

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO: SVGHCV2017/0121

BETWEEN:

MICHAEL DOUGAN

CLAIMANT

AND

KENDRA'S ALUMINIUM PRODUCTS LTD.

DEFENDANT

Appearances:

Mrs. Zhing Horne-Edwards of counsel for the Claimant

Ms. Anne Marie Jack of counsel for the Defendant

2018: June 11

2019: March 5

JUDGMENT

- [1] **Moise, M.:** This is an application for an assessment of damages. On 9th March, 2018 judgment was entered on admissions with leave granted for the claimant to file an application for an assessment of damages within 6 weeks. The claimant duly filed his application and the defendant gave notice of its intention to be heard on assessment. The parties filed witness statements and on 11th June, 2018 the assessment of damages was conducted with leave granted to the defendant to put questions to the medical practitioner on paper in lieu of cross examination. The court further ordered that written submissions be filed and exchanged on or before 13th July, 2018. The parties duly complied with the court's orders and it is therefore left for me to offer an apology for the delay in the delivery of this judgment on assessment. I hope that this has not caused any inconvenience to the parties.

THE FACTS

- [2] The defendant is the operator of a factory which produces aluminium products. The claimant was an employee of the defendant company as a senior fabricator. On 14th January, 2015 he was employed with that company for a number of years. His job entailed feeding material into a Rigid Table Top Ridge Saw. On the day in question, whilst feeding material into the table saw, the saw

unexpectedly jerked causing the claimant's fingers to be caught on the blade of the saw. As a result of this the tips of the claimant's middle and ring fingers were severed and he suffered a laceration to the little finger.

- [3] The claimant was rushed to the accident and emergency department of the Milton Cato Memorial Hospital where his wounds were dressed and sutured. On 16th January, 2015, the claimant was examined by Dr. Perry DeFreitas who observed that his fingers were "somewhat swollen to the tips of the left, middle and fourth fingers were missing, each finger had sutures closing what was left." The wounds were again cleaned and the claimant was advised to continue dressing his wounds on alternative days and to return in two weeks to have the sutures removed.
- [4] According to the medical report of Dr. Charles Woods, dated 17th July, 2017, the claimant was examined on 14th July, 2017 and on review it was observed that his injuries were fully healed. Dr. Woods states that the claimant had loss of the distal ½ inch of the ring and middle fingers of the left hand. He still complained of some weakness when lifting with the left hand. He also suffered some difficulty in picking up flat objects off the floor. Dr. Woods states that the claimant's disability was permanent.

THE ASSESSMENT OF DAMAGES

- [5] The parties have agreed on the special damages in the sum of \$769.08. This includes the costs of medical reports, loss of earnings for a fortnight and cost of domestic assistance for one month. I would award that amount to the claimant in special damages.

GENERAL DAMAGES

- [6] Both parties referred the court to the case of ***Cornilliac v St. Louis***¹ where 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) The nature and extent of the injuries sustained

¹ (1965) 7 WIR 491

- [7] The injuries were described by Dr. Woods as traumatic amputation of the distal ½ of the middle and fourth fingers of the left hand and a laceration to the little finger.

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

- [8] There was some concern raised by the defendant regarding the evidence of physical disability suffered by the claimant. Dr. Woods in his report of 17th July, 2017 concluded that the physical disability was permanent. In his witness statement the claimant addressed this issue and states that he experiences a loss of feeling and tenderness to his fingers when applying even slight pressure. This results in difficulty in performing some tasks such as lifting heavy objects. He also finds it difficult, if not impossible, to lift flat objects such as tiles, from the floor. He states that he has been a “workman” for his entire life and earns a living performing manual labour. He has since lost his employment with the defendant and although he is reemployed, he claims to have some difficulty in performing a number of tasks at work due to the injuries he sustained.
- [9] Further to this, the claimant states that he performed as a disc jockey in his spare time. He claims that in order to perform this task he would use both of his hands, and more particularly, the tips of his fingers, in order to perform the task of “scratching”, which is important to that job. He claims that since his injury he has been hindered in this task and this has reduced his capacity to work as a DJ. He has however provided no medical evidence to address this specific issue.
- [10] The defendant was granted leave to put further questions to Dr. Woods in writing. Dr. Woods in his response affirms that the claimant’s disability was 25% and that it was permanent. He describes a disability as “a physical or mental condition that limits a person’s movements, senses or activities; a disadvantage or handicap, especially one imposed or recognized by the law.” He states that a permanent disability “therefore refers to such condition being irreversible after medical treatment.” Despite this, Dr. Woods states that the claimant’s condition does not render him unable to work and that the claimant’s injuries can be considered as a disfigurement. He should, according to Dr. Woods, be able to adapt to perform most everyday tasks.

(iii) The pain and suffering endured

- [11] The claimant describes his initial reaction to the injuries as that of shock. Despite this he describes the sensation as being “stinging.” He states that after being taken to the hospital he felt a little “woozy and almost passed out”. He states that the pain was a throbbing and burning sensation and

that it was “bearable”. The witness Conrad Charles describes the moment after the incident by stating that “... I could tell that Michael was in pain and was uncomfortable, I believe that he was in shock because he seemed to be a bit bewildered and quiet considering that the tips of his fingers had just been chopped off.”

