

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

GRENADA

GDAHCV2019/0208

BETWEEN:

KIMON BROWNE

Claimant

and

HARRY GIBSON

Defendant

Before:

The Hon. Mr. Carlos Cameron Michel
Master

Appearances:

Mrs. Kindra Maturine-Stewart for the Claimant
Mr. Benjamin Hood for the Defendant

2023: March 9; March 10

DECISION ON ASSESSMENT OF DAMAGES

- [1] **MICHEL M:** This is the court's decision on an assessment of damages on the claimant's claim for damages resulting from a collision between the defendant's vehicle and the claimant's motorcycle on 6th June 2025 on the St. Paul's public road, Saint George.
- [2] The claimant filed the present claim against the defendant on 3rd May 2019 which was subsequently amended on 23rd September 2019, seeking special and general damages for damage to his

motorcycle and personal injuries suffered as a result of the collision, loss and damage. No defence was filed by the defendant to the claimant's claim and judgment in default of defence was entered for the claimant for special damages in the sum of \$14,072.50 together with interest and for general damages to be assessed.

- [3] The claimant filed a witness statement in support of the assessment and written submissions on the assessment were filed on his behalf. A witness summary and written submissions were filed on behalf of the defendant; however, the defendant did not attend the hearing of the assessment of damages to give evidence.

Special Damages

- [4] The claimant was cross-examined by the learned counsel for the defendant in relation to his claim for special damages; however, the issue of special damages being conclusive on the entry of the default judgment in this particular case, the parties accepted that the assessment of damages would now only relate to the claimant's claim for general damages.

General Damages

- [5] 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

- [6] The claimant was 27 years old at the time of the accident. His injuries are described in the expert report of Dr. Justin La Rose,

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

MD, FCSNN, Neurosurgeon Specialist filed in compliance with an order of the court.

- [7] The claimant was admitted to the care of Dr. La Rose at the hospital following the accident on 6th June 2015. In his report, Dr. La Rose stated that the claimant had sustained multiple injuries because of the accident inclusive of head trauma, with a laceration to his forehead measuring 6cm with irregular edges and that profuse bleeding was noted from the said laceration. The claimant was treated antibiotics, pain killers and IV hydration until he was in stable clinical condition upon which he was discharged on 15th June 2015 with pain killers and antibiotics and follow up clinic appointments for one month. It is noted that in the claimant's witness statements he stated that he was warded at the hospital until 8th June 2015.
- [8] Dr. La Rose's report indicated that the claimant was subsequently reviewed in July 2015 and February 2017 when he presented with episodes of periodic headaches of moderate intensity and an area of esthetical deformity in the region of the forehead where he received the laceration.
- [9] Dr. La Rose's medical report stated that the claimant is expected to have a fairly good recuperative period but may have headaches from time to time at varied intensity which may be long term and may on occasion require medicated treatment for the esthetic deformity which is permanent in nature. No further medical evidence was presented in relation to the headaches being experienced by the claimant.

The nature and gravity of the resulting physical disability

- [10] The no medical evidence was presented to the court in relation to any resulting physical disability to the claimant but the court

notes the headaches he experiences and the esthetic deformity to his forehead.

Pain, Suffering and Loss of Amenities

- [11] In his witness statement, the claimant stated that since the day of the accident he has consistently suffered periodic headaches for which he is required to take medication. Under cross examination, the claimant stated that his headaches sometimes go away for three months and then come back and that he always has to keep a box of pain killers with him.

The extent to which the claimant's pecuniary prospects have been affected

- [12] There is no evidence before the court in relation to this head of the assessment and neither were any arguments presented to the court under this head.

Approach to Awards on Assessment of Damages

- [13] The purpose of compensation in personal injury cases is to attempt to put the injured party back in the position he or she was in before the injuries occurred. The assessment of damages is not a precise calculation as the aim is to provide reasonable compensation for the pain and suffering and loss of amenities. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. In **CCCA Limited v Julius Jeffrey**,² Gordon JA [Ag.] framed this as follows:

“I accept that the trial judge must exercise his discretion based on the evidence before him, but that discretion must be curtailed by attempting to achieve consistency in awards within the jurisdiction of this Court.”

² Saint Vincent and the Grenadines Civil Appeal No. 10 of 2003 (delivered 2nd March 2004, unreported).

[14] Lord Hope of Craighead in **Wells v Wells**³ explained the approach in the following terms: “The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court’s basic estimate of the [claimant’s] damage”.

