

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Antigua and Barbuda

Claim No: ANUHCV 2018/0500

BETWEEN:

COLLIN HOPE JR.

Claimant

and

EDMOND LAKE

Defendant

Before:

Master Jan Drysdale

Appearances:

Dr. David Dorsett of counsel for the claimant

2020: February 19th
 April 21st

DECISION ON ASSESSMENT

[1] **Drysdale, M.:** The matter for consideration is an assessment of damages for certain personal injuries sustained by the Claimant as a result of the negligent driving of the Defendant. Liability not being contested default judgment was obtained on 23rd January 2019 with damages to be assessed. The Defendant also chose not to participate in these proceedings and as such quantum is assessed on the evidence of the Claimant and the law.

Background

[2] On 1st November 2015, a motor vehicle owned and driven by the Defendant struck head-on a motor vehicle in which the Claimant was a passenger. The Claimant was 23 years of age but now is 27 years of age.

- [3] As a result of the accident the Claimant sustained severe whiplash injury and loss of balance. He reported to the Mount St. John's Medical Centre and after radiological studies was admitted to the Orthopaedic Services for acute spinal injury and was administered medication to suppress the immune system and decrease inflammation. He was discharged after five days at which time he gradually developed in the functions of his left side of his body and his neck pain gradually got better. The cervical collar given to him was taken off.
- [4] The Claimant continued to suffer with lower back pain which restricted his movements and disabled him in his functions. He was subsequently diagnosed as having sustained L5/S1 disc bulge. Physical therapy was recommended.
- [5] On 4th July 2016 it was recommended that the Claimant seek a second opinion as after six months of conservative treatment his recovery had not been satisfactory. In pursuance of this an MRI was undertaken the result of which informed a diagnosis that the Claimant suffered muscle spasm, a cervical sprain due to whiplash injury to the cervical spine and injury to the L3-L4, L4-L5 and L5- S1 discs without significant herniation. Surgical intervention was not recommended as the Claimant's symptoms were found to be a result of annular tears which are notorious for taking a long time to resolve. A recommendation for physical therapy was made. The Claimant was also assessed as having sustained partial disability of 15%.
- [6] The final medical report dated 10th September 2018 confirmed that the cervical sprain is still in effect along with the annular tears. It reiterated that surgical intervention was not necessary and once again partial disability was confirmed to be 15%.
- [7] The Claimant claims special and general damages for personal injuries in the aggregate sum of \$1,727,654.41

SPECIAL DAMAGES

- [8] Special damages are damages that are typically capable of precise calculation and for that reason must be pleaded and proved. The Claimant has claimed the aggregate sum of \$23,772.99 as special damages for medical treatments, taxi services and food supplements and has satisfactorily proved the same. The Claimant is entitled to a full recovery of the sum of \$23,772.99.

GENERAL DAMAGES

- [9] These are damages which the law 'will presume to be a direct natural or probable consequence of the action complained of.'¹ Such damages are not capable of precise calculation and for that reason the Court takes cognisance of the injuries sustained by the Claimant as well as similar cases which dealt with the issue of appropriate compensation in the circumstances.
- [10] In assessing the appropriate measure of general damages, the Court also takes cognisance of the principles enunciated in the case of **Cornilliac v St. Louis**² being the nature and extent of the injuries suffered, the nature and gravity of the resulting physical disability, the pain and suffering which had to be endured, the loss of amenities suffered and the extent to which, consequentially, the plaintiff's pecuniary prospects have been affected.
- [11] The Claimant states that he continues to experience pain on his left side and in the lower lumbar area. He states that he has suffered loss of flexibility and that he is unable to stand for any length of time.
- [12] The Claimant has claimed general damages for the injury sustained which he posits should result in an award of damages in the sum of \$50,000.00. The Claimant relies on the Judicial College (2019) Guidelines for the Assessment of General Damages in Person Injury Cases.³ He also relies on the authorities of **Ferdinand v The Attorney**,⁴ **Maynard v Jeffers**⁵ and **Taliam v Duncan**⁶ and **Attorney General of St. Helena v AB and others**⁷ as well as the Common Law Declaration Act, as justification for using these guidelines exclusively for the determination of damages.
- [13] Having read the various authorities and legislation the Court is not of the opinion that determination of compensation should be done solely in reference to the Judicial Guileless. The authority of **Attorney General of St. Helena v AB and others**⁸ and the reception of the common law through the Common Law Declaration Act relied on by the Claimant as justification for this posture does not assist the Claimant. Firstly the St. Helena is a British overseas territory. Therefore, in that case there was never any doubt or question that the Judicial

