

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2016/0158

BETWEEN:

1. **Godfrey Ferdinand**
2. **Tamar Ferdinand acting herein Ferdinand by her
Next Friend Godfrey Ferdinand**
3. **Samuel Harrigan acting herein by his duly appointed
Attorney, Godfrey Ferdinand**
4. **Shauna Dantes**

Claimants

and

The Attorney General of Saint Lucia

Defendant

Before:

The Hon. Mde. Master Agnes Actie

High Court Master

Appearances:

Mr. Leslie Prospere with Mr. Vilan Edwards for the claimants

Mr. Dexter Theodore Q.C with Ms Kozel Creese for the defendant

Mr. Vern Gill holding a watching brief for West Indies General Insurance Ltd.

2017: October 28
2017: December 1
2018: February 16
2018: March 12
2018: August 6

JUDGMENT

- [1] **ACTIE M:** On 1st October 2015 a Bordelais Prison Bus, driven by Mr Mc Lean Emmanuel, collided with the front boundary wall of the first claimant's property and then collided with a car parked in the front yard. The impact caused the car to

climb onto the front steps of the building before making contact with the second and fourth defendants. The second defendant, eight (8) years old at the time, was pinned to the wall with her right leg trapped and crushed resulting in a below knee amputation. The fourth defendant suffered less severe injuries. The claimants obtained summary judgment and the issue is now limited to the quantum of damages on assessment.

Special Damages

- [2] The following sums pleaded and proved were agreed as special damages namely:
1. Godfrey Ferdinand- Loss of car and police report - \$24,000.00
 2. Tamar Ferdinand - Medical expenses - \$73,581.89
 3. Samuel Harrigan - Costs of repairs to the property - \$12,300.00.
 4. Shauna Dauntes – Medical expenses and other incidentals- \$3,248.95
- [3] What is in dispute is the sum of \$13,500.00 claimed by Godfrey Ferdinand for the loss of use of his vehicle from the date of the accident until the 31st December, 2015.
- [4] The defendant is of the view that Mr Ferdinand acted unreasonably in renting a vehicle rather than purchasing a replacement vehicle. The defendant contends that Mr Ferdinand was the owner of three (3) income generating minibuses, one of which was sold for \$50,000.00 plus he was paid a monthly stipend of \$1,000.00 as President of the National Council for Public Transportation. It is also the evidence that Mrs. Ferdinand earns a net monthly income of \$2,700.00 as a clerk. The defendant avers that in the circumstances, Mr. Ferdinand should be compensated for a period of two (2) weeks as he was financially able to replace his damaged vehicle within that time period.
- [5] Mr. Ferdinand, in response, avers that he was unable to replace the vehicle sooner due to his daughter's urgent medical expenses and other financial obligations. He intimated that he had to seek financial assistance from relatives to

help defray his daughter's travelling and medical expenses. Mr. Ferdinand, in evidence-in-chief, said that part of the proceeds from the sale of the minibus was used for the purchase of replacement parts for the two aged minibuses which constantly required servicing. Mr. Ferdinand also stated that his brother required the rented vehicle to conduct business on his behalf after his departure to the USA.

Analysis

- [6] The appropriate test in determining "reasonableness" was propounded in the decision in **Morris v Richards**¹ where the court states:

"As between a claimant and a tortfeasor the onus is on the latter to show that the former has unreasonably neglected to mitigate the damages. The standard of reasonable conduct required must take into account that a claimant in such circumstances is not to be unduly pressed at the instance of the tortfeasor. To adopt the words of Lord Macmillan in the well-known **Waterlow case**, the claimant's conduct ought not to be weighed in nice scales at the instance of the party which has occasioned the difficulty."

