

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCv2022/0100

BETWEEN:

BRADLEY TITRE

Claimant

and

SHECORE SIMON

Defendant

Appearances:

Mr. Wesley George for the Claimant

Mr. Wendel Alexander for the Defendant

.....
2023: June 15;
August 22
August 23 (Amended and Reissued)
.....

DECISION

- [1] **MICHEL, M:** The claimant commenced these proceedings against the defendant seeking damages, including damages for personal injuries he sustained when he was struck by a vehicle being driven by the defendant whilst riding his motorcycle. The defendant failed to file a defence to the claim and at the request of the claimant, judgment in default of defence was entered against her for an amount to be decided by the court. The sole issue for the court's determination therefore is the quantum of damages to be awarded to the claimant on his claim.
- [2] The claimant has filed a witness statement and written submissions together with authorities for the assessment of damages and a supplemental witness

statement exhibiting the expert medical report of Dr. Kavar Kaushalendra Singh, Consultant Orthopedic Surgeon detailing the claimant's injuries, treatment and medical prognosis. No witness statements or written submissions were filed by the defendant for the assessment of damages.

General Damages

- [3] In assessing general damages, the court has to consider: (1) the nature and extent of injuries suffered; (2) the nature and gravity of the resulting physical disability; (3) the pain and suffering endured; (4) the loss of amenities suffered; and (5) the extent to which the claimant's pecuniary prospects have been affected.¹

Nature and Extent of Injuries Suffered

- [4] The claimant was 38 years old at the time of the accident. His injuries are detailed in the medical report of Dr. K.K. Singh. As a result of the accident, he received the following injuries:

- (1) Fractures of the 2nd and 5th metatarsals which was surgically treated at the Mount St. John's Medical Centre.
- (2) Unoperated horizontal separated fracture of left patella
- (3) Injury to left-hand involving PIP joints of left middle finger and ring finger with residual disability and restriction of full extension

The Nature and Gravity of the resulting Physical Disability

- [5] The claimant had a mid-foot amputation on account of the injury he suffered. The report of Dr. Singh indicates that the claimant's total disability as a man has been calculated at 3% in his upper extremity and 45% in the left lower extremity which is equal to 20% as a whole man. Dr. Singh in his medical report also indicated that the claimant's left knee had full range of motion and has not ended up with any permanent physical impairment at present on account of the horizontal separated fracture of his patella however his percentage of

¹ See Cornilac v St Louis (1965) 7 WIR 491.

permanent physical impairment will increase as he grows older on account of developing further post traumatic degenerative joint disease.

- [6] The claimant stated that he purchased a prosthetic brace and prosthetic inert to assist him to return to normalcy and underwent physiotherapy. The use of the prosthetic has aided him in maintaining normalcy however he walks with a permanent limp.

The Pain and Suffering Endured and Loss of Amenities Suffered

- [7] In his witness statement the claimant describes the pain, suffering and loss of amenities he suffered as a result of injuries he received from the accident. The claimant was struck on his left side by the car being driven by the defendant and was thrown several metres away. He indicated that he immediately experienced pain all over his body and especially in his left foot. He noticed blood soaking through his jeans pant and felt blood oozing out over his left eye. He experienced intensifying pain as he was transported to the hospital. He went into immediate surgery on his left foot and when he awoke from the surgery, he felt severe pain in his left foot. Several pieces of the bone in his foot were missing and bone was scattered in his foot.
- [8] The claimant later underwent further surgeries to treat an infection in his left foot. After the final surgery when he regained consciousness, during a re-dressing of this foot he saw bones and tendons in his foot which made him feel sick and caused him distress.
- [9] He later travelled overseas to the United States to seek further medical treatment and at the time of his departure he was unable to walk or use the restroom on his own or bathe without assistance. He received medical attention at the University of Chicago Medical Centre and following a series of tests he was advised that he had an infection in the bones and flesh of his left foot and that an amputation was necessary. He stated that the realization he was at risk of losing a piece of his body was highly stressful and frightening.

