

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

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

Claim Number: **SVGHCV2018/0072**

BETWEEN

**Carlos Baptiste
Madestine Baptiste**

CLAIMANTS

and

Edwin Ballantyne

DEFENDANT

Before: MASTER Ermin Moise (on paper)

Appearances:

Mr. Ronald Marks with Mrs. Patricia Marks-Minors of Counsel for the Claimant
Ms. Samantha Robertson of Counsel for the Defendant

2019: July, 1st
2020: February, 7th

JUDGMENT

- [1] **Moise, M.:** The claimants are husband and wife respectively and brought this action against the defendant for personal injuries sustained in a motor vehicular accident which occurred on 7th August, 2016. The defendant admitted liability to the accident and judgment was therefore entered on admission on 14th August, 2018. The claimants now seek an assessment of the damages to which they are entitled.

The facts

- [2] The claimants were 47 and 48 years old respectively at the time of the accident. They were paying passengers on the defendant's motor vehicle on 7th August, 2016. The motor vehicle was involved in a collision. As a result of this the claimants both sustained personal injury.

- [3] Mr. Baptiste suffered an injury to his head and shoulder and lost consciousness. He was transported to the Georgetown Clinic and later to the Milton Cato Memorial Hospital (MCMH). He states in his witness statement that he was in intense pain until he was treated at the MCMH. He underwent a CT scan and remained at the hospital for two days. The results revealed no demonstrable intracranial lesions and left frontal sinusitis. After what was described medically as a favourable hospital course, Mr. Baptiste was discharged two days later with instructions to wear a Velcro arm sling and to follow up with the orthopedic clinic in 3 weeks.
- [4] On 18th November, 2016, Mr. Baptiste was examined by Dr. Charles Wood. In his report, Dr. Wood states that Mr. Baptiste continued to complain of weakness of the right shoulder and occasional pain. He also complained of occasional neck pain and headaches. Dr. Woods noted that Mr. Baptiste had some anterior shoulder tenderness, with good range of motion. He had no neurological deficits and there was good range of motion of the cervical spine. He was diagnosed with post-concussion headaches and mild shoulder capsulitis. Physiotherapy was recommended for the shoulder but it was noted that there may be a continuation of chronic shoulder pain.
- [5] Dr. Woods further examined Mr. Baptiste on 19th November, 2018. Mr. Baptiste continued to complain of intermittent neck pains. The doctor however noted that there was good range of motion of the neck and no neurological deficits. It was noted that Mr. Baptiste had developed arthritis of the shoulder which will be chronically debilitating and would potentially worsen with age.
- [6] In his witness statement Mr. Baptiste states that on being discharged from the hospital he had great difficulty in carrying out the simplest of tasks. He states that he had to rely greatly on family and friends during his recovery period as he could not use his right hand; which is his dominant hand. He experienced headaches which caused him to stay in bed for days. It was his son who helped him with his daily personal needs. Mr. Baptiste goes on to state that he could not do his job as a small machine operator and could not tend to his crops. He had to pay someone \$30.00 per day to assist with this. Further to this, Mr. Baptiste states that he followed up with Dr. Woods at his clinic because he was experiencing severe pain to his shoulder and neck. He also experienced headaches. He visited Dr. Woods again in November 2018 due to the weakness and stiffness to his right shoulder.

- [7] In assessing this evidence however, I wish to state that there appears to be some difference between the severity of the injury described by Mr. Baptiste in his witness statement and that which is contained in the medical reports. Mr. Baptiste states, for example, that he visited Dr. Woods due to the severe pain he was experiencing in his shoulder and neck. Yet in the report, Dr. Woods indicates that Mr. Baptiste complained of weakness to his shoulder and occasional pain. He also complained of headaches and neck pains. His condition was there described as being mild. In the report on November, 2018 there is an indication that the stiffness and weakness to the shoulder is related to exertion as work. This requires analgesics. The report however does not go so far as to describe the injury as debilitating and severe in the manner described by Mr. Baptiste in his witness statement. This description is not one which is made up by the doctor. The medical report addresses the doctor's own findings on physical examination, but also indicates what was pointed out to him by the claimant at the time of the examination.
- [8] The medical reports do not give one the impression that the injuries were necessarily severe to the point that Mr. Baptiste was unable to perform his daily functions. In my view, the court may at times be able to infer the level of the claimant's incapacity from the nature of the injury itself. In cases such as an amputation for example, or an injury which necessitated major surgery, the court would be able to infer this level of disability without more. However, in most cases it would be more than useful if such issues are addressed in the medical reports to the extent that a doctor, who is an expert in the field, is able to explain to the court whether this type of injury is likely to cause a level of disability so as to necessitate domestic care services or a period of incapacity at work. This may also be necessary to assist in determining whether there is a likely impact on the future pecuniary prospects of the claimant.
- [9] Mrs. Baptiste also sustained injury as a result of the accident. She states that she lost consciousness as a result of her injuries. When she awoke she was disoriented and felt pain in her head, neck and back. She was transported to the Georgetown clinic and then to the Milton Cato Memorial Hospital. She underwent a CT scan. She described her pain as being intense. She was discharged from the hospital after two days.
- [10] Mrs. Baptiste, like her husband, states that she was unable to carry out basic tasks after being discharged from the hospital. She couldn't attend to her crops, which was at least part of her

