

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES**

Claim No. SVGHCV2017/0065

Between:-

RASMIN ROGERS

Claimant

and

TYRONE CREESE

KISMET INC.

Defendants

Appearances:

Mrs. Patricia P. Marks-Minors of Counsel for the Claimant
Ms. Suzanne Commissiong of Counsel for the Defendants

2017: December 19
2018: April 10

ASSESSMENT OF DAMAGES

- [1] **WALLACE, M.:** On 11th March, 2014, the Claimant, then 46 years old, was travelling along the Argyle main road in the vicinity of the Oasis Spa and Resort when her vehicle was struck by a vehicle owned by the second-named Defendant and driven by the first-named Defendant. On the 15th August, 2015 the first-named Defendant was found guilty of driving without due care and attention in the Magistrates Court.
- [2] The Claimant commenced legal proceeding for negligence on the 3rd May, 2017 claiming damages, interest and costs. On the 24th October, 2017, judgment on admission was entered for the Claimants with damages to be assessed.

SPECIAL DAMAGES

- [3] The Claimant has claimed special damages in the amount of Seven Hundred Dollars (\$700.00). The Defendant does not dispute this claim. I am satisfied that special damages have been pleaded and have been proven in the amount of Seven Hundred Dollars (\$700.00). That sum is allowed.

HOME CARE/NURSING CARE

- [4] The Claimant states that while at home recovering she was severely restricted in terms of her mobility. She was unable to carry out her usual household or personal duties, she claims that her mobility was limited during this time, that she was unable to perform any domestic chores, could not bathe herself, use the bathroom or prepare her own meals. Her daughter was her primary helper during her recovery period as she was off from work for a period of six (6) months. She makes a claim for Three Thousand Dollars (\$3,000.00) being six (6) months at Five Hundred Dollars (\$500.00) per month under this head.
- [5] The Defendant conceded the sum of \$500.00 for nursing/home care for 1 month but challenged the period of six (6) months on the basis that no evidence has been produced that the Claimant remained at home for 6 months.
- [6] The Claimant filed supplemental evidence exhibiting medical leave certificates for period being claimed. I find that an award in the sum of \$3,000.00 to be reasonable in all the circumstances.

GENERAL DAMAGES:

- [7] The legal principles governing the assessment of general damages are well settled.¹ Consideration is to be given to the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability; the pain and suffering endured; the loss of amenities suffered; and the extent to which the Claimant's pecuniary prospects have been affected.
- [8] The Court must award a fair and reasonable amount in compensation to reflect the loss or injury caused to the Claimant by the Defendant's actions. The sum is not calculable by any fixed formula

¹Cornilliac v St Louis (1965) 7 WIR 491

but is intended to put the injured party in the position that they would have been had they not sustained the injury. A Claimant's general damages may represent the damages for pain and suffering, loss of amenities and for future loss of earnings.

[9] In **Wells v Wells**², Lord Hope of Craighead said that:

"...The amount of the award to be made for pain, suffering and the 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 best estimate of the plaintiff's general damages...."

[10] The criteria that a judge should apply in the exercise of his or her discretion in relation to general damages for personal injuries is well set out in the Civil Appeal case of **CCCA Limited v Julius Jeffrey**³ and reads as follows:

"...it is, 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 the context of damages for personal injuries, there are certain principles which apply and there is a discretion which needs to be exercised. In the case of pain, 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 be clearly very helpful in relating the claimant's injuries on a comparative scale. This is not a precise science, leaving much room for the trial judge's discretion".

Nature and Extent of the Injuries Sustained

[11] The injuries sustained by the Claimant as a result of the accident as verified in the Medical Reports dated 26th October, 2015 were Injury to both ankles and feet. X-rays revealed fracture of the 5th Metatarsal of the right foot and fracture of the proximal phalanx of the left foot. Both feet were casted for one month. After the casts were removed the Claimant did several months of physiotherapy. At the time of the medical report the Claimant was expected to make a full recovery.

² [1998] 3 ALL ER 481

³ C.A. No. 10 of 2003 SVG

[12] The Claimant also stated that she was later admitted to hospital on the 12th May, 2015 on what was a suspected case of pulmonary embolism as she expressed chest pain, calf pain and shortness of breath. She was discharged 7 days later.

[13] The Defendants submitted that there was no indication that any of these symptoms were related to the injury sustained 18 months previously. Further, the Claimant was treated for pain with Panadol, a mild analgesic, and discharged within 7 days in a stable condition.

Nature and Gravity of the Resulting Disability

[14] The Claimant stated the effects the injuries had on her life. She stated that she was off work for a period of six (6) months.

[15] The medical report from Dr. Woods dated some three years after the accident stated that when the Claimant was seen by him on the 19th September 2017, she continued to experience pain in her right foot and swelling of ankle and had what he described as “mild post traumatic degenerative disease of the ankle” which may progress to chronic arthritis of the ankle. The Claimant states that her legs are prone to swelling when she stands or sits for long periods and that she is unable to partake in social and recreational activities as she did in the past. Additionally, she is unable to drive unless she is wearing an ankle brace.

[16] Counsel for the Defendants submitted that although Dr. Woods stated that the Claimant had developed mild post traumatic degenerative disease he also stated that it would improve with exercise and heat therapy and the progression to chronic arthritis was not a certainty.

