

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2010/0035

BETWEEN:

KEVIN CRAIG a minor
(by his mother and next friend)
Patricia Morgan

CLAIMANT/APPLICANT

AND

ELSWORTH WEEKS
MARVIN DABREO
JIMMY PHILMORE GRANT
BASIL WEEKS

FIRST NAMED DEFENDANT/RESPONDENT
SECOND NAMED DEFENDANT/RESPONDENT
THIRD NAMED DEFENDANT/RESPONDENT
FOURTH NAMED DEFENDANT/RESPONDENT

Appearances:

Mrs. Zhing Horne Edwards for the Claimant
Mrs. Mandela Peters for the Fourth Named Defendant
Second and Third Named Defendants present and unrepresented

2019: September, 18
2020: March, 3

Judgment

Burnett, M. (Ag.):

- [1] This is an application for assessment of damages consequent upon a judgment delivered by Her Ladyship Madam Justice Esco .L. Henry on the 19th December, 2018.

Introduction

- [2] On 17th March, 2007, Kevin Craigg was walking from his home in Green Hill towards Kingstown. He stopped along the road, close to an area where passengers usually gather to get transport into town. He saw a jeep approaching at high speed. It struck him, resulting in injuries to him. He was hospitalised and underwent treatment. At the time he was 13 years old.

[3] His mother Patricia Morgan brought this claim against the 4th named defendant who was driving the vehicle at the time of the accident and the first named defendant, who was the owner of the vehicle. Ms. Morgan in her claim alleged that the accident arose from a collision between that jeep and a minivan belonging to the second named defendant. It was being driven by the third named defendant.

[4] This Court ruled that the third and fourth named defendants were liable to the claimant in negligence. The second named defendant was held to be vicariously liable for the third named defendant negligence. The claim against the first named defendant was dismissed.

The Court also held that the second, third and fourth named defendants shall pay damages to the claimant.

Special Damages

[5] The claimant claims the following as special damages:

Particulars of special damages	
Cost of Police Report	\$ 100.00
Cost of X-Ray	\$ 30.00
Cost of Airline Tickets	\$1,313.62
Departure Tax to and from Trinidad and Tobago	\$ 180.00
Total	\$1,996.12

[6] Particulars of special damages were set out in paragraph 11 of the witness statement of the claimant in addition to exhibit "K.C4" which showed the expenditure incurred.

The general rule is that special damages must be specifically pleaded and strictly proved and I am satisfied that the claimant has proven his loss. In the premises, the Court awards the claimant special damages in the sum of \$1,996.12.

General Damages

[7] As far as general damages are concerned, Counsel for the claimant set out the factors to be considered based on the decision of *Cornilliac v St. Louis*¹. These factors were the nature and extent of the injuries sustained, the nature and gravity of the resulting physical disability, the pain and suffering experienced, the loss of amenities suffered and the extent to which pecuniary prospects were affected.

Pain and Suffering and Loss of Amenities

[8] In *CCAA Ltd v Julius Jeffrey*² Gordon JA quoted Lord Hope of Craighead in *Wells v Wells* as saying:

¹ (1965) WIR 491

² Civil Appeal No 10 of 2003 (St. Vincent)

“The amount of the award to be made for pain, suffering and the 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 best estimate of the plaintiff’s general damages.”