- [10] The claimant underwent the amputation of his foot and essentially lost half his foot. He stated that he was in a lot of pain after the amputation and had issues sleeping and cried at night from the pain and frustration of not being able to sleep. Pain medication was unable to mask the pain he felt. Eventually he noticed improvement in his sleep.
- [11] The claimant is the father of two children and he stated that upon his return to Antigua his children cried when they saw his amputated foot and his son distanced himself from him and preferred to stay with his sister whilst he recovered. He stated that the strain his injuries put on his family made him emotional.
- [12] The claimant tried to return to his pre-accident level of fitness and his duties at the Royal Police Force of Antigua and Barbuda and head of the K9 Unit; however, this caused him great pain and discomfort. He stated that he has been unable to engage in exercise due to the ongoing pain he is experiencing. He stated that he is unable to lift and carry loads on his own in excess of 60 lbs.
- [13] The claimant stated that he used to perform household chores, gardening and other domestic activities and cared for his children before the accident, however he now has to rely on others to do some of these activities. He stated that a 5-year romantic relationship he had had before the accident subsequently ended due to the added pressure it put on his then partner to care for his children.
- [14] The claimant stated that he is a motorcycle enthusiast, however the injuries he received have made riding and the changing of gears on the motorbike more difficult. The claimant stated that he built motorcycles and engines and has sold motorcycles but has lost customers because of the accident.

Approach to Award for General Damages

[15] It is recognized in our jurisdiction that in approaching an award for general damages, the practice is to “grant a global sum for general damages for pain and suffering and loss of amenities, considering these against the background of the nature and extent of the injuries sustained and the nature and gravity of the resulting impairment and physical disability.”² The purpose of an award is to put the claimant in the position that she would have been if the accident had not happened. The court must award a fair and reasonable sum to compensate the claimant for the injuries suffered.

[16] The claimant submitted some 12 cases³ from the Eastern Caribbean for the Court’s consideration of an appropriate award for general damages for pain suffering and loss amenities. I have read and considered all the authorities submitted by counsel for the claimant as comparable cases to take into account in making an award to the claimant. I particularly found the cases of **Cleston Maynard v Wayne Jeffers et al** and **Ezra Neverson v Seafarers Shipyard Group Ltd** comparable and I have also read and considered other cases from the OECS where claimants suffered comparable injuries including the recent case from Grenada **Tevon Regis v Koran Charles**.⁴

[17] In **Ezra Neverson** the claimant was injured whilst at work when he was loading an engine block onto a container. The engine block slipped while the claimant was using a piece of pipe to push it into the container. This caused the pipe to hit the claimant’s leg, causing him significant injury to the extent that his leg was amputated below the knee. In 2020, the master awarded the claimant the sum of \$140,000.00 for pain and suffering and a further \$60,000.00 for loss of amenities, a total award of \$200,000 for general damages for pain suffering and loss of amenities.

² Kathleen McNally v Eric Lotte and CITCO (BVI) Ltd. BVIHCV2001/0068 (delivered 2nd July 2003, unreported)

³ Kendol Fredericks v Carlton Cunningham SVGHCV2022/0475 (delivered; Maynard v Jeffers NEVHCV2004/0131; Joseph v Morris Civil Suit No. 166 of 2005; Rasamin Rogers v Tyrone Creese Kismet Inc. SVGHCV2017/0065; Fraser v Dalrimple et al ANUHCV2004/0513; Darel Christopher v Benedicta Samuels dba Samuels Richardson & Co. BVIHCV2008/0183; Willie et al v Chervy Oliviere et al SLUHCV2016/0622; Mark Andrew Carter v St. Clair Latham et al SVGHCV2005/0524; CCAv Jeffrey Civil Appeal No. 10 of 2003; Ezra Neverson v Seafarers Shipyard Group Ltd. SVGHCV2018/0194; Sylvian Laurent v Simon Anthony Cuffy DOMHCV2012/0238

⁴ GDAHCV2020/0066 (delivered 21st December 2022, unreported).

