

IN THE EASTERN CARIBBEAN SUPREME COURT  
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: DOMHCV2018/0122

BETWEEN:

BEYANKA BLANCHARD

Claimant

and

CURT PEMBERTON

Defendant

**Appearances:**

Ms. Dawn Yearwood, Counsel for the Claimant

Mr. Curt Pemberton, the Defendant appears in person

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2021: September 30<sup>th</sup>,  
October 21<sup>st</sup>;  
December 1<sup>st</sup>

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**DECISION**

- [1] **GARDNER HIPPOLYTE, M.:** This is a decision for an assessment of damages, based on injuries inflicted by the Defendant who was wielding a cutlass on the Claimant. He chopped her on her hands/wrist, and leg.

**Background**

- [2] On 23<sup>rd</sup> November, 2015 about 12:45 p.m. the Claimant was at work at Pulse Car Rentals when the Defendant entered the premises with a cutlass. The Defendant and the Claimant had been in a relationship from 2009 to 2015, and she lived with him from 2013 to November 2015. When the Defendant entered the Pulse Car Rentals, the Claimant was on the phone. Her right hand was on the mouse of the computer and her left hand held the phone receiver to her ear. He entered with his left hand behind his back. He then said to the Claimant – “you want me to go jail well I will kill you and I will go jail.”
- [3] The Defendant then pulled out a cutlass lifted it over his head and brought it down on the right hand of the Claimant and it cut her. The cutlass fell and when he picked it up, he started bringing it down again on the claimant. She received further blows to her left wrist and upper left arm.

The Claimant tried to fend him off but he then cut her foot with the cutlass. He then left and the Claimant stated she was screaming and several employees from the company came and gave assistance. The department supervisor used his tie, his shirt and vest to tie the wounds of the Claimant. She was taken to the Princess Margaret Hospital.

- [4] The Claimant sustained the following injuries<sup>1</sup>
- Right hand: laceration 5 cm to distal radius, lateral aspect, fractured bones visible, fingers in flexion;
  - Left hand: laceration 4 cm distal radius, fractured bone visible, fingers in flexion, thumb extends slightly;
  - Left leg 6 cm lacerations at anterior midleft, toes extend and flex without difficulty, good capillary refill, and incomplete hairline fracture left tibia.
  - Diagnosis – 1. Open fracture right distal radio with transection of all extensor flexion  
2. Open fracture left ulna styloid with transection of all extensor tendons between the extensor pollicis longus.
- [5] The Claimant had her first surgery on the same day. She had 2K wires which were placed in her right distal radio, suturing of all extensor tendons, suturing of the left leg, left wrist fixation of the ulnar styloid fracture and repair of all extensor tendons 2, 3, 4 and 5. Both her hands were placed in a cast.
- [6] On 6<sup>th</sup> January, 2016 the Claimant was taken to the operating room and a second surgery was performed removing the k-wires from both wrists and mobilization of the joints. On the 17<sup>th</sup> February, 2016 she underwent her third surgery for mobilization of both wrists and both fingers due to stiffness.
- [7] On 18<sup>th</sup> May, 2016 she underwent her fourth surgery, this was due to the stiffness. On 7<sup>th</sup> September, 2016 and 7<sup>th</sup> July, 2017 she underwent her fifth and sixth surgery. After every surgery she was referred to physical therapy. Dr. Armas indicates that the Claimant only regained 70% of her use of both wrist and hands. That 100% recovery is impossible, and she will experience pain in both hands and wrist for the rest of her life.<sup>2</sup>
- [8] Judgement on admission was entered on the 20<sup>th</sup> September, 2018 and directions for assessment were subsequently issued. The Defendant is unrepresented, and he has chosen to ask very few questions of the Claimant and her witness. No documents were submitted by the Defendant. On the day of the hearing of the assessment the Defendant gave brief submissions focusing on the lack of receipt for the home help and the amount of the award requested by the Claimant. The Defendant emphasised he spent four years in jail already and if he has to pay, he can only do so on a monthly basis. Counsel for the Claimant chose to rely on her filed documents and submissions.

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<sup>1</sup> Updated medical report of Dr. Julian De Armas MD, Consultant Orthopaedic Surgeon at page 2.

<sup>2</sup> Ibid at page 3.

