

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

SAINT VINCENT AND THE GRENADINES

CLAIM NO: SVGHCV2020/0033

BETWEEN:

CAVET THOMAS

Claimant

and

THE ATTORNEY GENERAL (FOR THE COMPTROLLER OF CUSTOMS)

First Defendant

and

THE SAINT VINCENT AND THE GRENADINES PORT AUTHORITY

Second Defendant

and

BRENTON JAMES

Third Defendant

Appearances:

Mr. Joseph Delves for the Claimant

Mr. Sten Sargeant and Ms. Réne Baptiste for the 2nd and 3rd Defendants

2022: March 31;
May 17.

JUDGMENT ON ASSESSMENT OF DAMAGES

- [1] **GILL, M.:** This matter concerns a claim in negligence against an employer for damages for personal injuries sustained in an accident at work. Before trial, with the agreement of the employer, judgment on liability was entered against the 2nd and 3rd defendants. Assessment of damages falls before this court.

Background

- [2] On 21st April 2017, the claimant Cavet Thomas ("Ms. Thomas") a senior customs officer was carrying out her duties in examining a box of cargo at a port operated by the 2nd defendant

the Saint Vincent Port Authority (“the Port Authority”). The 3rd defendant Brenton James (“Mr. James”), an employee of the Port Authority, negligently drove the Port Authority’s forklift and caused it to collide with Ms. Thomas causing injury to her.

SPECIAL DAMAGES

- [3] Special damages must be pleaded, particularised and proved.¹ Ms. Thomas has satisfied this test regarding expenses related to her injuries in the sum of \$2,583.85, which is agreed by the parties. I will award special damages accordingly.

GENERAL DAMAGES

- [4] The well-established legal principles to be followed in awarding damages in personal injury cases were laid down in **Cornilliac v St. Louis**.² The main factors to be taken into account are (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities, if any; and (v) the extent to which pecuniary prospects are affected.

The nature and extent of the injuries sustained and the nature and gravity of the resulting physical disability

- [5] Ms. Thomas’ evidence is that she was bent over examining a box of cargo when she heard a voice say, “Watch out for the Customs Officer.” As she raised her head, she was struck on the side of her face by the blade of a forklift. She was taken to the Milton Cato Memorial Hospital. However, it took such a long time for her to get attention there, so that on the suggestion of her supervisor who had accompanied her, she went to the nearby clinic of Dr. Lennox Adams.
- [6] Lennox R. Adams MD (hereinafter “Dr. Adams”) prepared a medical report dated 6th May 2017. The report shows that Dr. Adams examined Ms. Thomas on 21st April 2017 a few hours after the accident. She complained of tenderness along the forehead and intermittent shocking pain along the left side of her neck. The report further reveals the following:

¹ **Ilkiw v Samuels** [1963] 2 All ER 879 at 890, per Lord Diplock

² (1967) 7 WIR 491, per Wooding CJ

- i. Ms. Thomas suffered a one centimetre diameter abrasion just above the medial edge of the right eyebrow;
- ii. Surrounding hematoma was noted;
- iii. Ms. Thomas recalled no loss of consciousness;
- iv. She was in no acute distress;
- v. There was no obvious palpable deformity of the skull beneath;
- vi. Her pupils were equal, round, reacting to light and accommodating;
- vii. The extra ocular muscles were intact;
- viii. The neck was supple and at that time there was no tenderness;
- ix. The rest of her examination was within normal limits;
- x. X-rays of the skull revealed no obvious fractures;
- xi. Ms. Thomas was started on analgesics and antibiotics.

[7] Over the few days after the first examination, according to Dr. Adams, Ms. Thomas began to experience pain also along the right side of the neck. However, he reported that she then began to show gradual but steady improvement. He stated that her small abrasion eventually healed and the hematoma resolved progressively. At the time of this subsequent examination, there was still a small residue beneath the wound site. He noted that Ms. Thomas still experienced pain along the neck from time to time although this was resolving. Dr. Adams does not state the date of the second or subsequent examination. However, I deduce that it was on or before the date of his report, 6th May 2017, which was two weeks after the accident and first examination.

