

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

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **SVGHCV2018/0194**

BETWEEN

Ezra Neverson

CLAIMANT

and

The Seafarers Shipyard Group Ltd.

DEFENDANT

Appearances:

Ms. Anne Marie Jack of Counsel for the Claimant

2019: July, 3rd;
2020: February, 7th

JUDGMENT

- [1] **Moise, M.:** This is an application for an assessment of damages. The claimant filed his action on 10th December, 2018, claiming compensation for an injury which he sustained during the course his employment. The defendant failed to file a defence within the prescribed time and judgment was therefore entered in default on 3rd January, 2019. The claimant has duly served the judgment as well as provided notice to the defendant of the date of the hearing of the assessment of damages. I will therefore examine the facts in order to determine an appropriate award of damages to order against the defendant.

The facts

- [2] The claimant was an employee of the defendant. On 7th February, 2018, in the course of his employment, he was loading an engine block onto a container. He was assisted by other colleagues in this endeavor. Notwithstanding this, the engine block slipped while the claimant was using a piece of pipe to push it into the container. This caused the pipe to hit the claimant's leg, causing him significant injury to the extent that his leg was amputated on 14th February, 2018.

- [3] In the medical report dated 21st September, 2018, Dr. Woods indicated that the claimant was presented to the accident and emergency department of the Milton Cato Memorial Hospital on 7th February, 2018. The report states that the claimant suffered from a compound fracture of the tibia and fibula of the right leg. Prior to that incident, the claimant suffered from a fracture of the right tibia sometime in 1996. He therefore had a pre-existing injury.
- [4] The medical report also indicates that the claimant was in moderate distress mostly because of the pain he was suffering. He was admitted to the male ward and the leg was x-rayed. He was treated with analgesics and antibiotics. The claimant's wounds were dressed daily but continued to bleed. In fact, two units of blood were transfused. The injury continued to "ooze and became foul smelling". One more transfusion was done prior to surgery. The leg was amputated below the knee on 14th February, 2018. Thereafter he was advised that the injury would be dressed daily at first and then on alternating days. He was discharged from the hospital on 26th February, 2018 on antibiotics. The claimant states that upon leaving the hospital he used crutches while walking. Although the medical report indicates that he was to continue as an outpatient at the orthopedic clinic, the claimant does not present much evidence regarding this treatment.

The assessment of damages

- [5] Having briefly outlined the facts as it relates to the injuries sustained, I am to consider the following issues: i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the impact the injuries had on the claimant's pecuniary prospects. I will examine each one of these factors in turn.

(i) The nature and extent of the injuries sustained

- [6] There can be no doubt that the claimant suffered significant injuries. He states in his witness statement that he noticed the bone in his leg was sticking out and that it was bleeding. The injury was significant to the extent that amputation was necessary. He spent a total of 19 days in the hospital and had to undergo surgery. The bleeding was significant to have necessitated 3 transfusions during his treatment at the hospital.

(ii) The nature and gravity of the resulting physical disability

[7] As I indicated earlier, the evidence presented does not give any post treatment diagnosis regarding the claimant's level of disability. Notwithstanding this, it would be obvious that an injury which necessitated the amputation of the right leg must result in significant disability. The claimant was given crutches when leaving the hospital. On one occasion he fell on the streets in Kingstown as he tried to navigate life without his right leg.

(iii) The pain and suffering endured

[8] The claimant states that at the time of the injury he was in a lot of pain. He states that his injury was "scary to see". He received some pain medication at the hospital. He continued to be in a lot of pain after he was discharged. He had to adjust to life using crutches and found it hard to move around. Although the wound has healed, it still feels tender to touch.

(iv) The loss of amenities

[9] The claimant was 45 years old on the date of the incident. It is his evidence that he enjoyed working with the defendant but was afraid to continue doing so after the accident. Although counsel, in written submissions has referred to the claimant still being employed with the defendant, the evidence presented does not address this issue. He could not cook and do other household chores for himself. He used to go hunting wild animals and planting various crops, such as pineapple, peas and ground provisions. This he did to supplement his income. He could no longer engage in these activities after the accident. He states that there are times when he feels a sensation in his leg which makes it seem like the lower part of the limb is still there. However, when he looks down and observes his leg he feels sad because of the disfigurement.

