookson** and **Graham v Dodd's** rule on the calculation of the multiplier, which required that it be calculated from the date of death. In addition, the UK Supreme Court judges explained that the Cookson rule was decided in a different era when the calculation of damages for death was nothing as sophisticated as it is now. I am not convinced by that particular explanation. Whatever truth there is in that opinion, it cannot be disputed that the **Cookson** rule resulted in injustice and courts are beholden to make just decisions and not be slaves to formulas that result in unjust results.

¹⁴ See section 18(1) of the Supreme Court of Judicature Act, Cap 91.

Cookson rule on calculating the multiplier resulted in injustice. Should we persist in applying such a rule and if so, why? In my view, the **Knauer** rule, unlike the one in **Cookson**, is the one that best accords with the interest of justice. The reasons given for jettisoning the **Cookson** rule are sensible and apply equally in cases arising in this jurisdiction. The **Cookson** rule has been demonstrated to undermine the overriding principle that damages ought to place a person harmed as far as practicably possible in the same position they would have been but for the tortfeasor's wrongful act.

- [53] In **Knauer**, the UKSC judges could not have been more emphatic. They stated that the “reasoning in [**Cookson**] is illogical and [] results in unfair outcomes”. No cogent reasons were advanced, despite my express overture to the parties on 19 July 2024, to explain why this court should apply the **Cookson** rule as opposed to the one set out in **Knauer**. Since the **Cookson** rule was developed by judges, unless there is a good reason to the contrary, that rule should be corrected or brought up to date by judges (**Knauer**, see para. 26).
- [54] One key difference between this jurisdiction and England is the use in the latter of the Ogden Tables to compute damages. At the time of **Cookson**, those tables were not much in use. The Ogden Tables have been referenced and applied in some cases in this jurisdiction, but their use is not widespread. In my view, this is not sufficient justification to continue to apply the rule set in **Cookson**, which is intrinsically unfair and unjust because its use results in under-compensation.
- [55] Unlike in England and Wales in which the **Cookson** rule bound lower courts' assessment of damages, I have not been pointed to any case in this jurisdiction in which the Court of Appeal or the Caribbean Court of Justice ruled that the correct law to apply on the determination of the multiplier is that laid out in **Cookson**. In the interests of the stability of this jurisdiction's stare decisis, I must consider, but am not bound by, the opinions expressed in previous cases, which applied the **Cookson** rule on the calculation of the multiplier from the date of death rather than the date of trial. In my respectful assessment, there is not in existence a binding precedent that restricts this court's discretion to not apply the rule set in **Cookson** and to determine that the interests of justice require that the multiplier be calculated from the date of trial.
- [56] Consequently, in the exercise of this court's inherent power, I hold that the multiplier should, and in this case will, be determined from the date of trial, which I have set as 31 July 2024.

(v) ***Principles on the factors that determine the period of the dependency***

- [57] Whether a deceased's spouse, parent or child was reliant on them for pecuniary support and would have so remained but for the deceased's death is a question of fact (***Kassam***, at page 3). An imponderable number of factors determine dependency. They include factors peculiar to (a) the deceased (such as their age, life's expectancy, date of retirement, etc.); and (b) the claimants and/or dependants (such as age, family arrangements, medical or other life-limiting conditions).
- [58] Obiter, with respect to children of a deceased person and their entitlement to sue for loss of pecuniary support, section 8 of the Torts Act introduces a conundrum. It restricts the definition of a "child" on whose behalf or name a claim may be instituted to that provided in the Families and Children Act, Cap 173. Section 2(1) of the latter enactment defines a "*child*" as a *person below the age of eighteen years.*"
- [59] I will use an example to illustrate the conundrum. Baron who was killed in a road traffic accident had two children. Brandon who is aged 17 and in High School and Bradley aged 18 who is in college. Section 8 of the Torts Act as read with section 2(1) of the Families and Children's Act will deny Bradley a cause of action against the tortfeasor because he is 18 years' old. Brandon, on the other hand, possesses a cause of action and may recover damages for loss of pecuniary support for a period that exceeds his eighteenth birthday. The latter point is borne out by the majority of this jurisdiction's caselaw. This, in my view, results in a palpable injustice. Both Brandon and Bradley are children of Baron and were and would have continued to be dependent on him but for his death.
- [60] Due to the operation of section 8 of the Torts Act, in ***Romero*** (at 12) and ***Penner*** (at 7-9), the court dismissed claims for loss of pecuniary support made by the children of the deceased because they were over 18 years old.¹⁵
- [61] Some children are financially dependent on their parents well into adulthood or for the entire duration of their parents' life due to any number of reasons - medical conditions, cultural factors, the wealth of the deceased or simply inability to secure employment. Consideration should be given to delinking the definition of a child – for purposes of claims under the Torts Act - from

¹⁵ This contrasts with the position in England and Wales under its Fatal Accidents Act. For example, in the case of ***Welsh Ambulance Services NHS Trust and ANR v Jennifer Mary Williams*** [2008] EWCA Civ 81 the adult children of the deceased were able to secure substantial damages for loss of pecuniary support.

that provided in the Families and Children Act.

[62] That issue aside, while each case is to be determined on the basis of its own facts, caselaw is also used in the determination of periods of dependency. This assists in ensuring consistency and stability in the law and practice on damages in wrongful death cases. This is much the practice in this and other common law jurisdictions.

[63] In these proceedings, I shall consider and use as a baseline the multipliers proposed by both the claimants and the defendants as well as the officers' dates of retirement. Consistent with caselaw and the submissions made by both parties, I will not limit the minor children's period of dependency to their attainment of the legal age of majority, which is 18 years. I do so because whether or not a child of a deceased person is dependent and had a reasonable expectation of dependency on the financial support provided by their deceased parent but for their death is a matter of fact to be assessed in the circumstances of each case. Notably, in this case, the defendants have prosecuted their defence on the understanding that the two deceased officers' minor children are entitled to damages for loss of pecuniary support beyond their eighteenth birthdays.

[64] In relation to Cpl Mendez's widow (now aged 29) and children (now aged 11 and 7) the defendants requested the court to use of a multiplier of 16. In relation to Cpl Choco's widow (now aged 28) and parents (now aged 61 and 57), the defendants proposed a multiplier of 12. For their part, the claimants proposed the use of a general multiplier of 6-18 years. Cpl Mendez parents are aged 56 and 52 respectively.