[8] Dr. Adams' diagnostic impression was blunt trauma to the head with soft tissue injury to the forehead and whiplash injury to the neck.

[9] After encountering difficulties in returning to Dr. Adams, Ms. Thomas went to Dr. Chester Toney ("Dr. Toney"), Physician/Obstetrician/Gynaecologist. The defendants, in submissions, refer to Dr. Toney as "the Sexologist" presumably as Dr. Toney's letterhead reads, "Specialist in Gynaecology & Obstetrics/Sexology, Alternative Medicine (DIP)." Dr. Toney examined Ms. Thomas on 22nd October 2017, six months after the accident, and in a report dated 17th November 2017, made the following diagnosis;

- 1) Subluxation of the second cervical vertebra of the vertebral column; (Ms. Thomas provides her own understanding of the meaning of 'subluxation' as an incomplete or partial dislocation with subsequent functional loss);
- 2) Muscle spasm of the cervical spine;
- 3) Brachial plexus neuritis; and
- 4) Lower back spasm.

[10] Dr. Toney's first report states that Ms. Thomas "was treated with chiropractic adjustments, chiropractic adjuster, analgesics and anti-inflammatory drugs". A CT scan of the "craneo" was done on 8th November 2017. This revealed no demonstrable intra-cranial findings. She was placed under medical supervision for the next nine months with monthly consultations, "with chiropractic adjustments/adjuster". Ms. Thomas' evidence is that Dr. Toney did therapy for eight months, and this helped. However, the receipts in evidence in relation to this suggest therapy was for two and a half months only.

[11] Dr. Toney submitted another report dated 29th October 2018. It is identical to the report dated 17th November 2017 except for one sentence indicating that Ms. Thomas was referred to go overseas for consultation with a neurosurgeon/neurologist for a more in-depth diagnosis and treatment as she still experienced chronic pain on the left side of her head and left shoulder. Nowhere in Dr. Toney's reports is it stated that Ms. Thomas suffered a severe whiplash injury as submitted to this court she did. Ms. Thomas only stated that he said so.

[12] I note that Dr. Toney also did not state that the injuries he diagnosed six months after the accident were consistent with same. Dr. Toney (or any other doctor) was not called to give evidence in the assessment to explain or defend his findings, particularly the injuries with respect to Ms. Thomas' spine and lower back. In any event, the evidence and submissions on behalf of Ms. Thomas direct the court that she suffered a head injury and a neck injury.

[13] After Dr. Toney, Ms. Thomas states that from time to time her problems flared up and she went to see a Cuban doctor at the Integrated Medical Clinic. This doctor is not named nor is there any report from him or her. Understandably therefore, the defendants refer to that person as "the Ghost Cuban Doctor".

- [14] The only other medical evidence before the court came from a report of Dr. Charles Woods, Orthopaedic Surgeon. It is dated 18th July 2021. Dr. Woods reports that he reviewed Ms. Thomas on 9th July 2021 in relation to the accident of April 2017. He states that Ms. Thomas complained of occasional tenderness to the base of the skull, “but no other current symptoms”. The rest of the report reads:

“On examination the patient had good range of motion of the neck. There was some mild tenderness on palpation of the base of the skull and insertion of the trapezius muscles. There were no neurological deficits or paresthesias affecting the limbs.

It would appear that Ms. Thomas sustained a whiplash injury to her neck as a result of the blow to her head, resulting in past neck pain and neuralgia, but her symptoms have now almost completely resolved.”

