

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

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

Claim Number: **GDAHCV2017/0241**

Between

Akim Morain

Claimant

and

Devon Pierre

Defendant

Before: MASTER Ermin Moise

Appearances:

Ms. Herrica Willis of counsel for the Claimant
Mr. Francis Paul of counsel for the Defendant

2018: October, 9th

2019: January, 8th

JUDGMENT

[1] **MOISE, M.:** This is an application for an assessment of damages. The claimant was injured in a motor vehicular accident on 31st January, 2015. At the time he was 23 years old and was a passenger on the motor vehicle driven by the defendant. He states that while travelling along the eastern main road to Grenville in the Parish of St. Andrew the defendant collided with a truck. As a result, he brought this action for damages for personal injury due to the defendant's negligence. On 26th September, 2016 summary judgment was entered in favour of the claimant for damages to be assessed. On 9th October, 2018 the parties agreed that the affidavits filed in this matter will stand as evidence with no cross examination and that the submissions were to be considered on paper. I now come to consider the damages to which the claimant is entitled.

Special Damages

[2] There is not much contention between the parties as it relates to special damages. The claimant claims the sum of \$2,181.10 and presents receipts in an attempt to substantiate this amount. The

defendant's only contention is that receipt number 2235 from Spice Isle Imaging Center is in the sum of \$200.00 whereas the claimant claims the sum of \$800 for this expense. Having examined the receipt it appears that the defendant is correct. In the circumstances the claimant has presented receipts and invoices to substantiate special damages in the sum of \$1,581.10. I make an award for special damages in this amount.

General Damages for Pain, Suffering and Loss of Amenities

[3] The oft cited case of ***Cornilliac v St. Louis***¹ sets out the principles on which I must be guided in assessing general damages for pain, suffering and loss of amenities. I am to consider 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.

The nature and extent of the injuries sustained

[4] Both parties have acknowledged that the claimant suffered severe injuries. In his medical report dated 17th October, 2016, Dr. Justin La Rose states that the claimant was diagnosed with a severe head injury and was admitted to the intensive care unit of the hospital. X-rays revealed a fracture in the lateral aspect of the right orbit. A CT scan also revealed intra-ventricular hemorrhage of the left lateral ventricle with multiple foci of contusion in both cerebral hemispheres. The doctor also indicates that the claimant suffered from a post traumatic subarachnoid hemorrhage in the cisterns of the cerebral convexities.

[5] Dr. La Rose described the medical treatment received by the claimant as being aggressive. He states that there was weakness of the right side of the claimant's body, sub-conjunctival hemorrhaging and swelling of the craniofacial region with greater prominence on the right frontal region. The claimant was placed on mechanical ventilation and anti-cerebral edema therapy was administered. A nasogastric tube was inserted in order to commence feeding.

¹ (1965) 7 WIR 491

- [6] Further to this, the medical report indicates that numerous complications arose as a direct result of the severe brain injury which the claimant suffered. This included cerebral salt wasting, as well as infection of the chest and bladder. Progress in his clinical condition was slow and the report attributes this to the aggressive management of his injuries which he received in the intensive care unit. Two CT scans were conducted. Physiotherapy was eventually commenced. With improvement to his condition, on 18th February, 2018 he was transferred to the male surgical ward where intra-hospital management was continued. The claimant was eventually discharged on 25th February, 2018 with outpatient care continuing. The doctor opines that as a result of the injuries the claimant is likely to suffer from behavioral disturbance, sleep difficulties, seizure disorder, severe post traumatic headache and learning impairment. This was not an exhaustive list.
- [7] The claimant was reviewed on 17th October, 2016 and Dr. La Rose noted severe behavioral changes in the claimant which were characterized by easy out-burst, agitation and reduced attention span. He states that there was parasthesia on the right side of the head as well as gait difficulty when ambulating forward at a quick pace. These were determined to be a direct result of the injuries sustained in the accident and Dr. La Rose does not rule out the development of late onset sequelae. In his last follow up on 29th June, 2018 his condition is largely determined to be unchanged with some worsening of various symptoms.

The nature and gravity of the resulting physical disability

- [8] As it relates to the physical disability arising out of the accident, I note that the claimant suffered from a serious brain injury. This much is conceded by the defendant. The claimant's injuries also caused weakness to his right side. A course of physiotherapy was recommended during his recovery. Dr. La Rose also indicated that upon subsequent examination the claimant had gait difficulty. The claimant's mother refers to him suffering from a severe leg injury. However, apart from the problems with his gait, the medical report does not directly address a leg injury in any detail.
- [9] There is also evidence to suggest that this injury has affected his interaction. Dr. La Rose states that the claimant is easily agitated and his attention span has been affected and indicates that if these conditions do not improve a further CT scan will be recommended. I note that the defendant

has raised objections to the evidence of the change in the claimant's emotional response. The evidence suggests that the claimant and the defendant had known each other for some time. The defendant states that the claimant had always displayed some of these tendencies. The claimant's mother, on the other hand suggests that these issues arose as a result of the accident. Ultimately, there is medical evidence which addresses this issue and it is on this that the court will rely in coming to its conclusions.

The pain and suffering endured

[10] The claimant does not provide a witness statement himself but relied on the statements of an acquaintance Ms. Jennifer George, his mother and the medical reports. Nothing in the evidence therefore speaks directly to the issue of pain and suffering. However, as has been conceded by the defendant, it is inevitable that the claimant would have suffered significant pain as a result of what has been described as severe injuries.