Dependent spouses of the deceased

[65] For the following reasons, I have determined that it is fair and just that I use a multiplier of 16 years for the claims for loss of pecuniary support made by (a) the first claimant (Cpl Mendez's widow); and (b) the third claimant (Cpl Choco's widow).

[66] The baseline offer of 16 years made by the defendants offers a useful starting point. It is at the top-end of the range proposed by the claimants and is consistent with broadly similar-fact precedents such as ***Canul, de Habert***, and ***Alarcon*** in which a multiplier of 16 years was used. In this regard, I note that in ***Mallet v McMonagle*** (1970) Appeal Cases 166, at p. 177, Lord Diplock stated:

"In cases such as the present where the deceased was aged 25 and his widow about the same

age, courts have not infrequently awarded 16 years' purchase of the dependency. It is seldom that this number of years' purchase is exceeded"

[67] On the facts, Cpl Mendez and Cpl Choco were about the same age and so too their wives. It is common cause between the parties that Cpl Mendez and Cpl Choco's widows would, had the two officers not died, been reliant on their husbands for financial support. Although limited, the evidence provided by the claimants (and not disputed by the defendants) weighed in favour of the two officers being responsible individuals who provided for and invested in their households. Further, the defendants do not dispute that Cpl Mendez and Cpl Choco were in good health and more likely than not to have remained in the force until retirement. From the evidence provided by the claimants, both Cpl Mendez and Cpl Choco would have retired in circa 2037. In my decision, I have opted not to factor in the prospects of salary increases and promotions. To the extent that that is a loss to the first and third claimants, it is recouped in a limited way through the use of a multiplier of 16 proposed by the defendant. This approach best suits the facts of this case hampered as I am by limited evidence.

Dependent children of the deceased

[68] In relation to the children, there is not any difference between the multipliers proposed by the parties. The multiplier of 16 proposed by the defendant is consistent with precedent (see para. 66 above) and just shy of that proposed by the claimants. Cpl Mendez's two children are still in school and the first claimant's evidence that it was her and Cpl Mendez wish for their children to undertake tertiary education is not controverted. However, in view of my decision that the multiplier will be determined from the date of trial and not the date of death, I shall use a multiplier of 12 for Cpl Mendez children. This should cover the period during which both children would undertake tertiary education.

Dependant parents of the deceased

[69] Regarding the parents, I shall use the multiplier of 12 years proposed by the defendants in relation to the parents of Cpl Choco and not the one proposed by the claimant of 22 and 27 years in relation to Cpl Mendez's father and mother, respectively. I also reject the proposed multiplier of 6 years made by the defendants in relation to Cpl Mendez's parents who are marginally younger than Cpl Choco's parents in relation to whom the defendant proposed a multiplier of 12 years. Surprisingly, the claimant did not provide any multiplier figures for the parents of Cpl Choco. There is no disputing that on the facts of this case, both Cpl Mendez and Cpl Choco looked after their parents and would have continued to do so (barring the vicissitudes

of life) for the remainder of their parent's life.

[70] In view of the parties' litigation positions, I will not use an actuarial calculation. The evidence provided by the parties and their submissions does not permit any such approach. In addition, I shall round off some amounts. Justice demands that I adopt an approach that best estimates the multipliers that will result in the claimants being put in the financial position they would have been had the two officers not died in the helicopter crash.

(vi) Principles on interest

[71] The Torts Act does not address the issue of interest on awards of damages. In the cases cited by the parties, I have been unable to deduce any clear and consistent practice on, and regarding the principles underlying, interest awards. In some cases, interest at 3% per annum, which is half of the statutory rate of interest on judgment orders, was awarded on pre-trial damages with the same rate of interest awarded on future pecuniary loss (see *Diego and Penner*¹⁶). In others (see *Arana*, both the High Court and Court of Appeal decisions¹⁷) interest at 6% was awarded on the total sum awarded as damages. I was not pointed to any Court of Appeal case that has laid down any guidelines on this aspect on the interest awarded on damages in the context of the Torts Act.

[72] The only case that I found that analysed the issue of interest in some detail is the High Court case of *Romero*. In that case, Griffith J considered, at the invitation of counsel for the defendant, the principle on interest set out in *Cookson* and declined to follow it. Griffith J stated, "*the rationale that informed the award of interest at [the] half rate only on the pre-trial assessment in the UK is not necessarily applicable to Belize.*" Having made that decision, the honourable judge awarded the claimant interest on pre-trial damages at 6% and declined to make an interest award on the damages awarded for future loss of earnings (see para. 28). The honourable judge did not provide reasons for the latter part of her decision.

Interest on pre-trial financial loss

[73] Regarding interest on pre-trial damages, the claimants contended that the court should apply a rate of 6% while the defendant argued for 3%.

¹⁶ In *Penner*, the court did not provide any reasons for the decision on the rate of interest applied to the award of damages.

¹⁷ In the Court of Appeal decision (see para. 87(5)), the court ordered that "Statutory rate of 6% interest is awarded on the sum of \$130,289.62 from the date of the judgment of the High Court, 26 September 2018. This is not surprising in view of section 176 of the Senior Courts Act and because neither the High Court nor the Court of Appeal adopted a two-stage approach to the calculation of damages.

[74] Section 75(1) of the Senior Courts Act provides:

“In any proceedings tried in the Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment...”

[75] Clearly, the court has a broad discretion to determine (a) whether to award interest on damages awarded under the Torts Act; (b) the date on which the interest should run; and (c) the rate of interest. And, in exercising its discretion, the court must consider that the purpose of an award of interest is to compensate a claimant for being kept out of their money after they should have been paid (see **Reinhard v Ondra** [2015 EWGC 2943, at para. 3; **Harbutt's v Wayne Tank Company** (1970) 2 W.L.R 212).

Date from which interest runs

[76] In a claim for damages under the Torts Act, from which date should interest run? Is it the date on which the cause of action arose, i.e., the deceased's date of death or the date on which demand was made to, or legal process was served, on the defendant?

[77] In their written submissions, both parties submitted that interest on pre-trial damages should run from the date of death.

[78] I share the opinion expressed by Lord Denning in **Jefford v Gee** [1970 2 QB, at 147, that the date from which interest on pre-trial damages starts “*might in some cases be...the date of the letter before action but at the latest it should be the date when the writ was served.*” That said, there will be cases where it will be proper to rule that interest should run from the date the cause of action arose.

[79] In this case, as requested by the parties, I shall calculate interest on pre-trial damages from 1 March 2020. Cpl Mendez and Cpl Choco died on 27 February 2020. However, for ease of calculation, I shall use 1 March 2020 as the date from which interest on pre-trial damages shall run.

Rate of interest on pre-trial damages

[80] What rate of interest must the court use in relation to an award for pre-trial damages? On this issue, the parties are not in agreement. The claimants asked that interest be awarded at 6%

and the defendants argued for 3%.

[81] In this jurisdiction, there is as yet to emerge a consistent practice or approach on this issue. However, the practice in England and Wales is to award interest at half or the average of the rates of interest secured from short-term fixed interest rate securities, which it appears is the approach the defendant proposes be used.

[82] In **Cookson**, Lord Diplock opined that:

“Looked at from a juristic standpoint the justification for giving interest at only half the current rate is that the amount the widow became entitled to at the date of her husband’s death in respect of the instalments of the dependency which would have inured to her benefit up to the date of trial, would be the present value of each such successive instalment as at the date of death (572 A-F). [Emphasis added]

[83] On the issue of the rate of interest on damages awarded for the pre-trial period, I do not propose to follow the rule set out in **Cookson** or for that matter the rules and guidelines set out in English precedents on what is termed the “conventional rate”. The theory underlying that rule is that a party awarded damages is able (is expected) to invest the sums awarded in fixed interest rate securities. As noted by Griffith J in **Romero**, that is not the reality for Belize. The country does not have a stock market and there is limited to no debt or equity securities trading. The option open to the majority is to deposit any damages awarded into a savings account with a financial institution. Rates of interest earned on savings accounts are limited and do not compare nor are they a reasonable substitute for the type of returns one expects, for example, from fixed interest rate securities.

[84] Given the realities of Belize, it makes little sense to adopt the English “conventional” rule on interest as set out in **Cookson** and as exists in other common law jurisdictions with different types of securities markets. Consequently, in line with Griffith J’s ruling in **Romero**, I uphold the claimant’s plea and hold that in this case, pre-trial damages in wrongful death cases under the Torts Act will attract interest at the rate of 6% per annum, which is equivalent to, but is in nature different from, the statutory rate of interest. In view of the parties’ position that interest should run from the officers’ date of death, I shall calculate interest on damages for pre-trial loss of pecuniary support from 1 March 2020.

Interest on future financial loss

[85] The claimants requested that interest at 6% be awarded on damages for future financial loss. The defendants argued that no interest be awarded.

[86] In their written submissions, the claimants correctly noted that section 176 of the Senior Courts Act provides that:

“Every judgment debt shall carry interest at the rate of six per centum per annum from the time of entering the judgment until the same is satisfied...” [Emphasis added]

[87] A judgment or order sounding in money becomes a judgment debt with respect to the person against whom the order was made. Consequently, every judgment or order sounding in money carries interest at 6% per annum by operation of law. Consequently, the rule set by Diplock LJ in **Cookson** that “No interest should be awarded on the future loss” in claims for damages in wrongful death cases does not apply in this jurisdiction. In my view, this court has no power to disapply section 176 of the Senior Courts Act. For that reason, I am unable, with respect, to follow Griffith J’s decision in **Romero** on this particular aspect and I dismiss the defendants’ plea.

[88] My decision does not address the concern expressed in **Cookson** relating to the fact that a lumpsum award of damages represents financial support that would have accrued periodically to a dependant over a number of years and that that award should be discounted by not awarding interest to reflect the present value of the money. In this jurisdiction, the solution to that issue does not lie in denying a successful litigant interest on the amount awarded. Interest accrues on judgment debts as a matter of law. The solution, if it exists, should be the subject of full argument in an appropriate case with a decision made following an adversarial process.

(vii) *Summary*

[89] Drawing on the above, in these proceedings I will:

- (a) use the multiplicand/multiplier methodology;
- (b) use a two-stage approach to calculating damages, i.e., damages for the dependants’ pre-trial and post-trial loss of financial support;
- (c) use the conventional percentages formula to calculate and apportion the deceased officers’ net incomes (the multiplicand) between their dependants after discounting the sums that they would have spent on their personal needs;
- (d) calculate the dependants’ dependency from the date of trial and not the date Cpl Mendez and Cpl Choco died;
- (e) use the multipliers as set out above;
- (f) apply 6% interest per annum on pre-trial damages calculated, as requested by the parties,

from the date of the officers' death to the date of trial with interest starting from 1 March 2020 to 31 July 2024; and

(g) apply the statutory rate of interest on the judgment order.

IV. Assessment of damages

[90] In the statement of claim, the claimants' case is set out as follows:

- "(1) Damages on behalf of the Estate of Cpl YASSIR MARCUS MARCELLO MENDEZ (deceased), and Cpl REYNALDO CHOCO (the deceased) and as dependants of Cpl YASSIR MARCUS MARCELLO MENDEZ (deceased), and Cpl REYNALDO CHOCO (the deceased) pursuant to the Torts Act, Chapter 172;
- (2) Special damages in the sum of BZ\$17,239.88 pursuant to Section 16(2) of the Torts Act, Chapter 172.
- (3) Interest on any damages found to be due to the dependants of the deceased persons pursuant to section 166 of the Supreme Court of Judicature Act, Chapter 91.
- (4) Costs."

[91] The defendants have admitted liability, and the parties are in broad agreement on the heads of damages. Consequently, in this section, I will address whether the claimants are entitled to:

- (a) damages representing funeral expenses and if so, how much;
- (b) damages for loss of expectation of life and if so, how much;
- (c) damages for pre-trial loss of pecuniary support and if so, how much;
- (d) damages for future loss of pecuniary support and if so, how much?

[92] I will analyse the first and second claimants' claims for damages under the following heading '**The Mendez's claim**' and that of the third claimant as '**The Choco's claim**'. Under each part, I shall assess the claimants' cases for (i) Special damages; (ii) Pre-trial loss of pecuniary support; and (iii) Future loss of pecuniary support.

A. The Mendez's claim

I. Special damages

(a) Funeral expenses

[93] In this matter, the claimants claimed what they called "*additional funeral expenses incurred as special damages*" in the sum of \$17,239.88. The figure provided of \$17,239.88 represents the total amount claimed in respect of Cpl Mendez and Cpl Choco's funerals, and for the administration of their estates. The first and second claimants did not indicate who between the two of them paid for funeral expenses.

