

THE EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE

GDAHCV2017/0346

BETWEEN:

CATHERINE SYLVESTER

CLAIMANT

AND

GEO .F. HUGGINS & CO (GRENADA) LTD

DEFENDANT

Appearances:

Ms. Hazel Hopkin for the Claimant

Mrs. Crystal Braveboy-Chetram for the Defendant

2019: November 12th
2020: March 3rd

Judgment

Burnett, M. (Ag.):

- [1] This is an assessment of damages after Judgment in Default of Acknowledgment of Service was entered on behalf of the claimant

BACKGROUND

- [2] On the 11th September, 2017, the claimant filed an action against the Defendant, the owner and occupier of the Foodland Supermarket located at Kirani James Boulevard.
- [3] The claimant alleges to have been struck on the left side of the head by a canned good that fell off one of the shelves.
- [4] The claimant claims special damages, general damages, interest and costs.

- [5] On the 20th October, 2016, Judgment in Default of Acknowledgment of Service was entered for the claimant as follows:
- Special damages of \$4,530.16.
 - General damages to be assessed.

SPECIAL DAMAGES

THE LAW

- [6] The claimant relied on the case of Grant v Motilal Moonan Ltd¹ for the proposition that the value of each item of loss claimed as special damages must be strictly pleaded, particularized and proved.
- [7] The claimant also relied on the Grant v Motilal Moonan Ltd for the proposition that where due to the nature of certain items claimed it is not possible to produce a receipt. It is within the Court's jurisdiction to make an award to reflect the loss as appropriate.
- [8] The claimant claims that the sum of \$5,100.00 being \$4,030.00 in respect of damages pleaded in the Claim Form and \$1,070.00 in respect of additional expenses incurred after filing of the Claim Form.
- [9] The defendant raises no issue with this amount being awarded to the claimant. I would therefore award the sum of \$5,100.00 to the claimant as special damages.

GENERAL DAMAGES

- [10] In assessing general damages the following factors must be taken into consideration²
- (a) The nature and the extent of the injuries sustained
 - (b) The nature and the gravity of the resulting physical disability
 - (c) Pain and suffering
 - (d) Loss of amenities
 - (e) The extent to which pecuniary prospect was affected.
- [11] The nature and extent of the injuries sustained by the Claimant are as follows:
- (a) Moderate tenderness on palpation of the left temporal area of scalp;
 - (b) Mild ataxia in her heel to toe gait; and
 - (c) No intra cranial bleed or fracture
- [12] The nature and gravity of the resulting physical disability:

¹ (1988) 43 WIR 372

² Wooding CJ in Cornillac v St. Louis (1965) 7W.I.R. Page 492.

The claimant contends that she presently suffers from a physical disability which affects her ability to lead a normal life.

PAIN AND SUFFERING

- [13] Immediately after the injury, the claimant contend that she suffered pain and discomfort. She contends that the pain continued unabated and that she was prescribed medication.

LOSS OF AMENITIES

- [14] The claimant contends that the injury has caused her pain and discomfort which affects her ability to engage in several activities.

NURSING CARE

- [15] The claimant contends that for three (3) weeks immediately after the accident, she was unable to carry out personal duties of hygiene and preparation of meals.
- [16] A witness statement was submitted by Philbert Pierre who avers that he assisted the claimant with the preparation of her meals, fed her, and provided laundry and cleaning service to her.

AUTHORITIES

- [17] In evaluating the compensation which should be attributed to the claimant, the Court considered cases submitted by both parties:
- Mercedes Delplesche v Samuel Emmanuel De Roche³ - in that case, Lanns M awarded \$65,000.00 where the claimant sustained trauma to the head and left knee, abrasions to the face laceration to the forehead, nose and lower hip bleeding from left nostril.
 - Jessica Ledger et al v Heslyn Codougan et al⁴ the claimant suffered the following injuries as a result of motor vehicle accident:
 - (a) Superficial abrasion on the left forehead with underlying hematoma
 - (b) Superficial abrasion was noted to the medial aspect of the right arm
 - (c) Laceration approximately 1 cm on left lower extremity in length to the left knee as well as superficial abrasions were noted to the left leg.
 - (d) The claimant was awarded the sum of \$30,000.00 for pain and suffering and \$10,000.00 for loss of amenities.

³ Claim No 41 of 2012

⁴ SVGHCV2013/0077

- *Haley Glasgow v Cameron Veira and others*⁵ - in that case the claimant struck her head on the windscreen of her vehicle and suffered a whiplash injury. The Court awarded \$15,000.00 for pain and suffering and \$5,000.00 for loss of amenities.
- *Eilett Charles & Others v Sandford Mofford and Vivian John*⁶ the second named claimant was awarded general damages of EC\$5,000.00 after she suffered swelling of the paracervical muscle, decrease range of motion of the cervical spine, severe pain in the neck and headache on account with motor vehicle accident.
- *Azquilt Mc Lean v Sheldon Bynoe*⁷ - the claimant who was struck with a cinder block on the left side of his head, sustained a 4 cm laceration to left parietal region of the scalp and was admitted to the hospital for six (6) days after complaining of headaches, vomiting and light headedness. The CT scan was unremarkable and there was no evidence of skull vault fracture. The claimant was absent from work for three (3) months during which time he endured intense pain. Master Lanns awarded the claimant \$15,000.00 as general damages for pain and suffering and loss of amenities.

