

**THE EASTERN CARRIBBEAN SUPRME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT VINCENT AND THE GRENADINES

SVGHCV2017/0193

BETWEEN:

JANINE FORDE

Claimant

and

MARTIN WILLIAMS

First Defendant

BEACON INSUARNCE COMPANY LIMITED

Second Defendant

Appearances:

Mr. Lyndon George for the Claimant

Ms. Suzanne Commissiong for the Defendants

2021: November 24;

2022: February 17.

JUDGMENT ON ASSESSMENT OF DAMAGES

- [1] **GILL, M.:** This is an assessment of damages for personal injuries the claimant suffered in a motor vehicular accident that occurred as a result of the negligent driving of the first defendant, Martin Williams. The second defendant, Beacon Insurance Company Limited is the insurer of the first defendant. The claim was brought originally against the first defendant only. In the course of case management, the second defendant applied to the court and was added as party to the proceedings.

Background facts

- [2] On 21st December 2014, the claimant Janine Forde was a back-seat passenger in a car registration number PM300 driven by her mother Jennie Forde on the Fountain public road

when a motor vehicular accident occurred. Jennie Forde was driving from the compound of Minors Construction Ltd onto the highway after a vehicle had stopped to let her out. A jeep driven by the first defendant overtook that vehicle and collided with the car, causing injuries to the claimant. She was knocked unconscious. She regained full consciousness on arrival at the hospital. She was 22 years old at the time.

[3] On 21st December 2017, the claimant filed a claim seeking damages for personal injuries, particularised in the claim as follows:

- a) Head injury
- b) Loss of consciousness
- c) 8 cm curvilinear laceration to the right front parietal region of the scalp that required at least 20 stitches
- d) Periosteum of the skull exposed
- e) Pain to the neck that required soft collar and caused extremely painful headaches
- f) Pain in the lower back
- g) Haematoma to right elbow.

[4] Judgment in default of acknowledgment of service was entered on 16th January 2019 with damages to be assessed.

Issue

[5] The court must determine the quantum of damages to be awarded to the claimant.

SPECIAL DAMAGES

[6] The claimant pleads special damages as follows:

- a) Cost of travel for medical treatment - \$4,000.00
 - b) Medication and treatment - \$2,000.00
 - c) Cost of medical report - \$100.00
- Total - \$6,100.00.

[7] Special damages must be pleaded, particularised and proved. This fundamental principle was stated by Lord Diplock in **Ilkiw v Samuels and Others**¹ as follows:

¹ [1963] 2 All ER 879 at 890

“Special damage in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularised... it is plain law...that one can recover in an action only special damage which has been pleaded and of course, proved.”

- [8] The case of **McPhilemy v Times Newspapers Ltd and Others**² outlines the principle that pleadings are required to mark out the parameters of the case that is being advanced by each party. In **McGregor on Damages**,³ it is stated:

“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 crystallised or because it can be measured with complete accuracy, this exact loss must be pleaded as special damage. The prime example of this appears in personal injury cases, where earnings already lost and expenses already incurred before the action must be pleaded as special damage before proof of them may be allowed.”

Cost of travel and medical treatment

- [9] The claimant's evidence is that on two separate occasions, she travelled to Trinidad to be examined by neurosurgery consultants at a medical centre. She states that on each occasion, the flights cost between \$600.00 and \$800.00 each. In written submissions, counsel for the claimant posits that the claimant has proved expenses for two plane tickets to Trinidad amounting to \$1,200.00 (\$600.00 each) to see medical consultants. The claimant has not provided any proof of payment for these plane tickets. However, the medical reports in evidence show that the claimant received medical treatment in Trinidad. Further, the claimant exhibited the pages of her passport showing travel to and from Trinidad and Tobago at the material times.
- [10] Even if receipts are not provided, the court may award the sum claimed once there is some credible evidence of the loss and the sum is not unreasonable.⁴ In **The Proprietors, Condominium Plan No. 2/1989 v Trinity Investment Company Limited**,⁵ Michel JA explained:

“This approach advocated by the Appellants is not however justified in law. The claim by the Respondents for special damages in a stated amount is a pleading requirement, which has been satisfied. If, however, a claimant is to be awarded the sum claimed by him, he must substantiate it by evidence on which the court

² [1999] 3 All ER 775 at 793

³ 18th edition at paragraph 44-012

⁴ See *Angela Hinkson v Gibson Construction Limited* SVGHCV2007/0149; *Ann Robertson v The Attorney General* GDAHCV2009/0338; *Malcolm Joseph & Another v Alison Charles* GDAHCV2002/0077

⁵ ANUHCVP2008/0009 at paragraph 43

can rely. If he fails to do so, he does not thereby become disentitled to damages for loss suffered by him, but only that the court becomes entitled to disregard the specific amounts claimed by him and to make such award in respect of the losses suffered by the claimant as the court considers reasonable in the circumstances.”

- [11] The claimant has pleaded the cost of travel for medical treatment. Her evidence shows that she did so. Even in the absence of receipts, I am satisfied that the claimant incurred expenses to travel to Trinidad for medical treatment in respect of the injuries she sustained in the accident on 21st December 2014. The cost of plane tickets at \$1,200.00 to and from Trinidad on two separate occasions is not at all unreasonable and I will award the claimant accordingly.

Medication and treatment

- [12] The claim does not specify or particularise exactly what the claimant seeks under this head. In her evidence she relies on a letter detailing charges of TT\$2,200 that she states she paid for consultancy regarding her medical issues. This has not been specifically pleaded nor is there any proof of payment. In a supplemental affidavit, the claimant exhibits a document that purports to be proof of payment of the equivalent of EC\$2,600.00 for an MRI in Trinidad and Tobago. The defendants do not doubt that the procedure was performed as it is mentioned in one of the medical reports. However, learned counsel for the defendants holds the claimant to the fundamental pleading rule regarding special damages. Learned counsel further points out that the receipt number for the MRI is quoted, yet the original or even a copy of same has not been produced. The document notes the date of the claimant's appointment as 12th December 2016, over a year before the filing of the claim. This item should have been specifically pleaded. In the circumstances, I am constrained to disallow both the amounts claimed for consultancy and the MRI.

Physiotherapy

- [13] The claimant states that a few months after her accident, she began therapy with a qualified physiotherapist once a week for five weeks at the cost of \$60.00 per session, and subsequently four sessions with another therapist. There is no proof of payment by the claimant for physiotherapy. Moreover, there is no pleading relating to physiotherapy. I decline to make an award under this head.

Medical reports

- [14] It appears that the cost of one medical report only (\$100.00) was pleaded. Whereas three medical reports are exhibited in evidence, there is no proof of payment for these reports. Again, in written submissions, learned counsel for the claimant contends that the claimant has proved expenses of \$100.00 for a medical report from the Milton Cato Hospital and the TT equivalent of EC\$1,000.00 for two medical reports from Trinidad. On the evidence before the court, the Trinidad medical reports were available before the filing of the claim and should have been pleaded. Further, although exhibited, in her evidence, the claimant does not state that she paid for any of the reports. In these circumstances, I will disallow any amounts sought for medical reports.

Domestic care

- [15] The claimant avers that after the accident, as a result of pain, she was unable to go the toilet or shower without the assistance of her mother. She was unable to bathe herself or lie down pain free by herself for the greater part of three months immediately after the accident. Learned counsel for the claimant submits that she is entitled to a total of \$625.00 as special damages for domestic care. Domestic care was not pleaded as special damages or at all. The court is fully aware of the principle of making awards for domestic or home care in cases where a mother, wife or other family member provides necessary assistance to an injured person.⁶ The point here is that the claimant is asking the court to make an award for domestic care as special damages, the care administered immediately after the accident, long before the institution of the claim. There is absolutely no excuse for the failure to plead this item, and then to seek an award in submissions. Therefore, I also decline to award special damages for domestic care.

- [16] Based on the foregoing, I will award the claimant special damages for the cost of travel for medical treatment only, in the sum of \$1,200.00.