[94] From a pleading perspective, the Mendez and Choco claims for funeral expenses should not

have been commingled. Where there is more than one claim for funeral expenses, each claimant's claim should be separately set out.

[95] That said, neither the claimants nor defendants' pleadings dealt with this head of damages in any great detail. In their pleadings and written submissions, the defendants argued that they had paid \$4,000 towards each of the funerals of Cpl Mendez and Cpl Choco. This explains the claimants' claim for "*additional funeral expenses*". In view of the fact that there was no real disagreement between the parties on this issue, I had expected the lawyers to settle an agreed statement on this head of damages for use by this court in its decision making. It is a source of regret that despite my express order on 19 July 2024, this was not done.

[96] From what I can gather from the claim form, the first and second claimants spent the following "*additional amounts*" on Cpl Mendez's funeral.

(a)	Funeral expenses	\$203.50
(b)	Bereavement gathering	\$1,000
(c)	Memorial services	\$1,247
(d)	Administration of estate	\$5,625

[97] This gives a gross total of **\$8,075.50** with respect to Cpl Mendez's funeral and the administration of his estate.

[98] Section 16(2) of the Torts Act entitles dependants to recover "*damages in respect of the funeral expenses of the deceased person if such expenses [were] incurred by the parties for whose benefit the action is brought.*" [Emphasis added].

[99] In view of the litigation position adopted by the defendants on this head of damages, I award the **first claimant** the sum of **\$2,450.50** for funeral expenses, which is the total of what is stated were the additional expenses incurred for (a) funeral expenses; (b) bereavement gathering; and (c) memorial services. I conclude that all three sets of claims constitute funeral expenses.

[100] It is unclear who between the first and second claimant paid for the funeral expenses. I award the damages to the first claimant (Mrs Mendez).

[101] In the circumstances, I award the first claimant the total sum of **\$2,960.00** for funeral expenses. I arrive at this figure using the following calculation. The first claimant paid **\$2,450.50** for funeral expenses. This attracts interest at the rate of 6% per annum calculated from 26 February 2021, the date the claimants issued their claim form to 31 July 2024. I have used the 26th of February

2021 because that is the date the amount became due. The parties did not address this issue in their submissions, and it would be inappropriate to award interest from the date of Cpl Mendez' death. As of 31 July 2004, interest stood at **\$502.25**. This brings the total to \$2,959.49 [**\$2,450.50 + \$502.25 = \$2,959.49**] which I round off to **\$2960.00**. The **\$2,960.00** shall attract interest at the statutory rate.

[102] The claim for expenses incurred in the administration of Cpl Mendez's estate in the sum of \$5,625 cannot be described as constituting a funeral expense. That expense is not due to the claimants pursuant to section 16(2) of the Torts Act, which limits claims to funeral expenses.

(b) Damages for loss of expectation of life

[103] In their claim form and statement of claim, the first and second claimants did not make a claim for loss of expectation of life. As noted above, in the claim form, the claimants sued for "damages for negligent death", special damages (i.e., funeral expenses) and interest.

[104] In their written submissions filed on 22 April 2024, the first and second claimants claimed \$41,000 for loss of expectation of life. They justified this claim as follows:

"In Penner case (*sic*)...the court award (*sic*) as damages for loss of expectation of life of a father who died at ages 52 (*sic*) "in the sum of \$20,500 for each deceased person" in the instant case Cpl. Mendez died at the tender age of 29 (23 years difference), in the prime of his life and career. Thus, his expectation of life we submit should be valued at double that sum at \$41,000."

[105] Regrettably, that submission is premised on a misunderstanding of the purpose behind an award of damages for loss of expectation of life, which award typically arises in the proper context of personal injury claims and not in claims made by dependants under the Torts Act for loss of financial support. Additionally, it misses the peremptory need for relevant averments in the claim form, statement of claim and witness statements demonstrating a basis in law and fact for a claim for damages for loss of expectation of life.

[106] In the defendants' written submissions also filed on 22 April 2024, Crown Counsel made the following submission on behalf of the defendants:

"Based on the Belizean cases of [**Diego, Penner, Arana**], all claims initiated pursuant to the Torts Act, the Defendants submit that the sum of \$20,500 be considered as a nominal sum for damages for loss of expectation of life to show respect for the value of human life." [Emphasis added]

[107] In their submissions, Crown Counsel did not object to the claimants' claim under this head of damages and affirmed the claimants' entitlement to damages but limited to \$20,500.

[108] In these proceedings:

- (a) both the claimants and the defendants are of the view that in cases brought under section 12 of the Torts Act, and where liability has been established or admitted the claimants are entitled to damages for loss of expectation of life; and
- (b) the defendants agree to pay the claimed damages in the sum of \$20,500 under the heading of damages for loss of expectation of life.

[109] Drawing on the peculiar facts of this matter as set out above, the parties' contentions, and in exercising my discretion, I award Mrs Mendez (the first claimant) the admitted sum of **\$20,500** with interest at 6% per annum calculated from 1 March 2020 to 31 July 2024. In my judgment, between the two claimants, she bears the greatest burden as the mother of her two children with Cpl Mendez, and it is just that I award the admitted sum to her. I leave it to the first and second claimants to decide if the amount is to be shared equally between all of Cpl Mendez's dependants that were cited in these proceedings.

[110] Having made this decision, I must stress the following. Without the defendants' agreement that the claimants are entitled to an award of damages under this head in the sum of \$20,500, I would have dismissed the claim as not established since the claimants did not, in their claim form and/or statement of claim, articulate any claim for loss of expectation of life.

[111] The claimants' use of the phrase "damages for negligent death" did not establish a prima facie case for a claim for loss of expectation of life. In general, in a claim for damages, each head of damages must be clearly spelt out and supported by relevant averments of facts. In addition, the pleadings must identify the relevant legal basis for the claim. The use of the phrase "damages" in the absence of any relevant information supporting the claim exposes a claimant to the very real risk of the claim being struck off or dismissed. Even if such a claimant is permitted to amend their claim, they may end up being saddled with costs.

