

IN THE EASTERN CARIBBEAN SUPREME COURT:

IN THE HIGH COURT OF JUSTICE
Civil Division

COMMONWEALTH OF DOMINICA

Claim Number DOMHCV2021/0003

Between

GIANCARLA FRITZ

Claimant

-and-

MICHAEL RODNEY

Defendant

Before Master Alvin Shiva Pariagsingh

Appearances: Cara Shillingford – Marsh for the Claimant; and
John Elue Charles for the Defendant.

2022: June 28
October 03

DECISION

Claimant's Assessment of Damages

[1] Before the Court is the Claimant's assessment of damages pursuant to a judgment in default of a defence granted on March 12, 2021.

THE CLAIM:

[2] The Claimant who was born on August 03, 1985 was a passenger of the Defendant's passenger bus on January 08, 2018. The Claimant contends that the Defendant suddenly and without warning pressed his foot on the breaks pedal causing her to be thrown forward. She contends that she was thrown off her seat and into the area near

the sliding door. Her evidence is that she became unconscious and was transported to the Princes Margaret Hospital. She complains of extreme pain.

[3] The Claimant's case is that she was hospitalized for 2 days during which she suffered general body pain including pain in her head, face, neck, back and waist area. She was prescribed with a neck brace, which she purchased. She complains of continuing to feel back, waist and neck pains regularly. She also complains of intermittent swelling of her feet and numbness in her hands.

[4] Special damages are claimed in the sum of \$5,274.94.

THE CLAIMANT'S EVIDENCE:

[5] The Claimant's evidence is largely consistent with her pleaded case. Two main areas of factual disputes are whether the Claimant was thrown out of her seat and whether she was unconscious after her fall. On the first issue I accept the Claimant's evidence. I accept that she was thrown out of her seat. The Defendant's evidence on this point was from a witness who accepted that she did not leave where she was sitting at the front of the bus to come to the back of the bus where the Claimant was to see what had happened to her.

[6] On the second issue, I accept the Defendant's evidence on this point. I find that the Claimant was not unconscious at any time after her fall as alleged. I accept the Defendant's finding that he assisted the Claimant to get up after her fall. I also accept the Defendant's witness evidence that the Claimant was conscious and talking and expressing concern over who would stay with her at the hospital and how her child would get home.

[7] Generally I found the Claimant to be a witness of truth except that I find that some accepts of her evidence on pain and suffering and loss of amenities are grossly exaggerated. In particular, I accept the Defendant's evidence that he saw the Claimant

at a party and carried her to her Christmas dinner after the accident. although no mention of the time she stayed or what where the seating arrangements, applying the measure of common sense, if the Claimant suffered as much pain and swelling of the feet as she claims it is highly improbable that she would attend these events.

- [8] Further the medical report of Dr. George dated March 08, 2021 states that the Claimant showed improvement with significant decrease in pain and discomfort. This supports my findings that she has exaggerated her actual pain and suffering in this assessment.

THE DEFENDANT'S EVIDENCE:

- [9] I found the Defendant to be an honest, direct and unimpeachable witness whose testimony I accept.

- [10] I accept that the Defendant's felt the Claimant hit the back of the front seat and heard her immediately complain of pains to her head. The Defendant immediately stopped the bus came to the passenger door and opened same where he saw the Claimant laying on the floor of the bus. I accept that he assisted her to get back on the seat and during that entire time she was complaining of pain to her head.

- [11] The Defendant took the Claimant to the Princess Margaret Hospital for medical attention. I accept that the Defendant visited the Claimant every day at the hospital during her 2 day admission and that on these visits he saw no swelling to her face. It was the Defendant who took the Claimant to his insurers to make a third party personal injury claim.

- [12] I accept that after the accident up until December 2020 the Defendant continued to provide public transportation to the Claimant. Each of these trips would be between 40 to 45 mins during which time the Claimant never complained to the Defendant about any pains to her neck, back or waist.