monthly source of income. She states that she relied on her son for physical domestic assistance due to her experiencing bad headaches and pain in her back, which caused her to be in bed most days. She states that she followed up with her district doctor and visited Dr. Woods in November, 2017. I note however, that the medical report indicates that the visit took place in November, 2016. It is unclear to me as to which of these two dates is correct.

[11] Dr. Woods, in his report dated 28th November, 2017, indicates that Mrs. Baptiste complained of chronic neck stiffness and tension. She also complained of chronic right side back pain radiating down the right leg. On examination she had some neck and lower back stiffness. There were no neurological deficits. She was diagnosed with cervical ligament injury and mild sciatica, secondary to trauma. It was recommended that she undergo heat and exercise therapy and may have chronic back and neck pain as a result of her injury. She was further examined on 19th November, 2018 and complained of occasional neck pain and radiating pain to the left shoulder, which sometimes limits her activity, and requires analgesics for relief. There was also a complaint of pain to the left lumbar spine and some mild back stiffness. Upon examination, Dr. Woods noted that there was mild lumbar tenderness with good range of motion to the spine. There was also some left cervical muscle tenderness. The doctor recommended long term treatment with physiotherapy.

The assessment

[12] In the case of ***Cornilliac v St. Louis***¹ it was determined that in assessing general damages in personal injury cases the court is to consider a number of factors. These are 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 consider each of these factors in addressing the injuries sustained by the claimants in this case.

(i) The nature and extent of the injuries sustained

[13] Mr. Baptiste's injuries were such that he was rendered unconscious immediately after the accident took place. His injuries were to his head, neck and shoulder area. This necessitated medical intervention which resulted in him remaining in the hospital for a period of 2 days. I have outlined

¹ (1965) 7 WIR 491

earlier the complaints he continues to have regarding his injuries and note that some of these will remain chronic for the rest of his life. He has developed arthritis and his condition is expected to continue for the remainder of his life.

[14] Mrs. Baptiste suffered injuries which were similar to those of her husband. She was rendered unconscious and spent two days in the hospital. She has been diagnosed with cervical ligament injury and mild sciatica. She continues to experience pain and discomfort and her condition is also expected to continue for the rest of her life.

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

[15] Both claimants were unconscious for a period of time. There is however no indication from the evidence as to precisely how long this continued in either case. Both claimants also claimed to have been unable to perform daily functions and claimed to have needed assistance to perform household chores and care for themselves. They also claimed to have been unable to perform work on their farm and, in the instance of Mr. Baptiste, he claims to have been affected in the performance of his job at work. I have however noted that the medical evidence presented to me does not address this issue. While the conditions of both claimants are said to be chronic, the doctors do not go so far as to conclude that there is any significant resulting physical disability.

(iii) The pain and suffering endured

[16] Both claimants describe the pain they endured as being intense. They continue to feel pain up until the time of the assessment. They also complain of pain in the affected areas and in some instances weakness when performing tasks. Both parties complain of chronic head and neck pains.

(iv) The loss of amenities

[17] Mr. Baptiste was 47 years old at the time of the incident. He states that he was troubled in some way at being unable to care for his wife regarding her own injuries. He states that he had difficulty lifting heavy objects. He states in his witness statement that prior to the accident he enjoyed a very sociable life. He went out with his wife on occasion. Due to the injuries they remain mostly indoors.

[18] Mrs. Baptiste, on the other hand, states that she was an active wife and mother and partook in social activities. She states that she could no longer perform many of the tasks which she undertook for her family and no longer attends social activities.

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

[19] Mr. Baptiste states that he has been demoted at work as a result of his inability to perform tasks as well as he used to. He states that he previously earned \$100.00 per day and sometimes worked overtime for extra pay. He has however been reassigned to perform another task and is now paid \$60.00 per day. Even then he states that he was only able to return to work about 6 months prior to the filing of his witness statement.

[20] I must repeat my initial concern regarding the nature of the evidence presented by the claimants. If indeed one is to examine Mr. Baptiste's evidence at its highest, he appears to be claiming his inability to work for almost two years subsequent to the date of the accident. Yet the medical reports do not address this issue in anyway. Neither has he presented any evidence from his employer regarding this period of incapacity. He described his employment as a small machine operator with Gibson's Construction but speaks to having to lift heavy objects. He also states that he has now been assigned to manually operate a small concrete mixer which appears, by his evidence, to be much more labour intensive. There is no documentary evidence of his actual income, either before or after the injury.