[112] Relatedly, my decision is not authority for the proposition that courts in Belize may, pursuant to the Torts Act, award damages to dependants for loss of expectation of the deceased's life. While acknowledging the number of cases in this jurisdiction in which dependants have been awarded damages for loss of expectation of life in claims initiated under the Torts Act, I remain to be persuaded that section 12 of the Torts Act grants dependants any right to sue for a deceased's loss of expectation of life.

[113] The Torts Act grants dependants the right to sue for damages only under two heads, i.e., for:

(a) loss of financial support or services that can be quantified in money terms (section 12); and/or (b) funeral expenses (section 16(2)). I make this statement with the greatest of respect to my learned colleagues' rulings in, among others, the cases of **Diego, Penner** and **Arana**. In addition, it does not appear that in those cases the issue of the availability of damages for loss of expectation of life under the Torts Act was contested, which in all likelihood explains the decisions. It was also not argued before me that any of cited cases on this point constitute or are based on binding authority.

[114] In **Romero** (see para. 13-14), Griffith J expressed what I consider to be understandable concern about the validity of claims made by dependents under the Torts Act for loss of expectation for life. In my view, the learned judge was correct in stating that:

“...an award for loss of expectation of life represents a loss to the deceased which ought to devolve unto the estate and therefore is not a loss [to] the dependants...”

[115] And in para. 14, the learned judge also stated, and rightly in my view, that

“...due notice is given that the origin and relevance of the award [for loss of expectation of life] in a dependency claim will be called into question at the next available opportunity.”

[116] Regrettably, this is not such a case in which this issue can be adequately canvassed and resolved. Consequently, my decision is authority only for the proposition that the court may issue an order sounding in money in acknowledgment of the parties' agreement on the payment of such a sum in settlement of a dispute. On the facts of this case, I have no cause to look behind the parties' agreement on the availability of damages for loss of expectation of life and refrain from doing so.

[117] Consequently, I award the first claimant the sum of **\$25,933** for the claim for loss of expectation of life. This amount represents the admitted sum of **\$20,500** plus interest at 6% per annum calculated from 1 March 2020 to 31 July 2024. Interest for this period amounts to \$5,433.00 (rounded off) which brings the total to **\$25,933**. The total amount (\$25,933) shall attract interest at the statutory rate.

Totals for special damages

[118] In summary, I award the following amounts in special damages to the first claimant:

- (a) **\$2,960.00** for funeral expenses with interest at the statutory rate.
- (b) **\$25,933** as damages for loss of expectation of life with interest at the statutory rate.

II. Pre-trial loss of pecuniary support

[119] In this section, I set out my calculations for pre-trial loss of pecuniary support. My assessment is based on what I consider to be Cpl Mendez's net income and benefits drawing on the information and accounts provided by the parties. In addition, I have taken the decision not to factor in, as requested by the claimants, the prospects of Cpl Mendez being promoted. I have done so because there is no conclusive evidence that Cpl Mendez would – as a matter of fact - have been promoted during this period and any promotion would have been dependent on a number of contingencies not within Cpl Mendez's control. In addition, no evidence was led demonstrating that it was more likely than not that Cpl Mendez would have been promoted to a higher rank and would have earned a higher income.

(i) Calculation of Cpl Mendez's monthly net income

[120] In my assessment, I find that at the time of his death on 27 February 2020, Cpl Mendez's gross monthly salary was \$1,734.36 and his net monthly salary was **\$1,632.29**. In addition, Cpl Mendez earned specialist pay (at 10% of his gross wages) which it appears was not taxed. That amounted to a benefit of **\$173.36** monthly. In addition, Cpl Mendez was given a "living allowance" of **\$250**. This brings the total monthly net income to **\$2,055.65**. I will round off this amount to **\$2,060.00**.

[121] The defendants submitted that Cpl Mendez had a loan of \$520.51 with an undisclosed financial institution, which was deducted from his salary. In their calculations, they also deducted the sum of \$5.00 – a deduction apparently made to his salary because he was a non-commissioned officer. I will not deduct the sum of \$520.51 from Cpl Mendez's salary as the defendants did not indicate any basis for the deduction. It was not suggested that Cpl Mendez used that sum for anything other than his family's interests. I will also not deduct the sum of \$5.00 from Cpl Mendez's salary as the amount is de minimis. This balances out with my decision not to factor in any prospects of upward salary and benefits adjustments. I conclude therefore that Cpl Mendez's net income in the month of February 2020 was **\$2,060.00**. It is not in dispute between the parties that Cpl Mendez's February 2020 income was paid into his account and consequently into his estate.

[122] I will use this figure (**\$2,060.00**) to calculate Cpl Mendez's pre-trial income, which in the exercise of this court's inherent power I have cut off as of **31 July 2024**.

(ii) Calculation of pre-trial loss of pecuniary support

[123] In my consideration, but for the fatal accident:

- (a) between **1 March 2020 and 31 December 2020**, Cpl Mendez's total net income and benefits would have been \$20,600, i.e., \$2,060 x 10 months = **\$20,600**.
- (b) between **1 January 2021 and 31 May 2021**, Cpl Mendez's net income would have been \$10,300, i.e., \$2,060 x 5 months = **\$10,300**.
- (c) in **June 2021**, Cpl Mendez's income was reduced by 10% in line with all public servants and his net income would have been \$1,854, which I round off to **\$1,855**.
- (d) between **1 July 2021 to 31 December 2021** during which the 10% salary cut applied, Cpl Mendez's net income would have been at \$11,124 (which is, \$1,854 x 6) which I round off to **\$11,130**.
- (e) between **1 January 2022 and 30 June 2022**, during which the 10% salary cut applied, Cpl Mendez's net income would have been **\$11,130**.
- (f) between **1 July 2022 and 31 December 2022** (during which period the 10% salary cut was removed), Cpl Mendez's net income would have been \$12,360, i.e., \$2,060 x 6 = **\$12,360**.
- (g) between **1 January 2023 and 31 December 2023**, Cpl Mendez's total net income would have been \$24,720, i.e., \$2,060 x 12 = **\$24,720**.
- (h) Between **1 January 2024 and 31 July 2024**, Cpl Mendez's total net income would have been \$12,360, i.e., \$2,060 x 6 = **\$12,360**.

[124] In sum, for the pre-trial period (1 March 2020 to 31 July 2024), I calculate Cpl Mendez's net income at **\$106,515**.

