

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

**Claim Number: SLUHCV2017/0165
Between**

Orlando Edwin

Claimant

AND

**1. Orin Sherwin Choyee
2. Conroy J Edward**

Defendants

Appearances: Mr. Henry Joseph of counsel for the claimant
Mr. Leslie Prospere with Mr. Vilan Edward of counsel for the defendants

2018: April 11, 24

JUDGMENT

1. **ACTIE M:** On 23rd December 2015, at about 10.30 P.M., the claimant's motor cycle collided with a motor vehicle driven by the first defendant and owned by the second defendant. The claimant filed a claim with a statement of claim against the defendants and obtained judgment in default of acknowledgment of service with damages to be assessed. The matter now comes on for the assessment of damages.

Special Damages

2. The defendants conceded special damages as pleaded and proved comprising of the following:
 1. Accommodation in hospital and treatment \$36,312.02
 2. Police accident report \$200.00

3. Medical consultations (x4)	\$1370.00
4. Physiotherapy sessions (x1)	\$600.00
5. X-Ray (x2) @ EC \$90.00	\$180.00
6. Medication	\$55.30
7. Medical Report	\$500.00
8. Loss of earnings	\$11,102.40
9. Loss of personal effects	\$4408.46
10. Replacement of motor cycle less salvage value	\$13,500.00
Total Agreed Special Damages	\$68,228.18

Vehicle Rental

3. What is in dispute is the claimant's claim for the sum of \$30,000.00 for rental of a Terios jeep for a period of ten (10) months from April 2016 to March 2017. Firstly, the defendants contend that the claimant should be awarded a comparative rental value of a motor cycle ranging in the sum of \$80-\$100 instead of the rental value of the SUV. The claimant in response states that the injuries sustained as a result of the accident caused severe pain in his hip and groin area which made it impossible to ride a motor cycle.
4. Secondly, the defendants, citing the dicta of Master Cottle as he then was in **Hybert Construction Co Ltd V Henry Bacchus**¹ contend that the claimant should not be compensated for an amount which was in excess of the value of the replacement vehicle.

Analysis

5. The tortfeasor takes the claimant as he finds him. The defendants having accepted liability for the claimant's injuries were under a duty to compensate the claimant within a reasonable time. I accept the claimant's evidence that the injuries suffered in the groin area affected his ability to ride a motor cycle. I also accept the evidence that the SUV allowed much needed comfort due to the nature of the injuries and the resulting impact. I also note that the rental rate for the motor cycle ranging from \$80 - \$100 proposed by the defendants is within the range claimed for the rental of the SUV.

¹ SLUHCV0083/2004

6. I am in agreement with counsel for the defendants that the claimant acted unreasonably in renting a motor vehicle from April 2016 for a period of ten (10) months, in light of the existing evidence.
7. Whereas the defendants were under an obligation to pay compensation promptly for the wrong committed. It is the corollary that the claimant was under a duty to take reasonable steps in order to mitigate his loss. The text **Mc Gregor on Damages**² states:-

“a plaintiff must take all reasonable steps to mitigate the loss to him consequent upon the defendant’s wrong and cannot recover damages for any such loss which he could have avoided but has failed, through unreasonable action or inaction”.
8. In **Malcolm Joseph et al v Alison Charles**³. Barrow J (Ag.), as he then was, states that what is reasonable is a question of fact to be considered in light of the particular circumstances of a given case.
9. The claimant submitted a report from Motorcycle Solutions dated 26th February 2016. The report described the motor cycle as a complete right off with a pre-accident value of \$16,000.00 and a salvage value of \$2,500.00. The claimant resumed work in April 2016, with full knowledge that the motor cycle was totaled and needed replacement. The claimant, in examination-in-chief, states that he was financially able to purchase a replacement vehicle. An amount which is almost twice the value of a replacement motor cycle is unreasonable in the circumstances. Applying the above principles to the facts, I am of the view that a period of three (3) months was sufficient time for the claimant to have obtained a replacement vehicle. Accordingly, I make an award for a rental period of three (3) months in the sum of \$9000.00.

Costs of Physiotherapy

10. The defendants challenge the sum of \$6600.00 claimed for physiotherapy sessions since the claimant only produced one receipt in the sum of \$600.00 under this head.

² Chapter 7 page 168 Para 275.

³ GDAHCV 2002/0077

11. The claimant presented a report from Zhenia C. Allain, Chartered Physiotherapist dated 17th August 2016. The report states that the claimant was seen for physiotherapy on 27th December 2015 and also at home for four physiotherapy treatments. Ms. Allain opined that the claimant may need an average of further nine (9) physiotherapy sessions.
12. I note that Ms. Allain's report of 17th August 2016 pre-dates the filing of the claim on 10th March 2017. However, the claimant only produced one receipt for physiotherapy dated 28th March 2016 in the sum \$600.00. The receipt did not give details of the period for the physiotherapy session. The claimant was under an obligation to provide receipts to substantiate any amount claimed as special damages. The absence of the receipts places the court in an undesirable position to speculate which may lead to a nominal award. Counsel for the defendants accepts the evidence for the further physiotherapy but suggests a nominal sum of \$100.00 per session to be considered as future medical care. I agree with this posture and accordingly an award in the sum of \$900.00 is made for future medical care.