¹ *Stroms Bruks Aktie Bolag v Hutchinson* [1905] A.C. 515

² 1965 7 W.I.R 49

³ 15th edition, Oxford University Press

⁴ SLUHCV 2016/0158

⁵ NEVHCV 2004/0131

⁶ SLUHCV 2018/0418

⁷ [2020] UKPC 1

⁸ [2020] UKPC 1

Guidelines should be applied. The issue rather was whether the guidelines should be applied without any discount regard given to the local circumstances.

- [14] In contrast Antigua and Barbuda is a fully independent country with its own Constitution which has not only recognized a tripartite system of governance but has formally recognized and established its own judicial system. Further unlike St. Helena which the Privy Council recognized was a small overseas dependency (with less than five thousand persons) and not having fully developed its own jurisprudence which could be relied on to determine damages, the same cannot be said of this jurisdiction.
- [15] Moreover, the Court of Appeal which binds this Court has definitively put to rest the issue of the manner in which cases for personal injuries should be determined. In the case of **CCCA Limited v Jeffers**⁹ the Court expressed the view that the courts should always strive for consistency of awards and to that end local and regional authorities along with the evidence are first to be considered to determine quantum. Gordon JA (Ag.) endorsed the position taken on **Wells v Wells**¹⁰ which stated:

‘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’

- [16] Gordon JA continued ‘[t]hus, to summarise, I accept that the trial Judge must exercise his discretion based on the evidence before him, **but that discretion must be curtailed by attempting to achieve consistency in awards within the jurisdiction of this Court.**’ (emphasis mine)
- [17] Ergo in the cases of **Ferdinand v The Attorney**,¹¹ **Maynard v Jeffers**¹² and **Taliam v Duncan** where the Judicial Guidelines were applied, in each case there was a paucity of comparable cases in the region. This is not the situation in this case.
- [18] Therefore, the failure to provide the Court with relevant cases is not justification for the use of the guidelines neither does it demonstrate that there is a lacunae in the jurisprudence. The Court wishes to reiterate that whilst the guidelines

⁹ Civil Appeal No 10 of 2003

¹⁰ [1998] 3 All E.R. 481

¹¹ SLUHCv 2016/0158

¹² NEVHCv 2004/0131

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.

- [19] Ergo the Court through its own research has unearthed the authorities of **Winston v Telemaque**¹³ and **Sparman v Jolly Beach Resort & Spa**¹⁴ which regard will be given to determine compensation. A brief summary of these cases is contained hereunder:

Winston v Telemaque¹⁵ — The claimant a 30 year old man (36 years of age at date of assessment) suffered personal injuries as a consequence of a motor vehicle accident for which the defendant was entirely responsible. In particular the claimant sustained significant injuries to his spine. The MRI showed evidence of an annular tear at L4-L5 level and disc protrusion causing lateral recess stenosis. At L5/S1 level there was also a mild diffused annular bulging with minimal narrowing of the right lateral access, a potential site for nerve root irritation or impingement. His injury required surgical intervention which was performed on the claimant some six years after the accident all during which period the claimant continued to experience pain. He was eventually assessed as having a whole person impairment of 15%. The court did not accept the loss of amenities of the claimant having found him prone to exaggeration. The claimant was awarded damages in the sum of \$30,000.00.