The loss of amenities

[11] The claimant's mother states in her witness statement that he enjoyed the normal life of a young man prior to the accident. He enjoyed football for example and could no longer play that sport after the accident. She states that "after the accident his coordination was completely gone and he could no longer kick a ball." An affidavit was also presented by Ms. Jennifer George who identifies herself as a teacher and having known the claimant for in excess of 20 years. She also described him as a youngster who was very "sporty". He was athletic and would play football and socialize with youngsters his own age. The medical report does not directly address this issue. However, it would seem natural that the injuries outlined in the report would result in an inability to engage in such an activity; especially the medical evidence referencing the problems with the claimant's gait.

[12] Ms. George also identifies the claimant as being a mellow individual and a very respectful and responsible person. She states that this changed after the accident and that the claimant became very irritable and easily distracted. He now has a difficulty in searching for the right words to say. He would attend work with his mother and get very frustrated when he could not perform various

tasks. I again note that the defendant disputes this and states that the claimant has always displayed such tendencies. I therefore repeat that the medical evidence speaks to the nature of the effect the injuries have had on the claimant and I will rely on that evidence in coming to my conclusions.

The impact the injuries had on the claimant's pecuniary prospects

[13] The claimant did not provide much evidence to show the status of his employment prior to the accident. His mother describes him as a construction worker and that he also worked as a conductor. It would appear that he was a conductor on the defendant's vehicle at the time of the accident. This substantiates at least that aspect of the claimant's mother's evidence. However, the medical evidence does not address the extent to which the claimant is unable to perform such tasks. I do accept that the nature of the injuries as well as the updated diagnosis of Dr. La Rose may make it difficult for the claimant to function in a work environment. However, without direct medical evidence providing an opinion on this issue I would not venture to speculate. There is also no evidence presented regarding the income derived from such employment.

The award

[14] The claimant refers the court to a number of cases and submits that an award of \$250,000.00EC is reasonable compensation for the pain and suffering he has endured. I agree with the defendant that the case of **Marcel Fevriere et al v. Bruno Canchan et al**², which has been referred to by the claimant is not comparable and not of any assistance in assessing damages in the present case. The claimant also refers to the case of **Lazarus Phillip v. Linton Martyre**³. In that case the claimant's injuries were described primarily as neck injuries. He however did suffer from a brain contusion. Some of the symptoms of his injuries were similar to that of the claimant in that he suffered from dizziness, forgetfulness and slowness. These can be described as injuries affecting basic brain functions just as the claimant suffers in this case. Apart from these I can find no similarities between that case and the injuries suffered by Mr. Morrain. Mr. Phillip was awarded the sum of \$80,000.00 in general damages for pain, suffering and loss of amenities. I am satisfied

² SLUHCV1989/0313

³ SLUHCV2015/0347

however, that Mr. Morrain's injuries were more severe and that he ought to be awarded a sum which is higher than that awarded to Mr. Phillip.

[15] Reference is also made to the case of **Arthur Edwards v. Enroy Hanes**⁴. In that case the claimant also suffered from severe head injuries. These would initially appear to be more severe than those of Mr. Morrain. However, it was noted that the effects of the injury exacerbated a pre-existence neurological deficit experience by Mr. Edwards. He was awarded \$100,000.00 in damages for pain, suffering and loss of amenities. I do note however that this was decided in 2003 and Mr. Edward's loss of amenities was minimal given his neurological state prior to the accident as well as his age compared to that of Mr. Morrain. The damages of \$100,000.00 awarded in that case is equivalent to \$136,667.96 as the current value updated to December, 2017.

[16] In these circumstances I would award the claimant the sum of \$150,000.00 in damages for pain and suffering and a further \$30,000.00 in damages for loss of amenities as he is a relatively young man who will live with these neurological changes for the rest of his life. After considering the authorities referred to above I am satisfied that this is a reasonable award and I grant this amount to the claimant.

Future Medical Care

[17] The claimant also claims damages for future medical care. The defendant submits that this ought not to be granted as the medical evidence does not address this issue. The last report of Dr. La Rose indicates that the claimant was examined on 29th June, 2018 and that his condition remained the same with some worsening in his symptoms. The report does not go on to state precisely what treatment is provided for this. However, it does indicate that a further CT scan will be considered if the symptoms persist or worsen in spite of the treatment instituted. Although I do agree that the evidence is somewhat scant I am satisfied that, on balance, there is likely to be some future care provided to the claimant. A precise cost of this care has not been provided in the evidence. I would therefore award a nominal sum of \$3,500.00 for the eventuality that such care will be needed given the severity of the claimant's injuries. I note that an award is not granted for loss earnings, whether present or future, due to the lack of evidence presented in that regard.

⁴ SVGHCV1998/0025

[18] In the circumstances it is hereby ordered and declared as follows:

- (a) The Defendant will pay the sum of \$1,581.10 in special damages with interest at a rate of 3% from the date of filing to the date of judgment.
- (b) The Defendant will pay the sum of \$180,000.00 in general damages for pain, suffering and loss of amenities to the claimant;
- (c) The defendant will pay interest on General and special damages at a rate of 6% per annum from the date of judgment;
- (d) The defendant will pay the sum of \$3,500.00 to the claimant representing a nominal award for future medical care. There will be no award of interest on this award;
- (e) Prescribes costs in the sum of \$13,869.00

Ermin Moise
Master

By the Court

Registrar