[13] The Defendant's evidence is that the Claimant continues to enjoy her normal social life including attending and participating in fetes and parties, attending the World Creole Music Festivals and participating in carnival activities including a special entertainment event for Carnival 2022 dubbed "Rize & Whine".

[14] On cross examination the Defendant remained largely unshaken. He did accept he did not see the Claimant at these events personally but saw pictures on her social media accounts. He also accept that he does not know long she spent at the events or whether she took breaks to sit and rest in between.

THE DEFENDANT'S WITNESS:

[15] I found the evidence of Ms. Alicia Adrien to be largely contradictory in material aspects about the accident itself to the evidence of the Defendant. In particular it was Ms. Adrien's evidence that the Claimant was not on the floor of the bus after the accident. That was contradictory to the Defendant's evidence. In so far as is relevant, the only probative evidence of Ms. Adrien was her corroborating the Defendant's evidence that the Claimant never lost consciousness. Save for this I attach very little weight to her evidence, more so as it emerges, she and the Claimant have their own personal differences.

THE MEDICAL EVIDENCE:

[16] At the assessment the Claimant called Dr. Curlson George. Dr. George was not a treating doctor of the Claimant during the initial stages of her injury. His first interaction with the Claimant was on December 22, 2020 a few days less 2 years after the injury. He noted a history of whiplash post motor vehicle accident. He also noted that upon reassessment she showed improvement with significant decrease in pain and discomfort. The impression: C-Spine Rectification – degenerative thoracic spondylosis. This in itself is not a serious injury.

[17] In cross examination, the doctor maintained that did not see the Claimant on January 23, 2018 when shown a medical sick leave certificate of that date.

[18] The doctor's evidence is that the Claimant's condition could be caused by multiple factors including trauma and degeneration. He expressed the view that blunt force trauma could have most likely caused the Claimant's injury.

[19] His evidence was that he did not do any test to determine the impression he stated as it was not necessary. He indicated that an MRI or CT Scan would be relevant but the same diagnosis could be arrived at by other test.

[20] Overall I accept the doctor's evidence, the same was not direct to the specific injury suffered by the Claimant in my view. The responses of the doctor seemed to me of a more academic nature.

[21] I have also considered the medical reports of Dr. Julian De Armas dated May 15, 2018 and December 06, 2018. Both these medicals are closer in time to the injury. Furthermore, Dr. De Armas was an actual treating doctor who says in his medical reports what was the physical examination he did and what was his diagnosis.

[22] In his first medical report, Dr. De Armas noted that the CT Scan revealed no vertebral fracture, mild bulging disc L4 – L5 and L5 – S1 level with no fracture found. He also noted that on physical examination her cervical spine was negative for L'hermitte signs, no vascular sign and there was full range of movement. She was diagnosed as having a suspected posttraumatic cervical spine and lumper spine.

[23] In his second medical report dated December 06, 2018, after the Clamant returned from medical treatment abroad. In this medical Dr. De Armes physical examination of the Claimant noted as being normal. He also reviewed her MRI lumber spine and MRI cervical spine and noted that both were normal.

[24] Dr. De Armes stated that at that moment he did not find any orthopedic cause for her symptoms.

[25] Given the findings by Dr. De Armes, I attach lesser weight to the evidence of Dr. George.

GENERAL DAMAGES:

[26] In assessing general damages, I am mindful of the heads as set out in **Cornilliac v St. Louis (1964) 7 WIR 491** at page 492:

1. the nature and extent of the injury sustained;
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.

[27] Lord Diplock in **Wright v British Railways Board [1983] 3 WLR 211** at page 214 describes the character of an award of damages in personal injury cases as:

".....that non-economic loss constitutes a major item in the damages. Such loss is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigants should be even-handed instead of depending on idiosyncrasies of the assessor, whether jury or judge, the figure must be " basically a conventional figure derived from experience and from awards in comparable cases."

[28] The nature and extent of the injury is set out in the expert reports of Dr. De Armes and Dr. George. The Claimant suffered whiplash injury and degenerative thoracic spondylosis. The extent of the injury is not severe.