- [7] The defendant was under a duty to compensate Mr. Ferdinand for his vehicle within a reasonable time; likewise Mr Ferdinand was under a duty to take reasonable steps to mitigate his loss. Having regard to all the circumstances, I am of the view that it would be unconceivable for a parent faced with the situation presented in this case would utilise his limited funds to purchase a replacement vehicle instead of paying his daughter's urgent medical needs.
- [8] However, I do not accept the reason given by Mr Ferdinand for keeping the rental vehicle beyond his departure to the USA. It is the evidence that Mr Ferdinand's brother had access to transportation as he was the driver of one of the two minibuses. I am of the view that Mr Ferdinand acted unreasonably in continuing the rental after his departure to the USA on 23rd December 2015. In the circumstances, I will allow loss of use for eighty two (82) days from the 2nd October 2015 to 23rd December 2015 making a sum total of \$12,300.00 under this head.

¹ [2003] EWCA Civ 223

General Damages

- [9] A claim for general damages is made for Tamar Ferdinand and Shauna Dautes. General damages are usually determined taking into consideration the principles set out by Wooding CJ in the seminal case 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.

Tamar Ferdinand

[10] **The Nature and Extent of Injuries Suffered**

Tamar, 8 years at the time of the accident, endured a traumatic and life changing experience. Dr. Arlette Charles, who examined Tamar at the Victoria Hospital states that the injuries were confined to the right lower limb. Tamar was diagnosed with an open comminuted (multiple fragments) fracture of both tibia and fibula with multiple floating, splintered fragments of bone. The muscle was completely stripped off the bone in places with significant tissue loss. The ankle joint was completely destroyed and could be splayed like an open book with the ligaments all completely torn. The laceration of the skin around the muscle started anteriorly and extended medially separating the heel from the dorsum of the foot. The limb was cold without pulses and assessed as unsalvageable. Tamar's parents eventually consented to a below knee amputation.

The Nature and Gravity of the Resulting Physical Disability

- [11] Tamar was fitted with a prosthetic lower right limb with recommended replacement intervals into adulthood. Extensive counselling and physiological support was recommended to manage her traumatic amputation.

Pain and Suffering

- [12] Tamar had to be anaesthetized on admission at the hospital due to the immense pain. She suffered excruciating pain throughout the period of hospitalisation until

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

she was discharged on 8th October 2015. The severity of the pain interrupted her sleep as the prescribed regular pain killers were incapable of bringing relief. On 11th October 2015, Tamar was returned to the hospital with shooting pain in the stump and was diagnosed with post amputation pain.

- [13] Due to the lack of local facilities, Tamar was referred and admitted to the Kings County Hospital, New York, USA on 26th October 2015 for further evaluation and long term management of her pain. She was discharged on 4th November 2015 with post routine weekly outpatient clinics, counselling and physiotherapy sessions. She returned to St. Lucia in March 2016 and continues to suffer pain and shock spasms due to the friction of the leg stump against the prosthetic leg.

Loss of Amenities

- [14] Prior to the accident, Tamar lived a normal active life of a young child. She was an avid swimmer and enjoyed playing football, skipping, cooking, modelling and participating in physical education activities at school. She can no longer enjoy running and playing games with her school colleagues, young relatives and friends.

- [15] Lord Hope of Craighead in **Wells v Wells**³ states:

“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.”

- [16] Counsel for the claimants referred the court to several authorities to assist in making a comparative award:-

(1) **Courts Jamaica Limited v Kenroy Biggs**⁴: - In March 2003, Biggs, 19 years, was knocked down by a vehicle pinning him to a wall from his stomach down to his feet. He suffered abrasions to right side of chest and upper abdomen;

³ [1998] 3 All ER 481

⁴ Jamaica {2012} JMCA Civ. 50

abrasions to medial aspect right arm; mangled left lower limb wound extending from mid-thigh across the posterior aspect of the knee, down to the leg. He had no sensation below the knee; pulses diminished; fracture right and left superior and inferior rami of the pelvis; open fracture of left femur with injury to the pelvis; transection of the urethra with inability to pass urine. He underwent several surgical procedures both in Jamaica and the USA. All attempts made locally to save his leg were unsuccessful resulting in amputation after six (6) months of the accident. He experienced problems with the healing of the amputation site coupled with urination problems which required the use a urine bag. After three years of the accident, it was discovered that a bony spur had developed to the rear and side of the end-bone where the amputation had occurred. His combined impairment was assessed at 55% of the whole body person. In 2012, the Court of Appeal confirmed an award of \$18,000,000.00 equivalent to ECD \$371,900.00 for pain and suffering and loss of amenities.

