

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

CLAIM NO.: SLUHCV2019/0026

BETWEEN:

BREANNA KERISSA MODESTE by her next friend and natural Tutor VALDA MODESTE

Claimant

and

ORBAN LAMBERT of Banse Quarter of Laborie

Defendant

APPEARANCES: On written submissions of Mrs. Esther Greene-Ernest for the Claimant

2019: September 19
November 6

JUDGMENT

GILL, M. (Ag.)

- [1] This is an assessment of damages following judgment in default of acknowledgment of service entered on April 30, 2019. Breanna Kerissa Modeste ("Breanna") is a minor suing by her next friend Valda Modeste who is her mother. The required certificate of next friend pursuant to CPR 23.7 has been filed. The Claimant claims special damages, general damages, interest and costs.

Background Facts

- [2] The facts relied on by the Claimant are contained in the Statement of Claim filed herein on January 23, 2019. The claim alleges that on June 15, 2016 in the vicinity of the Coolie Town Vieux Fort bus shelter, the Defendant drove his motor vehicle negligently as a result of which a wheel from the vehicle came off, hit Breanna on her head and then hit the bus

shelter which collapsed onto her causing her severe personal injury. Exhibited to the Claim Form and Statement of Claim is a handwritten document dated June 23, 2016 signed by the Defendant and witnessed by a Justice of the Peace in which the Defendant agreed to “bear all responsibilities” which involved the Claimant in relation to the accident which took place on June 15, 2016. Breanna suffered trauma to her head and face, including abrasions to her upper lip, nose and forehead. She was diagnosed with post concussive syndrome and post-traumatic stress disorder. She was fourteen (14) years old at the time of the incident.

Special Damages

- [3] The Claimant claims special damages in the amount of \$4204.75. This includes expenses paid for and in relation to Breanna’s medical treatment up to the time of filing the claim. The Court notes the fundamental rule that special damages must be pleaded, particularised and proved. I refer to the frequently quoted dictum of Lord Diplock in **Ilkiw v Samuels and Others**:¹

“Special damage in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularised... it is plain law...that one can recover in an action only special damage which has been pleaded and of course, proved.”

- [4] In the Statement of Claim, the Claimant has listed the expenses and exhibited receipts for the amount claimed as special damages. The Court is satisfied that the Claimant has pleaded and particularised and so, proved the amount claimed. Therefore, special damages are awarded to the Claimant in the sum of \$4204.75.

¹ [1963] 2 All ER 879 at 890

General Damages

- [5] The well-established legal principles to be followed in awarding damages in personal injury cases were laid down by Sir Hugh Wooding CJ. in **Cornilliac v St. Louis**.² The main factors to be taken into account 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 extent to which pecuniary prospects are affected. The Claimant submits that the sum of \$100,000.00 is reasonable compensation for pain and suffering and loss of amenities in this case.

The nature and extent of the injuries sustained and resulting physical disability

- [6] The medical reports exhibited reveal that Breanna was seen and treated at the Emergency Room of St. Jude Hospital ('the hospital') on June 16, 2016 complaining of head and facial trauma. She denied loss of consciousness but complained of pain to her forehead and face. She sustained abrasions to her upper lip, nose and forehead associated with mild swelling and tenderness to the left side of her forehead. She was diagnosed with soft tissue injuries to the face and forehead and was discharged on oral analgesics and topical antibiotics. (Report of Dr. Claudius George dated July 25, 2016).
- [7] On July 5, 2016 Breanna was seen at the Out-Patient Department of the hospital with complaints of headache, memory problems and "some strange behaviour". Physical examination was normal. A CT-brain was advised and she was discharged with analgesics. (Report of Dr. Sarawathi Lakkasanri).
- [8] She was referred to and visited the Neurosurgery Out-Patient Clinic of the hospital on October 17, 2016. She complained of intermittent headaches since the incident, particularly to the left frontal region and "heavy head" sensation on mornings, memory disturbances, for example, forgetting she had school assignments to complete and being easily distracted. Her physical examination was unremarkable. She was diagnosed with Post Concussive Syndrome and she was referred to the psychiatrist for assessment. (Medical Report of Dr. Curby Sydney, Neurosurgeon dated November 15, 2016).