- [15] Shockingly, without a shred of medical evidence, Ms. Thomas states, “It seems I may have suffered a traumatic brain injury (TBI).” Further, she exhibits articles, including diagrams, pulled from the internet (the “Google Doctor” say the defendants) from Medicine Plus and the US Center for Disease Control (CDC) on TBI and direct indications of a head injury such as nosebleeds, swelling, bruising and stiff neck. Even if Ms. Thomas gave certain instructions, I find it appalling that this evidence of the claimant’s speculation of a brain injury, and submissions on it, are put before the court for consideration. Any information from the internet, even on a diagnosed injury, would not be specific to a claimant in a particular case. The internet research submitted to this court is unacceptable. Therefore, for the purposes of this assessment, I disregard any reference to a TBI.

- [16] I am constrained to give the same treatment to Ms. Thomas’ evidence that she developed high blood pressure and vertigo. None of these is even mentioned in any of the medical reports before this court. The court cannot rely solely on Ms. Thomas’ contentions simply because she says she did not have these complaints before the accident. There is no medical evidence that she had these complaints after the accident or at all.

- [17] The fact that Ms. Thomas was not cross-examined does not mean that the court will accept her evidence wholly or entirely. In a personal injury case, the court must be provided with medical evidence from credible medical experts as to the injuries suffered by the claimant. The complaints of the claimant must be verified or substantiated to enable the court to make

a proper assessment. A statement by Webster JA (Ag.) in **Clint Louis v Miguel Jeffrey**³ in dealing with a submission that reasonable medical inferences could be drawn from receipts for medical expenses is instructive, notwithstanding the issue of receipts is not Ms. Thomas' thrust. The point to be extracted is the need for medical evidence. His Lordship opined:

"I do not agree that this is a satisfactory way to prove the nature and extent of injuries and resulting disabilities. A claimant in a claim for damages for personal injuries must support the proof of his injuries by medical evidence. Receipts are not medical reports. They do not expound on the nature and extent of the injuries or resulting disability. They do not contain the expertise of a medical professional from which a judge may adequately discern a claimant's pain and suffering and loss of amenities."

Pain and suffering

- [18] There is no doubt that Ms. Thomas suffered some pain from the injuries to her head and neck as a result of the accident. It is expected that she would suffer headaches and pain from whiplash. Up to over four years after the accident, Dr. Woods' report shows that Ms. Thomas' symptoms, though mild, had not completely, but "almost completely" resolved. The dispute between the parties is as to the extent and severity of the pain and suffering complained of.
- [19] Ms. Thomas states that Dr. Adams told her to stay home for seven days and then go back to him. After the first seven days, she was still in so much pain that he gave her a further seven days at home. She couldn't do anything physical for herself. Every time she held up her head, she had a headache or a nosebleed. The sight of blood running from her nose was scary. She further states that after the second set of days off, she went back to work, but her employers sent her home, even without a sick leave certificate from Dr. Adams who proved impossible to reach.
- [20] I find this evidence to be incredible. There can be no reasonable explanation for the absence of a medical certificate granting leave to Ms. Thomas for fourteen days from her employment as a senior customs officer of the government of St. Vincent and the Grenadines. It is inconceivable that a registered medical practitioner would simply tell an employed individual to stay home for an injury for any length of time, far less two weeks. This state of affairs is unlikely since an employee in this jurisdiction is liable to termination for not submitting a

³ SLUHCVP2018/0010, delivered November 10, 2021, at paragraph 48

medical certificate to an employer for absence from work due to injury or illness for more than two days.⁴ In these circumstances, as advanced by the defendants, I do not accept that Ms. Thomas was medically unfit to work in the initial fourteen days after the accident.

- [21] Ms. Thomas complained that she had problems sleeping for the first week after the accident. About a month after, it was painful when her sister was combing her hair and later that night, she had a severe headache with neck pain going down to the side of her shoulder and upper back. I note that Dr. Toney made no mention of these complaints.