(2) Mark Andrew Carter v St. Clair Latham and Concrete and Aggregates Ltd⁵:

The claimant, 38 years, was run over by a bulldozer. He sustained a crush injury to the right leg resulting in above the knee amputation; fracture to the lateral metacarpals proximal 1-3; fracture to the ischio/ilio pubic rami bilaterally. The claimant was an avid footballer who also practiced judo in his spare time. He loved swimming and night fishing which he could no longer do. At the time of the assessment, he was completely healed and mentally normal. In 2006, an award was made in the sum of \$60,000.00 for pain and suffering and \$50,000.00 for loss of amenities.

(3) Eddeoin Ballantyne v Donald John⁶: the claimant, a 27 years old bartender, was struck by a motor vehicle and pinned against a bank. He suffered severe injuries including fractures to his ribs with a crushed left leg. Surgical attempts in Saint Vincent and Trinidad failed and eventually had an

⁵ SVG 2005/0524 delivered on April 21, 2006

⁶ SVG1993/0277 delivered on 26th October 2007

above the knee amputation. In 2007, he was awarded \$90,000.00 for pain and suffering \$40,000.00 for loss of amenities.

(4) Karen John v David Dibique⁷: - The claimant, a 22 years old female bartender, dominant arm was amputated at the position of the shoulder as a result of a gunshot wound. She was hospitalized in Saint Vincent for eight days and thereafter flown to Trinidad for future observation and life-saving surgeries intending at saving the arm. She underwent five surgeries of which two were for amputations. The arm was eventually amputated up to the shoulder. In 2014, an award was made for pain and suffering and loss of amenities in the sum of \$230,000.00 of which \$120,000.00 was for loss of amenities.

[17] Counsel submits that there is a paucity of comparative regional authorities for minors with limb amputations. Counsel recommends the range of awards provided by **The Judicial Guidelines Studies Guidelines for the assessment of Damages** for below knee amputation of one leg and suggests an award in the sum of \$500,000.00 for pain and suffering and loss of amenities.

[18] Counsel for the defendant suggests an award in the sum \$65,000.00 for pain and suffering and \$35,000.00 for loss of amenities. Counsel cites the following authorities namely:- **(1) Wadadli Cats Ltd V Frances Chapman⁸, (2) Sherma Mathurin v Rain Forest Sky Rides Ltd⁹ and (3) Ronald Fraser v Joe Dalrimple** with awards ranging from \$120,000.00 to \$150,000.00. The court notes that the injuries in authorities cited by the defendant were all dissimilar with awards made to adult claimants with severe fractured limbs. In further submissions filed on 9th February 2018, the defendant cites the case of **Vilone Joseph v Therese Morris etal¹⁰** where a claimant, 48 years old, was treated for a crushing injury to her right

⁷ SVGHCV2009/0359 delivered on March 20,2014

⁸ ANUHCv 2004/0551 delivered on April 2005

⁹ SLUHCv2008/0551 delivered August 2010

¹⁰ ANUHCv2006/0133 delivered in June 2009

leg in Antigua. She was subsequently treated in the USA, where her limb was amputated and fitted with an artificial limb. The court, in 2009, awarded the sum of \$85,000.00 for pain and suffering and \$50,000.00 for loss of amenities.