[12] The claimant goes on to state that during the nursing of his injuries he experienced some pain as the anesthetics which was initially administered were not effective. The doctor used an instrument which “looked like a pliers” to nibble the bones of the finger in order to be able to put the skin on each side of the bone. The same was then done to the ring finger. The claimant was discharged from the hospital after 4 hours.

[13] The claimant further states in his witness statement that as a result of the injuries he was unable to perform certain basic functions without discomfort and pain. He couldn’t use his left hand whilst in the shower and this made the process uncomfortable. However, he sought assistance from his partner whenever she was available. He continues to feel tenderness and loss of sensation to his fingers.

(iv) The loss of amenities

[14] I have outlined in some detail the main issues raised by the claimant in terms of his loss of amenities. He explained his difficulties in grooming and taking care of himself during the course of his recovery. He also indicates that he had some difficulty in performing his tasks as a disc jockey due to the sensations experienced with his fingers. He goes on to describe the challenges with his performance at work where he claims to be embarrassed at his inability at times to lift heavier objects as other employees are able to.

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

[15] This is perhaps the main area of contention between the parties. The claimant states that 8 months after the injury he lost his employment with the defendant company. He states that he has been unable to find employment which remunerates him up to the level of what he earned with the defendant. This he attributes to his injuries and the difficulties he experiences in finding the type of work for which he is best suited. The defendant, on the other hand, exhibits a letter which outlines the reasons for the defendant’s dismissal of the claimant from his employment. This is attributed to

the claimant's behavior. In my view, this is not an issue which can be reconciled in these proceedings. If the claimant was aggrieved at the reasons for his dismissal there are certainly legal remedies available to him at statute and common law. I am not satisfied that this ought to have any bearing on the decision which must be made regarding the damages to which the claimant is entitled in the present proceedings. I am not satisfied that there is sufficient evidence to prove that there has been as much an impact on the claimant's pecuniary prospects as he has claimed. The medical report indicates that the claimant's injuries do not render him unable to work and I accept that as a matter of fact. It also does not address whether there is a limit to his capacity to perform tasks at work, except to say that he has some difficulty in lifting flat objects from the floor. Damages of this nature must ultimately hinge on medical evidence and what has been presented does not substantiate the claimant's assertions.

QUANTIFICATION

- [16] Both parties referred to the case of **Wayne Gloster v. John Ashton et al**² in which the sum of \$30,000.00 was awarded for pain, suffering and loss of amenities in circumstances where the claimant's middle finger was amputated. The parties also referred to the case of **Augustine Biscette v. Club Mediterranee**³ in which the sum of \$45,000.00 was awarded in damages for pain, suffering and loss of amenities in which there was a partial amputation of three of the claimant's fingers. I accept that the injuries in **Augustine Biscette v. Club Mediterranee** are more in line with those suffered by the claimant; except to note that there were three amputated fingers to the right hand. The claimant in that case was right handed and there was likely to be a greater impact on his capacity to perform daily functions. Adjusted to consider inflation up to December, 2018 the award in that case would have an approximate current value of \$53,000.00. Taking these factors into account, giving due regard to the distinguishing element which I have highlighted, I would award the sum of \$45,000.00 to the claimant for the pain, suffering and loss of amenities he has endured.
- [17] The claimant also claims damages for loss of earning capacity and loss of future earnings. He relies on the decision of the Privy Council in the case of **Lau Ho Wah v. Yau chi Biu**⁴ and the decision in the case of **Augustine Biscette v. Club Mediterranee** in support of this submission.

²SVGHCV2001/0036

³ SLUHCV2000/0645

⁴ Privy Council Appeal number 20 of 1985

However, I note that in these cases the medical evidence specifically concluded that there was a significant and permanent loss of earning capacity. The same cannot be said for the circumstances of the present case. There is no medical evidence to substantiate the fact that the claimant has a loss of earning capacity and that he should be awarded damages for loss of future earnings. In fact, the medical evidence specifically states that his injuries do not render him unable to work and does not offer any opinion on the effect this would have on his earning capacity. In my view, the absence of medical evidence renders the claimant's request for damages for loss of earning capacity and loss of future earnings unsubstantiated and I would decline to make such an award.

[18] In the circumstances I make the following orders:

- (a) The defendant is to pay to the claimant the sum of \$45,000.00 in damages for pain, suffering and loss of amenities;
- (b) The defendant is to pay to the claimant the sum of \$769.08 in special damages with interest at a rate of 3% per annum from the date of the injury to the date of judgment;
- (c) The defendant is to pay interest on damages at a rate of 6% per annum from the date of judgment;
- (d) The defendant is to pay prescribed costs in the sum of \$5,149.0215 (representing 75% of the prescribed costs given the stage at which the judgment was entered against the defendant)

Ermin Moise
Master

By the Court

Registrar