Loss of amenities

- [22] Ms. Thomas claims that after the accident, she could not “do things for herself” and for the first few weeks her boyfriend had to look after her, thereafter, her sister and niece for about a year. Her brother-in-law took care of the yard, scrubbed the steps, and washed down, and other things, as she could not do these things herself.
- [23] Her evidence is that she used to go walking for exercise but had to stop because of the accident. Since then, she has not exercised as regularly as before as “I seem to have lost my motivation”. She states that the blow stopped her from going to a friend’s wedding as she was in pain. No date was given for this event.
- [24] Ms. Thomas further states that she stopped going out socially and going to the beach and on boat rides with her partner, and going fishing, all things she used to love to do. She claims that her injuries have put a strain on the relationship with her partner, and for a couple of years after her injuries, caused interference with her intimate relations with him. She says she is anxious around forklifts and when they come close to her, she gets jumpy. She says she is not the same person she was before the accident and that her body “is just different”.
- [25] There is no evidence provided to suggest that Ms. Thomas suffered any injury that physically prevents her from doing things she did before the accident. Apart from her evidence in relation to pain, Ms. Thomas brings a psychological element to her claim for damages. Again, her downfall is medical evidence. There is nothing from a person qualified to inform

⁴ See the Protection of Employment Act, section 16(g), Chapter 212 of The Laws of Saint Vincent and the Grenadines

the court that Ms. Thomas' issues with motivation, socialising, intimacy, anxiety and change in personality, are first of all, real, and secondly, whether they are attributable to the accident. In my view, it is not sufficient for Ms. Thomas simply to say that she did not experience these things before the accident. However, I am prepared to accept that Ms. Thomas did suffer some degree of trauma from being struck with a piece of equipment as large as a forklift.

Comparable awards

[26] The court is aware of the need to strive to make an award in keeping with comparable cases.

As stated by Lord Craighead in **Wells v Wells**:⁵

“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 plaintiff’s damage.” **[or pl’s gen. damages – check]**

[27] This approach was considered the more modern school of thought by Gordon JA (Ag.), as he then was, in **CCAA Limited v Julius Jeffrey**⁶ as follows:

“Thus, to summarise, 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.”

The claimant’s authorities

[28] Ms. Thomas seeks an award for pain and suffering and loss of amenities in the range of \$70,000.00 to \$85,000.00 and cites cases from the jurisdiction of the Eastern Caribbean Supreme Court.

[29] In **Mercedes Delplesche v Samuel Emmanuel De Roche**,⁷ the claimant, 54 years old at the time, was standing on the sidewalk when she was struck down by a motor vehicle. She suffered trauma to the head and left knee, abrasions to her face, lacerations to the forehead, nose and lower lip and bleeding from the left nostril. She was hospitalised for four days. Her injuries resulted in scars to her forehead and face. She complained of pain in the right side of her neck, lower back and knee. In 2013, she was awarded \$65,000.00 for pain and

⁵ [1998] 3All ER 481

⁶ Civil Appeal No. 10 of 2003 (Saint Vincent and the Grenadines), delivered March 2, 2004, at paragraph 10

⁷ Claim No. 41 of 2012 (Saint Vincent and the Grenadines), delivered April 19, 2013

suffering and loss of amenities. Notwithstanding the absence of a whiplash injury, I do not consider the injuries Ms. Thomas suffered to be as severe when compared with those of Ms. Delplesche. Further, Ms. Thomas was not hospitalised and there is no evidence of scarring in this case.

[30] The claimant in **Danny Bramble v William Danny and Another**⁸ was 56 years old when a truck collided with his vehicle. He suffered injuries to the knee and lower back. The accident caused a severe whiplash injury to his lower spine and aggravated his pre-existing degenerative joint disease. He continued to have intermittent pain in his loins and had difficulty getting out of his car, and could no longer exercise, play softball or go for walks. In 2004 (18 years ago), he was awarded \$50,000.00 in general damages. I have already concluded that there is no medical evidence before this court to show that the whiplash injury suffered by Ms. Thomas was severe, or that she could not exercise, go for walks, socialise, and so on.