GENERAL DAMAGES

- [17] The relevant factors to be taken into account in the exercise of an assessment of general damages were laid down by Wooding CJ in **Cornilliac v St. Louis**⁷ namely:

⁶ See *Cunningham v Harrison* [1973] QB 942; [1973] 3 All ER 463

⁷ (1965) 7 WIR 491

- a) The nature and extent of the injuries sustained;
- b) The nature and gravity of the resulting physical disability;
- c) The pain and suffering which has been endured;
- d) The loss of amenities suffered; and
- e) The extent to which, consequentially, the claimant's pecuniary prospects have been materially affected.

The nature and extent of the injuries sustained

[18] The claimant was taken to the Accident & Emergency Department of the Milton Cato Memorial Hospital from the scene of the accident. In a medical report dated 10th June 2015, Dr. Barry Aussi, a consultant of the General Surgery Department of the said hospital, diagnosed the claimant with "head injury with loss of consciousness". He reports that the claimant had loss of consciousness and was apparently drowsy en route to the hospital where she complained of numbness and pain to the right elbow and neck. As mentioned earlier, the claimant says that she was knocked unconscious by the impact of the collision and regained full consciousness on arrival at the hospital. Dr. Aussi notes that the claimant had an 8 cm curvilinear laceration at the right front parietal region of the scalp. The periosteum of the skull was exposed with minimal bleeding from same. The claimant was admitted to the female surgical ward of the hospital where she remained for three days and continued to experience pain to her neck. She was discharged with a soft collar to the neck and pain medication. She was advised to have a CT scan of her head and neck as an outpatient and to follow up later.

[19] Seven months after the accident, on 15th July 2016, the claimant consulted Dr. Steve V. Mahadeo, who signs with the title 'Consultant Neurosurgery', at the St. Clair Medical Centre, Port of Spain, Trinidad. In a medical report dated 25th November 2016, Dr. Mahadeo states that the claimant complained of frontal headaches occurring four times per week, lasting for various periods from one to eight hours. She also complained of a sensation of a rush of blood across the head and that her neck movements were painful especially on the right. A further complaint was pain from the neck to the middle of her back brought on by sitting for more than one hour, relieved by stretching. Of note is the doctor's report that the claimant indicated that she did not have any of these complaints

before except frontal headaches which came on after excessive exposure to sunlight. Dr. Mahadeo concluded that the claimant's complaints were due the injury to the scalp nerves and tear of the sternocleidomastoid muscle on the right (which controls rotation of the head and neck). He opined that the complaints could be treated using simple measures e.g. with Diclofenac for pain.

[20] On 25th November 2016, the claimant was reviewed by Dr. Mahadeo. He found that her cognitive functions were normal and that she had no cranial defects and no cerebellar signs. He also found that the muscle power in both upper limbs was normal but the biceps and supinator tendon reflexes on the left were absent. There was tenderness to palpation along the middle of the lumbar spine and lumbar flexion was limited. All lower limb reflexes were diminished. The claimant was referred to have an MRI of the cervical and lumbar spine.

[21] With the results of the MRI scans, Dr. Mahadeo reviewed the claimant on 14th December 2016. He reports that the MRI of the cervical spine showed loss of the cervical lordosis (excessive inward curvature of the spine) with persisting muscle spasm. The MRI of the lumbar spine showed loss of lordosis only. The doctor explained that the claimant's persisting pain in the lower back and the neck, approximately two years after the accident, is in keeping with the findings of the MRI scans.

The nature and gravity of the resulting physical disability

[22] The claimant is now 29 years old. Under this head, I reproduce the last three paragraphs of Dr. Mahadeo's report of 14th December 2016 as follows:

"Due to the injuries sustained to the cervical spine, there is a likelihood that she will have an acceleration of the normal degenerative changes in the spine that occur with age. This would in my opinion be increased by approximately thirty percent (30%) over the next ten (10) years.

In her lumbar spine there is no actual injury to the vertebral bodies nor discs but the persisting spasm indicate [sic] there is muscular injury. This also will produce chronic pain.

