



FATAL ACCIDENTS CLAIM: THE RIGHT TO A CAUSE OF ACTION FOR DEATH UNDER THE RIVERS STATE TORTS LAW 1988

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ABSTRACT

With Rivers State as focus and adopting the doctrinal research method, this work undertakes an analysis of the Rivers State Torts Law 1988 with respect to what rights, liabilities and compensation are available for the families of persons who died from injury caused by another in order to avoid dependants being left in precarious conditions. It is the finding of this work that most accidents that result to deaths are commonly redressed through criminal suits, quickly settled out of court and what is being received by deceased families most often is to conduct the deceased's burial and depending on the deceased family's negotiating prowess, some sum as compensation, which often is not for the benefit of all the proper dependants. Worst fact is that most persons are not aware of their legal rights regarding compensation for death. The Rivers State Torts law is a positive response that claims can be made and damages paid not for the benefit of the deceased but creates a wrong doer's new liability towards the deceased's dependants. The work recommends that in fatal accidents claim, there should be pro-activeness in the adoption and enforcement of the Rivers State Torts Law 1988 rather than non-recourse to court or solely taking criminal cause of actions.

Keywords: Fatal accident, Claim, Death, Deceased, Immediate Family, Dependant, Compensation, Damages, Cause of Action

INTRODUCTION

Death is an inevitable occurrence, the cessation of all body functions leading to a cessation of life. It is the end of a life. Fatal accident is the sudden, undesired and unexpected occurrence or happening that results in death. It is an accident that causes someone to die. Death causes so many changes, it changes a person's legal status, ends marriage, initiates succession rights, ends some contractual cum parental obligations and most of all transfers the body from a living vessel to a corpse. Technology has permeated every walk of life with positive and negative occurrences. One of such is the upsurge in the number of deaths from fatal accidents as a result of use of technologies like cars and other industrial machines and

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equipment. Some of these fatal accidents are caused by the fault of others and some are self-inflicted.

When these accidents occur, there is a feeling of pure grief and loss; what is the fate of the deceased and his dependants? In some instances, especially where the fatal accident involves a breadwinner, financial reality quickly hits the dependants from organizing a burial to other financial woes. The area of Civil Law that can address these issues by legal damages fall under the law of Tort, fatal accident claims; dealing with accidents that result into the death of a person. Some positive steps to lay claims help in some measure. It gives some form of comfort knowing that something can be done to alleviate the financial distress *albeit*, no financial burden can be taken away by any amount of compensation talk less of when it involves loss of life. No amount of money can atone for causing the death of another by whatever means. Compensation though is needful in helping the bereaved dependants cope financially to some extent in the absence of the deceased.

Death affects tortious liabilities in these ways:

- a. It may affect an existing right of action or liability or
- b. It may create a new liability towards the victim's dependants.

At first under common law, the rule was that the right to an action in tort is put to an end by the death of either party (*action personalis monicur cum persona*).¹ However, the upsurge of industrialization in Europe brought about increased fatal and non-fatal accidents. Based on the rule, the dependents of those killed recovered nothing but if injured, the person could recover at Common Law. Therefore, there was need for legislative intervention which came as the 1846 Fatal Accidents Act² (FAA) popularly referred to as Lord Campbell's Act to address the anomaly.

The FAA though amended severally³ is an Act for compensating the families of persons killed by a wrongful act or neglect or default of others. It meant that the death of a person does not extinguish a right of action but rather vests a right of action for the benefit of the estate of the deceased except in cases of defamation.⁴ Therefore, the rule that provides that the death of a person terminates his rights and obligations is inapplicable to fatal accidents claims. Two special causes of action can arise where a person is killed by another's tort; they

¹ *Baker v Bolton* (1808) 1 Camp 493.

² FAA.

³ FAA 1976; Administration of Justice Act, 1982.