[125] To determine the multiplicand (i.e., the amount relied upon by Cpl Mendez's dependants, I will use the conventional formula, which I have modified slightly in view of the evidence (albeit limited) provided by the claimants regarding Cpl Mendez's family situation. I have taken into consideration the size of Cpl Mendez's immediate and extended family and the testimony provided that he was a dotting son that looked after his parents as required under his culture. In view of this, I determine that Cpl Mendez would have spent 20% of his income on himself and the balance on his wife, children and parents. In the circumstances, I hold that he would have used the balance of his net income for the period as follows: **70%** on his wife and essential family and household requirements, **20%** on his children and **10%** on his parents.

[126] In money terms, out of the pre-trial income of **\$106, 515**, after deducting the money that Cpl Mendez would have spent on himself using 20% as the formula, this leaves the sum of **\$85,212** to be distributed to his dependents using the 70%, 20% and 10% formula outlined above. Consequently, I award:

- (a) **70% of \$85,212** to the first claimant, which is **\$59,648.40**. Interest at 6% per annum from 1 March 2020 to 31 July 2024 amounts to \$15,807 (rounded off), which brings the total to \$75,456 (rounded off). Consequently, I award the first claimant the sum of **\$75,456.00** with interest at the statutory rate.
- (b) **20% of \$85, 212** to the first claimant for the benefit of her and Cpl Mendez's two minor children, which is \$17,042.40. Interest at 6% from 1 March 2020 to 31 July 2024 amounts to \$4,517 (rounded off). This brings the total to \$21,559. Consequently, I award the first claimant the sum of **\$21,559 (rounded off)** with interest at the statutory rate.
- (c) **10% of \$85,212** to Cpl Mendez's father and mother (the second claimant and Edita Mendez), which is \$8,521.20. Interest at 6% from 1 March 2020 to 31 July 2024 is \$2,258. This brings the total to \$10,780. Consequently, I award the third claimant for his benefit and for the benefit of his wife, the sum of **\$10,780 (rounded off)** with interest at the statutory rate.

(iii) Summary

[127] In summary, I award:

- (a) the first claimant the sum of **\$75,456** as damages for pre-trial loss of pecuniary support together with interest at 6% per annum calculated from 1 August 2024.
- (b) the first claimant for the benefit of the two minor children the sum of **\$21,599** as damages for pre-trial loss of pecuniary support together with interest at 6% per annum from 1 August 2024.
- (c) The third claimant for his and his wife's benefit (Edita Mendez) the sum of **\$10,780** as damages for pre-trial loss of pecuniary support together with interest at 6% per annum from 1 August 2024.

III. Future loss of pecuniary support

[128] I will use the above-referenced multiplicand (annual financial support lost) to determine post-trial damages. I have determined that Cpl Mendez's net annual income was **\$24,720** (\$2,060 monthly income x 12 months) and that of this amount, annually, he would have spent 20% on

himself. This leaves **\$19,780** (rounded off), which he would have expended on his dependants, and which represents the loss that each has suffered. I apportion the damages as follows:

- (a) \$13,846 as Cpl Mendez's wife's annual dependency (representing 70% of \$19,780 = \$13,846).
- (b) \$3,956 as Cpl Mendez's children's annual dependency (representing 20% of \$19,780 = \$3,956).
- (c) \$1,978 as Cpl Mendez's parent's annual dependency (representing 10% of \$19,780 = \$1,978).

[129] As noted above, I have settled on a multiplier of 16 years for the first claimant and a multiplier of 12 years for the two minor children and Cpl Mendez's parents, respectively. Consequently, for future loss of pecuniary support, I award:

- (a) the first claimant, Guadalupe Mendez the sum of **\$221,536** with interest at the statutory rate. This represents \$13,846 (multiplicand) x 16 years (multiplier) = **\$221,536**.
- (b) the first claimant for and on behalf of her and Cpl Mendez's two minor children, collectively, the sum of **\$47,472** with interest at the statutory rate. This represents \$3,956 (multiplicand) x 12 (multiplier) = **\$47,472**.
- (c) the second claimant and his wife, Edita Mendez, collectively, the sum **\$23,760** with interest at the statutory rate. This represents the total of \$1,980 (multiplicand) x 12 years (multiplier) = **\$23,736**.

B. The Chocos' claim

[130] The third claimant, Jasmin Gichelle Perez (Jasmine Perez) sued for loss of financial support and other dependency damages on her own behalf and on behalf of and for the benefit of Pedro Choco Jr and Silvana Eleuteria Choco, Cpl Choco's parents. As above, in the determination of damages due to Jasmin Perez and her in-laws, I will use the following headings (a) Special damages; (b) Pre-trial loss of pecuniary support; and (c) Future loss of pecuniary loss.

I. Special damages

(i) Funeral expenses

[131] In the statement of claim, Jasmine Perez claimed the following the following sums of money:

- (a) Funeral expenses \$968.38
- (b) Bereavement gathering \$1,400.00

- (c) Memorial service \$1,171.00
- (d) Administration of estate \$5,625.00

[132] Consistent with my decision in relation to the claims advanced by the first claimant, I hold that the first three claims qualify as funeral expenses. Jasmin Perez is unable to sustain a claim for expenses incurred in the administration of Cpl Choco's estate under section 16(2) of the Torts Act. Consequently, I award Jasmin Perez the total sum of \$3,539.38, which I round off to **\$3,540.00** I will add to this amount interest at 6% per annum calculated from 26 February 2021 to 31 July 2024, which amounts to **\$731** (rounded off). This brings the total amount to **\$4,271.00**

[133] In the circumstances, I award Jasmin Perez the sum of **\$4,271.00** with interest at the statutory rate.

(ii) Damages for loss of expectation of life

[134] For the same reasons I expressed in relation to the first claimant's claim for loss of expectation of life, I award Jasmin Perez, the sum of \$20,500 for what has been described as loss of expectation of life. To this amount, I will add interest at the rate of 6% per annum from 1 March 2020 to 31 July 2024, **which amounts to \$5,433** (rounded off). In total, I award the third claimant **\$25,933.00** with interest at the statutory rate.

[135] Totals for Special damages

- (a) **\$4,271.00** for funeral expenses with interest at the statutory rate.
- (b) **\$25,933.00** for damages for loss of expectation of life with interest at the statutory rate.