² (1965) 7 WIR 491

- [9] Accordingly, on October 21, 2016 she was seen at the Psychiatric Out-Patient Clinic of the hospital where she presented with a history of headaches, dizziness, forgetfulness and fearfulness after the accident. Mental status examination during follow-up visits suggested flashbacks and anxiety symptoms. She was diagnosed with Post Traumatic Stress Disorder. Medication and therapy sessions were advised. (Psychiatric Report of Dr. R. G. Swamy, Consultant Psychiatrist dated June 4, 2018).
- [10] On June 27, 2017, an electroencephalogram (EEG) test was performed on Breanna. The results were normal. In a follow-up visit to the neurosurgery clinic, her mother noted improved behaviour and overall improvement. (Addendum to Medical Report dated November 15, 2016 by Dr. Curby Sydney dated February 8, 2018).
- [11] On November 7, 2017 Breanna reported experiencing less headaches, but sometimes dizzy and blurry vision. The neurological examination was normal. In his report, the neurosurgeon stated:
- “Ms. Modeste is being treated for a post concussive syndrome and has shown improvement in her symptoms with medical treatment. She will need continued follow up visits with her neurosurgeon and psychiatrist as deemed necessary. She may continue with symptoms for an unpredictable time period.” (ibid)

The pain and suffering endured

- [12] Shortly after the incident, Breanna complained of pain to her face and forehead as a result of abrasions to her upper lip, nose and forehead. On subsequent visits to the out-patient clinics, she complained of headaches, memory disturbances, “heavy head” sensation, dizziness and blurry vision. A medical examination suggested, and her mother attested to her having flashbacks and anxiety.

Loss of amenities

[13] In an affidavit in support of assessment of damages sworn to on June 13, 2019 and filed on June 14, 2019 next friend Valda Modeste, Breanna's mother averred at paragraph 9 as follows:

"Breanna Kerissa Modeste has not been the same since the accident, she suffers with headaches, dizziness and blurry vision, she is no longer the happy child she used to be. She is forgetful, scared and very anxious. She still has flashbacks of the accident, her schoolwork has suffered and it takes tremendous effort for her to concentrate. This wasn't how it was before the accident. I fear for her future."

The Court was not made privy to any activities in which she previously enjoyed participating and now cannot, or is in some way limited.

The extent to which pecuniary prospects are affected

[14] No claim was made under this head. Breanna is a minor and there is nothing in the medical reports or otherwise to allow the Court to make a determination in relation to this issue.

The assessment

[15] The Court is aware of the need to strive to make an award in keeping with comparable cases. As stated by Lord Craighead in **Wells v Wells**:³

"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 is

³ [1998] 3 All ER 481

reasonable and in line with similar awards in comparable cases as represents the Court's basic estimate of the plaintiff's damage."

- [16] The Claimant cited the case of **Mercedes Delplesche v Samuel Emmanuel De Roche**.⁴ In that case, the Claimant, a 54 year old woman, was struck down by a motor vehicle while she was standing on a sidewalk. She suffered trauma to the head and left knee, abrasions to face, laceration to forehead, nose and lower lip, bleeding from left nostril and scars to her forehead and face. She was admitted to hospital for four (4) days and thereafter required physiotherapy and pain medication. She was awarded \$65,000.00 as general damages for pain, suffering and loss of amenities.
- [17] The Claimant also relies on the decision of the Court of Appeal in **Wadadli Cats Limited v Frances Chapman**⁵ where the Respondent suffered injuries whilst on a boat trip. In her Statement of Claim, she particularised her injuries as follows: shock, severe bruising to the head, severe pain in the neck and arm, bruising of the inner ear and post-concussion syndrome, paraesthesia – pins and needles in her right arm, numbness over the right thumb and forefinger, cervical spondylosis and a mild degree of carpal tunnel syndrome. The Court of Appeal awarded the Respondent general damages of \$120,000.00 (a reduction of the amount awarded by the trial judge).
- [18] The Court was not presented with any authority in relation to the fact that Breanna is a minor and not earning an income. In **Sheena David and Alana David v Kingston Bowen and Ashton Bowen**,⁶ the Claimants were sisters, aged 16 and 12 respectively who were injured in a motor vehicular accident. In assessing damages in this matter in June 2013 Taylor-Alexander M. (as she then was) noted the paucity of evidence on injuries involving children, and even greater paucity for cases involving neck and back pain which would allow for comparative analysis. I venture to include in this category cases where children suffer head trauma and stress disorders. In the case of the sisters, the Court noted that

