

**IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF MONTSERRAT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: MNIHCV2020/0025

BETWEEN:

**P L a child MACKIBA HALLEY
by her litigation/next friend**

Claimant

and

**[1] BLESSINGS BUS SERVICE LLC
[2] WILLIAM CABEY**

Defendants

Appearances:

Mr. Jean Kelsick, Counsel for the Claimant

Mr. Rushaine Cunningham, Counsel for the Defendants

2021: September 23rd;
October 5th

DECISION

- [1] **GARDNER HIPPOLYTE, M.:** This is a decision for an assessment of damages based on a minibus accident with a seven-year-old child. The child, PL was knocked down, dragged, and driven over by the minibus. The claim was brought by her mother Mackiba Halley as her litigation/next friend against the employer Blessings Bus Service LLC (the first defendant) and the driver of the minibus William Cabey (the second defendant).

Background

- [2] On the 7th November, 2016 at about 4:00 p.m. the second Defendant was dropping the claimant - PL at Cavalla Hill for private lessons. As the Claimant alighted from the bus the second Defendant struck and knocked down the Claimant, drove over her with the minibus. The Claimant was then taken to the hospital by the second Defendant.
- [3] She sustained fractures of her right femur, the left humerus and her right clavicle.¹ A laparotomy was performed and revealed the abdominal cavity was filled with 1600ml of blood, multiple lacerations to the liver and spleen. After her surgery she was airlifted to the intensive care unit of Mount St. John's Medical Centre in Antigua. At Mount St. John's Medical Centre, PL was placed in skeletal traction for the stabilisation and reduction of her right femur fracture, which

¹ Medical Report Dr Lowell Lewis dated – 14th August 2019

entailed the insertion of Steinmann pin. On the 21st November, 2016 she returned to the Glendon Hospital in Montserrat and remained in traction until 28th December, 2016.

- [4] The Claimant suffered repeated infections in respect of her abdominal surgical wound. This required three surgeries to drain the wound and re-suture. The Claimant has a permanent scar from this injury. During this period the Claimant was out of school for approximately four months. The Massy United Insurance Company met some of the initial expenses totalling over \$ 40,000.00 however there is an additional amount of expenses totalling \$8,344.40. The Counsel for the Defendant has formally indicated to the Court that the sum requested for the expenses is not in dispute.
- [5] Judgement in default was entered on the 11th December, 2020 for an amount to be decided by the Court and the matter was adjourned for directions on the assessment of damages. Counsel for the Defendant indicated in the Notice of intention to be heard on assessment, that they wished to cross examine Mackiba Halley. On the day of the hearing of the assessment Counsel subsequently declined to cross examine and relied on his written submissions. Counsel for the Claimant chose to also rely on his filed documents and submissions.

Evidence of PL

- [6] Two witness statements were filed on behalf of the Claimant, one from P L and the second from her mother by her litigation/next friend. In PL's witness statement, at paragraph four - she states how she thought she "was going to die, her face hurt and her leg felt like pieces of glass breaking all over." The Claimant indicated she experienced "bad pain for three weeks after the accident, really severe pain after the accident while in Antigua and also when the pin shift in her leg for 3 days at the hospital in Antigua."
- [7] The Claimant spoke about her challenges with sports and how she was an avid runner coming first and second in school sports. At the date of her statement on the 28th April, 2021 the Claimant states she walks with a limp and is still scared of minibuses.

Evidence of Mackiba Halley

- [8] The mother of the Claimant also gave a statement, and her statement contained the evidence in relation to the expenses and medical evidence of the doctors.
- [9] At paragraph 9 of her witness statement Ms. Halley sets out in detail expenses totalling \$8,344.40. She admitted she did not keep receipts for all the expenses as she had to receive assistance to pay for some things, for example a plane ticket for her mother. The Defendants have indicated that they are not objecting to the sum claimed for expenses. I find the amount claimed is reasonable in the circumstances and therefore I award the sum of \$8,344.40 for special damages.

General Damages

[10] 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.

The Nature and Extent of the Injuries Sustained

[11] The Claimant's injuries are set out in detail in the medical reports. In summary the Claimant suffered fractures of her right femur, the left humerus and her right clavicle. A laparotomy was performed as her abdominal cavity as it was filled with 1600ml of blood, there were multiple lacerations to the liver and spleen. The Claimant had to be airlifted to the intensive care unit of Mount St. John's Medical Centre in Antigua, where she was placed in skeletal traction for the stabilisation and reduction of her right femur fracture, which entailed the insertion of Steinmann pin. A cast was also placed on her arm.

[12] The Claimant was then returned to Montserrat and remained in hospital until the 28th December, 2016. From the 7th November, 2016 to 28th December, 2016 she spent a total of 52 days or one month and 22 days at the hospital; approximately 46 of those days with her leg in traction. The Claimant also had three surgeries to fix the post-operative recurring infection connected to her abdominal wound.

The Pain and Suffering and Loss of Amenities

[13] The Claimant a seven-year-old child was in traction for approximately 46 days with a Steinmann pin in her leg. She indicated in paragraphs 4 to 9 of her witness statement the amount of pain she was in the following situations:

- (i) immediately after the accident,
- (ii) in the hospital while her leg was in traction,
- (iii) when she returned to school,
- (iv) going about her normal activities; and
- (v) for over a year and a half due to the constant problem with her wound in her abdomen.

"She stated she "used to cry a lot because it felt like someone took a needle and kept poking at her foot."

[14] The Claimant stated how the injuries affected her active childhood lifestyle. She said she used to come first and second place in running, but when she returned to school in March 2017 she could not run, play, or walk on stones without being in pain. The Claimant was also in a wheelchair, but no specific timeframe is submitted in relation to this component.

- [15] The Claimant stated she walks with a limp and Dr. Lewis confirms that her right leg is 1 centimetre longer than the left. The Claimant additionally has a scar on her midline abdomen which is also confirmed in the medical report of Dr. Braimah Kassim dated 8th March, 2018. He stipulated this scar to be permanent. It should be noted there are no details as to the size of the scar.
- [16] The Claimant's future prognosis is positive as per Dr. Lowell Lewis report of 17th August, 2020 there was "full and normal range of movement at all joints and normal coordination and symmetry of steps."
- [17] Counsel for the Claimant referred to the following cases as comparable amounts to be considered:
- (a) **Mary Joseph v Asha Hill**² - the Claimant who was 42 years suffered a broken leg and other injuries, she was left with a shortened limb and permanent limp. General damages awarded - \$100,000.00
 - (b) **Brentley Charles v Marcus Corridon**³ - the Claimant was 21 years old and suffered a broken leg but had perpetual problems for debridement of his leg. He was awarded \$100,000.00 for pain and suffering.
 - (c) **Kendol Fredericks v Carlton Cunningham**⁴ - the Claimant was a 12-year-old who suffered severe injuries to his leg which was crushed by a truck. He was awarded \$150,000.00
 - (d) **Ryan Richards v Michael Francois**⁵ the Claimant sustained several injuries including a fractured leg and was in hospital for three months in traction. He was awarded \$140,000.00 for PSLA but was found contributory negligent by 30% and his award was reduced.
 - (e) **Fae Ann James v Randy Thomas**⁶- the Claimant was 7 years old, and her leg was broken she was hospitalised for three days and made a full recovery. She was awarded \$45,000.00 for pain and suffering and temporary loss of amenities.
- [18] The Court was referred to the authority of **Fae Ann James v Randy Thomas** by Counsel for the Defendant. Counsel succinctly prepared a schedule comparing the facts in the two cases side by side. While it was a very useful exercise it also highlighted the fact that PL's injuries were considerably more severe.

Analysis

- [19] I agree with the principles stated in **Wells v Wells**⁷ 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."
- [20] PL at the time of the accident was a seven-year-old child who was ran over by a minibuss. The Claimant sustained injuries to right femur, left humerus, right clavicle and intra-abdominal

² DOMHCV2014/0192

³ SVGHCV2002/0506 AS PER MASTER ACTIE

⁴ SVGHCV2002/475

⁵ GDAHCV2010/0156

⁶ GDAHCV2016/0186

⁷ [1998] 3 ALL ER 481

bleeding from multiple lacerations to her liver and spleen.⁸ She was in traction, with a Steinmann pin in her leg from the 8th November, 2016 to the 23rd December, 2016 or approximately 46 days. The Claimant underwent 4 surgeries⁹, and was unable to walk for about 4 months. She spent Christmas day in the hospital and has a permanent scar on her abdomen.

- [21] Counsel for the Defendant proposes a reasonable amount to be \$60,000.00 having used the **Fae Ann James** case¹⁰ as the starting point, adding an inflation figure of \$5,000 and an additional sum for loss of amenities of 10,000 to the award. The Court agrees **Fae Ann James** award is a useful starting point in its analysis however due to the more severe nature of the injuries sustained by the Claimant in the instant case, there is a marked difference between a leg placed in a cast and a leg in traction with a Steinmann pin for approximately 46 days. Having also considered the other authorities provided by both Counsels for the Claimants, I have found them quite useful in determining a figure that is reasonable and fair in the round. Each case had a set of facts that allowed the Court to glean comparable circumstances and differences. Relying on the dicta in **Wells and Wells**¹¹, I am of the opinion an appropriate amount for pain suffering and loss of temporary amenities is \$90,000.00.
- [22] I agree with Counsel for the Defendant there is no medical evidence or report to support a claim for psychological injury. Additionally, there is no medical evidence to support the possibility of future complications having received a positive report from Dr. Lewis which the medical evidence suggests to the contrary. Accordingly, no award will be made under these two areas.
- [23] Having considered all the cases provided by both Counsels for the determination of the assessment it is unnecessary to include a rate of inflation.

Interest

- [24] The Claimant is entitled to interest on the special damages at the rate of 3% from the date of the accident to today. As stated by Lord Denning¹² "interest should not be awarded as compensation for damage done. It should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him..... in all ordinary cases he should have thought it would be fair to award interest on the today's sum of special damages from the date of the accident to until the date of trial."

Order

- [25] The Defendants shall pay to the Claimant the following awards:
1. Special damages in the sum of \$8,344.40 with interest at 4% per annum from the date of the accident to 23rd September, 2021;
 2. Pain and suffering and loss of temporary amenities - \$90,000.00;

⁸ Report of Doctor Lowell Lewis dated 14th August 2019

⁹ The first initial surgery to address the lacerations to the liver and spleen and three post-operations.

¹⁰ Ibid at footnote 6 above

¹¹ Ibid at footnote 7 above

¹² Jefford v Gee [1970] 2 QB 130 at paragraph 146A

3. Interest on the award at 4% per annum from the date of Judgment to payment;
4. Prescribed costs on the global sum in accordance with CPR 65.5;
5. The Claimant to draw, file and serve this Order.

Charon Gardner-Hippolyte
High Court Master

By the Court

Registrar