II. Pre-trial loss of pecuniary support

[136] My assessment of pre-trial damages is based on what I consider to be Cpl Choco's net income and benefits drawing on the views expressed, and accounts provided, by the parties. In addition, I have taken the decision not to factor in any prospects of Cpl Choco's promotion. I have done so because there is no conclusive evidence that Cpl Choco would – as a matter of fact - have been promoted during his career and any promotion would have been dependent on a number of contingencies not within Cpl Choco's control. In addition, no evidence was led demonstrating that it was more likely than not that Cpl Choco would have been promoted to a higher rank and would have earned a higher salary and benefits.

(i) *Calculation of Cpl Choco's monthly net income*

[137] In the written submissions filed on behalf of the third claimant, Ms Matura indicated that in February 2020, Cpl Choco's net income was \$1,461.52. Learned counsel indicated however that as of that date, Cpl Choco had just been promoted and that his net monthly salary was \$1,488.59 although this was not reflected in his February 2020 salary statement. In their submissions, the defendants state that Cpl Choco's salary was \$1,461.52. They did not, however, query the information provided by Ms Matura reflecting Cpl Choco's higher salary or her assertion that it was not uncommon for salary adjustments to be made in later months to account for salary due but not paid in previous months following a promotion or some adjustment in salary. I accept the submissions made by Ms Matura and proceed on the basis that Cpl Choco's actual salary in the month of February 2020 was, and onwards would have been, \$1,488.59. I round off this figure to **\$1,490.00**.

[138] Consequently, I find that at the time of his death on 27 February 2020, Cpl Choco's net monthly income was **\$1,490.00**. Cpl Choco is said not to have earned any benefits.

[139] The defendants submitted that Cpl Choco had a loan of \$396.05 with an undisclosed financial institution, which was deducted from his salary as well as a deduction of \$5.00 made from a non-commissioned officer's salary. It is said that there was also a deduction of \$70.00 from Cpl Choco's salary, which was paid to Guardian Life (said to now be part of RF&G Insurance). In their calculations, the defendants deducted the total sum of **\$471.05** (representing \$396.05 + \$5.00 + \$70.00) from the total of Cpl Choco's net income. The defendants did not indicate any basis for deducting the \$471.05 from Cpl Choco's net salary for purposes of calculating his net income. Consistent with my decision regarding the claims made by the first and second claimants, I decline to make any of the deductions as contended by the defendants from Cpl Choco's monthly income. I conclude therefore that Cpl Choco's net income in the month of February 2020 was **\$1,490.00**.

[140] It is not in dispute between the parties that Cpl Choco's February 2020 salary was paid into his account and consequently into his estate. I will use this figure (**\$1,490.00**) to calculate Cpl Choco's pre-trial monthly income, which I have cut off as of **31 July 2024**.

(ii) *Calculation of pre-trial loss of pecuniary support*

[141] In my consideration, but for the fatal accident:

(a) between **1 March 2020 and 31 December 2020**, Cpl Choco's total net income and

benefits would have been \$14,900, i.e., $\$1,490 \times 10 \text{ months} = \mathbf{\$14,900}$.

- (b) between **1 January 2021 and 31 May 2021**, Cpl Choco's *net income* would have been \$7,450, i.e., $\$1,490 \times 5 \text{ months} = \mathbf{\$7,450}$.
- (c) in **June 2021**, Cpl Choco's income was reduced by 10% in line with all public servants and his net income would have been \$1,315.80, which I round off to **\$1,341**.
- (d) between **1 July 2021 to 31 December 2021** during which the 10% salary cut applied, Cpl Choco's net income would have been at \$7,896 (which is, $\$1,490 \times 6 = \mathbf{\$8,046}$.
- (e) between **1 January 2022 and 30 June 2022**, during which the 10% salary cut applied, Cpl Choco's net income would as above have been **\$8,046**.
- (f) between **1 July 2022 and 31 December 2022** (during which period the 10% salary cut was removed), Cpl Choco's net income would have been \$8,940, i.e., $\$1,490 \times 6 = \mathbf{\$8,940}$.
- (g) between **1 January 2023 and 31 December 2023**, Cpl Choco's total net income would have been \$24,720, i.e., $\$2,060 \times 12 = \mathbf{\$17,880}$.
- (h) between **1 January 2024 and 31 July 2024**, Cpl Mendez's total net income would have been \$12,360, i.e., $\$2,060 \times 7 = \mathbf{\$10,430}$.

[142] In sum, for the pre-trial period (1 March 2020 to 31 July 2024), I calculate Cpl Choco's net income at **\$77,033.00**.

[143] Similar to my ruling in relation to the first and second claimants' case, to determine the multiplicand, I will use the conventional formula, which I have modified to suit the facts of this case. Owing to the size of his family and the testimony provided that he was a responsible and loving husband to his wife and dotting son to his parents and used his income to provide for his immediate and extended family, I determine that Cpl Choco would have spent 20% of his annual income on himself and the balance on his wife and parents. I will deduct the 20% that Cpl Choco would have spent on himself from the income of \$77,033.00, which Cpl Choco would have earned but for his death. This leaves a balance of \$61,626.40, which I round off to **\$61,627.00**.

[144] I proceed on the basis that Cpl Choco would have spent 90% of his residual income on his wife and household requirements and 10% on his parents and that the resulting figures constitute the pecuniary loss suffered by the third claimant and Cpl Choco's parents during the pre-trial period.

[145] Consequently, out of the residual pre-trial sum of **\$61,627.00**, I award:

- (a) the third claimant 90% of **\$61,627** together with interest at the rate of 6% per annum calculated from 1 March 2020 to 31 July 2024. 90% of \$61,627 is \$ 55,465 (rounded off). Interest at 6% per annum for the period amounts to \$14,698.22 (rounded off to \$14,699). Added together this amounts to \$70,164. Consequently, I award the third claimant **\$70,164.00** with interest at the statutory rate.
- (b) the third claimant, for and on behalf of her father and mother-in-law (Pedro Choco Jr and Eleuteria Choco), 10% of \$61, 627 together with interest at the rate of 6% per annum calculated from 1 March 2020 to 31 July 2024. 10% of \$61, 627 is **\$6,163.00**. Interest for the period amounts to \$1,634 (rounded off). Added together, this amounts to **\$7,797.00**. Consequently, I award the third claimant for the benefit of Pedro Choco Jr and Eleuteria, Choco the sum of **\$7,797.00**.

