

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

CLAIM NO: SLUHCV2018/0558

BETWEEN:

RHEA FLETCHER

Claimant

and

NICHOLINA JAMES

Defendant

Appearances:

Mrs. Kimberley Roheman of Counsel for the Claimant
Mr. Andie George of Counsel for the Defendant

2020: February, 4th
2020: February, 17th

JUDGMENT ON ASSESSMENT OF DAMAGES

[1] **SANDCROFT, M. [Ag]:** On 2nd November, 2018, the Claimant filed this claim for damages for personal injury. On the 7th day of February, 2020, Judgment in Default of Acknowledgement of Service was entered against the Defendant and in favour of the Claimant for damages to be assessed. The Claimant has now brought this application for an assessment of damages.

The facts

[2] The Defendant on the 4th day of September, 2017, whilst the Claimant and a relative were seated on a balcony, opened the balcony door and pulled her son who was on the balcony in. Thereafter, the Defendant reopened the balcony door and threw hot water on the Claimant.

[3] At the medical facility the Claimant was attended to by Dr. Segun Tobias, who provided a comprehensive report on the Claimant's condition and the treatment she received. Dr. Segun Tobias

diagnosed the Claimant as suffering from injuries as follow: first and second degree burns to the breasts, second degree burns to the right of the abdomen, second degree burns of both arms, first degree burns to upper thighs, scarring and hypopigmentation of the skin.

- [4] The Claimant also suffered pigmentary changes to the left arm, left thigh, darkening and thickening of the skin of the right flank and right thigh, noted to have become flatter, but still very dark. Of note, this blistered and became infected at the time of the burning. Post-inflammatory hyperpigmentation distributed to the left areola, right medial breast 3-4.00 region, left distal posterior upper arm, perumbilical skin, and right anterior proximal thigh.
- [5] Another medical practitioner by the name of Dr. Radusky counselled the Claimant regarding what her expectations should be in light of her injuries: lighter or darker discolouration than the surrounding skin, which could take months to years to normalize, that it is important that there is sun avoidance and sun protection, that there can be drying to the skin, that cosmetic glycolic acid peels may prove necessary.
- [6] The claimant describes the effect of her injuries in the following manner:

“I was born on the 22nd March, 1986. I am scarred physically and mentally by the attack I sustained and to this day I cry and feel emotional having to revisit the malicious assault/incident.

I hid out at my Cousin’s home in Beausejour until my mother was able to come to St. Lucia or on about 14th September i.e. about ten (10) days after I sustained the injury.

I was continuously in excruciating pain in the area of my thighs, there was a gland near my vagina, walking was very difficult for the first four weeks.”

- [7] The Claimant therefore claims special damages for the cost of skin specialty dermatology treatments and medical bills as well as other expenses. She claims special damages of \$1,711.26 and damages including aggravated damages. She also claims general damages for pain and suffering. The Claimant also relies on a Criminal Conviction before the First District Court on 22nd August, 2016 wherein the Defendant was sentenced to twelve (12) months imprisonment suspended for three (3) years.

Claimant's Submissions

- [8] The Claimant relies on the case of **Ann Robertson v The Attorney General** Claim No. GDAHCV2009/0338 2010, July 13, October 20, where on the authority of **Hayward and Another v. Pullinger & Partners Ltd** [1950] 1KBD 581 and **Ilkiw v Samuels** [1963] 1 WLR 991 it is established that special damages, which are generally capable of exact calculation have to be specifically pleaded and proven.
- [9] And in **McGregor on Damages** 16th edition [2003] paragraph 43-006 states as follows:

“Where the precise amount of a particular item of damage has become clear before the trial, either because it has already occurred and so becomes crystallised or because it can become measured with complete accuracy, this exact loss must be pleaded as special damage.”

- [10]The Claimant further submits that it is reasonable that all receipts presented flow from the injury and are on a balance of probabilities: medicines and treatments reasonably required as ordered by the Medical Practitioners that is recede topical gel, burn cream and recede mini peel pads. The Case relied on here is the case of **Liverson Sandy v. Antigua Public Utility Authority** (Citation).