- [19] Counsel for the defendant concedes that the injuries in the authorities cited are dissimilar to the injuries at bar but relies on the dicta of Gordon JA in **CCAA Limited v Julius Jeffery**¹¹ where he states:--

“ 8. In my view, a function of the law, as far as possible to be predictable, given the infinite variety of the affairs of human kind. In context of damages for personal injuries, there are certain principles which apply and then there is a discretion which needs to be exercised. In the case of pain and suffering and loss of amenity, that discretion could be wholly subjective and hence unpredictable, or it could be precedent based: that is to say, the trial judge, having considered all of the evidence led before him, would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would clearly be very helpful, ***but even awards of wholly dissimilar injuries are helpful in relating the claimant's injuries on a comparative scale (emphasis added).*** This is not a precise science, leaving much room for the exercise of the trial judge's discretion.”

Analysis

- [20] The purpose of compensation in personal injury cases is to put the claimant back in the position he or she was in before the injuries occurred. The assessment of damages is not a precise calculation. An award for general damages is intended to compensate the claimant not only for the pain and suffering caused by the injury but also for the impact of the injury on the claimant's enjoyment of life. There is no simple formula for converting into monetary terms the pain and suffering, loss of function, loss of amenity and disability which an injured person has sustained. Any process of conversion must be essentially artificial¹².

¹¹ SVGHCAP 2003/0010 delivered March 2004

¹² Heil v Rankin [2001] QB 272

- [21] In **Lim Poh Choo v Camden & Islington Health Authority**¹³ it was held that damages are awarded for pain and suffering for both physical and mental stress caused to the plaintiff both pre and post-trial as a result of the injury and includes: (i) pain caused by the injury itself; (ii) pain from treatment taken to treat the injury (iii) the awareness of embarrassment at the disability or disfigurement and (iv) suffering the plaintiff may undergo as a result of anxiety about the possible further deterioration of his condition.
- [22] On 2nd October 2015, Tamar at the tender age of 8 underwent a devastating and life changing experience. The traumatic amputation has no doubt significantly diminished her general quality of life and will continue to do so. The psychological and emotional effects of losing a limb at such a tender age cannot be overemphasized. No sum can sufficiently compensate a teenage girl being left with such a disability which has shattered her self-confidence for the rest of her life.
- [23] Prior to the accident, Tamar was an avid swimmer. Counsel for the defendant contends that the prosthetic limb does not rule Tamar out of participating in sports as a special swimming prosthesis will facilitate her swimming ambitions.
- [24] It is the evidence that Tamar is deeply distraught by her reduced mobility and the inability to enjoy her pre-accident childhood pursuits. She exhibits discomfort with her infirmity to the extent that she will not readily swim in the presence of her friends. She continues to wear long pants or stockings to conceal her prosthetic limb. While it is agreed that the prosthesis will enable her to pursue her interest, there is very little that she can do to reduce the appearance or to conceal the prosthetic, when for example when she is on a beach or by a swimming pool in swimwear. In my view, the physical impairment may not be obvious and can be disguised with the prosthetic, but it does not take away the fact that the

¹³ (1979) 2 AllER 910

amputation suffered at this tender age is permanent and will restrict Tamar's ability to pursue a normal life.

[25] In an award for general damages, the court must have regard to the severity of the injury, whether it caused trauma and distress, the extent of treatment required, the age and impact on the claimant's lifestyle and work. The court must as nearly as possible provide "*reasonable*" compensation for pain and suffering and loss of amenities which will put the injured party in the same position as he/she would have been in, but for the injury.

[26] I accept the paucity of comparatives and also note that some of the authorities cited by both counsel are not recent and are of limited assistance as comparatives to determine an appropriate award in this case. The Privy Council in **Seepersad v. Persad**¹⁴, has frowned on the practice of relying on older decisions and employing an adjustment formula to arrive at a likely award. Lord Carswell in delivering the judgment stated as follows:

" Pain and Suffering and Loss of Amenity

15.Their Lordships entertain some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago, with the accompanying need to extrapolate the amounts awarded into modern values. It is an inexact science and one which should be exercised with some caution, the more so when it is important to ensure that in comparing awards of damages for physical injuries one is comparing like with like. The methodology of using comparisons is sound, but when they are of some antiquity such comparisons can do no more than demonstrate a trend in very rough and general terms."