(v) The impact the injuries had on the claimant's pecuniary prospects

[10] The claimant has presented very little evidence regarding his pecuniary prospects. While he claims to have worked for the defendant and outlined the nature of this work, the medical evidence does not address the effect these injuries would have on his ability to work. Further, it is unclear as to whether he has in fact returned to work. However I am also of the view that, given the nature of his

work with the defendants and his pastime in hunting and farming, it would be natural that an amputated limb would affect his ability to perform on the job in some way.

Special Damages

[11] The claimant presented invoices and claimed the sum of \$458.25 in direct expenses. I see no reason to deny him this claim. I note that he has also claimed the sum of \$350 in compensation for domestic care for a period of one month. He states that a gentleman referred to as “Short Man” assisted him during this period. Whilst the medical report does not address the issue of whether domestic services would have been required by the claimant, I am of the view that the nature of the injury itself is enough to find that these services were required. I would award the sum of \$350.00 as claimed for domestic services.

General Damages for pain, suffering and loss of amenities

[12] The claimant refers to the case of ***Violine Joseph v Terese Morris et al***¹. In that case the claimant was awarded \$85,000.00 for pain and suffering and \$50,000.00 for loss of amenities for a crushed injury to the right leg, which resulted in amputation of the leg. He also refers to the case of ***David Moore v. Hutchinson Construction Company Limited***² where this court awarded the claimant the sum of \$85,000.00 for pain and suffering and \$40,000.00 for loss of amenities. The claimant also refers the court to the case of ***Mark Carter v. St. Clair Latham***³ where the claimant’s hip was fractured and his right leg was amputated. He was awarded \$217,000.00 in general damages for pain, suffering and loss of amenities.

[13] Taking all of these cases into account, I am satisfied that the claimant has suffered significant enough an injury to warrant an award within the range provided in these cases. I would award the sum of \$140,000.00 for pain and suffering and a further \$60,000.00 for loss of amenities.

¹ ANUHCV2006/0133

² SVGHCV2015/0108

³ SVGHCV2005/0524

Loss of Earning Capacity

[14] In written submissions filed on his behalf, the claimant seeks damages for loss of earning capacity.

Counsel for the claimant relies on the authority of *Karen John v. David Dibique*⁴ where Master Taylor Alexander (as she then was) indicated that the court may grant such an award if there is a strong likelihood that were the claimant to lose his current employment, he would be disadvantaged in the labour market. In the unreported case of *Jasmine Nichols v. Rodney Davis*⁵, Master Glasgow (as he then was) awarded the sum of \$36,000.00 for loss of earning capacity. What was argued in that case was that a *Smith v. Manchester* award was to be granted. The master accepted the submissions of the claimant that in calculating the award, the annual income ought to have formed the basis of that calculation and adopted a multiplier of 4. However, I am not at all sure that this is a universally acceptable approach.

[15] In his witness statement, the claimant states that he was employed with the defendant from 7th September, 2017 and was responsible for working on the sandblast, loading containers and steel bending. He also gave evidence of other sources of income such as hunting and farming. He earned \$572.00 fortnightly with the defendants. It is unclear as to whether he is still employed with the defendants as he has expressed some apprehension in returning to work. Taking all of this into account I would award the sum of \$36,000.00 in damages for loss of earning capacity of the claimant.

[16] In the circumstances I would award the claimant the following in damages:

- (a) \$450.00EC as special damages for medical expenses
- (b) \$350.00 as damages for domestic care services
- (c) Interest on special damages at a rate of 3% per annum from the date of the incident;
- (d) General damages for pain and suffering in the sum of \$140,000.00EC and for loss of amenities in the sum of \$60,000.00EC.
- (e) Interest on general damages at a rate of 6% per annum from the date of judgment until paid in full;

⁴ SVGHCV2009/0359

⁵ SVGHCV2016/0160

- (f) Loss of future pecuniary prospects in the sum of \$36,000.00EC with no interest;
- (g) Prescribed costs in the sum of \$12,825.00;
- (h) Costs on the assessment in the sum of \$1000.00

Ermin Moise
Master

By the Court

Registrar