[31] The claimant was awarded \$65,000.00 as general damages in **Lenroy Connor v Cynthia Flemming**.⁹ In that case, a motor vehicle collided with the rear of the claimant's motor vehicle and he suffered a whiplash injury with exacerbation of an old neck injury. One medical report stated that he was treated with pain killers, muscle relaxants and a neck brace and his whiplash had resolved. A later medical report, dated six years after the accident by another doctor, stated that the claimant had tightness and weakness of the posterior neck muscles, episodic pain in left neck radiating down to shoulders and then to fingers, sticking of the left little finger, episodic falling of the left thumb into palm, and painful spasm of all the fingers, lasting a little while before wearing off. Mr. Connor's condition was made far worse because of his pre-existing condition. Ms. Thomas' latest medical report shows that her injuries were almost completely healed.

[32] In **Garth Lewis v Leonnoth Serrant and Another**,¹⁰ the claimant was 45 years old at the time when a vehicle collided with his vehicle. He suffered an injury to his left knee and was diagnosed with multiple post-traumatic disc herniation lumbar spine L3-L4 and L4-L5. He

⁸ ANUHCv1999/0160, delivered January 15, 2004

⁹ SKBHCV2012/0353, delivered January 14, 2016

¹⁰ DOMHCV2017/0161

was awarded \$70,000.00 for pain and suffering and loss of amenities. I fail to see how this case assists the court in the instant case.

The defendants' submissions

- [33] The defendants suggest an award of \$20,000.00 for pain and suffering and \$5,000.00 for loss of amenities. They submit that the most comparable authority is the St. Vincent and the Grenadines case of **Jessica Ledger et al v Heslyn Codougan et al**.¹¹ In that case, Jessica Ledger was crossing the road carrying her two-year old son in her arms when she was struck to the ground by a vehicle. The impact caused the child to be thrown from her arms to the ground. Both sustained injuries. Jessica suffered head trauma and soft tissue injury to her knee and elbow. A medical report listed her injuries as (1) superficial abrasion on the forehead with underlying hematoma, (2) superficial (*sic*) was noted to the medial aspect of the right arm, and (3) laceration approximately 1cm on left lower extremity in length to the left knee as well as superficial abrasions were noted on the left leg. Jessica was hospitalised for three days. Two subsequent medical reports spoke to persistent headaches. The court awarded Jessica \$40,000.00 for pain and suffering and loss of amenities, \$30,000.00 for pain and suffering and \$10,000.00 for loss of amenities. The court took into consideration the trauma she suffered from having witnessed her son being flown out of her hands on impact. I consider the absence of a whiplash injury in that case to be a significant distinction in assessing the award in this case.
- [34] In addition, the defendants submit that the court should seek guidance from the UK Judicial College *Guidelines For The Assessment of General Damages in Personal Injury Cases*.¹² They cite the Eastern Caribbean Supreme Court Personal Injury Cases Digest 2000-2017 ("the Digest") and conclude that there is not a single case that deals with a whiplash injury to the neck only. They observe that there is a category for head injuries, but nothing related to the neck. Ms. Thomas contends that based on the reasoning in **CCAA Limited v Julius Jeffrey**,¹³ the court should not follow the Judicial College Guidelines.

¹¹ SVGHCV2013/0077, delivered June 10, 2016

¹² 15th Ed., Oxford University Press

¹³ Supra at note 6

[35] In **The Attorney General of Saint Lucia v Godfrey Ferdinand and Another**,¹⁴ the Court of Appeal considered the reliance on **CCAA Limited** and agreed that the court can look at awards for wholly dissimilar injuries in an appropriate case, but “an award made by a court in a jurisdiction with similar, economic and industrial conditions in respect of a similar (albeit not identical injury) will be much more helpful”.¹⁵ At paragraph 41 of the judgment, Fay JA (Ag.) opined:

“It is possible that in a future case, a party might seek to make a comparison between awards made in our court against the recommendations for similar injuries in the UK Judicial Studies Board Guidelines. If that comparison demonstrates that the level of awards made in those Guidelines is typically higher or lower than awards made for similar injuries in our court, then it might be useful to apply that difference to the importance/reliance of an award suggested in the Guidelines for an injury where there is no local similar award.”

