

IN THE MATTER of THE WORKER'S  
COMPENSATION ORDINANCE  
1964-65

BETWEEN GLYNN & DORA EVANS of  
Auckland, as proposed  
Administrators in the  
estate of the late  
Julie Aroha Evans  
(deceased), previously  
of Rarotonga, Pilot

Applicant

A N D THE DEPARTMENT OF  
TRADE, LABOUR &  
TRANSPORT, Rarotonga

Respondent

Mr Mitchell for the Applicants

Date of Judgment : 24<sup>th</sup> day of June 1992

JUDGMENT OF DILLON J.

The applicants are the grandparents of Gillian Tia Evans, aged 9 years, the only child of their only daughter, Julie Aroha Evans deceased. The applicants have had custody of their grandchild since she was born on 20 December 1983; and they intend to continue being responsible for the welfare, education and support of their grandchild until she becomes of age.

As a result of the air accident at Rarotonga when Julie Aroha Evans lost her life, the sum of \$60,000 has become due and payable pursuant to the provisions of the Worker's Compensation Ordinance 1964-65 to the only child of the said deceased. These funds are at present deposited "on call" pending a decision of this Court.

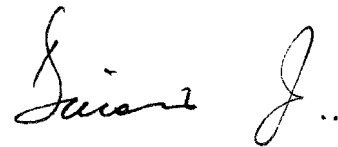
Mr Mitchell has filed a further memorandum to the Court detailing discussions and negotiations with the N.Z.I. Guardian Trust with which Trustee Company it is now suggested the funds should be invested until Gillian Tia Evans (hereinafter called "the Infant") should be 21 years.

The Court agrees to that proposal and orders as follows :

1. Mr Mitchell has incurred costs in connection with these proceedings totalling \$645.50; and in connection with the air accident proceedings totalling \$2,019.30. The Registrar is to pay the total costs of

\$2,664.80 to Mr Mitchell. I agree that the ultimate beneficiary to the proceedings at present pending in respect of the air accident claim will be the infant, and the costs of \$2,109.30 should therefore be paid from these funds.

2. The Registrar will forthwith transmit to the N.Z.I. Guardian Trust (hereinafter called "the Trustee Company") the sum of \$60,000 plus accumulated interest less the sum of \$2,664.80 referred to in (1) above, such sum to be invested by that Trustee Company in accordance with the provisions of the New Zealand Trustee Act and its amendments.
3. The Trustee Company shall consult with the applicants to ensure that the funds and the interest thereon are available for the future welfare, education and advancement of the infant. In this context the Trustee company should provide periodic payments to the applicants for the infant's school uniforms; special education needs such as school fees, music tuition, ballet lessons, sports training and similar activities. The above is not intended to be exhaustive, but indicative only.
4. Based on the schedules of the average income yields as presented by the Trustee Company, the infant's "welfare education and advancement" during her primary education should easily be covered by the income from the investment of these funds. That may not necessarily be the case when the infant attends secondary school and when there will be increased demands on that income. In that event the Trustee Company shall have recourse to both capital as well as income in order to ensure a full and comprehensive secondary education is achieved and at the same time activities such as already referred to are encouraged and fostered. It may also be considered as beneficial to the infant's interests to attend a boarding secondary school. If this should be decided recourse to capital funds might very likely be necessary.
5. I have already referred to the civil claim that Mr Mitchell is pursuing in respect of the air accident that resulted in the death of the infant's mother. While the infant will be the ultimate beneficiary of any award secured from that claim, there will of course be associated legal costs incurred in the meantime. The Court has been advised that instigating this claim would be justified. Mr Mitchell has indicated that any further costs he incurs on this claim would be settled on the outcome of the proceedings. Insofar as future disbursements on this claim are concerned the Trustee Company has authority to reimburse Mr Mitchell from the funds held on presentation of an itemised account.
6. The Trustee Company shall file a brief report and statement of accounts with this Court once a year at a balance date convenient to the Trustee Company.
7. The Trustee Company or the applicants shall have leave to apply to the Court for directions at any time.



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