[29] The Claimant claims that she still suffers pain and occasional swelling of her feet. These are not grave resulting physical disability. More so as I have found that the Claimant is exaggerating the effect of injury.

[30] I have no doubt that the Claimant suffered pain by the injury, in treatment of the injury and continuing after the injury however residual or minimal. I find that the level of pain and suffering that persist at present is significantly improved from the pain she suffered immediately after the accident consistent with the medical report of December 2020 of Dr. De Ames.

[31] The Claimant would have suffered loss of amenities as a result of the injury. I find that loss of amenities would have decreased significantly up to the medial report of Dr. De Ames dated December 2020 which remained consistent with the finding of improvement stated by Dr. George. I do not consider the Claimant's loss of amenities to be as very significant.

[32] There is no evidence of the Claimant's pecuniary prospects being affected. Save for the Claimant saying that her injury has caused her to have to take time off from time to time, there is no evidence medical or otherwise to suggest that she cannot work or continue to do the work she did prior to the accident.

[33] The Claimant relies on the cases of **Talisha Bryan v Anthony Simpson** HCV5780/2011 (Jamaica), **Harvey Taliam & Ors v Duncan & Ferdinand** SLUHCV2018/0418, **Olive George v Sherwin Taitt & Ors**, CV2007/00106 (Trinidad and Tobago) , **Sheena David et al –v- Kingston Bowen et al**, GDAHCV2007/0055, **Bellot –v- Raffoul**, DOMHCV2012/0360, **Cyril Donelly v Aldrick Octave**, SLUHCV2012/0940, **Annie Benn v Community First Co-operative Credit Union Limited**, ANUHCV2007/0725, **Danny Branble v William Danny Key Properties Limited**, ANUHCV1999/0160 and **Temicia Smith v Brian Dean et al** SVGHCV2013/098. The Claimant submits that an appropriate range for general damages is between \$25,000.00 to \$70,000.00.

[34] The Defendant relies on the cases of **David Saunders et al v Grace Rhymer**, SKBHCV2001/0041, **Martha Leblanc v Augustus Thomas et al**, DOMHCV2009/0296 and **Peter Cherry et al v Trevor Trim et al**, SLUHCV2011/0073. The Defendant submits that the appropriate range for general damages is between \$2,000.00 to \$16,000.00.

[35] I find that the injuries suffered by the Claimant are more in line with the range submitted by the Defendant in all the cases submitted by the Claimant except the case of **Harvey Taliman** the injuries were more severe than the injuries suffered by the Claimant.

[36] The injuries suffered by the Claimant is slightly more involved than the injuries suffered in **David Saunders** but not as involved as the injuries suffered in **Martha Lablanc**. Given that age of these authorities and the fact that the Claimant was slightly younger than **Martha Lablanc**, I assess general damages for pain and suffering and loss of amenities in the sum of \$15,000.00.

SPECIAL DAMAGES:

[37] Special damages must be specially pleaded and proven, **Grant v Motilal Moonan Ltd and Another (1988) 43 WIR 372**.

[38] All the sums pleaded were evidenced with bills. In addition there are receipts for medical reports after the claim was filed. I have allowed those expenses as well. My calculation of the bills, which seems to be slightly different to the Claimant's calculation is in the sum of \$6,482.44. This sum is allowed.

COSTS:

[39] The Claimant is entitled to her costs. These costs are quantified as 60% of the costs payable on a claim having a value of the total awards made (inclusive of pre-judgment interest).

ORDER:

[40] It is hereby ordered that:

1. The Defendant shall pay the Claimant:
 - i. general damages for pain and suffering and loss of amenities assessed in the sum of \$15,000.00; and
 - ii. special damages assessed in the sum of \$6,482.44.
2. The Defendant shall also pay the Claimant's costs quantified in the sum of \$1,933.42; and
3. Interest on the sums awarded at the rate of 5% per annum from today's date to the date of satisfaction of the judgment.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar