

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0032

BETWEEN:

KYLE DAVY

CLAIMANT

AND

**MICHAEL DE BIQUE
ARISTON DENNIE**

**FIRST DEFENDANT
SECOND DEFENDANT**

Appearances:

Mr. Duane Daniel and Ms. Jenelle Gibson, Counsel for the Claimant
Ms. Keisal Peters, Counsel for the Defendants

2019: September, 16
2020: March, 27

JUDGMENT

- [1] **Burnett, M. (Ag.):** This is an assessment of damages following a Judgment in Default of Acknowledgment of Service against the defendants.

FACTUAL BACKGROUND

- [2] On the 23rd February, 2015, the claimant while a pedestrian walking on the sidewalk along Casson Hill, was struck by motor vehicle PL7 driven by the first named defendant and owned by the second named defendant.
- [3] On the 18th February, 2019, Judgment in Default of Acknowledgement of Service was entered against both defendants.

SPECIAL DAMAGES

[4] The claimant claims \$1,044.25 as Special Damages for medical and other related expenses. A bundle of receipts was evidenced with the witness statement as exhibit "K.D.10".

[5] It is the law that Special Damages must be strictly pleaded and proved.

[6] In considering the evidence and submissions, I am satisfied, based on the evidence that the claimant has pleaded and proved, and is therefore entitled to Special Damages in the sum of \$1,044.25 made up as follows:

a) Physiotherapy (Milton Cato Memorial Hospital)	\$ 15.00
b) Consultations	
25 th April, 2015	\$ 60.00
19 th August, 2015	\$ 60.00
c) Psychological Services	\$ 80.00
d) Medical Reports	
4 th May, 2015	\$ 150.00
7 th September, 2015	\$ 200.00
e) Psychological Report	\$ 100.00
1 st June, 2015	\$ 9.25
f) Stewards Office Physiotherapy	\$ 20.00
g) Police Report	\$ 100.00
h) Motor Vehicle Registration Information	\$ 100.00
	<u>\$ 1,044.25</u>

[7] Thus the total award for Special Damages is \$1,044.25

GENERAL DAMAGES – PAIN AND SUFFERING AND LOSS OF AMENITIES

[8] The claimant claims he was a minor at the time of the incident, being 17 years old. He was pinned under the motor vehicle and suffered trauma to the left side of face, and to left eye, with subconjunctival haemorrhage and trauma to left hand as follows:

- Dislocation of the left proximal phalanx of the second and third fingers.
- Fracture of the distal head to the fifth carpal bone.
- Stiffness of the left hand to the second and third finger.
- Slight deformity of the fifth finger secondary to metacarpal fracture.
- Slight numbness to left side of face.
- Muscular damages to left leg.
- Numbness to area of left forehead.
- Slight paresthesia down to the mouth.
- Trigeminal nerve injury.

[9] The claimant was, at the time of the accident, a student at the St. Vincent and the Grenadines Community College, Technical and Vocational Division, enrolled in AAS Agricultural Science Program.

- [10] The Claimant was hospitalized for three (3) days. He had to be fed, bathed and dressed. His academic performance suffered resulting in him failing his exams and being required to resit.
- [11] Prior to his injuries, he was a dancer and enjoyed swimming; however, he is unable to swim as he previously did. He also developed a specific phobia of walking on the streets.
- [12] Mr. Duane Daniel, counsel for the claimant referred the court to the case of **Guy v Watson**¹, a case from this jurisdiction. In that case, the claimant suffered fracture of left wrist and left leg, abrasion to right shoulder, a clavicular fracture, a displaced and comminuted fracture of distal left radius, fracture of left tibia and fibula, fracture of left side of her skull, lacerations and abrasions to head and forehead.
- [13] The claimant was awarded the sum of \$65,000.00 for loss of amenities and \$120,000.00 for pain and suffering.
- [14] In **Marrocco v the Attorney General of Antigua and Barbuda**², the claimant sustained a fracture to intra-articular right upper end tibia and fractures of the right distal radius and distal ulna, traverse fracture and by condular non-displaced tibia plateau fracture of the right knee. The court in that case, considered that an award under the head, pain and suffering and loss of amenities in the sum of \$50,000.00, as adequate.
- [15] Ms. Keisal Peters, counsel for the defendants submitted the cases of **Damon Dubois v Matthias Jerome et al.**³ The claimant was awarded \$27,500.00 for pain and suffering and loss of amenities after he sustained a soft tissue injuries of left shoulder, chest, face and knees and a grotesquely displaced closed comminuted right distal radial fracture with dislocation of the right ulnar head.
- [16] In **Howelle Fontenelle v Jn. Baptiste Marville**⁴ the claimant was awarded \$40,000.00 for pain and suffering after sustaining a 5 cm oblique laceration on the dorsum (back of hand) of right wrist involving the capsule (joint) of the wrist, extensor tendon, 3 laceration to the second, third and fourth fingers.

ANALYSIS AND FINDINGS

- [17] Counsel for the claimant rightly observed that the claimant, in the case at bar, did not sustain as many fractures as the claimant in **Guy v Watson**⁵ and as such, the figure for pain and suffering ought to be reduced.
- [18] The claimant in the **Marrocco**⁶ case also sustained more fractures than the claimant in the case at bar.

¹ SVGHCV2011/0410

² ANUHCv1997/0240

³ GDAHCV2011/0088

⁴ SLUHCv2011/0837

⁵ Ibid 1

⁶ Ibid 2

- [19] The Court found the case of **Dubois**⁷ quite helpful and notes the distinguishing features of that case to the one at bar.
- [20] The Court noted the conclusion of Dr. Charles Woods in his report of 7th September, 2015, where he concluded, “nerve injury to face which should resolve spontaneously in time, without active treatment”. Whereas, Dr. Jozelle Miller concluded that the patient is not demonstrating any severity of symptoms suggestive of post traumatic distress disorder.
- [21] The legal principles governing the assessment of damages are well established in the case of **Cornilliac v St. Louis**⁸ where Sir Hugh Wooding CJ, listed the main factors to be taken into account namely:
- 1) The nature and extent of the injuries sustained.
 - 2) The nature and gravity of the resulting physical disability.
 - 3) The pain and suffering endured.
 - 4) Loss of amenities and;
 - 5) The extent to which pecuniary prospect is affected.
- [22] The Court notes that an award for pain and suffering is incapable of exact estimation and an assessment must necessarily be a matter of degree based on the facts of each case.
- [23] In assessing the nature of the award in this case, the Court relied on the learning of Lord Hope of Craighead in **Wells v Wells**⁹, which states: “The amount of the award to be made for pain and suffering and loss of amenities 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 represent the Court’s basic estimate of the plaintiffs’ damage”.
- [24] Having reviewed the authorities cited, the injuries sustained by the claimant, the medical reports submitted and the conclusion of same; and taking into consideration the rate of inflation since the awards were made and the authorities cited, I conclude that an award of \$50,000.00 for pain and suffering and loss of amenities would meet the justice of this case. I award the amount of \$50,000.00 as General Damages in favor of the claimant.

NURSING CARE/DOMESTIC ASSISTANCE

- [25] The claimant also claims \$1,500.00 for nursing care/domestic care provided by the claimant’s family during his recovery. The claimant alleged that his mother had to assist him during his recovery which lasted for three (3) months.
- [26] Judith Thomas, the mother of the claimant, gave evidence in her witness statement that she sacrificed time, energy and effort to assist the claimant with his recovery and is entitled to compensation.

⁷ Ibid 3

⁸ (1965) 7 WIR 491

⁹ [1998] 3 All ER 481

- [27] The claimant relied on **Errol Edwards v Gabriel George**¹⁰, where the Court, in outlining governing principles for rewarding costs of domestic care, considered that: “A Court can make an award which includes provision for domestic services which the claimant’s injuries have incapacitated him from doing and for which he is forced to obtain assistance, provided of course, that those services arose out of the injury, in relation to which damages are requested.”
- [28] Ms. Keisal Peters, counsel for the defendant submitted that domestic care was not pleaded and particularized in the claimant’s Statement of Claim as Special Damages. Counsel relied on the case of **David Balcombe v Vaughn Lowman**¹¹.

ANALYSIS

- [29] A good starting point is that of the learned authors of Halsbury’s Laws of England¹² which states: “where the injured plaintiff is cared for, not by professional paid caterers but by volunteers, whether members of his family, the award of damages will reflect the value of the services provided. The value of such gratuitous services may be determined either by applying the cost of buying such care on the open market or by assessing the loss of income suffered by a carer who has given up paid employment to care for the plaintiff or a combination of the two.”
- [30] There is no evidence that Ms. Judith Thomas had to give up employment and lost income to help care for the claimant after his discharge from the hospital.
- [31] There is evidence before the Court that Ms. Thomas provided some care to the claimant. Against that background, it appears just for the Court to make an award.
- [32] The Court proposes to award a nominal sum¹³ of \$1,000.00 for Nursing Care/Domestic Assistance.

ORDER

It is hereby ordered and adjudged that the defendants do pay the claimant damages assessed as follows:

1. \$1,044.00 Special Damages, with interest on Special Damages at the rate of 3% per annum from date of accident to date of judgment.
2. \$50,000.00 for Pain and Suffering and Loss of Amenities with interest of 6% per annum from the date of service of the Claim Form to the date of judgment.
3. \$1,000.00 for Nursing and Domestic Care. No pre-judgment interest is payable.

¹⁰ GDAHCV2011/0424

¹¹ SVGHCV2006/0375

¹² (4th Edition Revised) Vol 12(1) paragraph 898

¹³ Greer v Alston Engineering Sales and Services Ltd.

4. The claimant will also be awarded prescribed costs as per Rule 65.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

Rickie Burnett
MASTER (Ag.)

By the Court

Registrar