[27] The absence of comparative awards for a minor with an amputation requires the court to make an arbitrary but reasonable award. In **Andrews v Grand & Toy Alberta Ltd**¹⁵ Dickson J. observed:-

"The monetary evaluation of non-pecuniary losses is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award

¹⁴ (2004) 64 WIR 378 (P.C),

¹⁵ (1977) 83 DLR (3d) 452, 475-476

must also of necessity be arbitrary or conventional. No money can provide true restitution.”

[28] The arbitrary nature of the exercise was also recognised in **Heeralall v Hack Bros**¹⁶ where Haynes CJ said at 125 that “the judicial exercise of measuring in money such things as pain and suffering or the impairment of capacity to lead life to the full really involves dealing in incommensurables”. The Privy Council in **Scott v The Attorney General and another (Bahamas)**¹⁷ states further;

“Given the essentially artificial, and therefore arbitrary, nature of the exercise involved in the assessment of general damages, there is a risk of markedly different levels of compensation resulting from individual assessments of what they should be. The need for some general guidance as to the appropriate amounts in similar cases is obvious. It was that need which prompted the statement in *Heil v Rankin* in para 25 to the following effect:

“The assessment of general damages requires the judge to make a value judgment. That value judgment has been increasingly constrained by the desire to achieve consistency between the decisions of different judges. Consistency is important, because it assists in achieving justice between one claimant and another and one defendant and another. It also assists to achieve justice by facilitating settlements. The courts have become increasingly aware that this is in the interests of the litigants and society as a whole, particularly in the personal injury field. Delay in resolving claims can be a source of great injustice as well as the cause of expense to the parties and the justice system. It is for this reason that the introduction of the guidelines by the Judicial Studies Board (‘JSB’) in 1992 was such a welcome development.”

[29] General damages for pain and suffering loss of amenities therefore, in my view, must meet not only the pain and suffering and loss of amenities but also the future concern of the disability. Tamar will no doubt have to learn to adapt to her disability but the consequences will be lifelong. I have considered the excruciating pain and initial shock on impact along with the emotional distress as a consequence of the injury. I also take into consideration the continuous pain along

¹⁶ (1977) 25 WIR 119

¹⁷ [2017] UKPC 15

with the adjustments to the artificial limb, the obvious embarrassment and humiliation as a consequence of the permanent disfigurement at this tender age. I am guided by the range of award suggested by the **Judicial College Board Personal Injury Guidelines** for below the knee amputation and also the award made by the Supreme Court of Jamaica in the **Biggs** case above. Biggs, 19 years at the date of the accident, may have experienced extensive pain over a prolong period of 6 months with the attempts made to salvage the limb unlike Tamar's immediate amputation. However, I consider the combined impact of the amputation, the deprivation of the ordinary experiences and child life enjoyment at the tender age of 8. I am of the view that the sum of \$400,000.00, of which the sum of \$175,000.00 is for pain and suffering and \$225,000.00 for loss of amenities is a reasonable compensation to meet the justice of this case, and I so award.

Future Medical Care

- [30] As Tamar transitions into early adulthood replacements and adjustments are to be made for either weight gain or loss and fair wear and tear of the prosthesis. Counsel presented quotations from Socitee D'Orthopedia Guitteaud in Martinique for a bath prosthesis, a below the knee prosthesis (with energy return foot) and a sport prosthesis at the costs of \$42,895.70. A report from Tulio Rivera of Ultrapaedics Ltd. suggests that Tamar will require lifelong prosthetic care to enable her to regain her quality of life. The report, having regard to Tamar's age and anticipated growth, suggests yearly replacements of the prosthetics until adulthood with two to three years replacement intervals into adulthood.
- [31] The growth in the unaffected leg requires the prosthesis to be refitted until Tamar stops growing. Dr Arlette Charles, in examination-in-chief, states that growth spurts in girls vary and can continue up to the age of eighteen (18). The growth spurts in girls commence from the date of the first menstrual cycle which is usually from the age of 11 years onwards. Tamar, eleven (11) years at the date of the assessment, had not started a menstrual cycle.