General Damages

- [11]The Claimant cited the aforesaid case of **Ann Robertson v the Attorney General Grenada** where it was stated:

[7] As far as General Damages are concerned Counsel have both set out the factors to be considered by the Court on assessment based on the decision **Cornillac v St. Louis** (1965) 7 WIR 491. These factors are the nature and extent of the injuries sustained, 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 the injured party's pecuniary prospects have been materially affected. Further, applying the principles in **Heeralall v Hack Bros.** (1977) 15 WIR 117, the law expects an award of fair compensation, fair to Ms Robertson for what has happened to her through the negligence of the defendant

and fair for the defendant to pay for such negligence. Such damages cannot be perfect compensation, but it will be fair compensation for her injuries and for the social, economic and domestic consequences to her.

[12] There is the case of **Liverson Sandy v Antigua Public Authority and Another** Claim No. ANUHCV1998/0156 July 2003, 29 July 2003, where the Claimant suffered second degree burns to both sides of his face, upper central chest, right forearm and hand. The skin had been burned off those areas. This had caused some degree of scarring, despite extensive plastic surgery. It is to be noted that the Claimant in that case had to undergo reconstructive surgery. In the instant case, the sum of \$44,145.15 for special damages and general damages of \$65,000.00 were awarded.

[13] Also, the case of **Lloyd v Poon Tips Ltd 19 T.T.J. (IV) 163**, where there were burns over 20% of the Claimant's body, the most serious burns were on the legs and feet. The award was \$76,757.00 which is equivalent to \$30, 693.82 (adjusted to November 2002).

Aggravated Damages

[14] The Claimant cited the case of **Levi Maximae v The Chief of Police et al DOMHCV2009/0054**, where it was rehearsed by Stephen J:

[67] The claimant also claims aggravated and exemplary damages. Aggravated damages may be awarded to compensate a claimant whose injury has been aggravated by the conduct of the defendants. It is compensation which takes into account the motives and conduct of the defendant over and above the ordinary damages flowing from the injury done to the plaintiff.

[68] Aggravated damages are considered to be damages assessed to compensate a claimant for the additional distress or injury to feelings arising from the manner in which a defendant committed a wrong against a claimant.

[69] These damages will not only compensate the claimant but will provide a measure of punishment to the defendant. Aggravated damages are awarded where there is conduct that requires an exceptional remedy. Aggravated damages are compensatory in nature and operate to compensate for insult and injured pride.

[71] The award is considered as having a threefold purpose that is to punish, deter and prevent. Where the defendant has committed a wrong in an unconscionable manner and for this he should be penalised. At the same time this should be an attempt to both deter him from repeating his conduct, and deter others from acting in a similar way.

[15] The Defendant submits that the invoices presented by the Claimant concerning treatment purportedly received in the United States of America. The Defendant further submits inter alia that there was no evidence that the Claimant was referred by a medical professional in Saint Lucia to medical care in the United States of America, and no evidence that had she continued treatment in Saint Lucia, that it would have been below reasonable quality. Further, other than where it is indicated that cash payments were made, there is no other way of ascertaining whether in fact, payment was made for items listed on the invoices, or in what currency some of the amounts were due. The difficulty as to currency is compounded by the fact that some of the said amounts indicated in paragraph 12 of the Statement of Claim in Eastern Caribbean Dollars are quoted as amounts in United States dollars in the Affidavit in Support of Assessment of Damages filed on behalf of the Claimant on the 10th of July, 2019.

[16] Also, the Defendant submits that the Claimant be paid for Special Damages pleaded and proved in the sum of \$947.25EC.

[17] The Defendant also referred to and cited that the factors outlined in the case of **Cornilliac v St. Louis**¹ are to be considered in arriving at a figure for damages for pain, suffering and loss of amenities. These are i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical

¹ (1965) 7 WIR 491

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.

Discussion & Findings

[18] In seeking to arrive at an award for pain and suffering and loss of amenities, the court adopts the following dictum by Lord Hope of Craighead in **Wells v Wells** [1998] 3 All ER 481:

“the amount of award for pain and suffering and loss of amenities 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 claimant's general damages”.