General Damages

13. The principles for compensation for general damages are well known and set out by Wooding CJ in the landmark decision of **Cornilliac v St Louis**⁴ 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.

THE NATURE AND EXTENT OF INJURIES SUFFERED

14. The claimant, 33 years at the time of the accident, was admitted at the Victoria Hospital and then transferred to the Tapion Hospital. He was discharged after 16 days with follow up care in physiotherapy. The claimant's injuries were described by Dr. N.A. Dagbue as: (a) an "open book" fracture of the pelvis with a widening of the symphysis pubis (b) bladder injury (c) multiple soft tissue injury to the back and lower limbs. The claimant injuries were managed surgically with open reduction; internal fixation of the symphysis with plates and screws and the bladder was repaired.

⁴ Cornilliac v St Louis (1965) 7 WIR 491.

15. NATURE AND GRAVITY OF THE RESULTING PHYSICAL DISABILITY

It is the medical evidence that the claimant fully recovered from his injuries but walks with a limp. The claimant continues to have pain in his pelvis and in the sacro-iliac joint, a condition which will continue for years to come and possibly for the rest of his life.

Pain and suffering

16. The claimant avers that he was transferred to the Tapion Hospital where he waited for three (3) days in pain before undergoing surgery. Upon being discharged, he was taken to his parents' home and was unable to bear any weight due to the pain in his back and legs. He remained in bed and in pain for one month. He states that he suffered tremendous pain the first time he was placed in a wheel chair. He remained off work for approximately four (4) months and continues to have pain in the lower back, groin and pubic area, left hip and knee. It is the medical evidence that the claimant may suffer the pain for the rest of his life.

Loss of Amenities

17. The claimant avers that the pain experienced in the hip and groin has diminished his enjoyment and performance as a Senior Systems Engineer. His job involves traveling to the southern OECS. The claimant avers that the travelling between the islands causes much pain and discomfort. The claimant also avers that prior to the accident, he enjoyed a very active life, both social and sporting, being a normal father to his 11 year old son. He asserts that he is now unable to engage in physical activities such as football, cycling and fishing with his son. The claimant further asserts that the injuries have impacted his sexual activities as he is limited to basic positions.

Analysis

18. The assessment of damages is not a precise calculation as the aim is to provide reasonable compensation for the pain and suffering and loss of amenities. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. Lord Hope of Craighead in **Wells v Wells**⁵ states:

⁵ [1998] 3 All ER 481

“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”.

19. The claimant claims for general damages in the sum of \$250,000.00 and presented several authorities to assist the court in making a comparative award namely:-

1. **Robert Antoine v Johnston International Limited**⁶:- The claimant suffered a crush injury to his pelvis resulting in comminuted fractures and bilateral subluxations of sacroiliac joints; bilateral fractures of the first sacral vertebra; injury to left first lumbar nerve resulting in foot drop; neuro praxia of the right sacral plexus; crushed chest injury with fractured ribs and ruptured diaphragm; ruptured bladder. The claimant underwent several surgical treatments with fixation with plates and screws. The patient was confined to a bed and chair and was eventually able to ambulate with crutches. In 2010, the court awarded general damages in the sum of \$120,000.00.
2. **Deipak Paul v Douglas Blyden**⁷: The claimant 56 years, sustained injuries when the defendant’s vehicle ran into him on a side walk. He suffered pre-prosthetic fracture of the left femoral stem; severe external rotation of the left leg; displacement of the left femoral prosthesis; osteoarthritic changes around both hips; lacerations to the right forehead and the above left eyebrow; abrasion to both knees; laceration to the face; fracture to the left femoral stem, extreme rotation of the leg and displacement of the left femoral prosthesis, and underwent several surgical procedures. After surgery, the claimant was only able to ambulate with the aid of a walker and was required to undergo post-surgery physiotherapy for a period of three months. The claimant who was an accountant was unable to find alternative employment due to his physical conditions. In 2012, the court awarded the sum of \$80,000.00 for pain and suffering and loss of amenities.
3. **Ryan Richards v Michael Francois**⁸: The claimant sustained a displaced comminuted fracture mid shaft left femur, skin traction to the left lower limb, soft tissue injuries to the shoulder and left arm, with a permanent limp and deformity to the femur uniting with some angulation and shortening. The claimant spent 3 months immobilized with his left leg

⁶ SLUHCv2008/0975 delivered on November 30,2010

⁷ BVIHCv 2011/0262 delivered on November 28,2012

⁸ GDAHCv201/0156 delivered on November 7 2013

suspended in the air and attached to a 25 Pound sand bag at the hospital. He suffered shortening of his left leg with continuous pain. In 2013, an award was made in the sum of \$80,000.00 for pain and suffering and \$60,000.00 for loss of amenities.