[36] There are cases involving head injuries, neck injuries and whiplash injuries in this region. Contrary to the defendants’ submission, my reviewing of the Digest reveals a category of neck injuries, listing four cases, including the St. Kitts and Nevis case of **David Saunders et al v Grace Rhymer**¹⁶ which involved a whiplash injury of the back of the neck. The 3rd claimant in that case, Nesta Seaton, was injured when the car she was driving was involved in an accident. As a result of the collision, her head struck the inside of the vehicle. She suffered severe neck pain and had to wear a cervical collar for three weeks following the accident. Six months after the accident, Ms. Seaton was diagnosed with residual whiplash injury of the back of the neck. In 2004, she was awarded \$14,000.00 for pain and suffering. It appears that even the defendants consider this much too low an award in the instant case. The antiquity of this case must be taken into consideration. Additionally, Ms. Thomas’ head injury must be factored in.

[37] Further, the case of **Lenroy Connor v Cynthia Flemming**¹⁷ cited by Ms. Thomas is one of a whiplash injury to the neck. The claimant’s pre-existing condition is a distinguishing feature for which an appropriate adjustment can be made.

¹⁴ SLUHCVP2018/0032, delivered June 26, 2020

¹⁵ Ibid at paragraph 41

¹⁶ Civil Suit No. 41 of 2001, delivered November 26, 2004

¹⁷ Supra at note 9

[38] Therefore, in my view, it is not necessary for the court to invoke the cited UK Guidelines in this case. The injury does not have to be identical. If there is no similar local award, that is, one made in St. Vincent and the Grenadines, the court can look to awards for similar, not identical, injuries in cases from the region. Even if a whiplash injury affecting the shoulder or upper or lower back is considered wholly dissimilar to one affecting the neck, this court is allowed to determine an appropriate quantum in those circumstances using cases from our court.

[39] The injuries suffered by Ms. Thomas are a head injury, being a 1cm laceration to the forehead, and a whiplash injury to the neck, caused by the blow of the forklift. The extent of the injuries stated by Ms. Thomas in this assessment is not supported by medical evidence, so too the pain and suffering she endured. In light of the evidence before the court and the authorities which I have distinguished where applicable, a reasonable award in this case for pain and suffering is \$45,000.00 and for loss of amenities \$5,000.00..

Home care

[40] In submissions, Ms. Thomas seeks \$9,000.00 for home care, that is, \$750.00 per month for one year. This item is not pleaded so the claim must be for general damages. However, whereas Ms. Thomas states that she had to be looked after and assisted by her boyfriend and her sister and her niece after the accident, she makes no claim for an award for home care in her evidence in this assessment. In any event, on the evidence before the court, coupled with my finding in relation to her being medically unfit for work in the absence of a medical certificate, I do not find the evidence on home care to be credible and I am not satisfied that Ms. Thomas was incapacitated and required home care as a result of her injuries. Therefore, I make no award for home care.

Impact on pecuniary prospects

[41] Ms. Thomas makes no claim under this head.

Order

[42] Based on the foregoing, it is ordered that the 2nd and 3rd defendants shall pay the claimant as follows:

- 1) Special damages in the sum of \$2,583. 85 with interest at the rate of 3% per annum from the date of the accident to the date of assessment.
- 2) General damages for pain and suffering and loss of amenities in the sum of \$50,000.00 with interest at the rate of 6% per annum from the date of service of the claim to the date of judgment on assessment.
- 3) Interest on the global sum at the rate of 6% per annum from the date of assessment to the date of payment in full.
- 4) Prescribed costs in accordance with CPR 65.5 in the sum of \$7,887.58.

Tamara Gill
Master

By the Court

Registrar