[32] In keeping with the evidence, counsel for the claimant seeks an award in the sum of \$343,165.60 for pre-adulthood replacement using a multiplier of 8 to compensate from the age of 10 to 18 years. Counsel for the defendant suggests a multiplier of 4 taking into consideration that Tamar was 11 years and was already fitted with the prosthesis and was not likely to grow past the age of fourteen (14) years.

[33] I reviewed and accept the medical evidence of Dr. Charles and the recommendations made by Tulio Rivera of Ultrapædics Ltd. I also accept the report from Socitee D'Orthopedia Guitteaud in Martinique that recommends a bath prosthesis, a below the knee prosthesis (with energy return foot) and a sport prosthesis at the cost of \$42,895.70 to determine the multiplicand. Using the age of 18 years as the bench mark, I will apply a multiplier of 7 for the yearly replacement of the prosthesis up to the age of eighteen (18) totalling the sum of \$300,269.90 i.e. (\$42,895.70 (x 7).

Prosthesis-Post 18 years (Adulthood)

[34] The report recommends triennial replacements of the prosthesis post adulthood. Counsel for the defendant contends that that the test to be determined in making an award under this head is whether the prosthesis is reasonably required. Counsel contends that no award should be made for swim and bath prosthesis after Tamar leaves school. Counsel avers that Tamar is presently self-conscious about the prosthesis and may not likely use the sport prosthesis even if she had one during adulthood. Counsel further posits "when that (sic) child enters adulthood, and this is especially true for women in the Caribbean society, sports tend to take a back seat."

[35] Counsel for the defendant has not provided any evidence to support his averments. It is the evidence that Tamar was an avid swimmer prior to the injury and still continues to pursue private swimming lessons. Tamar at such a tender age is obviously uncomfortable with her deformity especially in the company of her

friends. In the present case, it has been pointed out that replacing the artificial leg will be required every two to three years. It is not possible to form an accurate and verifiable estimate of the future costs because much depends on how Tamar progresses in the future. However, the court has to arrive at a reasonable estimate on the basis of the evidence on record to compensate for the needs arising from this injury.

- [36] Counsel for the parties concedes a life expectancy of 70 years in determining the costs of replacement of the prosthesis. The multiplier/multiplicand approach has been the established method for computing the cost for the replacement of the prosthetic during adulthood. Considering that compensation has been made for yearly replacements up to the age of eighteen (18) years, I am now to consider the replacements from the age of 18 to the life expectancy of 70 years to determine the multiplier. In arriving at the multiplier, it is the evidence that the prosthesis will be of limited lifespan and will have to be replaced triennially thus making a total sum of \$743,382.48 i.e. $(70 - 18 = 52 \div 3 = 17.33 \times \$42,895.70 \text{ (multiplicand)})$. Counsel for the claimant suggests a one third (1/3) reduction of the award having regard to the fact that Tamar will be receiving a lump payment and the contingencies, vicissitudes and imponderables of life. Accordingly, an award in the sum of \$495,588.32 is made under this head.

Loss of Earning Capacity

- [37] Estimating loss of income for a child of 8 years is challenging as the child has her entire life ahead of her and is too young to have started on a particular educational or career path.
- [38] The text "**Mc Gregor on Damages**¹⁸" provides guidelines for the calculation of loss of earning capacity for children:-

“ In the case of child “wholly or partially incapacitated for life, the court must take an estimate of how well the child, if uninjured, would have fared as an earner on attaining adulthood. The court is here faced with the

¹⁸ 19th Ed, Page 1434 Para 38-087 “

difficulty that it has little or no material upon which to assess future earning potential where the injury is incurred, and especially when the trial come on, at a time when the child is still too young for its ability to be measured with any degree of objectivity and certainty.”