[19] In assessing the general damages, I am guided by the cases cited and have considered the nature and extent of the injuries sustained by the Claimant as well as the loss of amenities and the extent to which as a consequence of the assault, she has been affected. I also consider that the degree of pigmentation and cosmetic changes of the whole person is a guide for making comparisons and arriving at a reasonable award.

[20] Having considered the similarities and distinguishing features of cases provided for comparison, it is my view that the injuries to Rhea Fletcher are less severe than those sustained by the Claimant in the cases cited, notwithstanding the higher PPD assessment, and while the case of **Lloyd v. Poon Tips Ltd. (Supra)** is closer in comparison, I find that there was no evidence of extensive reconstruction surgery as there was in relation to **Liverson Sandy v Antigua Public Authority and Another (Supra)** while in the case at bar there is evidence that the claimant's pain was intense for several weeks and she still has emotional pain. I find that the injuries suffered by the Claimant Liverson Sandy were more serious than those sustained by the Claimant in the case at bar.

[21] In view of all the circumstances it is my view that the sum of \$35,000.00EC would be adequate compensation for pain and suffering.

Aggravated Damages

[22] In addition to General Damages a party may claim Aggravated Damages and/or Exemplary Damages. In the often-cited decision of **Rookes v Barnard** [1964] A. C. 1129 Lord Devlin examined the elements required for both Aggravated Damages and Exemplary Damages.

[23] In respect of Aggravated Damages, he said this at page 1221:

“It is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite of the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride...”

[24] Similarly in the case of **The Attorney General of Jamaica v Gary Hemans** [2015] JMCA Civ 63 the Court of Appeal provided some direction on the scope of Aggravated Damages at paragraph 22 of the judgment:

“It is to be assumed that by identifying these factors, the learned trial judge recognized that aggravated damages are to be awarded only where there was some feature in the behaviour of the appellant that required the respondent being additionally compensated beyond what he would have received for the assault, false imprisonment and malicious prosecution.”

[25] The Court in **Rookes v Barnard** in discussing Aggravated Damages went on to highlight at paragraph 29, that the fact that this award is one which is compensatory, as distinct from being punitive, must be borne in mind and that there is a risk of over compensation arising out of double counting. Lord Devlin also examined the circumstances under which an award for exemplary damages should be made at page 1226 where he opined as follows: -

“...where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the others,

he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service.”

[26] There are three recognised categories in which exemplary awards are possible. They are oppressive, arbitrary and unconstitutional conduct by government servants, conduct calculated to result in profit, and express authorisation by statute. The Claimant has sought exemplary damages on the basis that the Defendant’s conduct was malicious and intentional. This is akin to one of the recognised categories under which such an award can be made. However, having examined all the circumstances, there is insufficient evidence on which to say that the Defendant’s behaviour not only caused injury but it had been accompanied by high handed, insulting and oppressive conduct which would warrant such an award.. In respect of Aggravated Damages, I have not been able to identify any feature in the Defendant’s conduct that would require additional compensation for the Claimant herein thereby requiring an award for Aggravated Damages.

[27] In the present case, the Claimant has suffered first and second degree burns to several parts of her body. These injuries affected the pigmentation of the Claimant. Her period of recovery was a number of months. I also consider the fact that the injuries were as a direct result of the senseless actions of the defendant. In considering the authority mentioned and the nature of the injuries I would award the claimant the sum of \$35,000.00EC in general damages for pain, suffering and loss of amenities.

[1] In the circumstances the defendant is ordered to pay the following in damages to the claimant:

- (a) Special damages for medical and other related expenses in the sum of \$1,711.26EC;
- (b) Interest on special damages at a rate of 3% per annum from 2nd November, 2018;
- (c) General Damages for pain, suffering and loss of amenities in the sum of \$35,000.00EC;

- (d) Interest on general damages at a rate of 6% per annum from the date of the delivery of this judgment.
- (e) No award is made for Aggravated Damages or Exemplary Damages;
- (f) Prescribed costs calculated in accordance with the Civil Procedure Rules 2000.

**Ricardo Sandcroft
Master (Ag)**

By the Court

Registrar