⁴ FAA, s 1(1).



are the dependency⁵ and the bereavement⁶ actions as found in the FAA 1976. To prove the tort, a plaintiff (claimant) will have to show that

1. the deceased was injured by the wrongful act, neglect or default of the defendant;
2. the deceased died in consequence of such injury;
3. that at the time he died, the deceased had a right to recover damages;
4. that the plaintiff is a member of the deceased immediate family;
5. that the plaintiff was dependent upon the deceased; and
6. the plaintiff suffered future pecuniary loss from the death of the deceased person.

The FAA has been enshrined in local statutes in Nigeria for the award of compensation to dependants of victims killed as a result an accident from the negligence or default of another person.⁷ Most fatal accident cases end up as criminal suits only and criminal suits do not provide any compensation for the dependants of the deceased. Some dependants do not know what claims can arise while some of these accident issues end up being quickly settled out of court with some payments received. What is received most often is to conduct the deceased's burial and depending on the deceased family's negotiating prowess, some sum as compensation, which often is not for the benefit of all the proper dependants and for the purposes for which claims under a fatal accident should address. Therefore, this article is primarily to reflect the adoption of the appropriate mode for pursuing legal rights and responsibilities that would ensure proper dependents benefit and appropriately under the Rivers State Torts Law⁸ after the death of a person occurs as a result of wrongful act, neglect or default of another.

FATAL ACCIDENTS CLAIMS UNDER THE TORTS LAW RIVERS STATE, 1988, CAP 131⁹

In Rivers State, upon the enactment of the Torts Law Rivers State (TLRS) on 21st May, 1988, through the Rivers State Edict 1988 N0. 14, the Torts Law, Eastern Nigeria Law No. 7 of 1962 as amended by the Torts Law, Chapter 125 of the Laws of Eastern Nigeria, 1963 were repealed under the Torts Law Rivers State, s22. Part 1 of the Torts Law Rivers State provides for bringing actions to compensate the families of those killed in fatal accidents. If the injured

⁵ FAA 1976, s 1.

⁶ FAA 19776, s 1 (A).

⁷ Fatal Accidents Act,1990, (FCT Abuja); Fatal Accidents Law, 1963 Cap 43 Law of Northern States; Fatal Accidents Law, 1962 Cap 52 Laws of Eastern Nigeria; Fatal Accidents Law, 1959 Cap122 Law of Western Nigeria; Fatal Accidents Law, 1961, Cap 40, Lagos State; Torts Law Rivers State, 1988 Cap 131.

⁸ Torts Law Rivers State, 1988, Cap 131 (TLRS) (R. S. E No.14).

⁹ *ibid.*



did not die but merely sustained injury, there cannot be a claim under this law. Such can best be actionable under the tort of negligence. This is discernable from the preamble of the Rivers State Torts Law which states as follows: ‘A Law to provide for compensation of the families of persons killed in accident, to amend the law with respect to assessment of damages rising there from....and the law relating to contributory negligence....’. The law is divided into five sections and these sections are examined below.

Nature of Action Maintainable Where Death was caused by Negligence¹⁰

Fatal accidents claim is a fresh cause of action on behalf of the dependants of the deceased and it is not the deceased’s own cause of action as continuation of the deceased right to sue for a tort committed against him. In the words of Lord Blackburn in *The Vera Cruz*,¹¹ the action is: ‘new in its species, new in its quality, new in its principle, in every way new.’ It therefore means that in actions of this nature, the victim (deceased) cannot be a party to this suit. The nature of the action maintainable here is such that the first question to be asked before the dependants can bring an action is if at the time of death, the deceased could have taken or maintained an action against the defendant? If before the deceased died, he could not have maintained an action against the defendant as a result of having obtained judgment against the defendant in a negligence action or the victim had accepted full compensation from the defendant, his right to sue is extinguished, then the deceased dependants would not be qualified to maintain an action. If the deceased could have brought the action himself, then an action is maintainable by the deceased’s dependants. Hence, where the death of a person is caused by any wrongful act, neglect or default and the tortfeasor would have been liable, if death had not ensued, such tortfeasor would be liable under an action for compensation of the families of the deceased killed in such accident. the TLRS, s1(1) provides thus:

whenever, the death of a person is caused by the fault of any other person and the fault is such as would (if death had not occurred) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every case the person who would have been liable if death had not occurred shall be liable in an action for damages notwithstanding the death of the person injured.

This provision which is *in pari materia* with other fatal accidents statutes, therefore gave compensation to families and dependants of a deceased killed in a fatal accident. This section is to the effect that had it been the deceased was merely injured, which injury did not result to

¹⁰ (n8) s 1.

¹¹ (1884) 10 App. Cas. 57 at 70.

his death, he would have found an action against the defendant personally, recovering damages. But for his death, he would not be able to found an action, hence the giving of this right of action against the defendant to his dependants. A dependant will have no right of action against the tortfeasor if the deceased himself could not have sued if he were to be alive. It is worthy to note that had the plaintiff not died, his claim cannot come under fatal accident claims but under the tort of negligence against the tortfeasor.

Person Entitled to Benefit¹²

An action under fatal accidents claim must be brought by and in the name of the executor or administrator of the deceased; this action exists for the benefit of the members of the deceased immediate family,¹³ and it is not brought for the benefit of the deceased's estate and will not be used for the payment of the deceased debts.¹⁴ It is for the benefit of a determined class of dependants. The TLRS, s1(2) provides that such action shall be for the benefit of the members of the deceased's immediate family. Immediate family is determined based on the personal law of the deceased. By the TLRS, S1(3)(a) if the deceased was not subject to Customary Law or Islamic law, then immediate family includes-

- (i) wife;
- (ii) husband;
- (iii) parent; it is worthy of mention that by the TLRS, s21(2), reference to parent includes father and mother, and grandfather and grandmother, stepfather and stepmother
- (iv) child; A child under the TLRS, s21(3) includes son and daughter, and grandson and granddaughter, and stepson and stepdaughter, a child whose paternity has been acknowledged in accordance with any customary law applicable in Nigeria, a child adopted whether before or after the commencement of this Law or any other statute in force in Nigeria or in any other country, a child *en ventre sa mere*, and a child legitimated under the Legitimacy Law.
- (v) brother; and
- (vi) sister.

The TLRS went further in section 1(3) (b) to provide that in relation to a deceased who was subject to customary law, in addition to wife, husband, parent, child, brother, sister, any other relation recognized as such by Customary Law to which the deceased was subject to is included as an of immediate family.

¹² (n8) s 1 (2).

¹³ *ibid.*

¹⁴ *Marginson v MBlackburn B C* (1939) 2 KB 426.



By the TLRS, s1(3)(c), with respect to a deceased person who was subject to a system of Islamic Law, the immediate family meant those who are entitled to share in the award of *diyya* as prescribed by Islamic law. Like the TLRS, the scope of dependants is found in the Eastern Nigerian law to include deceased's brothers and sisters, nephews and nieces under age 16 years as well as step father, mother and children.¹⁵

A claimant need not be only a dependant in law but in fact. That is, the claimant is not just a member of the immediate family of the deceased but was actually dependent financially on the deceased. This is easy to discern in cases of widows and children of the deceased. If no financial dependency is proved, there will be no liability against the defendant. Difficulty in proving dependency may arise where the claim is brought by or on behalf of a surviving husband or father, an adult son or daughter who is no longer dependant on the deceased parent. In *Shashie v Salako*¹⁶ where the brother of the deceased who could not prove dependency could not recover, the court observed that:

But a brother is not obviously a dependant; and unless he can prove dependency, he cannot recover. In the present case, there is no evidence that Samuel Shashie could expect to be supported by the deceased or was dependent on him. Therefore, he cannot recover. What has apparently happened is that he has found himself saddled with responsibility of the deceased's widow and children. It may be that this claim is a drain on his resources, but this does not entitle him to damages under fatal accidents law.