### **Evidence of Beyanka Blanchard**

- [9] The Claimant in her witness statement relayed the incident where the Defendant wielded a cutlass at her, and she reflects on how much pain and suffering she has been in as a result of the injuries sustained. At paragraphs 11-13 of her witness statement she refers to the pain suffered due to the many surgeries that she had to undergo and the fact that she still has pain and that her hands cannot bend at the wrist. She feels uncomfortable for many reasons particularly when people stare at her scars. She is fearful while holding her child and indicates that she cannot be as affectionate as she used to be due to the physical impairments that she suffers.
- [10] The Claimant stated the fees for the six surgeries was \$80,000.00. It is noted 80% of which was paid by Sagicor and 20% by her. Further due to being on medical leave for five months she was only paid 60% of her salary and the balance of 40% amounts to \$3,464.00.
- [11] The Claimant had to rely on the assistance of Esther George and her cousin, Tahira to help her to meet the most basic of her needs since both her hands were in casts. For example, brushing her teeth, bathing and going to the washroom.

### **Evidence of Esther George**

- [12] This witness indicates that she provided care and support to the Claimant. In particular at paragraph 4 of her witness statement she highlights that she did everything for the Claimant as both her hands were in casts. She bathed her, fed her, brushed her teeth and dressed her.
- [13] A sum of \$3,000 is being requested for the home help received by the Claimant.

### **Special Damages**

- [14] The Defendant has challenged the sums claimed for special damages. I find the amount requested for the balance of the Claimant's salary not proved as no documents were submitted. The Claimant explained that the company she worked for no longer exists and as a result she is unable to obtain the documents required. It is also settled law that a claimant can pursue sums for home care while recuperating.<sup>3</sup> The amount requested is \$3,000.00 and I find that to be appropriate in the circumstances. The Defendant has orally challenged the medical expenses letter submitted by the Claimant. The surgery fees and medical expenses paid were submitted in a letter by Dr. Julian De Armas, the letters total the medical expenses incurred at \$80,000.00. The Court has no other document submitted suggesting to the contrary for medical fees. The Claimant underwent six surgeries, the Court finds this to be reasonable in the circumstances. I

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<sup>3</sup> Shunette Thompson et al v Owen Jones et al SVGHCV 2012/0138

therefore find the total amount claimed for special damages is reasonable and therefore I award the sum of \$83,000.00 for special damages.

### **General Damages**

[15] Once a person suffers personal injuries they are entitled to general damages under the heads as set out in **Cornilliac v St. Louis** (1964) 7 WIR 491 at page 492:

- (a) The nature and extent of the injury sustained;
- (b) The nature and the 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 interests have suffered – (this head does not apply).

### **The Nature and Extent of the Injuries Sustained**

[16] The Claimant's injuries are set out in detail in the medical reports. In summary the Claimant suffered

- Right hand: laceration 5 cm to distal radius, lateral aspect, fractured bones visible, fingers in flexion;
- Left hand: laceration 4 cm distal radius, fractured bone visible, fingers in flexion, thumb extends slightly;
- Left leg 6 cm lacerations at anterior midleft, toes extend and flex without difficulty, good capillary refill, and incomplete hairline fracture left tibia.
- Diagnosis – 1. Open fracture right distal radio with transection of all extensor flexion  
2. Open fracture left ulna styloid with transection of all extensor tendons between the extensor pollicis longus.

[17] The report of Dr. Armas states she will only have 70 percent function of her hands and that she will be in constant pain for the remainder of her life.

### **The Pain and Suffering and Loss of Amenities**

[18] The Claimant at paragraph 5, 8, 10 and 11 describes the pain and suffering and loss of amenities she endured. She indicated the amount of pain she was in the following situations:

- (i) immediately after the incident she was screaming ...thinking how she was going to survive in the world without hands;
- (ii) she cried all the time and was totally dependent on people;
- (iii) was hospitalized for seven days;

- (iv) was on sick leave and incapacitated for approximately five months;
- (v) her reduction in movement affects her grip and pinch;
- (vi) feelings of pins and needles and or numbness – worse on her right hand;
- (vii) she has an ugly scar;
- (viii) she has had six surgeries and physical therapy was painful;
- (ix) unable to hug her child and husband properly;
- (x) unable to play dominoes anymore;
- (xi) had to cut her hair;
- (xii) was unable to look after herself to do basic needs after the incident;

[19] Counsel for the Claimant referred to the following cases as comparable amounts to be considered:

- a. **Dwight Mayers v Carl Williams** - the Claimant who was 25 years suffered injury to his right hand and his 4<sup>th</sup> and 5<sup>th</sup> fingers were amputated. He was awarded \$80,000.00 for PSLA.
- b. **CCAA Limited v Jeffrey**<sup>4</sup> - the Claimant suffered injuries to his right hand and his thumb was amputated. His award was \$80,000.00 for PSLA.
- c. **Austra Franklyn v MA Kharafi & Sons Ltd.** - the Claimant's hand was crushed between a steel boat and a pile. He was awarded \$60,000.00 for PSLA.

