

SAINT LUCIA

EASTERN CARIBBEAN SUPREME COURT

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

Claim Number: SLUHCV2018/0418

Between

1. Harvey Taliam
2. Adeline Nela Eudovique
3. Neo Taliam by his Next Friend Adline Nela Eudovique

Claimants

AND

1. Kurt Duncan
2. Victor Fernand

Defendants

Appearances: Mr. Alvin St. Clair of counsel for the Claimants
Ms Sue-Anne Frederick of counsel for the Defendants

2019: April 17, 26

Ruling on assessment of damages

1. **ACTIE M:** On 14th October 2017, a vehicle owned by the first claimant was rear ended by a vehicle owned by the first defendant and driven by the second defendant. The claimants filed a claim with a statement of claim for damages and on 8th January 2019 obtained judgment in default against the defendants. The matter now comes on for assessment of damages pursuant to CPR 12.13 and 16.2.

Special Damages

2. The claimant pleaded and particularized special damages and the parties conceded the following sums:

1. Travel expenses - \$1335.00
2. Medical expenses - \$5666.15
3. Vehicle expenses - \$11,890.00
4. Loss of use - \$23,550.00

Domestic care

5. What is in dispute is the sum of \$3,950.00 claimed for baby sitting and household duties.

The second claimant states that she suffered continuous pain to the neck, shoulder and upper chest which affected her ability to perform basic functions such as baby sitting, household duties and her hair dressing services. The claimant presented receipts proving payments made to Kimberly Antoine who provided those services at the cost of \$600.00 for intervals of two weeks from October 2017 to January 2018.

6. The defendants contend that there is no evidence which shows that the services claimed were reasonably required in light of the injuries suffered and especially in light of the absence of the injury to the minor.

Analysis

7. The second defendant suffered tenderness in the shoulder on palpitation with upper chest wall movements. The medical reports dated November 14, 2017 and January 25, 2018 speak to the decreased range of movement primarily on flexion and hyperextension of the neck consistent with the whiplash and chest injuries suffered as a result of the accident.
8. It was held in **Donnelly v Joyce**¹ that “in an action for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third party which were reasonably required by the plaintiff because of his physical needs directly attributable to the accident”.
9. The defendants have not presented any evidence to contradict the claimants’ evidence and pleadings. The medical evidence is consistent and speaks to the pain which restricted the second claimant’s ability to perform her duties immediately after the accident. I am of the view that the

¹ (1973) ALL ER 475

services were reasonably required in light of the injuries suffered and I accordingly allow the sum of \$3950.00 claimed for domestic care making a total sum of \$46,391.15 for special damages.

General Damages

10. The claimant claims general damages under the well-known principles set out by Wooding CJ in the landmark decision of **Cornilliac v St Louis**², namely (1) the nature and extent of injuries suffered; (2) nature and gravity of the resulting physical disability; (3) pain and suffering endured; (4) loss of Amenities; (5) extent to which the claimant's pecuniary prospects have been affected.
11. In an assessment for damages 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 reasonable and in line with similar awards in comparable cases as represents the court's basic estimate of the plaintiff's damage.³

Harvey Taliam

12. Harvey Taliam, 39 years at the time of the accident, was admitted at the Victoria Hospital and discharged on the following day on a course of analgesia with follow-ups at the orthopedic out-patient clinic. He was diagnosed as having suffered soft tissue injury to the cervical spine (whiplash injury); soft tissue injury to the upper and lower back and a right index finger sprain. On his last visit to the doctor on 27th November 2017, Mr. Taliam complained of continued pain in the upper neck and index finger, with episodes of numbness in the right upper and lower limb. Mr. Taliam seeks the sum of \$45,000.00 for general damages for pain and suffering and loss of amenities

Adline Eudovique

13. Adline Eudovique suffered musculo-skeletal pains and was discharged on the same day of the accident with painkillers and advised to rest. Upon further examination she was diagnosed with tenderness in her shoulders and neck which worsened on movement. She also had a decreased range of movement on the neck on flexion and on hyper-extension. Her conditions were consistent with whiplash injury and chest injury as a result of the accident. She was treated with

² Cornilliac v St Louis (1965) 7 WIR 491.

³ Lord Hope of Craighead in **Wells v Wells**³

anti-inflammatory analgesics and referred to physiotherapy. She seeks general damages in the range of \$15,000.00 to \$25,000.00.

14. Both claimants aver that the injuries have impacted their activities with their minor son. The claimants further aver that the accident has also affected their intimate life. The claimants referred to the awards in **Miriam Myers v Dickenson Bay Hotel** ⁴ and **Sheena David v Kingston Bowen**⁵ as comparatives to guide the court in making an appropriate award.
15. The defendants contend that the authorities cited by the claimants are not comparable with the injuries suffered. The defendants state that the **Sheena David's** case bears some resemblance but with more severe injuries than the whiplash injuries suffered by the claimants. In **Sheena David**, the claimant suffered soft tissue injury to the neck and shoulders; ligamentous strain and muscle spasms which significantly reduced range of motion of the cervical spine and neck pain as a result of an accident. Sheena was diagnosed with chronic ligamentous inflammation with pains to continue indefinitely in the future according to posture and movements. According to the reports, Sheena would have increased incidence of arthritis developing in the neck, cervical and lumbosacral spine with continuous pain. In 2011, the court made an award in the sum of \$37,000.00 for pain and suffering and loss of amenities.
16. The defendants submit that an award in the sum of \$10,000.00 and \$13,000.00, respectively, is appropriate for the injuries suffered and cite the authorities in **Martha Le Blanc v Augustus Thomas, Cyril Dornelly v Aldrick Octave** and **Winston Mc Millan v Clifren Warren** in support. The defendants also rely on the **Judicial College Guidelines for Assessment of General Damages in Personal Injury Cases** where it states that minor neck injuries where full recovery takes place within a period of about one to two years attract awards ranging from amounts equivalent to ECD \$12,302.90 to \$22, 298. 68.
17. With respect to Mr. Taliam, I note the medical report dated 30th November 2017 describes him as stable without expectation of any incapacitation over the next year. The report also states that a whiplash injury usually caused pain in the neck with difficulty in movement for periods up to a

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⁵ GDAHCV2007/0055 delivered on 7th June 2013

year and the soft tissue injury to the upper back up to six months. Mr. Taliam was able to perform most activities but with pain whenever he turns. The report further states that Mr. Taliam was unable to bend or lift heavy items. At the time of the report in 2017, Mr. Taliam had not reached the maximum medical improvement which would normally take up to two years. However, Mr Taliam did not provide the court with an updated medical evaluation for the assessment of damages.

18. Ms. Eudovique's medical condition was described as stable but with tenderness on palpitations and movements with decreased range of movement of the neck on flexion and hyperextension.
19. I have considered the medical evidence and the authorities by the parties. The medical evidence suggests that both parties have made full significant recovery from their injuries with no permanent disability. I am of the view that an award in the sum of \$25,000.00 for Mr. Harvey Taliam and \$15,000.00 for Ms. Adline Eudovique, respectively, is reasonable in the circumstances.

Neo Tayliam

20. Neo Taliam, 3 years old, was an occupant of the car at the time of the accident but was not injured. The claimants seek damages, general damages in the sum of \$5000.00 for mental disturbance.
21. A report from the Child Development and Guidance Centre dated June 19, 2018 states that the minor was out of pre-school for approximately 2 months after the accident. This was due to the parents' injuries as they needed time to recover and additionally the minor became very clingy and found it difficult to separate from both parents as he had regular nightmares after the accident. The report indicates that the minor has an attachment bond with his parents and that he most likely experienced shock, fear and anxiety during and after the accident. The report further states that the minor's level of post-accident functioning appeared to have improved significantly.
22. The defendants took the position that the minor suffered no damage and should not be compensated. Although the minor did not suffer any physical injury resulting from the accident, it

is the evidence that his personality had changed after the minor and his parents' involvement in the motor vehicular accident caused by the 2nd defendant.