However, a more liberal approach was adopted by the court in *Uko v West Portland Cement Co. Ltd.*,¹⁷ where at an accident at work, a 27-year-old steel erector was killed and his employers were held liable. The action which was brought on behalf of the parents of the deceased succeeded. The court said that:

Damages are in some cases calculated with reference to a reasonable expectation of pecuniary benefit as of right from the continuation of the life of the deceased. In Nigeria, sons and daughters more often than not, confer such benefits upon their parents. It is an obligation founded upon filial piety and universally held sentiment. They are not as remote from their parents as their counterparts in England... it would be reasonable and just to infer, from bare facts that the probability is that if Edemeka Udo had not died, he would have conferred some pecuniary benefit on his parents.

¹⁵ *Okafor v Mbuku* (1962) 6 ENLR 143.

¹⁶ (1976) NMLR 163.

¹⁷ (1973) 9 CCHJ 11.

Person Entitled to bring Action¹⁸

Not everyone affiliated to the deceased is eligible to bring an action. The person to bring an action is provided under the TLRS, s2(1) which states that:

If the deceased was immediately before his death subject to a system of Customary Law or Islamic Law relating to the administration of estates, the action shall be brought at the option of his immediate family, by and in the name of such person as the court is satisfied is under Customary Law or Islamic Law, entitled or empowered to represent the deceased person or his estate.

Where the deceased in his life time was not subject to a system of Customary Law or Islamic Law, then the action shall be brought by and in the name of the executor or administrator of the deceased's estate.¹⁹ If there is no executor or administrator of the deceased or if no action is brought within six months after the death, an action may be brought by and in the name of all or any of the persons for whose benefit the action would have been brought.²⁰

Any action brought by a person not within the class of those stipulated in the law to bring an action is to be dismissed by the court and the dependants of the deceased will not recover any compensation. In *Benson v Ashiru*,²¹ The plaintiff brought an action in his own name as husband of the deceased. The action failed and the Supreme Court said that the action was brought by a plaintiff who did not come within the classes of those empowered to bring an action. He therefore was not qualified to bring the action for himself and for the benefit of or on behalf of the persons that have interest. He therefore had no capacity to sue and nothing could be recovered for the dependent's benefit.

Time

It is of utmost importance to know when the dependants can bring an action in claims of this nature. The passage of time is a factor the court considers in examining and determining the rights of the dependents. No time is fixed under the TLRS within which an action for fatal accidents claim can commence. In the Eastern States, fatal accident claims is time bound, actions must be commenced within three years after the death of the deceased and in the name of the administrator or executor of the deceased.²²

The only time frame given in the TLRS is if no action is brought by the administrator or executor in the name of the deceased within six months after the death of the deceased, the

¹⁸ (n8) s2 (1) (2).

¹⁹ (n8) s 2(2) .

²⁰ Ibid, s 2 (3)(a)(b).

²¹ (1967) 2 All NLR 113; *Anamadi v Iljirigho* (1960) 5 S C 97.

²² (n8) s 4; s 4 FAL Lagos State.



action may be brought by and in the name of all or any of the persons for whose benefit the action would have been brought.²³ In the case of *Ugbobor v Onukafor*,²⁴ the plaintiff, a dependant of the deceased brought an action under a fatal accident claims less than six months after the death of the deceased. The defendants contended that since the plaintiff was not an administrator or executor of the deceased but just a person or beneficiary enabled under the law to sue, he ought to have waited for six months to elapse before bringing the action. This was rejected by the court which stated thus:

The only restriction which the proviso puts on a beneficiary's right to sue is that he cannot sue within six months if there is either an executor or administrator. The deceased executor or administrator has a first right to sue within that period, and if at the expiration of the said period he does not sue, then a beneficiary can sue. There is no suggestion that there was an executor or administrator when the action was brought. There is even till now no suggestion that one has since existed. The provision being considered is in substance the same as section 1 of the United Kingdom Fatal Accident Act 1864 and it has been held under that section of the said Act that an action may be brought by a relative within six months if there is no executor or administrator at the time

By the TLRS, s2(4) not more than one action shall lie for and in respect of the subject matter.