Due to the nature of the injury and the clinical findings, at this time, I would assess disability from the injury to her spine at approximately twenty (20) percent (permanent partial disability)."

[23] This report is the latest medical report in evidence. At the hearing, the claimant told the court that she still experiences headaches. She explained to the court that if she turns her head and doesn't move her whole body, she gets a headache. To avoid that, she turns her whole body, which action she demonstrated to the court.

[24] In addition, the claimant's evidence is that she has a scar as a result of the laceration to her scalp. The laceration was noted by Dr. Aussi on the day of the accident. When Dr. Mahadeo examined the claimant on 15th July 2015, he noted the scar in the right parietal area of her scalp, which he stated was from a healed laceration.

[25] As mentioned earlier, the evidence shows that the claimant is unable to sit for long periods or periods exceeding one hour without experiencing pain.

Pain and suffering

[26] Under this head, in addition to the evidence of pain already mentioned, the claimant gives an account of the pain she suffered from the time of arrival at the hospital after the accident. She avers that due to excruciating pain from her injuries, she was unable to get up and walk to the bathroom that night so a catheter was inserted to enable her to urinate. After her release from hospital, she depended on her mother to assist her to shower. She states that simply bending was excruciatingly painful. Although therapy and exercise assist, the claimant says she still has headaches, neck discomfort and back pain.

[27] The defendants point out that the claimant's frontal headaches were a pre-existing condition and submit that the doctor did not indicate anywhere in his report that the headaches became worse as a result of the accident. Surprisingly, the defendants are of the view that there is no evidence of a head injury in this case. I understand the defendants to be saying that the court should not consider the claimant's evidence of headaches because there was no head injury. It appears that the defendants do not consider the laceration to the claimant's scalp as a head injury. Dr. Aussi's diagnosis on the night of the accident was 'Head injury with loss of consciousness'. In addition to the laceration, he noted that the periosteum of the skull was exposed, with minimal bleeding from same. Dr. Mahadeo noted the claimant's history of being treated for a laceration on the right parietal scalp which extended to the pericardium and neck. Dr. Mahadeo's report

dated 25th November 2016, on his examination of the claimant on 15th July 2015, reveals that the frontal headaches experienced by the claimant before the accident were brought on by excessive exposure to sunlight. That was not the case with the complaints of headaches to Dr. Mahadeo on the 15th of July 2015. The doctor specifically states that “Ms. Forde’s complaints are due to injury to the scalp nerves and tear of the sternocleidomastoid muscle on the right”. These complaints included frontal headaches which occurred four times per week lasting variable periods from one to eight hours. On the evidence, although the claimant admits that the major injuries she suffered were to her neck and back, there is clearly a head injury which must be taken into account in the award of general damages for pain and suffering and loss of amenities. Indeed, under cross-examination, the claimant told the court that the headaches after the accident are a different type of headache. Further, Dr. Mahadeo’s report on his examination of the claimant on 15th July 2015 reveals a plan to consider the use of carbamazepine “should the headache intensify”.

The loss of amenities

[28] Prior to the accident, in July 2013, the claimant began studying in Trinidad for her Association of Chartered Certified Accountants (ACCA) qualification. At the time of the accident, she was home in St. Vincent for the Christmas holidays and was due to return to school on 6th January 2015. She states that she was unable to travel or even sit up to attend school until July 2015 after which she eventually dropped out. She claims that her sense of accomplishment was diminished after she could not complete her studies in the allotted time.

[29] As a result of the 20 stitches to her scalp, the claimant has a scar. She exhibited photographs showing the stitches to her head, the site of a significant scar to her scalp, when she was in hospital. The pictures reveal the necessity for, and the fact of, her hair being cut off as a result. Dr. Mahadeo noted the scar from the healed laceration. The claimant alleges that she suffered shame and embarrassment when members of her church passed her and did not recognize her because all her hair was cut off. As of today, there is no suggestion that the scar on the claimant’s scalp has any aesthetic impact on the claimant’s life.

Comparable awards

[30] 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**:⁸

“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.”