[20] The Court found the following cases which were comparable in some of the injuries received:

- a. **Sullivan v Jack Tar Village Management Company**<sup>5</sup> the Claimant's most significant injury was a severely comminuted intra-articular fracture of the left distal humerus. There was permanent disability of 25% of normal strength left hand, ulnar neuropathy, and mild flexion deformity. An award of \$80,000.00 was given for PSLA.
- b. **Guy v Watson**<sup>6</sup> - the Claimant was 51 and she received a fracture to her left wrist. Her disability was assessed at 8%. She received other injuries including clavicular fracture, fracture of left tibia and fibula, fracture of her skull; an award of \$185,000 was given for PSLA.

[21] The Court having reviewed a number of cases found that the only one remotely comparable was **Sullivan v Jack Tar** referred to above. The Claimant in the instant case however received injuries to both her wrists and will have only 70% of her use of both wrists and hands. Her evidence is also clear on the pain she continues to feel as well as her loss in relation to her grip.

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<sup>4</sup> SVGHC VAP 2003/0010

<sup>5</sup> St Kitts and Nevis High Court no 002 of 2015

<sup>6</sup> SVGHC V 2011/0410

## **Analysis**

- [22] I agree with the principles stated in **Wells v Wells**<sup>7</sup> where “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.”
- [23] Counsel for the Claimant proposes a reasonable amount to be \$300,000.00 for the PSLA. Having considered the authorities, I find the most useful to be **Sullivan v Jack Tar**. The injury sustained in **Sullivan v Jack Tar** was to one wrist and the Claimant here sustained injuries to not just one hand/wrist but both wrists and her leg. She is also only able to have 70% use of her hands. Although it is noted that there was no lasting impact to the leg injury as it was a hairline fracture, she still received an injury to her leg.
- [24] There is no medical evidence or report to support a claim for psychological injury but it is quite apparent from the Claimant’s statement that she suffered tremendously. Due to the incident and the psychological injury of having a boyfriend “cut her repeatedly” and to relive the incident again via a video being circulated of that event would cause anyone distress. In **Shunette Thompson et al v Owen Jones**<sup>8</sup>, Master Actie indicated that whilst there was no medical evidence to support a claim for psychological injury there was no doubt in her mind that the Claimant had suffered emotional stress and pain having lost her baby due to an accident. Master Actie gave an elevated award for the emotional stress and pain and I am of the opinion that this case warrants the same treatment of an elevated award.
- [25] In the circumstances an award of \$160,000.00 for pain and suffering and loss of amenities is appropriate. Having considered all the cases provided for the determination of the assessment it is unnecessary to include a rate of inflation.

## **Interest**

- [26] The claimant is entitled to interest and as per the decision in **Nigel Mason v Maundays Bay Management Ltd**<sup>9</sup> as follows:

1. With regard to general damages, no interest should be awarded before judgment on loss of future earnings;
2. On damages for pain, suffering and loss of amenities interest should be awarded from the date of service of the writ to the date of trial at the rate payable on money in court placed on short term investment and, in the absence of evidence of that rate, the statutory rate of interest would be used;

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<sup>7</sup> [1998] 3 ALL ER 481

<sup>8</sup> Shunette Thompson, Ronisha Foyle by mother and next friend Shunette Thompson, Laticia Foyle by her mother and next friend Shunette Thompson v Owen Jones, Desmond Lewis, SVGHCV 2012/0138 at paragraph 15

<sup>9</sup> AXAHCV 2006/0090 at paragraph 39

3. With regard to special damages, interest should be awarded for the period from the date of the accident to the date of trial at half of the rate payable on money in court placed on short term investment.

### **Conclusion**

### **Court's Order**

[27] The Defendant shall pay to the Claimant the following awards:

1. Special damages in the sum of \$83,000.00 with interest at 2.5% per annum from the date of the accident to 30<sup>th</sup> September, 2021;
2. Pain and Suffering and loss of amenities - \$160,000.00, interest at 5% per annum from the date of service of the writ to today's date;
3. 60 % of Prescribed costs on the global sum in accordance with CPR 65.5;
4. The Claimant to draw file and serve this Order.

**Charon Gardner-Hippolyte**  
High Court Master

**By the Court**

**Registrar**