Assessment of Damages²⁵

The basis of damages being paid is to put the dependant in a position he would have been had the accident not occurred. The effect of a *restitutio in integrum* is to compensate the plaintiff by damages and the defendant should as far as possible, pay such an amount as compensation that would put the plaintiff, who has suffered, in the same position as he would have been if the incident of the defendant's wrong had not occurred. This is easier where the injury suffered is a replaceable item or property but if it is an irreplaceable item such as life under this tort, what has happened has happened and the monetary compensation is only an imperfect righter of wrongs. Attempting to translate the damage suffered into money is seeking to equate the incommensurable as there cannot be under a fatal accident claim, the exact return to *status quo ante*, it is an impossible mission. Therefore, what is awarded under this claim is not *restitutio in integrum* as compensation which can never be equated with life or accessed accurately.

Again, based on the principle of *Ubi jus ibi remedium*, a legal maxim that states; where there is a wrong, there is a remedy. The prime function of the Law of Tort is payment

²³ (n8) s 2(3) (a) (b).

²⁴ (1966) 2 ALL N L R 113.

²⁵ (n8) s 3.



of compensatory damages which basically aims to compensate a victim for the injury suffered and put the victim in the position he was before the tort was committed, that is, to effect a *restitutio in integrum*. Can this be reiterated as a pivotal role damages occupy in fatal accidents claim? Obviously, money cannot equate life and the fact that a party does not suffer loss in vain is the basis of award of damages in fatal accident claims.

The court in assessing damages causing the death of another under a fatal accident claim shall not take into account any insurance money, pension or gratuity which has been or will be or may be paid as a result of the death of the deceased.²⁶ Such proceeds from the deceased life or accident insurance, pension or gratuity are retained by the dependants. Damages awarded in a fatal accidents claim are divided among the dependants. This is done usually in proportion to the degree of injury suffered by each dependant as a result of the death of the deceased. All reasonable funeral expenses are covered and recoverable by the plaintiff as damage.

The damage recoverable is only for the dependants own losses and not the losses of the deceased.²⁷ It is only pecuniary losses that are recoverable and not emotional damages. In the case of *Stanley v Saddique*,²⁸ pecuniary losses were held to include anything of economic value, such as the loss of caring services or financial support. Claims under this tort are not recoverable for business losses. In the case of *Burgess v Florence Nightingale Hospital Gentlemen*,²⁹ the plaintiff and his wife were professional dance partners. Plaintiff's wife died as a result of the defendant's negligence and the plaintiff took an action against the defendant claiming business losses suffered from the wife's death. The plaintiff's claim failed.

The damage paid is for the loss of dependency. Its quantum is at the court's discretion. Stating this law, Viscount Haldane in the *Taff Vale Railway v Jenkins*³⁰ said, that 'The basis is not what has been called *solatium*, that is to say damages given for injured feelings or on the ground of sentiment but damages based on compensation for a pecuniary loss.'

The deceased in *Taff Vale Railway v Jenkins*³¹ was an intelligent sixteen-year-old who was about completing her dressmaking apprenticeship. Her parents succeeded in their claim

²⁶ (n8) s 3(1).
²⁷ *Gray v Barr* [1971] 2 QB 554.
²⁸ (1992) QB 1.
²⁹ (1955) 2 WLR 533.
³⁰ (1931) AC 1.
³¹ (n30).



despite the fact that the deceased had not started receiving earnings and could not have conferred pecuniary benefit on her parents. The discretion exercised by the court was based on a clear assumption that the deceased in future would have done so. In the case of *Akinreti v Jenyo*³² where the parents of a five-year-old girl sued as administrators of the estate of the deceased for the benefit of themselves under the Fatal Accidents Act, 1961. The court of first instance awarded them N25,000 as general damages. On appeal, the Court of Appeal reduced the damages to be paid since there is necessarily so much uncertainty about the child's future, no confident estimate of prospective happiness can be made. On further appeal to the Supreme Court, the Court relied on *Barnett v Cohen*³³ dismissed the appeal and held them not entitled to damages as the age of the girl could not confer any benefit from her nor could it be speculated and conjured that the deceased would live and even if she lived, she would have conferred pecuniary benefits on her parents. In the said *Barnett's case*, the plaintiff as personal representatives of his son, a deceased four year old boy took action under the FAA of England. The court stated:

In the present action, the plaintiff has not satisfied me that he had a reasonable explanation of pecuniary benefit. His child was under four years old. The boy was subject to all risks of illness, diseases, accident and death. His education and upkeep would have been substantial burden to the plaintiff for many years if he had lived. He might or might not have turned out a useful young man. He would have earned nothing till about sixteen years of age. He might never have aided his father at all. He might have proved a mere expense. I cannot adequately speculate one way or the other.

The case of deceased children or infant would be different based on the decision in *Taff's case* as the law is that there must be pecuniary loss as basis for compensation under a fatal accidents claim and not for injured feelings or sentiments. It is therefore the position of this article that by the decisions above, it does appear that there is no remedy to assuage the parents of the deceased in cases of fatal accident involving children as the satisfactory proof of the element of pecuniary loss would be an uphill task.

Also, benefits that would be accruable to the dependants due to the death such as that derived from inheritance are discountenanced in calculating damages. In *Benham v Gambling*,³⁴ the principles of assessment were given as:

Damages given for shortening of life should not be calculated solely or even mainly on the basis of length of life that is lost, they should be fixed at a reasonable figure for the loss of a measure of prospective happiness. If

³² (1990) 2 NWLR (Pt 135) 663; *Barnett v Cohen* (1921) 2KB 461.

³³ (n32).

³⁴ (1941) AC 157.

however the character or habits of the deceased were calculated to lead him to a future of unhappiness and despondency that would be a circumstance justifying a small award. No regard must be had to financial losses or gains during the period of which the victim has been deprived; damage being awarded in respect for loss of life, not loss of future pecuniary prospects. In the case of a child, as in the case of an adult, the proper sum to be awarded should not be greater because the social position or prospect of worldly possession in one is greater in one than another.

The process of assessment of damages is the multiplier approach where the amount to be awarded is arrived at by multiplying the multiplicand by the multiplier. The multiplicand in a fatal accident claims is an estimation of the annual value of the dependency. The usual figure used as multiplier is between 10 and 15³⁵ taking into consideration the age and health of the dependants and the uncertainties as to their future, in addition to the age, health and future prospects of the deceased. The multiplier choice is difficult to determine and according to Begho J in the case of *Owolo v Olise*:³⁶

The number of years' purchase is the multiplier. To get a lump sum, the number of years purchase is used in multiplying the 'annual value of dependency'. The annual value of dependency is arrived at by subtracting from the annual income, the annual amount required for the deceased's personal upkeep, such as feeding and clothing, expenses and money spent on drinks and cigarettes etc. Tax on the income or wages should also be subtracted.

The number of years' purchase, or multiplier, is affected by many factors. Usually, the most important factor is the age and expectation of life or working life of the deceased himself. He is the source of the dependency, which could not, in any event, have continued beyond the span of his life or working life. Another important factor is the possibility of remarriage, in the case of a dependent widow. If she is young and attractive, the court may consider her marriage to be a strong possibility. If the widow is elderly as in this case (now 52 years old), or is of unattractive appearance or disposition, or suffers from one disability or is encumbered with a large number of young children, the court may consider her chances of remarriage to be slight and award her rather larger damages, by increasing the multiplier. So, too, the fact that there is no retiring age in the deceased's job, and that the job is not hazardous, may increase the multiplier. (The job of a solicitor's clerk is not hazardous and is one which a man may do till death). The future prospects of the deceased, if he had not been killed, will also affect the multiplier. However, in the present case before me, there is evidence that the deceased had good prospects of promotion and attaining a much greater wage or salary.

³⁵ *Olopade v Komolafe* (1978) 1 LRN 303.

³⁶ (1967) FLNR 179.