[21] Whilst I appreciate that Mr. Baptiste's evidence has gone uncontested, as there was no cross examination, the court must be concerned in ensuring that it properly assesses the evidence in a manner which is fair to both sides. If the court is called upon to assess the facts in order to determine an appropriate measure of damages to be awarded, it must satisfy itself that the evidence is sufficient. I am of the view that such an extended period of incapacity should be supported by expert advice and also evidence from the claimant's own employer, if possible, in order to assist the court in coming to its conclusion. I take the point that the claimant spent two days recovering in the hospital and must have been out of work for some time. But a two year incapacity for what was initially described medically as a mild injury ought to have been supported

by more evidence than what was presented. Had Mr. Baptiste been entitled to some measure of social security benefit for such incapacity, he would have certainly needed to present medical and other evidence to support his claim. The court ought not to operate any differently, unless there are obvious and compelling reasons to do so. I am therefore not satisfied, on the balance of probabilities, that Mr. Baptiste's claim for loss of earnings and future pecuniary losses is sufficiently supported by evidence; at least not in terms of the quantum claimed.

Special Damages

[22] Mr. Baptiste claims the sum of \$470.00 in special damages for medical expenses. He has presented evidence to support this and I would grant him this award as pleaded. Mrs. Baptiste also seeks the same award and has provided sufficient evidence to substantiate this claim.

General Damaged for pain, suffering and loss of amenities

[23] Counsel for the claimant refers to the case of ***Mercedes Delplesche v. Samuel De Roche***² in support of the damages to be awarded to the defendants. In that case the claimant suffered from trauma to the head and left knee, abrasions to the face, laceration to the forehead, nose, lower lip and bleeding from the left nostril. She was awarded the sum of \$65,000.00 in general damages for pain, suffering and loss of amenities. Reference is also made to the case of ***Lenroy Connor v. Cynthia Flemming***³ where the claimant was awarded the sum of \$65,000.00 in general damages for pain, suffering and loss of amenities. In that case he suffered from tightness and weakness of the posterior neck muscles, episodic pain in the left neck radiating down to the shoulders and then to the fingers; sticking of the left little finger, episodic falling of the left thumb into the pal and painful spasms of all the fingers which lasts for a short time before wearing off. It was determined by the doctor that arthritis would develop in a few years resulting in cervical spondylosis. Both cases referred to by the claimants date back to 2012.

² SVGHCV2012/0041

³ SVGHCV2012/0353

[24] I wish to refer to the case of **Benn V Community First Coop. Credit Union LTD⁴**, where the claimant suffered from injuries to her neck, shoulders, lower back and hips. The evidence was that he continued to experience intermittent pain for in excess of a year. She underwent physiotherapy and medication to assist with her pain. The claimant experienced flare ups which hampered her ability to drive and the performance her normal household chores. In 2007 she was awarded \$40,000.00 in general damages for pain, suffering and loss of amenities.

[25] I note that the claimants in the current case have largely suffered similar injuries. I am of the view that the authorities referred to are of similar facts, sufficient to guide this court into coming to its own conclusions in the present case. I have assessed however, the differences in the impact the injuries would have had on each claimant. I would award the sum of \$70,000.00 in general damages for pain, suffering and loss of amenities to Mr. Baptiste and the sum of \$45,000.00 under this head of damages to Mrs. Baptiste.

Loss of Earning Capacity

[26] As I stated earlier, I am not satisfied that there is sufficient evidence to make an award for loss of earnings or loss of earning capacity as it relates to Mr. Baptiste's employment. I do however conclude that in the immediate aftermath of the accident the claimants would have been hampered in their work as farmers. I would award the sum of \$10,000.00 jointly in order to address this issue.

[27] In the circumstances the defendant will pay damages as follow:

- (a) \$470.00EC as special damages for medical expenses to Mr. Baptiste
- (b) \$470.00EC as special damages for medical expenses to Mrs. Baptiste
- (c) \$10,000.00 jointly to the claimants for loss of earnings.
- (d) Interest on special damages at a rate of 3% per annum from the date of the incident;
- (e) General damages for pain, suffering and loss of amenities in the sum of \$70,000.00EC is awarded to Mr. Baptiste.
- (f) General damages for pain, suffering and loss of amenities in the sum of \$45,000.00EC is awarded to Mrs. Baptiste

⁴ ANUHCv2007/0725

- (g) Interest on general damages at a rate of 6% per annum from the date of judgment until paid in full;
- (h) Prescribed costs in the sum of \$7,928.88;
- (i) Costs on the assessment in the sum of \$1000.00

Ermin Moise
Master

By the Court

Registrar