(iii) *Total amounts for pre-trial damages*

[146] In summary, for pre-trial damages, I award the third claimant

- (a) **\$70,164.00** for pre-trial pecuniary loss of support with interest at the statutory rate; and
- (b) **\$7,797.00** for pre-trial pecuniary loss of support for Pedro Choco Jr and Eleuteria Choco with interest at the statutory rate.

III. Post-trial pecuniary loss of support

[147] I will use a multiplicand of 16 years to determine the third claimant's loss of pecuniary support and a multiplicand of 12 as proposed by the defendant in its written submissions regarding Cpl Choco's parents. I have determined that Cpl Choco's net annual income was **\$17,880** (\$1,490 monthly income x 12 months) and that of this amount, he would have spent 20% on himself. This leaves **\$14,304**, which he would have used annually to provide support to his wife and parents. I hold that he would have spent 90% of the \$14,304 on his wife and household requirements and 10% on his parents. This amounts to:

- (a) **\$12,874.00** as support to his wife and household requirements, which represents 90% of \$14,304 = \$12,874 (rounded off).
- (b) **\$1,430.00** as support to his parents collectively, which represents 10% of \$14,304 = \$1,430.40.

[148] Consequently, in post-trial damages, I award:

- (a) the third claimant the sum of **\$205,984.00** with interest at the statutory rate. This represents \$12,874 (multiplicand) x 16 years (multiplier) = **\$205,984.**
- (b) the third claimant the sum **\$17,160** for the benefit of and distribution to Pedro Choco Jr and Eleuteria Choco with interest at the statutory rate. This represents the total of \$1,431.40 (multiplicand) x 12 years (multiplier) = **\$17,177** (rounded off)

V. Costs

[149] The claimants have been successful in their claim for damages and are entitled to their costs, which if not agreed must be assessed.

[150] I also award the claimants the costs incurred in the administration of the estates of Cpl Mendez and Cpl Choco as part of their costs of litigation. In these proceedings, the first, second and third claimants needed to register the estates of both Cpl Mendez and Cpl Choco and to be issued with grants of administration to enable them to continue with litigation for damages under the Torts Act. These proceedings have been prosecuted by the administrators and for the benefit of identified dependants.

[151] Section 11 of the Torts Act provides:

“Every such action shall be brought by and in the name of the executor or administrator of the person deceased, but if in any case there is no executor or administrator of the person deceased, or if, there being such executor or administrator, no such action is, within six calendar months after the death of such deceased person, brought by and in the name of such executor or administrator, the action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit the action is hereby given, Provided that not more than one action shall lie for and in respect of the same subject matter of complaint.”

[152] I hold that the costs incurred in securing the grant of letters of probate for the two officers' estates were necessary to enable the claimants to sustain their cases for dependants' damages, in relation to the two minor children, Cpl Mendez's mother and Cpl Choco's parents. Consequently, they are recoverable as against the defendants as costs of litigation.

[153] In these proceedings, the defendants did not dispute the assertions and claims made by the first and third claimants that each expended the sum of \$5,625 in the administration of the estates of Cpl Mendez and Cpl Choco. In the circumstances, I order that the costs claimed for the administration of Cpl Mendez and Cpl Choco's estates be assessed and those incurred for the grant of letters of probate be paid to the first and third claimants, respectively.

VI. Disposal

[154] Drawing on the above, I order that:

[A] THE MENDEZ CLAIM

(i) Special Damages

1. The defendants, the one paying the others to be absolved, shall within 60-days of this order pay the first claimant, **Guadalupe Mendez**:
 - (a) **\$2,960.00** for funeral expenses.
 - (b) **\$25,933** for loss of expectation of life.

(ii) Pre-trial loss of pecuniary support

2. The defendants, the one paying the others to be absolved, shall within 60-days of this order pay the first claimant, **Guadalupe Mendez**:
 - (a) **\$75,456** for pre-trial loss of pecuniary support; and
 - (b) **\$21,599** for pre-trial loss of pecuniary support, which sum is for the benefit of Kyra Dennise Mendez and Yasnir Marcelo Alexander Mendez.
3. The defendants, the one paying the others to be absolved, shall within 60-days of this order pay the second claimant, Marcello Mendez for his and his wife's benefit (Edita Mendez) **\$10,780** as damages for pre-trial loss of pecuniary support.

(iii) Future loss of pecuniary support

4. The defendants, the one paying the others to be absolved, shall within 60-days of this order pay the first claimant, **Guadalupe Mendez**:
 - (a) **\$221,536.00** for future loss of pecuniary support; and
 - (b) **\$47,472.00** for future loss of pecuniary support for Kyra Dennise Mendez and Yasnir Marcelo Alexander Mendez.
5. The defendants, the one paying the others to be absolved, shall within 60 days of this order pay the second claimant, Marcello Mendez for his and his wife's benefit (Edita Mendez) **\$23,736** for future loss of pecuniary support.
6. The awards referred to in para. (1) to (5) above shall attract interest at the statutory rate.

[B] THE CHOCO CLAIM

(i) Special Damages

7. The defendants, the one paying the others to be absolved, shall within 60-days of this order pay the third claimant, **Jasmin Gichelle Perez**:
- (a) **\$4,271.00** for funeral expenses.
 - (b) **\$25,933** for damages for loss of expectation of life.

(ii) Pre-trial loss of pecuniary support

8. The defendants, the one paying the other to be absolved, shall within 60-days of this order pay the third claimant, **Jasmin Gichelle Perez**:
- (a) **\$70,164.00** for pre-trial pecuniary loss of support.
 - (b) **\$7,797.00** for pre-trial pecuniary loss of support for Pedro Choco Jr and Eleuteria.

(iii) Future loss of pecuniary support

9. The defendants, the one paying the other to be absolved, shall within 60-days of this order pay the third claimant, **Jasmin Gichelle Perez**:
- (a) **\$205,984.00** for future loss of pecuniary support.
 - (b) **\$17,177.00** for future loss of pecuniary support for Pedro Choco Jr and Eleuteria Choco.
10. The awards referred to in para. (7) to (9) above shall attract interest at the statutory rate.

[C] COSTS

11. Costs of suit, which include the costs of securing the grant of letters of probate for the estates of Cpl Mendez and Cpl Choco are awarded to the claimants. If not agreed, costs are to be assessed by the Registrar.

**Dr Tawanda Hondora
Judge
High Court**