- [18] In **Cleston Maynard** the claimant was offloading golf carts from a large shipping container when his right great toe was severed by the moving parts of the forklift truck engaged in the offloading exercise. Attempts by his surgeon to save his right second toe which was also severely injured in this unfortunate accident ultimately proved futile and it too had to be partially amputated some eight days later. The learned judge awarded the claimant the sum of \$95,000.00 in 2015 for pain suffering and loss of amenities.
- [19] In **Tevon Regis**, because of the injuries sustained when a bus ran off the road and ran over the claimant's foot, his foot was partially amputated. The claimant was awarded the sum of \$140,000.00 for pain, suffering and loss of amenities.
- [20] I take into consideration the fact that the claimant has suffered a mid-foot amputation, he went through multiple surgeries on his left foot, and suffered upper body injuries, that of his left hand resulting in residual disability and restrictions of full extension of his fingers. In **Ezra Neverson** the claimant suffered a below the knee amputation and in **Cleston Maynard** the claimant lost some toes. In **Tevon Regis** the claimant also had a partial foot amputation such as the claimant in the present case but the claimant in **Tevon Regis** suffered no other injuries unlike the claimant in this case. Thus, taking the medical report submitted by the claimant into account, the claimant's evidence in chief, and considering the guiding factors in assessing general damages, and having carefully reviewed the cases submitted by counsel for the claimant and the cases identified by the court from its own research, I consider that a general damages award of \$140,000.00 for pain and suffering and \$50,000.00 for loss of amenities to be fair and reasonable compensation for the claimant.

Loss of Future Income

- [21] In his witness statement, the claimant stated that prior to the accident he worked as security at JR-Spot, a local bar. He stated that he worked 5 nights a week as security at the said bar and earned approximately \$750.00 a week. This income is supported by a letter from the owner of JR's Spot which indicates that

the claimant worked 5 nights a week earning \$150.00 per night. The claimant stated that the supplemental income was necessary to assist him with his living expenses. He stated that the job as a security guard required standing for long periods of time and his physical strength when called upon and that as a result of the accident he is unable to continue this employment. He stated that in February 2022 in an effort to mitigate his losses he returned to JR-Spot for three nights; however, he stopped as the pain he was experiencing in his foot was unbearable even with the assistance of pain medication such as ibuprofen. He stated that he has therefore lost vital income due to his inability to continue this job.

[22] In **Sidney Binda v Juan Caliste et al**,⁵ Corbin Lincoln M explained:

“Damages for future loss of earnings is the amount which a claimant has been prevented by the injury from earning in the future. It is calculated mainly by: (a) taking the annual earnings of the claimant at the time of the injury and deducting the amount which he can now earn annually (the multiplicand); and (b) multiplying this sum by a figure based upon the number of years during which the loss of earning power will last (multiplier).”

[23] In **Martin Alphonso et al v Deodat Ramnath**,⁶ Satrohan Singh JA noted that:

“For the purpose of the multiplicand, the basis should be the least amount the respondent would have been earning if he had continued working without injuring. [See *Cookson v Knowles* (1979) A.C. 556].”

[24] I am satisfied that there is evidence for the court to conclude that the injuries sustained by the claimant prevent him from continuing his job providing security or similar type work based on his skill and experience. The claimant has stated that he presently earns EC\$4,480.96 per month as a Police Sergeant. The claimant’s current annual earnings are therefore EC\$53,771.52. Prior to the accident, he would have additionally earned \$36,000.00 annually (\$3,000 per month x 12 months) working security at JR’s Spot. The claimant’s total previous earnings would have therefore been \$89,771.52. The annual loss of earnings is

⁵ GDAHCV2014/0097 (delivered 10th February 2016, unreported).

⁶ (1997) 56 WIR 183.

therefore \$36,000.00 (\$89,771.52 - \$53,771.52) This represents the multiplicand. Using a multiplier of 8 based on the claimant's present age of 42 and discounting the award by 10% to because of its lump sum nature to account for the vicissitudes of life, an award for loss of earnings to the claimant would be \$259,200.00.