20. Counsel is of the view that the claimant's injuries were more severe than the authorities cited.

Defendants' Submissions

21. The defendants in response suggest an award in the sum of \$60,000.00 and cited several authorities as a guide for the assessment. However, emphasis was placed on the award made in the case of **Caroline Serieux v Sports St Lucia Inc**⁹. In that case the claimant, 26 years, suffered a closed fracture of the pelvis with soft tissue abrasions and contusions. The claimant was admitted at hospital for eighteen (18) days and was unable to walk for 8 days after which she commenced partial weight bearing using a walker frame. She suffered soft tissue abrasions and contusions on the upper limb. In 2013, an award for pain and suffering and loss of amenities was made in the sum of \$57,000.00.
22. Counsel for the defendants also referenced the **Judicial Studies Board "guidelines for the assessment of general Damages in Personal Injury Cases in Northern Ireland"** to determine a figure having regard to the paucity of authorities with similar type injuries. The **Judicial Studies Board** recommends compensation for significant injury to the Pelvis or Hip where permanent disability is not major nor at any future risk great, in the range of £24,000.00 - £58,000.00. Counsel for the defendants suggests the lower end of the award i.e. £24,000.00 to be scaled down by 25% taking into consideration the varying socio-economic circumstances between the United Kingdom and the Eastern Caribbean.
23. The aim of an award for general damages is to provide "*reasonable*" compensation for pain and suffering. While it is required to have consistency between awards for similar injuries the same injury could, however, have different impacts on different individuals.

⁹ SLUHCV2010/0753 delivered on 7th June 2013

24. According to my research, the “Open-Book Pelvic Fracture” suffered by the claimant is a term used to describe any fracture that significantly disrupts the pelvic ring. The term signifies the severity of pelvic widening, lateral and anteroposterior compression and other pelvic injuries with the highest risk of death or disability.
25. I accept the evidence that the claimant’s general enjoyment of life has been diminished as a result of the injuries sustained in the collision. The authorities cited by both parties refer to closed pelvic fractures which are less severe to the injuries suffered by the claimant. The figures contained in the **Judicial College’s Guidelines** are within a range of awards intended to provide a general guideline in relation to the value of the injury claimed. The court, in an assessment of damages, must have regard inter-alia to the age of the claimant, occupation, severity of the injury, extent of treatment required, effect on the claimant’s work and the impact on the claimant’s lifestyle. Each claim will be considered on its own merits taking into account the individual circumstances of each claimant.
26. I have considered the award contemplated by the **Judicial College’s Guidelines** and also took into consideration the difference in the socio-economic status of the United Kingdom when compared to the Eastern Caribbean. Accordingly, I make an award in the sum of \$100,000.00 for pain and suffering and \$40,000.00 for loss of amenities.

Contributory Negligence

27. The defendants contend that any award made should be discounted as the claimant failed to take necessary and reasonable actions to avoid the collision and resulting injuries. The defendants aver that the claimant failed to ride the motorcycle at a speed that would enabled him to safely stop, slow or swerve to avoid the collision.
28. It is open to the court to take into consideration the issue of contributory negligence¹⁰ for the first time at an assessment of damages. However, the defendant must satisfy on a balance of probability that the claimant’s action or inaction contributed to the injuries.

¹⁰ Lunnun v Singh etal (1999) Lexis Citation 2979

29. According to the police report, the accident was caused by the first named defendant turning right injudiciously across the path of the motorcycle. The report did not suggest any negligence on the part of the claimant. The defendants have not provided a scintilla of evidence to contradict the police evidence. I am of the considered view that the evidence before this court does not support the issue of contributory negligence as averred by the defendants. I accept the police evidence that the first defendant is fully responsible for the accident. Accordingly, the award made to the claimant stands without any diminution on the ground of contributory negligence.

Order

30. In summary, it is ordered that the defendants shall pay the claimant the following award:

1. Special damages as agreed - \$68,228.18
2. Rental of vehicle - \$9000.00.

Total special damages in the sum of **\$77,228.18** is awarded with interest at the rate of 3% from the date of the accident to the date of filing the claim and at the rate of 6% from the date of filing until payment in full.

3. Future Medical Care in the sum of **\$900.00** without added interest.
4. General Damages in the sum of \$100,000.00 for pain and suffering and \$40,000.00 for loss of amenities, with interest at the rate of 6 % from the date of judgment until payment in full.
5. Prescribed Costs on the global sum pursuant to CPR 65.5

AGNES ACTIE

MASTER, HIGH COURT

BY THE COURT

REGISTRAR