

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2020/0022

BETWEEN:

COLLIN HOPE Jr.

Appellant

and

EDMOND LAKE

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mde. Gertel Thom
The Hon. Mr. Paul Webster

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Dr. David Dorsett for the Appellant
No appearance for the Respondent

2022: February 23.

Civil appeal- Personal Injury- Assessment of Damages- Whether master erred in her assessment of damages by applying wrong principles of law - Whether master erred in finding that Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases (England) did not override Eastern Caribbean case law- Whether master erred by not basing award for future loss of income on part of the accepted evidence- Whether master's assessment of the award of damages for future loss of income was inconsistent with the pleaded case upon which default judgment was obtained

ORAL JUDGMENT

[1] **WEBSTER JA [AG.]:** This is an appeal against the decision of the learned Master Jan Drysdale ("the Master") made on 21st April 2021 on an assessment of damages

for personal injuries following the entry of a judgment in default of appearance against the respondent, Mr. Edmond Lake.

Facts

[2] On 11th November 2015, a motor vehicle driven by Mr. Lake collided with a vehicle in which the appellant, Mr. Collin Hope Jr., was a passenger. Mr. Hope was injured in the accident and claimed damages for personal injuries from Mr. Lake. Mr. Lake did not respond to the claim and on 23rd April 2019, judgment in default of appearance was entered against him for damages to be assessed. Mr. Lake did not participate in the assessment of damages before the Master and the damages were assessed on Mr. Hope's evidence and the law. The Master made the following awards:

- (a) special damages of \$23,772.99 with interest at 2.5% from the date of the accident to the date of the assessment;
- (b) general damages of \$40,000.00 for pain and suffering and loss of amenities with interest at the rate of 5% per annum from the date of the accident to the date of the assessment;
- (c) damages for loss of future earnings of \$248,400.00; and
- (d) costs at the rate of 60% of prescribed costs.

[3] Mr. Hope was dissatisfied with the damages awarded for pain and suffering and loss of amenities and for loss of future earnings. He appealed on three grounds:

- (i) The Master erred in her assessment of damages by applying a wrong principle of law, namely, that case law can override or nullify statute law.
- (ii) The Master erred in her assessment of future loss by applying a wrong principle of law, namely, not basing her award on evidence that she had accepted.

- (iii) The Master erred in her assessment of future loss by applying a wrong principle of law, namely, assessing future loss on a basis inconsistent with the pleaded case upon which Mr. Hope had obtained a default judgment.

Ground 1 – General damages for pain and suffering and loss of amenities

- [4] Mr. Hope's position before the Master and this Court is that he is entitled to general damages of \$50,000.00 for the injuries that he sustained based on the **Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases** ("the Guidelines")¹ which are a part of the common law of England. His counsel, Dr. David Dorsett, submitted that the **Common Law (Declaration of Application) Act**² of Antigua and Barbuda, imported into the State the common law of England. The Guidelines, being a part of the common law of England, are a part of the common law of Antigua and Barbuda and they are not merely persuasive but are binding authority and must be followed subject to a discount of 15-20% to reflect local conditions. In fact, Dr. Dorsett went so far as to submit in his written submissions that "[c]ase law from other jurisdictions cannot undermine the statutory regime that governs domestic law and its application",³ and that any change to the Guidelines, which we take to mean any departure from the Guidelines, must be done by Parliament and not by judicial activism.⁴
- [5] We reject this submission entirely. It is trite that the common law is the law made by judges through their decisions. It is the antithesis of statute law which is made by Parliament. The Guidelines are, as the name suggests, a book of principles and decided cases to guide courts and tribunals in assessing the quantum of damages in personal injury cases. They are just that - guidelines. As a part of the common law of England and therefore the common law of Antigua and Barbuda, they can be referred to and relied on by the local courts but they are not binding, certainly not in

¹ 15th Edition, Oxford University Press.

² CAP 92 of the Laws of Antigua and Barbuda.

³ Paragraph 15 of the appellant's submissions.

⁴ Paragraph 18 of the appellant's submissions.

the sense that exclusive resort must be had to them in making an award in personal injury cases. The well-known and established practice in the Eastern Caribbean courts in assessing damages is to look first to similar cases in the region and apply them to the cases being decided. If there are no local comparable decisions, the assessing court will undoubtedly refer to the decided cases in the Guidelines and make the necessary adjustments which, Dr. Dorsett submitted, is a discount of 15-20%. However, this is done only where there are no local comparable cases.

- [6] The approach of the courts of the Eastern Caribbean to the assessment of damages and the courts' reliance on the Guidelines is admirably summed up by the Privy Council in the case of **Scott v Attorney General of the Bahamas**, a case cited by Dr. Dorsett, as follows -

“What those guidelines can provide, of course, is an insight into the relationship between, and the comparative levels of compensation appropriate to different types of injury. Subject to that local courts remain best placed to judge how changes in society can be properly catered for. Guidelines from different jurisdictions can provide insight but they cannot substitute for the Bahamian courts' own estimation of what levels of compensation are appropriate for their own jurisdiction. It need hardly be said, therefore, that a slavish adherence to the JSB guidelines, without regard to the requirements of Bahamian society, is not appropriate.”⁵

In other words, the Guidelines can be resorted to in appropriate cases but they should not be used in place of or to contradict local decisions that are applicable to the case being decided.

- [7] With these preliminary observations, we now turn to the Master's approach to the assessment of damages in this case. Firstly, we reject entirely the allegation in ground 1 that the Master applied a wrong principle of law that case law can override or nullify statute law. She approached the assessment by firstly rejecting counsel's submission that the assessment should be done solely by reference to the Guidelines. She referred to three cases decided by the courts of the Eastern Caribbean where the Guidelines were applied and noted that -

⁵ [2017] UKPC 15 at paragraph 25.

“[I]n each case there was a paucity of comparable cases in the region. This is not the situation in this case.... The Court wishes to reiterate that whilst the guidelines have their place in the law it is not to the preference of local and or regional cases similar in context to the case at bar”⁶.

[8] The Master then referred to the cases of **Peter Winston v Dianne Telemaque**⁷ from the High Court of the Commonwealth of Dominica and **Simon Sparman v Jolly Beach Resort & Spa**⁸ from the High Court of Antigua and Barbuda and noted that the injuries in these cases were similar to those suffered by Mr. Hope and the awards made by the courts in these cases. Guided by those cases, the Master awarded \$40,000.00 as general damages for the pain and suffering and loss of amenities suffered by Mr. Hope.

[9] This is the classic approach to the assessment of general damages for personal injuries in the courts of the Eastern Caribbean. The Master did not apply a wrong principle of law in the assessment of general damages. She noted the relevance of the Guidelines in assessing damages in personal injury claims and proceeded to assess the damages based on comparable decisions of the High Courts of the region. She cannot be faulted for this approach and ground 1 is dismissed.

Grounds (2) and (3) - Loss of future income

[10] Mr. Hope's case is that he was a student pilot at the time of the accident and his loss of future income should have been assessed on his uncontested evidence that as a pilot, he would have earned \$7,000.00 per month or \$84,000.00 per annum. This would thereby entitle him to damages for loss of future income of \$1,653,881.42. As a result of his injuries he asserted that he could not become a pilot and that Mr. Lake was responsible for his entire loss of future income. The Master found that he had not provided sustainable evidence of this assertion and declined to award damages for loss of future income based on Mr. Hope becoming a pilot. Instead, she accepted his other evidence that he at the relevant time was a

⁶ Paragraphs 17 and 18 of the Decision.

⁷ DOMHCV 2005/0029 (delivered 10th September 2012, unreported).

⁸ ANUHCV2012/0292 (delivered 4th December 2018, unreported).

construction worker, whose income when discounted, was approximately \$10,800.00 per annum. Applying a multiplier of 23 years, she awarded \$248,400.00 for loss of future income.

[11] Mr. Hope complained in grounds 2 and 3 that the Master applied wrong principles of law in assessing the loss of future income loss in this way.

[12] In ground 2, learned counsel argued that this was an assessment of damages following a default judgment and therefore there was no issue of liability. Mr. Hope having stated in his pleadings and witness statement that he was a trainee pilot, and the Master having stated in an Order on 20th February 2020 that she accepted his unchallenged evidence, was bound to assess his future earnings as if he was a pilot and not a construction worker. We do not accept this submission. The issue of Mr. Hope's occupation is not a matter of liability – it goes to the quantum of damages to be awarded and the Master was required to examine and assess the evidence on the assessment and decide if it supports the damages being claimed. As Edwards JA said in **Michael Laudat and The Attorney General of the Commonwealth of Dominica v Danny Ambo**⁹–

“The issue of the defendant's liability having been settled by the default judgment, the only issue for the court is how much in compensatory damages is due to the claimant upon the evidence adduced by the claimant in proof of any special damages claimed and the general damages. Where damages for any pleaded causes of action have not been proven by the evidence, the claimant would generally not be entitled to damages under that head of claim.”

[13] The Master's approach to the assessment in this case is consistent with the guidance from Edwards JA in the **Laudat v Ambo** case. She was not bound to accept everything that Mr. Hope said in his evidence on the issue of damages. We are satisfied that the evidence before the Master on the issue of Mr. Hope being a student pilot was such that she was not bound to accept it. This is even more so when it became clear during the hearing before this Court that the student visa on which Mr. Hope placed heavy reliance, showed that it expired more than three years

⁹ HCVAP2010/016 (delivered 15th December 2010, unreported) at paragraph 30.

before the accident. This casts great doubt on his evidence that he was a student pilot at a flying school in Canada at the time of the accident and was on a break in Antigua to earn money. The Master took note that Mr. Hope had not produced any independent evidence of being a student such as a letter from the flying school or indeed we would add, any documentation showing enrollment at the flying school.

- [14] It cannot be said that there was no evidence to support the Master's finding of fact that Mr. Hope "failed to produce any tangible evidence which the Court can rely on to found loss of income on this basis". The basis that the Master was referring to was Mr. Hope's claim that he was a student pilot. The Master proceeded to assess his loss of future income based on the evidence placed before her by Mr. Hope that he was a construction worker. This is an unimpeachable finding of fact with which this Court will not interfere. Ground 2 is accordingly dismissed.

Ground (3)

- [15] It follows from our reasoning and findings on ground 2 that ground 3 must also fail. The finding of loss of future income is not inconsistent with the pleaded case. Following the reasoning of Edwards JA in the **Laudat v Ambo**¹⁰ case the default judgment settled the issue of liability for the losses suffered by Mr. Hope. However, the assessment of damages was decided on the evidence in the assessment proceedings which the Master was required to assess and make her findings. The submission that the Master made a finding on a different issue is rejected as being wholly unconvincing and lacking in merit.

¹⁰ Supra, paragraph 12.

Conclusion

- [16] This Court finds that the grounds of appeal are entirely without merit and the appeal is dismissed.

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Gertel Thom
Justice of Appeal

By the Court

Chief Registrar