[31] The claimant relies on three cases from the jurisdiction of St. Vincent and the Grenadines to justify an award in excess of \$100,000.00 for pain and suffering and loss of amenities.

[32] In **Osley Baptiste v C. K. Greaves and Company Limited**⁹ the claimant, 72 years old at the time, was severely incapacitated as a result of his injuries sustained from slipping and falling in a pool of bloody water which leaked from a refrigerator in a supermarket. His injuries were categorised as pain at the back of the neck, stiffness and pain in both legs and dizziness. The medical evidence showed that everyday tasks became painful and tedious due to his spinal pain and generalised weakness. He needed assistance in terms of care by his wife. In 2006, the court awarded him \$100,000.00 for pain and suffering and loss of amenities.

[33] The Court of Appeal reduced an award of \$250,000.00 by the learned trial judge to \$80,000.00 for pain and suffering and loss of amenities in the case of **CCAA Limited v Julius Jeffrey**.¹⁰ This case involved a crane falling on the respondent’s hand, resulting in the amputation of his left thumb and other injuries to his hand. This cannot be considered a comparable case under this head in the instant case.

[34] The case of **Kevin Craigg v Elsworth Weekes and Others**¹¹ involved a 13 year old boy who was struck by a jeep, resulting in a fractured pelvis, which initially rendered him unable to walk. He was treated in Trinidad with traction and diagnosed with post traumatic degenerative disease. His involvement in football and school sports diminished after the

⁸ [1998] 3 All ER 481

⁹ Claim No. 192 of 1997 (Saint Vincent and the Grenadines), delivered May 10, 2006

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

¹¹ SVGHCV2010/0035, delivered March 3, 2020

accident. He was awarded \$100,000.00 for pain and suffering and loss of amenities. I do not see how this case assists the claimant in the instant case. The injuries are not similar.

[35] The defendants contend that the claimant's injuries do not warrant an award of more than \$40,000.00 for pain and suffering and loss of amenities. They cite four cases for the consideration of the court.

[36] In **Celia Hatchet v First Caribbean International Bank Limited**,¹² a 40 year old woman was involved in a motor vehicular accident and suffered back and neck injuries. There was medical evidence that her back injury would deteriorate as a result of age and she would require continued treatment or maybe surgery. She was awarded general damages in the sum of US\$20,000 equivalent to EC\$53,400.00.

[37] An award of \$50,000.00 for pain and suffering and loss of amenities was made in **Anita Tobitt v Grand Royal Antiguan Beach Resort Limited**¹³ to the claimant who was 35 years old when she suffered injuries to her back and neck as a result of a motor vehicular accident. A medical report concluded that she was 8% permanently disabled and that she may require surgery in the future to maintain her then current level of abilities. The doctor further opined that she would develop post traumatic degenerative joint disease with age and this would increase the percentage of permanent physical impairments in the future.

[38] In **Sheena David and Alana David v Kingston Bowen and Ashton Bowen**,¹⁴ the claimants were sisters, aged 16 and 12 respectively who were injured in a motor vehicular accident. The first claimant suffered soft tissue injury to the neck and shoulders, ligamentous strain and muscle spasms, significantly reduced range of motion of the cervical spine and neck pain. The second claimant, who presented with tenderness to the back of the neck at the casualty department, developed back pain soon after the accident. There was reduced range of motion of the lumbosacral spine. There was slight scoliosis of the lumbar spine. Both girls were able to complete secondary school and A-levels with some challenges. The evidence of the first claimant revealed that she was a teacher and lived in constant pain and was forced to take Paracetamol on most days to control the

¹² BVIHCV2006/0227, delivered November 29, 2007

¹³ ANUHCV2006/0026, delivered October 13, 2010

¹⁴ GDAHCV2007/0055, delivered June 7, 2013

pain. She expressed that standing for long hours was not helping her lower back injury and wished for an alternative career field. The second defendant deposed to feeling constant pain in her neck, left knee, left hip and lower back. She was forced to take pain killers on a regular basis. Sitting and standing for long periods caused her a lot of back pain. The court noted that the quality of life of the claimants had been diminished by the accident. The claimants were awarded general damages of \$37,000.00 and \$35,000.00 respectively.