23. Having regard to the minor's personality change, his age and the period involved and the fact that he has significantly improved, I will make a nominal award of \$500.00 for general damages.

Aggravated/Exemplary Damages

24. The 1st and 2nd claimants seek aggravated/exemplary damages in the sum of \$10,000.00 each relying on the principles enunciated in **Rookes v Barnard**⁶. There are three (3) categories in which exemplary awards are possible namely: (1) oppressive, arbitrary or unconstitutional conduct by government servants; (2) conduct calculated to result in profit and (3) authorization by statute.
25. The claimants contend that the 2nd defendant was inebriated at the time of the accident and verbally insulted the 1st and 2nd claimants and proceeded thereafter to assault the 1st claimant.
26. The claimants rely on the dicta Gordon JA (ag) in the decision in **Keith Mitchell v Steve Fassihi**⁷ where the Court of Appeal referenced **Rookes v Barnard** which was followed by **Cassell & Co Ltd v Broome and Another**. In that latter case it was remarked by Hailsham L.C. that the mere fact that a tort is committed in the course of a business carried on for profit is not enough to bring the case within the second category. He went on:
- "What is necessary in addition is (i) knowledge that what is proposed to be done is in the ordinary course the appropriate response of a court to the commission of a tort is to require the wrongdoer to make good the wronged person's loss, so far as a payment of money can achieve this.

Exceptionally, a defendant's conduct in committing a civil wrong is so outrageous that an order for payment of compensation is not an adequate response. Something more is needed from the court, to demonstrate that such conduct is altogether unacceptable to society. Then the

⁶[1964] A.C 1129

⁷ GDAHCVAP2003/0022 delivered on November 22,2004

wrongdoer may be ordered to make a further payment, by way of condemnation and punishment.”

27. Gordon JA at paragraph 16 states “What I derive from the above cases is that the narrow requirement that a defendant must contemplate a profit exceeding the likely damages to be assessed against him has been considerably widened”.

28. Whereas exemplary damages are now possible across a whole range of torts under the second limb of the **Rookes v Barnard**, it is the defendant's behavior at the time of the tort which it is to be looked upon in order to decide whether an award for exemplary damage is appropriate.

29. The claimants' averments that the 2nd defendant was intoxicated or the utterances of expletives at the scene of the accident after the accident does not in my view bring the matter within the 2nd limb of the **Rookes v Barnard** principles. It is necessary to prove that the defendant had acted in cynical disregard of the claimant's rights and must have calculated the gains from his wrongdoing are likely to exceed the damage at risk in committing the tort.

30. The court's jurisdiction in making an award for exemplary/aggravating damages may be expected to extend to all cases of tortious wrongdoing where the defendant's behavior satisfies the criterion of outrageousness... something additional, rendering the wrongdoing or the manner or circumstances in which it was committed particularly appalling. The claimants have not established that the 2nd defendant falls within the category of cases as contemplated. In the circumstances I make no award under this head.

ORDER

31. In summary, it is ordered that the defendants shall pay the claimants the following award:

1. Special Damages in the sum of \$46,391.15 with interest at the rate of 3% from the date of the accident till judgment and at the rate of 6 % from judgment until payment in full.
2. General Damages for pain and suffering and loss of amenities to (i) **Harvey Taliam** in the sum of \$25,000.00; (ii) **Adline Eudovique** in the sum of \$15,000.00; (iii) **Neri Taliam** in the sum of \$500.00 with interest at the rate of 6 % from the date of accident to the date of payment in full.
3. Prescribed Costs pursuant to CPR 65.5 on the global sum.

AGNES ACTIE
MASTER, HIGH COURT

BY THE COURT

REGISTRAR