Sparman v Jolly Beach Resort & Spa¹⁶ - the claimant a 35 year old woman was employed as a cook with the defendant. Upon entering the kitchen the claimant in the course of her duties fell on a wet floor and suffered injury. The claimant was found to be suffering from pains in her lower back, right hip and lower limb, pains in her spine due to sacroiliitis/ sprain with L5-S1 disc bulge and sensory paresthesia (sensation of pins and needles) which progressed to mild discal dehydration that is degenerative disc disease with mild annular bulge of L4-L5 spine and to her current state – L4-L5, L5-S1 radiculopathy sensation reflex and power loss in the lower limbs. Surgery was recommended to relieve her condition. The court also accepted that the claimant could no longer work as a cook neither could she stand for prolonged periods. Further that she impaired in the performance of her

¹³ DOMHCV 2005/0029

¹⁴ ANUHCv2012/0292

¹⁵ DOMHCV 2005/0029

¹⁶ ANUHCv2012/0292

household chores. The claimant was awarded damages in the sum of \$65,000.00.

- [20] Unlike the authorities cited above, the Claimant has not been recommended to undergo surgery. Further in both cases the claimant sustained degenerative disease. The Court also notes that in the case of **Winston v Telemaque**¹⁷ that loss of amenities pleaded were not accepted. Notwithstanding these highlighted differences there are some marked similarities which render these cases safe for comparison to determine damages.
- [21] The Court notes that the effect that the Claimant has indicated that the injury has had on his life. Further the nature of the injury which medically has been determined to be one which is slow to resolve will it is accepted result in the Claimant continuing to suffer with pain for a protracted period of time. This naturally will continue to hamper the Claimant in the full enjoyment of his previous lifestyle. The Court also notes that the Claimant claims to be a student pilot at the material time but has produced no evidence to substantiate this and as such no award for loss of pecuniary prospects could be considered. Ergo after a careful consideration of the authorities and all similarities and differences as well as the impact the injury had on the Claimant's life, the Claimant is awarded the sum of \$40,000.00 for general damages for pain and suffering and loss of amenities.

Loss of future income

- [22] The Claimant asserts that at the time of the accident that he was student pilot with Moncton Flight School. He further asserts that he had taken a short break to return to Antigua to earn funds to complete pilot school. In order to do so he opened a store at the Craft Market and worked with his mother doing accounting. The Claimant also did some construction work with G&O Construction for which he earned the sum of \$600.00 per week. A letter from the Claimant's employer evidences the same. Notwithstanding the various forms of employment undertaken the Claimant submits that the assessment of loss of income should be based solely on his then anticipated career of an airline pilot. He submits that as a pilot he would have earned the sum of \$7,000.00 per month or \$84,000.00 annually which would thereby entitle him to damages in the sum of \$1,653,881.42.
- [23] Although the Claimant submits that he was training to be a pilot at Moncton Flight College and that the accident has thwarted his ability to achieve this he

¹⁷ DOMHCV 2005/0029

has only provided some pictures of him in what appears to be a uniform and one beside an aeroplane with the word "college" appearing therein. These pictures cannot stand as tangible evidence of the Claimant being a student pilot. If the Claimant was a student pilot seemingly some correspondence from the school could have easily confirmed the Claimant's enrolment and status. The Claimant failed to produce any tangible evidence which the Court can rely on to found loss of income on this basis. Lord Goddard CJ in the case of **Bonham-Carter v Hyde Park Hotel**¹⁸ in examining evidence presented for damage reminded the claimant of the duty to prove damage. He stated that:

'On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down particulars and, so to speak, throw them at the head of the court, saying: "This is what I have lost, I ask you to give me these damages". They have to prove it.'

- [24] The Claimant having failed to provide any sustainable evidence of his assertion cannot be granted damages for loss of future income as a student pilot. However all is not lost as it concerns a claim for loss of future income as the Claimant has provided a letter from a former employer which indicated that the Claimant from May 2013 worked in the field of construction and earned a weekly salary of \$600.00. The Claimant's loss of income will therefore be calculated on the evidence submitted as a construction worker.
- [25] The starting point for calculating loss of future earnings is the multiplier multiplicand approach. Concerning the multiplier our courts however have taken the view that the working life of an unskilled person ends at 65.¹⁹ The Claimant who is 27 years of age would have had an expected working life of a further 38 years. The undiscounted multiplier must then be discounted by considering the vicissitudes of life which may result in the injured party being unable to continue to earn income for the period between assessment and retirement. Based on the authority of **Matthews v O' Neal**²⁰ a discount of 40% is applied. This therefore makes the multiplier 22.8 rounded up to 23 years.
- [26] Concerning the multiplicand, the authority of **Alphonso v Ramnath**²¹ provides that the same is calculated on the least amount the Claimant would have been earning if he had continued working without being injured. The Court takes note that this type of employment is intermittent. Further the Claimant's evidence is that he engaged in a variety of different jobs thereby giving further credence to

¹⁸ (1948) 64 TLR 177

¹⁹ Fraser v Dalrimple Claim No ANUHCv2004/0513

²⁰ BVIHCv2015/0019

²¹ Civil Appeal 1 of 1996

the suggestion that his employment in the construction industry was intermittent. Additionally, the Claimant has not proved that he had any particular skill set which would perhaps give credence to him being able to work in a variety of different capacities and therefore for a longer period than an unskilled construction worker. Therefore, having examined all the evidence it is this Court's considered opinion that the least time for such employment would be for a period of approximately 6 months in any given year. The Court also notes that the evidence gives the gross and not the net income of the Claimant as a construction worker. For that reason, the monthly income will be discounted by one third thereby amounting to the sum of \$1,800.00 or \$10,800.00 annually. Based on the multiplier of 23, the Claimant is awarded loss of future income in the sum of \$248,400.00.

Interest

[27] As it relates to the issue of interest, the relevant guiding principles for determining the measure are found in the case of down in **Alphonso v Ramnath British Virgin Islands**²² and are as follows:

- a) Damages for pain and suffering and loss of amenities, the Court should award interest from the date of the service of the claim to the date of trial at the rate payable on money in Court placed on short term investment and, in the absence of such evidence of that rate, the statutory rate of interest is to be used.
- b) In relation to special damages, interest is to 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.

[28] Pursuant to section 5 of the Judgments Act Cap 227 of the Revised Laws of Antigua and Barbuda the Claimant is entitled to interest for the period after judgment.

Legal Costs

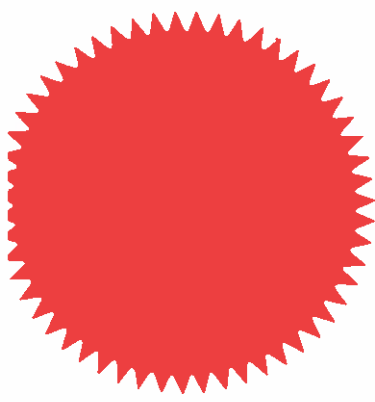
[29] The Claimant is also entitled to legal costs. Pursuant to part 65 of the Civil Procedure Rules the Claimant is awarded 60% of prescribed costs.

ORDER:-

[30] Based on the foregoing it is hereby ordered that the Defendant shall pay the Claimant the following:

²² Civil Appeal No 1 of 1996

- (1) Special damages in the sum of \$23,772.99 with interest thereon at the rate of 2.5% per annum from the date of the accident to the date of judgment on assessment.
- (2) Damages for pain and suffering and loss of amenities in the sum of \$40,000.00 with interest thereon at the rate of 5% per annum from the date of the accident to the date of judgment on assessment.
- (3) Damages for loss of future earnings in the sum of \$248,400.00.
- (4) 60% of prescribed costs.
- (5) Interest.



Jan Drysdale

Master

By The Court
[Signature]
Registrar