[39] More recently, in February 2020, the claimant in **Collin Hope Jr. v Edmund Lake**¹⁵ was awarded \$40,000.00 for pain and suffering and loss of amenities. The claimant was 23 years old when the vehicle in which he was a passenger was struck head-on. As a result, he suffered severe whiplash and loss of balance. He reported to the Mount St. John's Medical Centre and was admitted to Orthopaedic Services for acute spinal injury. He was hospitalised for five days. He continued to suffer with lower back pain which restricted his movements. He was later diagnosed with L5/S1 disc bulge. Physical therapy was recommended. Six months of conservative treatment did not prove satisfactory and the claimant sought a second opinion. After an MRI, he was diagnosed with muscle spasm, a cervical sprain due to whiplash injury to the cervical spine and injury to the L3-L4, L4-L5 and L5-S1 discs without significant herniation. Again, physical therapy was recommended. The claimant was assessed as having sustained partial disability of 15%. It was determined that surgical intervention was not necessary. The claimant continued to suffer with pain over a protracted period of time and this hampered the full enjoyment of his previous lifestyle.

[40] The cases cited by learned counsel for the defendant are of considerable assistance to the court in respect of the back and neck injuries. However, I have already concluded that there is the added element in the instant case of a head injury. I consider this to be of great significance in the consideration of an award in this case.

[41] The claimant, a healthy 22 year old young woman at the time of the accident, has undergone a life-altering experience. She has endured, and continues to suffer pain from her injuries, with permanent partial disability of 20% from the injury to her spine, with a likelihood of acceleration of the normal degenerative changes in the spine with age.

¹⁵ ANUHCv2018/0500

Further, she has had setbacks in life, all brought on by the negligence of the 1st defendant. Having considered the evidence and the relevant case law, I am of the view that a reasonable award for the claimant for pain and suffering and loss of amenities in this case is \$60,000.00.

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

[42] The essence of the claimant's submission under this head is that had she not dropped out of the ACCA qualification course, she would have successfully completed it, and would be drawing a salary as a chartered accountant with audit experience of about \$4,200.00. She secured employment as an accountant at Ottley Hall Marina with a salary of \$3,200. The contention is that the claimant is losing \$1,000.00 per month in earnings.

[43] While I accept that the claimant is entitled to general damages for loss of amenities since she was unable to continue her studies immediately after the accident and for some time after, I do not accept that the claimant is entitled to an award for loss of earnings or future loss of earnings. There is no guarantee that the claimant would have been successful in the ACCA programme. Further, there is no medical evidence to support the position that she was, or is, unable to complete the course. I do not agree with the argument of learned counsel for the claimant that Dr. Mahadeo's opinion, that there will be acceleration of the normal degenerative changes in the spine as the claimant ages by as much as 30% over the next ten years, means that the duration of her work life will be impaired. The doctor makes no assessment whatsoever in relation to the claimant's work life or what impact the disability he found, and predicts, has or will have on the claimant's desired employment. Therefore, notwithstanding the fact that the claimant, in submissions, makes a major issue of future loss of earnings/loss of earning capacity/loss of pecuniary prospects, I decline to make any award in this area.

Order

[44] Based on the foregoing, the defendants are ordered to pay the claimant as follows:

- 1) Special damages in the sum of \$1,200.00.
- 2) General damages for pain and suffering and loss of amenities in the sum of \$60,000.00.

- 3) Interest on special damages at the rate of 3 per cent per annum from the date of the accident to the date of judgment on assessment.
- 4) Interest on general damages for pain and suffering and loss of amenities at the rate of 6 per cent per annum from the date of service of the claim to the date of judgment on assessment.
- 5) Interest on the global sum at the rate of 6 per cent per annum from the date of judgment on assessment to the date of payment in full.
- 6) Prescribed costs pursuant to CPR 65.5 in the sum of \$5,508.00.

Tamara Gill
Master

By the Court

Registrar