The court in this case gave the number of years' purchase (or multiplier) as 14 and after putting into consideration the fact that the deceased was a solicitor's clerk of about 60 years of age, with a 52 years old widow and surviving children aged between 10 and 32 years, and the fact that the job of a solicitor's clerk was not a hard job; and not also hazardous, no retiring age, chances of remarriage was slim if not zero. Whereas in the case of *Nwafor v Nduka*,³⁷ the Supreme Court approved the application of a multiplier of 12 years' of purchased that the lower court used in deciding the death of a 28 years old man who was survived by a young widow and two children.

If the deceased before his death had obtained judgment or taken full compensation for the injuries he sustained, no action will lie. Also expressly stated in the TLRS, s12 as is usual in torts law, is that if the deceased was contributorily negligent, the recoverable damages will be reduced to the extent of the deceased's responsibility for the accident.

Payment into Court³⁸

A defendant who desires that the money be paid into court, shall pay the money as compensation in one sum to all the persons entitled without specifying the shares into which it is to be divided by the court.³⁹ Where the sum is not accepted by the plaintiff and an issue is taken up as to its insufficiency and the court comes up with a finding that it is sufficient, the defendant shall be entitled to the findings of the court in that issue.⁴⁰

Savings⁴¹

The Law provided to the effect that nothing contained in the TLRS shall affect the rights which may have accrued to any person before the commencement of this Law under the provisions of any enactment relating to fatal accident claim.

Defences

A fatal accident claim is derivative from any claim the deceased would have had if he had not died. If the defendant would have had a defence against the deceased had he not died, he would also have it against the dependants. The following are some of the defences a defendant can raise:

³⁷ (1972) 4 SC 4.

³⁸ (n8) s 4 (1).

³⁹ (n8) s 4 (1).

⁴⁰ *ibid*, s 4 (2).

⁴¹ *ibid*, s 5.



Defendant's Lack of Right: If before the deceased died, he could not have maintained an action against the defendant as a result of having obtained judgment against the defendant in a negligence action or having accepted full compensation from the defendant, his right to sue is extinguished and his dependants cannot maintain an action. This can be raised by the defendant as defence.

Contributory Negligence: Contributory negligence applies where the damage the plaintiff has suffered was partly due to his own fault (in this case the deceased's fault) and partly by the fault of the defendant. Specifically, the application of contributory negligence in cases of fatal accident is succinctly stated in the TLRS, s15 as:

Where any person dies as a result of his own fault and partly of the fault of any other person or persons and if, (had death not ensued) the damages would be reduced under section 11, any damages recoverable in an action brought for the benefit of the dependants of the person under Part 1 of this Law shall be reduced to a proportionate extent.

Therefore, contributory negligence of the deceased can be raised as a defence where the deceased died as a result of partly his fault and partly the fault of the defendant though this would only result in the reduction of damages to be awarded to the dependants as the court thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage.⁴²

CONCLUSION AND RECOMMENDATIONS

Money cannot equate life and the fact that a party does not suffer loss in vain is the basis of award of damages in fatal accident claims. An examination of the Rivers State Torts Law reveals that tortious liability does not end with the death of a person as it, in some established circumstances, creates a new liability towards the victim's(deceased's) dependants whenever, the death of a person is caused by the fault of any other person and the fault is such as would (if death had not occurred) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every case the person who would have been liable if death had not occurred shall be liable in an action for damages notwithstanding the death of the person injured. There is the need for proactiveness in adopting and enforcing the tenets of the TLRS instead of just seeking redress through criminal litigations and settlements out of court.

This work recommends that to get substantial justice and better compensation for deceased dependants, the provisions of the Rivers State Torts Law 1988 be invoked rather

⁴² (n8) s 12.



than non-recourse to court. Also, the Torts Law 1988 of Rivers State should be amended to take into cognizance the remarriage or future prospects of remarriage of a widow while assessing the widow's award. Lastly, there is no time fixed under the TLRS within which to commence an action under fatal accident claims. Actions are time bound as there is a limit as to how long one can wait before commencing actions. The Torts Law should be amended to provide a time frame for such actions.