

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE
Civil Division

GRENADA

Claim Number: GDAHCV2021/0018

BETWEEN:

SAMUEL FLETCHER

Claimant

-and-

BERNADINE PHILLIP

Defendant

Appearances:

Deloni Edwards for the Claimant; and
George Prime for the Defendant

2021: November, 08;
2022: January 18 – via email

DECISION

Claimant's assessment of damages

- [1] **PARIAGSINGH, M (Ag.):** - Before the Court is the Claimant's assessment of damages pursuant to a default judgment obtained on May 20, 2021.

- [2] Although this claim was commenced against two Defendants, it was discontinued against the Second Defendant on May 10, 2021.

- [3] Special damages and fixed costs were ordered by the Registrar when default judgment was granted against the Defendant. The only aspect of the damages left to be assessed is general damages.

THE EVIDENCE:

[4] At the assessment the Court received evidence from three (3) witnesses. The Claimant, Mr. Samuel Fletcher, Dr. Douglas Noel and Ms. Alicia Wayne.

Samuel Fletcher, the Claimant:

[5] The Claimant is a 96-year-old retired welder. On March 30, 2019 he was a front seat passenger of a vehicle which collided head on with the Defendant's vehicle. At the time of the accident the airbag deployed and Mr. Fletcher was secured to his seat by a seatbelt. Mr. Fletcher's evidence is that, immediately upon impact he was struck on his chest by the airbag and he felt pain. Mr. Fletcher was taken to the General Hospital where he received treatment and was discharged the same day.

[6] About one week after the accident and Mr. Fletcher was attended to by Dr. Noel with complaints of pain. On April 07, 2019, the Claimant was put in a cast which he kept on for approximately one month.

[7] Mr. Fletcher's evidence is that since the accident he continues to experience occasional chest pains when he moves his upper limbs. He contends that as a result of his injuries he required a domestic assistant in the person of his witness, Ms. Wayne. He says he hired Ms. Wayne during the period April to August 2019 and exhibits receipts.

[8] Mr. Fletcher's evidence is that for a period of about four months after the accident he was unable to groom, wash his clothes, wash wares and do other chores.

[9] Mr. Fletcher contends that he has loss income in the sum of \$1,500.00 per month since the accident. He says that prior to the accident he planted and sold the produce to supermarkets.

Dr. Douglas Noel:

[10] Dr. Noel's evidence is that he first saw the Claimant on May 03, 2019 when the Claimant came to see him privately. He diagnosed the Claimant as having fractured his left lower ribs, a left distal radial fracture and superficial lacerations on the right knee.

[11] In his prognosis, Dr. Noel indicates that he expects the Claimant to make a slow but good recovery from his fractured ribs. He expects the Claimant to have painful stiffness of the wrist for two months after treatment and he expects some permanent scarring on his knee. He also says he expected the Claimant's range of motion on his left wrist to improve but never be the same as his right wrist motion.

Alicia Wayne:

[12] Ms. Wayne's evidence is that she has been a caregiver for over 18 years. Prior to the accident she worked three days per week for the Claimant. After the accident she worked for 5 to 7 days a week and was paid \$1,000.00 per month from March to August 2019.

GENERAL DAMAGES:

[13] In assessing general damages, I am mindful of the heads set out in the celebrated case of **Cornilliac v St Louis [1964] 7 WIR 491** at page 492. The Court ought to have regard to:

- a. The nature and extent of the injury sustained;
- b. The nature and gravity of the resulting physical disability;
- c. The pain and suffering endured;
- d. The loss of amenities suffered; and
- e. The extent to which the Claimant's pecuniary prospects have been affected.

[14] In my view the nature and extent of the injuries sustained by the Claimant were serious, more so given his age. Any resulting physical disability must also be taken in the context of his age. The Claimant's age to my mind exacerbates the nature and extent of his injury as well as the resulting disability. The central element of the Claimant's complaint is continuing pain and the inability to have full range motion in his left wrist.

[15] The nature and gravity of the resulting disability would also be impacted by the Claimant's age. This however must be taken in the context of Ms. Wayne's evidence in her witness statement and under cross examination. Prior to the accident Ms. Wayne was already working for the Claimant 3 days per week. She was doing things for the Claimant such as assisting him with his chores. The resulting disability the Claimant had as a result of the accident saw Ms. Wayne's employment being almost full time according to her evidence. The resulting disability from the injuries for this particular Claimant was therefore significant in my view.

[16] Likewise, the pain and suffering endured by the Claimant by the injuries, by the treatment for the injuries and as a result of the injuries undoubtedly existed and continues to exist as he said in evidence, which I accept. I consider the pain and suffering again in the context of the age of this Claimant to be significant.