- [39] When assessing in such circumstances, the starting point is to look at the national average wage as the multiplicand. The Court of Appeal In **Croke v Wiseman**¹⁹ adopted a common approach taking into account parental backgrounds and achievements to determine an average earning. The court may apply a higher multiplicand to a clearly intelligent child or to one whose family background indicates that he/she would have been likely to enter a profession and earn an above average salary²⁰.
- [40] The parties were directed to file submissions to assist the court in determining an appropriate award in light of the above stated principles. In submissions filed on March 12, 2018, counsel for the claimants helpfully provided the court with the Earnings and Hours of Work Report for 2003.
- [41] Counsel for the claimants submits that Tamar has a very promising professional future and having regard to her excellent academic performances to date would place her in the bracket for bank tellers with average monthly gross earnings of \$1,531.29. Counsel suggests an uplift by 1.5 taking into account that the data was collated in 2003 and also Tamar’s excellent academic results.
- [42] Counsel for the defendant in summary contends that there is no evidence to suggest that Tamar would suffer any loss of earnings to justify an award. However, assuming but not admitting that she is entitled, counsel is of the view that there is no sound basis for an average annual range to be 1.5 times the national wage as proposed by the counsel for the claimants.

¹⁹ (1982) 1 WLR 71

²⁰ Harris v Harris [1973] 1 Lloyd’s Rep 445

Analysis

- [43] Tamar's disability is a factor which would determine her level of employment. At this tender age it is not possible to identify a specific career model for Tamar. The authorities require that it is necessary to resort to the national average earning figures and reference to the family history and educational attainments. Tamar is from a modest family with average educational background. Her father is a minibus operator and has been the president of the National Council for Public Transport for the past twelve (12) years earning a monthly stipend of \$1,000.00. Her mother has been a senior cashier and sales clerk with a reputable company for the past twenty four (24) years.
- [44] I am of the view that Tamar's academic performance together with her family background would place her at a probable income within the gross national monthly wage of \$1,531.29. The gross amount is to be discounted by 5% for NIC contributions making a net income of $\$1,454.72 \times 12 = \$17,456.64$ as the multiplicand. A multiplier of 18 is in keeping with the authorities making a total sum of \$314,219.52. An award under this head is usually discounted in view of imponderables and uncertainties and the fact that a lump sum is paid. However, I take into consideration that the figures relied on were collated in 2003 and considering possible increases in salary and inflation over the years would require an uplift to provide reasonable compensation. In the circumstances, I will not make the 1.5 uplift as suggested by counsel for the claimant but will not make the usual deduction for vicissitudes and imponderables. Accordingly, an award in the sum of \$314,219.52 is made for loss of future earnings.

Shaunta Dantes

- [45] Shaunta Dantes, 34 years, was admitted at the Victoria Hospital on the 2nd October and discharged on the 5th October 2015. She complained of tenderness and pain to the lower abdominal pain. An x-ray of left knee revealed swollen soft tissue. She was discharged and referred to orthopedics outpatient clinic. Her abdominal pain was resolved upon further assessment but she continued

experiencing pain in her left knee which was suggestive of ligamentous injury and hypotrophy of the quadriceps muscles. The most recent review on 24th February 2016 suggests expected improved results over a period of six (6) months with recommended physiotherapy and exercise of the left knee.