- [25] The claimant has also indicated that over the years he was involved in the repair and sale of motorcycles, but his injuries have left him unable to do so. He has provided no further evidence to support his contention that he was involved in the sale of motorcycles, or any revenue generated. I make no further award for loss of earnings in respect of repair and sale of motorcycles.

Future Medical Expenses

- [26] As it relates to future medical care, the expert medical report of Dr. Singh indicates that the claimant's unoperated fractured left patella has not given rise to any permanent physical impairment at present, however medical literature indicates that alteration of biometrics on account of the injuries especially in intra-articular displaced fractures cause early post traumatic degenerative joint disease. Accordingly, Dr. Singh's opinion is that the claimant will develop pain and disabilities in his left knee in future resulting in total knee replacement arthroplasty which costs approximately between \$60,000 and \$75,000.00 in the Caribbean.
- [27] The claimant also seeks an award to cover the cost of 6 physiotherapy sessions, medical consultations, x-ray and for prosthetics. In total he seeks the sum of EC\$95,615.80 as the cost of future medical care.
- [28] In **Seepersad v. Persad & Anor (Trinidad and Tobago)**⁷, the Judicial Committee of the Privy Council stated the following in relation to the costs of future medical treatment and medication, stated:
- "It is not possible to form an accurate and verifiable estimate of the future cost of medical treatment and medication, because so much depends on how the appellant progresses in the future. It was not

⁷ [2004] UKPC 19.

challenged that he had incurred such expense in the past, as is shown by the inclusion in the agreed special damage of a significant sum for medical treatment and medication. It does appear that there is likely to be some continuing expense, even if he improves significantly as time goes on. In their Lordships' opinion the most appropriate way to deal with this item is to allow a figure which will reflect the possibility of his incurring future expense of this type, on similar lines to the well-established approach to valuing loss of employment capacity: of such cases as *Smith v Manchester Corporation* (1974) 17 KIR 1 and *Moeliker v Reyrolle & Co Ltd* [1976] ICR 253.”

- [29] Considering the medical evidence before the court and the past medical expenditure of the claimant, I would make an award of EC\$60,000.00 to account for the possibility of the claimant incurring future medical expenses.

Benefit under Insurance Policy

- [30] In his witness statement, the claimant stated that he was insured under several policies of insurance to include an accident protection plan with Pan American Life and a whole life plan with Sagicor Insurance with provision for Accidental dismemberment. He stated that each contract of insurance contains a payout clause for dismemberment, and he made claims under these policies due to his amputation and was denied as his condition did not fall within the definition of a loss of limb according to the contract. He stated that he has been placed in a severe loss of financial compensation having been denied a payment of approximately EC\$125,000.00.
- [31] First, there is no pleading in the claimant's statement of claim to undergird this item of loss. The issue of pleadings and entitlement to recovery of heads of damages was very recently discussed by the Court of Appeal in **Carl Webster v Historic Beacon Point Anguilla Ltd. et al.**⁸ In that case Bennett JA [Ag.] reviewed and approved multiple authorities on the requirement of a claimant to sufficiently set out its case. Bennett JA approved and followed the learning in the English Court of Appeal decision in **Perestrello e Companhia Limitada v United Paint Company Ltd.**⁹

⁸ AXAHCV2020/0020 (delivered 21st June 2023, unreported).

⁹ [1968] EWCA Civ J1213-4.

“There is plenty of authority for the proposition that a plaintiff need not plead general damage; but since the expressions "special damage" and "special damages" are used in such a wide variety of meanings it is safer to approach this question by considering what a plaintiff is required to plead rather than what he is not.