ANALYSIS AND CONCLUSION

GENERAL DAMAGES

- [18] After careful review of the cases submitted by both Counsel and applying the five (5) factors which affect the award of general damages to the matter, I find that in Catherine Sylvester's case; damages are recoverable for pain and suffering and loss of amenities.
- [19] However, some of the authorities submitted in this matter were at significant variance with the injuries sustained by the claimant in this matter.
- [20] The award seeks to be a fair and reasonable amount to compensate the claimant for loss or injury caused to her by the defendant's action. It is intended to put the claimant in the position she would have been, had she not sustained the injury.
- [21] In *Wells v Wells*, Lord Hope of Craighead⁸ said this:
 "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's reasonable and in line with similar awards in comparable cases as represents the Court's best estimate of the plaintiffs' general damages..."
- [22] The claimant's injuries are detailed as: Moderate concussion – the doctor concluded that the headaches that the claimant continues to experience are due to the concussion and is likely to persist for an indefinite period.

⁵ Civil Suit # 571/1998

⁶ Civil Suit # 516 of 1994 (SVG)

⁷ Civil Suit # 463 of 2006 (SVG)

⁸ (1998) 3 All ER 481

- [23] Counsel for the claimant submitted that an award in the amount of \$35,000.00 for pain and suffering and loss of amenities would be appropriate. While Counsel for the defendant submitted that an amount of \$5,000.00 to be adequate.
- [24] I have noted the case submitted for my consideration. I have evaluated the medical evidence submitted. Having been guided by the case and the particular circumstances of the case at bar, I apply my discretion thereto and award the claimant the sum of \$10,000.00 for her pain and suffering and loss of amenities.

NURSING CARE

- [25] The claimant asserts that for about three (3) weeks post accident, she was assisted by one Philbert Pierre with self-care and daily chores.
- [26] Mr. Philbert Pierre's witness statement asserts that he helped the claimant in preparing meals and feeding her, washed and cleaned for the claimant.

AUTHORITIES

- [27] In evaluating what compensation should be awarded to the claimant the Court considered the case submitted by both parties: *Cleos Billigny v Keyon Jessie–Don Anderson and Leonet Anderson*⁹. In that case, the Court made an award for nursing care where the claimant pleaded in the Statement of Claim that for five (5) months, his arm remained in a cast, he was unable to use it and that he relied on the assistance of family. At paragraph 40 of the decision, Master Pearletta Lanns states: "It is the law that if a wife or mother or other member of the family undertakes to provide nursing care, an allowance will be made for the fair value of the services rendered because they are services necessary by the injury, although the claimant has made no agreement to pay for them (see *Cummingham v Harrison* [1973] QB 942: [1973] 3 All ER 463)"
- [28] *Christopher Ned Joachim v Damien Francis Luke*¹⁰. In that case Master Corbin-Lincoln, at paragraphs 7 to 13, rationalized why nominal damages in the sum of \$1,000.00 was appropriate in a case where the family member provided post-accident care to the claimant, notwithstanding the absence of evidence to prove a loss of \$300.00 per week.

ANALYSIS AND CONCLUSION

- [29] The claimant submitted that there was no contractual agreement for the provision of nursing care and urged the Court to award the sum of \$2,100.00 for the period of 21 days.

⁹ Claim No: SVGHCV2013/0096

¹⁰ DOMHCV2015/0139

- [30] While the defendant proffered that no loss was proven by Philbert Pierre and urged the Court that if the Court is satisfied that Mr. Pierre provided gratuitous care to the claimant over and above that which would have been given in the ordinary course of family life, the appropriate award ought to be nominal damages not exceeding \$1,000.00.
- [31] In determining the sum to award the claimant, the Court propose to be guided by the Learned Authors of Habbury's Laws of England where it has been stated as follows: "where the injured plaintiff is cared for not by professional paid caterers but by volunteers whether members of his family or otherwise, 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 care taker who has given up paid employment to care for the plaintiff, or a combination of the two. A plaintiff who receives damages for services rendered by another holds the relevant amount on trust for that other." (4th edition revised 12(1) paragraph 898).
- [32] In the case at bar, I propose to adopt the legal principle adopted in the case of Sidney Binder v Juan Callister Martin John where the Court found that there was no evidence that the claimant's family members, particularly his wife, had to give up employment \$1,000.00 was awarded as a reasonable compensation for this head of loss and I will make a similar award.

IT IS HEREBY ORDERED AS FOLLOWS:

1. General Damages in the sum of \$10,000.00 together with interest at the rate of 6% per annum from the date of service of the Claim Form until the date of judgment and thereafter, at the rate provided in the Interest Act, from the date of judgment until payment.
2. Special Damages in the sum of \$5,100.00 at the rate of 3% from the date of incident to the date of judgment, and on the judgment sum, at the rate of 6% from the date of judgment to the date of payment.
3. Costs to be paid by the defendant to the claimant, pursuant to Part 65.5 of the Civil Procedure Rules 2000.



**Rickie Burnett
MASTER (Ag.)**

By the Court

Registrar *AS*

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SUPREME COURT
GRENADA
WEST INDIES