- [46] Shaunta avers that she was unable to walk or stand for approximately 2 weeks after discharged from the hospital. She eventually walked with an apparent limp and was unable to climb stairs normally. She resumed work on 7th November 2016 after a period on medical sick leave. She states that she continues to experience flashbacks with insomnia and is also unable to return to her usual fitness and voluntarism activities with National Volunteers of Saint Lucia.
- [47] Shaunta seeks general damages in the sum of \$60,000.00 for pain and suffering and loss of amenities. The cases of **Randy James v Leroy James et al**; **Jennifer Prescott v Aldrick Parris et al** and **Dacon v Maharaj and Prudential insurance Limited** with awards ranging from \$40,000 to \$130,000 were referred to as comparatives for an appropriate award.
- [48] Counsel for the defendant suggests an award in the range of \$5,000 - \$7,000.00 and cited three authorities from the Republic of Trinidad & Tobago where in 1975 awards ranging from \$6,926.00 to \$8,694.98 with similar type injuries.
- [49] As indicated at Paragraph 17 above, it is inappropriate to refer to authorities of such vintage as comparatives. The court notes that the injuries in the authorities cited by the claimant are more severe than the injuries at bar. For instance, in **Jennifer Prescott v Aldrick Parris**, the claimant 36 years, suffered an anterior and lateral ligament tear of the right knee. She was initially managed with a knee brace followed by surgical repair of the ligaments in Martinique with continued assessment. She continued to suffer with pain and sudden give away of her right knee which caused near falls as a result of the injury. She developed osteoarthritis

with recommended knee replacement surgery. In 2013, an award in the sum of \$60,000.00 was made for pain and suffering and \$25,000.00 for loss of amenities.

[50] In the case at bar, the medical evidence suggests that the claimant would have been healed after a period of six months after her last evaluation in 2016. Unlike the cases cited, the claimant did not undergo surgery but was however in pain and on extended sick leave before resumption of work. She speaks of insomnia and the lasting effect of the accident but without any medical evidence to support her averments. I am of the view that an award of general damages in the sum of \$35,000.00, of which with \$25,000.00 for pain and suffering and \$10,000.00 for loss of amenities is reasonable compensation and I so award.

Order

[51] In summary, it is ordered that the defendant shall pay the claimants the following awards:

(a) Special Damages

1. Godfrey Ferdinand- Loss of car and police report - \$24,000.00
2. Tamar Ferdinand - Medical expenses - \$73,581.89
3. Samuel Harrigan - Costs of repairs to the property - \$12,300.00
4. Shauna Dauntes – Medical expenses and other incidentals- \$3,248.95
5. Loss of use for vehicle for Godfrey Ferdinand - \$12,300.00

Total Special Damages in the sum of \$125,430.84 with interest at the rate of 3% from the date of the accident to the date of judgment and at the rate at 6% from the date of judgment until payment in full.

(b) General Damages – Tamar Ferdinand

1. An award for general damages in the sum of \$400,000.00 of which the sum of \$175,000.00 is for pain and suffering and \$225,000.00 for loss of amenities with interest at the rate of 6 % from the date of judgment until payment in full.

2. Future Medical care in the sum of \$300,269.90 for prosthetics up to the age of 18; and the sum of \$495,588.32 for prosthesis during adulthood with no award of interest.
3. Loss of earnings in the sum of \$314,219.52 with no award for interest.

(c) General Damages for Shauna Dantes

1. General damages in the sum of \$35,000.00 with \$25,000.00 for pain and suffering and \$10,000.00 for loss of amenities with interest at the rate of 6% from the date of judgment until payment in full.

(d) Prescribed Costs on the global award in accordance with CPR 65.5

[52] The awards made in relation to the second defendant, Tamar Ferdinand are divided. One portion is allocated for the medical expenses prior to the age of eighteen (18) and which can be paid immediately. The court needs to protect the other portion of money for Tamar to be paid into court and to be paid out when she turns 18 or is otherwise declared an adult. Once Tamar reaches adulthood, an application can be made to the Court for the amount to be paid out. The parents may also petition this Court for early release of some or all of the money. However, the Court will only agree to do so, if the court feels that it is in the best interest of Tamar. It is also the evidence that interim payments have been made to the claimants. The awards made in the assessment are subject to the diminution as a result of the interim payments.

[53] I wish to thank both counsel for their valuable assistance in their submissions and authorities.

**Agnes Actie
High Court Master**

By the Court

Registrar