[17] The loss of amenities suffered by the Claimant were not challenged by Counsel for the Defendant. What I am cognizant of is that prior to the accident the Claimant relied on Ms. Wayne to assist him. This in my view must be taken into account as some of the chores and other things the Claimant says he could not do post the accident was already things he was being assisted with. Whilst the Claimant did suffer loss of amenities, in my view this loss was not as pronounced given that prior to the accident he was already assisted with some of his day to day chores.

[18] The Claimant claims that his financial prospects have been affected as he can no longer earn \$1,500 per month which he did by selling produce. This claim is evidentially based. Except for the Claimant saying that he did this there is no evidence of any planting or selling of produce. Whilst in a default judgment scenario the Court accepts unchallenged evidence, the evidence must be of such a nature that the Court can assess damages on it.

[19] I am not satisfied that the Claimant was earning \$1,500 per month by selling produce. Counsel for the Claimant suggested that I make a '**Blamire**' award following the principles set out in **Blamire v South Cumbria Health Authority(1993)PIQR**. This type of award is applicable where there are evidential uncertainties in quantifying damage to pecuniary prospects. I am not minded to make such an order. I am of the view that the Claimant has not demonstrated that he suffered any damage to his pecuniary prospects at all.

[20] The Claimant also seeks future medical care in the sum of \$20,000.00. Reference is made to the case of **Emmanuel Matthew v Milton Davy SVGHCV2019/0034**. In my respectful view, the evidence in this case does not justify such an award. The Claimant's doctor in his prognosis gave recovery periods far shorter than the period being claim for future medical care. I am again cognizant of the evidence of Ms. Wayne that prior to the accident she worked

three days per work for the Claimant assisting him to do things that he could not do for himself. In this regard, I make no award for future medical care.

Comparable award:

[21] The Claimant has placed reliance on the authority of **Emmanuel Matthew v Milton Davy, SVGHCV2019/0034**. In this case the Claimant was awarded the sum of \$70,000.00 for pain and suffering and loss of amenities. The main distinguishing factor between the case at bar and this case is the age of the Claimant. The injuries are comparable and I find this authority relied on by the Claimant to be of great assistance.

[22] Pain and suffering and loss of amenities awarded will generally be higher for a person in the prime of their life as opposed to a person who is older. In **Nutbrown v Sheffield Health [1993] 4 Med LR 187**, Potts J put the “prime of life” of a man or woman for the purpose of assessing damages for pain and suffering at 30 years.

[23] In the case of **Emmanuel Matthew** the Claimant was 50 years old and the award was made almost 3 years ago. In the instant case, the Claimant is almost double the age of the Claimant, **Emmanuel Matthew**. Whilst pain is subjective and loss of amenities suffered by the Claimant at 50 will be different from the loss of amenities suffered by a Claimant who is 96. In my view, it must be less.

[24] In my view an appropriate award for damages for pain and suffering and loss of amenities would be the sum of \$50,000.00. This is approximately 70% of the award made in **Emmanuel Matthew**.

[25] Having regard to the Claimant's age, I am of the view that an appropriate award for general damages for pain and suffering and loss of amenities is in the sum of \$50,000.00.

INTEREST:

[26] The Claimant's entitlement to interest is grounded in statute by Section 27 of the **West Indies Associated States (Grenada) Act** Chapter 336 of the 1990 Revised Laws of Grenada.

[27] As stated in **Jefford v Gee [1970] 2QB 130** by Lord Denning:

"Interest should not be awarded as compensation for damages done. It should only be awarded to a plaintiff for being kept out of money which ought to be paid to him."

[28] In **David Saunders v Grace Rhymer [2004] ECSCJ No. 286** it was stated that interest on general damages from the date of service of the claim to the date of judgment. Thereafter the Claimant is entitled to statutory interest.

COSTS:

[29] This is no reason to depart from the general rule that costs follow the event. In this claim the value of the claim would be the total value of the awards. The regime of costs would be prescribed costs and the applicable percentage would be 60% as a consent order was entered on liability very early in the proceedings.

ORDER:

[30] In the circumstances, it is hereby ordered that:

- a. The Defendant shall pay the Claimant general damages assessed in the sum of \$50,000.00 together with interest thereon at the rate of 6% per annum from the date of the service of this claim (January 19, 2021) to today's date (364 days) calculated in the sum of \$3,000; and
- b. The Defendant shall also pay the Claimant's costs of this claim quantified at 60% of the prescribed costs payable on a claim of value of the total award made herein (\$53,000.00) calculated in the sum of \$4,770.00.

**Alvin Shiva Pariagsingh
Master (Ag.)**

By the Court,

Registrar