- [9] Apart from the injuries listed in the statement of claim, the claimant and his mother provided witness statements which outlined the injuries.
- [10] The claimant was taken to the Accident and Emergency Department of the Milton Cato Memorial Hospital. A medical report of Dr. Charles Woods dated the 5th day of May 2007, showed that the claimant was presented with pain in the lower back and was unable to walk. He had lower back tenderness, with some swelling of the lumbar region as well as some pubic tenderness. X-Ray revealed that the claimant sustained a fractured pelvis with separation of the pubis and slight sacroiliac disruption
- [11] The claimant travelled with his mother to Trinidad and Tobago where he was examined by Dr. Sheriff Ali. Dr. Ali’s medical report stated that the claimant was unable to weight-bear and indicated tenderness over the symphysis pubis. X-Ray also revealed a non-displaced lower right ramus fracture. The claimant was treated with bed rest and NSAIDS.
- [12] The claimant was reviewed by Dr. Charles Woods and in his report dated 21st December, 2009, Dr. Woods concluded that the claimant had some limitation of movement of the left hip and the FABER test was positive. The claimant was also diagnosed with post traumatic degenerative disease of the right hip.
- [13] The claimant recalled being knocked to the ground and not being able to get up and walked properly as a result of the pain he was suffering in his hip, groin and lower back, which he deemed to be unbearable. He stated after the hip x-ray he was admitted to the ward and he was unable to walk. He spent ten (10) days at the hospital, undergoing treatment for the injuries. He testified further that every time he moved his leg or tried to shift his body, he felt a stabbing pain in his groin and hip area.
- [14] After being discharged, he was taken to Trinidad for further medical attention. He was treated in Trinidad and Tobago with traction, which helped with the pain by keeping his pelvis in a stable position. The pain continued after his return to St. Vincent and he was treated with pain killers.
- [15] At the time of the accident, the claimant was an active thirteen (13) year old boy who enjoyed sports like football and participated in school’s sport. Counsel submitted that his involvement in these activities diminished after the accident, due to pain and discomfort and anxiety about exerting himself for which he should be compensated.
- [16] Counsel further submitted that the hampering effect of the injury on the claimant’s daily life must also be considered.

Quantification of Damages

- [17] The claimant contended that an award of \$60,000.00 for pain and suffering and \$50,000.00 in respect of loss of amenities would be consistent with awards made in recent comparable cases in our jurisdiction with similar social and economic climate.
- [18] The claimant submitted that the age of the claimant should be a factor that the Court should consider. In the case of *Heidi Binder v Patrick McVey et al*³ and *Lincoln Carty v Lionel Partick*⁴, the Judges in the *Lincoln Carty* case had this to say:
“In 1998 the claimant gave his age as forty six (46) years old and this has to be taken into account in assessing damages cognisant of the fact that the overall impact of his injuries may not attract as large an award of damages than it would have had he been younger with more to lose”
- [19] In the case of *Aveline O’Garro et al v Neil Ross et al*⁵ which the claimant placed relevance on, the claimant was thirty (30) years old and suffered a fracture of the acetabulum of the right hip, hip dislocation, resting in a permanent hip. There was a likelihood of development of avascular necrosis and post traumatic arthritis of the hip.
- [20] Counsel for the fourth defendant submitted that the injuries in that case were far more severe than that suffered by this claimant.
- [21] In that case, the claimant was awarded \$140,000.00 for pain and suffering and loss of amenities.
- [22] Counsel also relied on the case of *Verona Chanella Faucher v Kenson Donacien*⁶. In that case, the claimant was involved in a motor vehicular accident as a result of which she suffered numerous injuries including a fracture of the superior and inferior pubis rami on both sides with separation of the symphysis pubis. In that case the Court awarded \$130,000.00 for pain and suffering and loss of amenities.
- [23] The claimant submitted that the case of *Caroline Serieux v Sports St. Lucia Inc*⁷ is a comparable case. In that case, an award of \$57,000.00 was made to a claimant who suffered a pelvic fracture when she was twenty six (26) years old. Like this claimant, her injuries were treated with pain killers and physiotherapy. The claimant required an eighteen (18) day stay while the claimant in the case at bar, was hospitalised for ten (10) days at the Milton Cato Memorial Hospital and then flown to Trinidad and Tobago for further medical attention.
- [24] Counsel for the fourth named defendant conceded that this case is more comparable to the case at bar and posited that an award of \$75,000.00 is reasonable as general damages for pain and suffering and loss of amenities.