The Rules of the Supreme Court are of no direct assistance. Order 18 Rule 7 requires that every pleading shall contain a summary of the material facts and by Rule 12 every pleading must contain the necessary particulars of any claim." By Rule 15 "a statement of claim must state specifically the relief or remedy" claimed. [The Equivalent provisions can be found in CPR 8.6 and 8.7]. It follows that the necessity of pleading "damage" (meaning injury) or "damages" (meaning the amount claimed to be recoverable), if it arises at all, does so as an example of the general requirement of any statement of claim that it shall "put the defendants on their guard and tell them what they have to meet when the case comes on for trial" (per Lord Justice Cotton in *Philippe v. Philipps*, 4 Queen's Bench Division 127, at page 139).

Accordingly, if a plaintiff has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act, he must warn the defendant in the pleadings that the compensation claimed will extend to this damage, thus showing the defendant the case, he has to meet and assisting him in computing a payment into court.

The limits of this requirement are not dictated by any preconceived notions of what is general or special damage but by the circumstances of the particular case. "The question to be decided does not depend on words but is one of substance" (per Lord Justice Bowen in *Ratcliffe v. Evans*, 1892 2 Queen's Bench Division, page 524)." (Emphasis added).

- [32] On the basis that the claimant has set out no facts in its pleadings to substantiate a claim for loss under his insurance policy which is not a necessary and immediate consequence of the defendant's wrong, the claimant ought not to be permitted to now seek to recover these sums.
- [33] Second, I am not of the view that the claimant would be entitled to recover from the defendant the sum of \$125,000.00 that he alleges was not paid to him by his insurer. The claimant's claim is for compensation for the injuries suffered as a result of an accident caused by the defendant. The purpose of an award is to put the claimant in the position that he would have been if the accident had not happened. Thus any award made to the claimant is to compensate him for losses which flow from the accident. Included in that award is an award for pain,

suffering and loss of amenities and future medical care. I can see no basis on which the defendant should pay to the claimant additional sums which the claimant's insurance company has deemed he is not entitled to in circumstances where the defendant is already being made to compensate the claimant for loss he has suffered. If the claimant considers that he is entitled to receive an additional benefit under his insurance policy, then that is a matter for him to take up with his insurer.

Special Damages

[34] It is well established so as to be considered trite that special damages must be strictly pleaded, particularized and proved. **Mc Gregor on Damages**¹⁰ states:

“Where the precise amount of a particular item of damage has become clear before the trial, either because it has already occurred and so become crystallized or because it can be measured with complete accuracy, this exact loss must be pleaded as special damage.”

[35] The claimant seeks special damages in the sum of EC\$,7,124.30 as follows:

- (1) Expenses for physiotherapy sessions: \$2,150.00
- (2) Supplemental medical report from Dr. K.K. Singh: \$3,480.00
- (3) Prosthetic insert: \$1,494.30

[36] It is noted that in his witness statement, the claimant stated that although he has pleaded the medical expenses he incurred whilst in the United States he is not seeking to claim reimbursement.

[37] In light of the foregoing, I am satisfied that the claimant has sufficiently pleaded, particularized and proved the expenses he seeks to recover by providing the requisite receipts. I would therefore award the claimant special damages in the sum of EC\$7,124.30.

[38] In light of the above, the court makes the following orders:

- (1) The defendant shall pay the claimant the following sums:

¹⁰ 18th Edition at 44-012.

- a) General damages for pain, suffering and loss of amenities in the sum of \$190,000.00 together with interest at the rate of 5% per annum from the date of filing of the claim to the date of this order.
- b) Special damages in the sum of \$7,124.30 together with interest at the rate of 2.5 % from the date of the accident to the date of this order.
- c) The sum of \$60,000.00 for future medical care.
- d) The sum of \$259,200.00 for loss of future earnings.
- e) Post judgment interest on the global award at the rate of 5% per annum until payment in full.
- f) 60% of prescribed costs in accordance with rule 65.5 and Appendix B and C to Part 65 of the **Civil Procedure Rules 2000**.

[39] I wish to thank learned counsel for their helpful submissions.

Carlos Cameron Michel
Master

By the Court

Deputy Registrar