[15] Learned counsel for the claimant referred the court to four cases to consider to make a comparable award for pain suffering and loss of amenities to the claim. The cases were **Diepak Paul and Douglas Blyden**,⁴ where the court made an award to the claimant of \$80,000.00; **Mercedes Delplesche v Samuel Emmanuel De Roche**,⁵ where the court awarded the claimant \$65,000.00. Among other injuries, the court took into account the scarring received by the claimant; **Asquith Mc Lean v Sheldon Bynoe**,⁶ where the court awarded the claimant the sum of \$15,000.00 for pain suffering and loss of amenities; and **Winston Mc Millan v Clifren Warren et al**,⁷ where the claimant was awarded the sum of \$10,00.00 for pain, suffering and loss of amenities.

[16] Learned counsel for the claimant submitted that based on the authorities and the above cases presented to the court in support of the claimant’s claim, and applying an uplift for the incidence of inflation, the claimant should be awarded general damages in the range of \$35,000.00 to \$45,000.00.

Defendant’s Submissions

³ [1998] 3 All ER 481.

⁴ BVIHCV2011/0262 (delivered 28th November 2012, unreported).

⁵ SVGHCV2012/0041 (delivered 19th April 2019, unreported).

⁶ SVGHCV2006/0463 (delivered 3rd July 2009, unreported).

⁷ SVGHCV2013/0183 (delivered 25th June 2015, unreported).

[17] In his written submissions, learned counsel for the defendant submitted that based on the cases provided by the claimant, and the state of injuries suffered by the claimant, the award for general damages to the claimant should be within the range of \$3,000.00 to \$5,000.00. In his oral submissions, learned counsel for the defendant urged the court to make an award on the lower end of the scale of cases presented by the claimant.

Discussion and Analysis

[18] In considering an award for general damages, the guidance provided by Rawlins J in Kathleen **McNally v Eric Lotte and CITCO (BVI) Ltd.**, is instructive. Rawlins J stated that:

“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.”

[19] In **Bonny Alexander v Stanislaus James and James Enterprises Limited**,⁸ Actie M stated:

“An award for general damages is not strictly for the injuries sustained, but for the pain and suffering and the loss of amenities which resulted from them. Where multiple injuries are sustained there will be an immediate loss of amenities and an accumulation of pain and suffering. The pain and suffering and loss of amenities may develop to either a greater or lesser degree to the individual. Each case will be tailored to its specific facts and considered with a view to determining a figure which reflects the combined effect of the injuries.”

[20] It is evident from the medical report of Dr. La Rose that the claimant although expected to have a fairly good recuperative period, has two notable lingering effects from the collision with the defendant's vehicle. Firstly, the claimant continues to suffer

⁸ SLUHCV2017/0280 (delivered 9th March 2018, unreported).

from periodic headaches and secondly, he now has an esthetical deformity in the region of his forehead where he received a laceration from the accident which is permanent.

[21] I have read and considered the cases referred to the court to arrive at an appropriate award for general damages to compensate the claimant for the injuries he suffered as a result of the accident. It ought to be readily accepted that the injuries received by the claimants in **Diepak Paul** and **Mercedes Delplesche** were more extensive than claimant in the present case, however, there are features of the injuries in those cases that the court is mindful of and takes into consideration. Whilst the awards in **Asquith Mc Lean** and **Winston Mc Millan** may be more in line with the injuries the claimant received in this case, I am of the considered view that the distinguishing features earlier mentioned in relation to the injuries suffered by the claimant warrant a higher award.

[22] I take into account the permanent esthetical deformity the claimant now has on his forehead and the persistent headaches he receives. I also take into account the vintage of the awards in the above cases referred to the court. Taking into consideration all the relevant matters, I consider that an award of \$28,000.00 for pain, suffering and loss of amenities to be fair and reasonable compensation for the claimant's injuries.

Contributory Negligence

[23] In the written submissions filed on behalf of the defendant, learned counsel for the defendant sought to advance arguments in relation to contributory negligence by the claimant. However, at the end of the assessment of damages hearing, learned counsel for the defendant conceded that those arguments could not be properly advanced in the absence of the defendant being before the court to give evidence.

Disposition

[24] In light of the foregoing, the defendant shall pay the claimant the following sums:

- (1) Special damages in the sum of \$14,072.50 together with interest at the rate of 6% per annum from the date of the default judgment to payment.
- (2) General damages for pain, suffering and loss of amenities in sum of \$28,000.00 together with interest at the rate of 2.5% per annum from the date of service of the claim to the date of this order and from 6% per annum from the date of this order to the date of payment in full.
- (3) 60% of prescribed costs on the global sum in accordance with rule 65.5 and Appendix B and C to Part 65 of the **Civil Procedure Rules 2000**.

[25] I thank learned counsel on both sides for their helpful submissions.

Carlos Cameron Michel
Master

By the Court

Registrar