³ BVIHCV 6 of 2005

⁴ SKBHCV 54 of 1998 at para 11

⁵ SVGHCV2004/0329

⁶ SLUHCV2013/0964

⁷ SLUHCV2010/0753

- [25] The fourth named defendant also submitted the case of Elisha Lewis v Worrell John⁸ for the Court's consideration.
- [26] I have considered the above authorities in so far as they are comparable and have accounted for the differences in circumstances where they are not. I have considered the younger age of the claimant at the time of the injury, the medical evidence of his continued limitation years after the accident, his continued pain and discomfort post accident, as contained in his witness statement.
- [27] I have considered the prognosis of Dr. Charles Woods in his medical report dated 5th May, 2007 and the medical report of Dr. Sheriff Ali of 14th January, 2008, Dr. Charles Woods of 21st December, 2009 and Dr. Carolyn Robertshaw of 23rd January, 2019.
- [28] Having addressed my mind to the evidence of the claimant and the defendant, the case law provided and cognisant of the guidelines provided in Cornillac v St. Louis. I award the claimant the sum of \$100,000.00 as General Damages for pain and suffering and loss of amenities.

Loss of Earning/Loss of Pecuniary Prospects

- [29] To successful claim compensation for loss of earning/loss of pecuniary prospect, the claimant must establish that his injuries will affect his future earning capacity. It means that medical evidence is critical.
- [30] The claimant seeks an award in the sum of \$10,000.00 for loss of pecuniary prospect. The fourth named defendant in response suggest that no award be made.
- [31] In Mitcham Black v The Attorney General of St. Lucia⁹, Hariprashad-Charles J referred to the test laid down by the Jamaican Court of Appeal in Gravesandy v Moore¹⁰ which states:
- “A plaintiff who seeks general damages for loss of earnings must show there is a real or substantial risk that he might be disabled from continuing his present occupation and be thrown, handicapped, on the labor market at some time before the estimated end of his working life. The risk in such a case will depend on the degree, nature or severity of his injury and the prognosis for recovery; and the evidence must be adduced as to these matters, and also, as to the length of the rest of his working life, the nature of his skills and the economic realities of his trade and location.”
- [32] The medical report of Dr. Carolyn Robertshaw dated 23rd January, 2019, stated that the claimant took 20 days off work in the preceding year as a Care Assistant. However, it was noted that the claimant still complained of pain. I take into consideration the claimant's employment as a support worker and the obvious effect as a result of the pain. I also note the medical evidence of Dr. Robertshaw who stated that the claimant was at risk of precocious development of osteoarthritis of the hips, though her report of January, 2019, was silent on this opinion.

⁸ SLUHCV2003/0371

⁹ SLUHCV2004/0502 delivered on 19th March 2007

¹⁰ (1986) 40 WIR 222

[33] In the circumstances, I will award the sum of \$3,000.00 under this head.

ORDER, in summary,

1. Jimmy Philmore Grant, Marvin DaBreo and Basil Weekes shall pay to Kevin Craigg, special damages of \$1,996.12 with interest at the rate of 3% from the date of the accident until judgment and at the rate of 6% from judgment until payment in full.
2. Jimmy Philmore Grant, Marvin DaBreo and Basil Weekes shall pay to Kevin Craigg general damages for pain and suffering and loss of amenities in the sum of \$100,000.00 with interest at the rate of 6% as follows:
 - (a) Jimmy Philmore Grant from 11th June, 2010 to date of judgment
 - (b) Marvin DaBreo from 11th June, 2010 to the date of judgment
 - (c) Basil Weekes from 11th June, 2010 to the date of judgment
3. Jimmy Philmore Grant, Marvin DaBreo and Basil Weekes shall pay to Kevin Craigg for loss of earning capacity/loss of pecuniary prospect in the sum of \$3,000.00.
4. Jimmy Philmore Grant, Marvin DaBreo and Basil Weekes shall pay to Kevin Craigg, prescribed costs in accordance with Part 65.5 of the Civil Procedure Rules 2000.

**Rickie Burnett
MASTER (Ag.)**

By the Court

Registrar