⁴ Claim No. 41 of 2012, St. Vincent and the Grenadines

⁵ Civil Appeal No. 16 of 2004, Antigua and Barbuda

⁶ Suit No. GDAHCV 2007/0055, Grenada

they continued to endure pain with some restriction on their daily activities. The Court ruled that the medical evidence offered no conclusion on which the Court could assume that the pecuniary prospects of the Claimants had been materially affected. The Claimants were awarded general damages of \$37,000.00 and \$35,000.00 respectively.

- [19] In **Master Marvin Cato by his mother and next friend Sheron France v Raphael Olliver and General Equipment Services Commission**,⁷ in a judgment in 2000, Mitchell J. assessed damages in relation to injuries suffered by a 6 year old boy who was struck by a Land Rover. He was unconscious for 3 to 4 hours after his admission to hospital and was discharged from hospital after 2 days. He had an abrasion to his right cheek, a half inch cut to the right front of his scalp and a comminuted, depressed fracture of the right frontal bone. In a medical report, the doctor listed complaints given by Marvin's mother (in relation to Marvin) as follows: affected by noise, frequent headaches, dropping back in school work, loss of memory, poor appetite, hyperactivity, unstable sleeping habits, stooling in his uniform. These symptoms his mother described were temporary and had passed by the time judgment was given. Mitchell J. awarded \$10,000.00 for pain and suffering and \$5000.00 for loss of amenity.
- [20] In determining what a fair and reasonable award, the Court should have regard to the relevant circumstances of this case. Notwithstanding the last report of the neurosurgeon that Breanna showed much improvement in her symptoms with medical treatment, it is clear from the medical evidence and that of her mother that she continues to suffer both physically and mentally from the impact of the accident.
- [21] In the cases cited, in most instances, the physical injuries to the Claimants were more serious than those suffered by Breanna. The injuries in **Mercedes Delplesche v Samuel Emmanuel De Roche**⁸ are comparable to those Breanna experienced although she was not admitted to hospital and does not present with facial scars. In relation to Breanna, a minor, the element of loss of pecuniary prospects is not present and a deduction must be

⁷ Civil Suit No. 498 of 1993, St. Vincent and the Grenadines

⁸ Supra note 4

made in this regard. As stated before, the symptoms listed by the mother in the **Master Marvin Cato** case,⁹ some of which Breanna experienced, were temporary in his case. Further, that case was decided almost 20 years ago. Breanna's neurosurgeon indicated that "she may continue with symptoms for an unpredictable time period". Missing from all the cases cited including the case of the minors, the sisters in the **Sheena David** case,¹⁰ is the issue of the Post -Traumatic Stress disorder suffered by Breanna. In this regard, the medical evidence is that she will need continued follow up visits with her psychiatrist (as well as with her neurologist). No evidence has been led as to the cost of future medical care.

[22] Having considered the evidence, the submissions and the authorities, I award general damages for pain and suffering and loss of amenities in the sum of \$55,000.00.

Order

[23] The Defendant shall pay the Claimant the following:

- i) Special damages in the sum of \$4204.75 with interest at a rate of 3% from the date of the injuries until judgment and at the rate of 6% from the date of judgment until payment in full.
- ii) General damages for pain and suffering and loss of amenities in the sum of \$55,000.00 with interest at the rate of 6% from the date of judgment until payment in full.
- iii) Prescribed costs in the sum of \$5328.43 in accordance with CPR 65.5.

**Tamara Gill
Master (Ag.)**

⁹ Supra note 7

¹⁰ Supra note 6