Pain and Suffering and Loss of Amenities Suffered

[17] The Claimant's evidence is that she experienced sudden and excruciating pain from the time of the accident through to the treatment process. Both of her feet were casted for a month. She continued to experience pain and was hospitalized a second time for what was a suspected case of pulmonary embolism, During this period of hospitalisation the Claimant's evidence is that she was confined to the hospital bed where she had to eat, bathe and use a bed pan.

[18] The Claimant stated in her Witness Statement that she led an active lifestyle prior to the accident. As a result of her injuries she has reduced foot strength which affected her mobility at times. She is unable to wear footwear with heel of a certain height socially or for work as her ankle is prone to swelling. She can no longer run or dance as she did before the injury.

Quantification of General Damages

[19] I have considered the evidence and medical reports of the Claimant and the Submissions of both Counsel.

[20] Counsel for the Claimant invited the Court to consider the sum of \$110,000.00 in general damages for pain and suffering and loss of amenities. I have noted the authorities that the Claimant submitted in support this sum. In **Ronald Rossi v. Stephanie Peters**⁴, a Dominica decision in 2016, an award of \$80,000.00 was made to a 50 year old claimant for pain and suffering and loss of amenities. The claimant in that case suffered ruptured knee ligament with no resulting disability. In **Kendol Frederick v Carlton Cunningham**⁵ a 2009 decision from this jurisdiction, an award was made of \$150,000.00 where the claimant, who was twelve (12) years old at the time of the accident, suffered injury to the back of his knee and to his ankle after his leg and foot were driven over by a truck. He was hospitalized for three and one-half (3 ½) months and although after his recovery period he has full range of motion, he had loss of sensation of the area of the injury that was covered by skin graft. The court found that the Claimant, a very young man had suffered a “horrible and disfiguring injury”. The Claimant, in **Cleo Billingsy v Kevon Jessie-Don Anderson et al**⁶ was awarded a sum of \$80,000 for pain and suffering and \$30,000.00 for loss of amenities in 2014 for numerous injuries including (a) Laceration to the scalp, (b) deformity of the left leg and left elbow (c) Fractures of left tibia and fibula and (d) Fractures of left distal humerus and right thumb. The Claimant in that case made a good recovery but the medical evidence was that he was developing post traumatic arthritis.

⁴DOMHCV2013/0308

⁵SVGHCV 2002/475

⁶SVGHCV2013/0096

[21] Counsel for the Defendants submits that the injuries in the case at bar are less severe than those in the cases relied on by the Claimant and that a more reasonable award should be in the range of \$50,000.00 to \$60,000.00.

[22] Counsel for the Defendants referred me to the following authorities:

Marcel Fevrier and Jenny Fevrier v Bruno Canchan et al⁷

Casey Piggott and Sherriann Pigott v Veleloma Potter and Vernon Potter⁸

Errol Edwards v Gabriel George⁹

[23] In **Marcel Fevrier** decision out of Saint Lucia in 2002, an award of \$50,000.00 was made to the first-named claimant for pain and suffering and loss of amenities. The claimant in that case suffered fracture of his left leg, fracture to toes of both feet, fracture of the right hip and right knee. He was hospitalized for two months and on sick leave for a further four months. His medical report indicated that he would have chronic pain in his feet and a two percent (2%) disability. In **Casey Piggott**, a 2012 Antigua and Barbuda decision, an award was made of \$50,000.00 where the claimant, who was twenty five (25) years old at the time of the decision, suffered severe headache, swollen and tender right thigh, dislocated right lower limb and severe close fracture of the right femur as a result of a motor vehicle accident. He was also left with leg shortening which could only be corrected with surgery. The Claimant, in **Errol Edwards**, a decision from Grenada, was awarded a sum of \$50,000 for pain and suffering and loss of amenities in 2013 for numerous injuries including (a) fractured hip, (b) puncture wound to the right leg (c) soreness to the right knee and (d) abrasion to the left knee, forehead and right side of the face. The claimant in that case stated that he was unable to continue his hobby of gardening.

[24] Having considered the range of authorities and their respective dates of delivery and all the circumstances of this case I am of the opinion that an award under the head of Pain and Suffering and Loss of Amenities in the sum of \$80,000.00 will suffice to compensate the Claimant.

⁷ (Civil Suit No. 313 1989, Saint Lucia),

⁸ ANUHCv20L0/0423

⁹ GDAHCV20II/0424

Loss of Earning Capacity/Handicap on the Labour Market

- [25] The Claimant stated that she is employed as an Aviation Security Supervisor where her job requires her to be on her feet for several hours per day. As a result of her injuries her feet are prone to swelling and this has impacted her ability to carry out her job as she did prior to her injuries. She has expressed her anxiety as to her future prospects in her job due to the Doctor's diagnosis. She states that her gross salary is \$2,700.00 per month.
- [26] Counsel for the Claimant submitted that in light of the most recent medical report and the nature of the Claimant's job there is a real risk of her losing her job and being thrown on the job market where she would be at a disadvantage because of the uncertainty which has developed as a result of her injuries. She should be compensated for this as was done by the court in **Randy James v. Leroy Lewis et al**¹⁰. In that case the court awarded the claimant the sum of Sixty Thousand Dollars (\$60,000.00) under this head. Counsel then invited this Court to make an award of Fifty Thousand Dollars (\$50,000.00).
- [27] Counsel for the Defendants submitted that despite the restrictions stated by the Claimant, she is still employed as an Aviation Security Officer, a job which she admits requires her to stand for several hours per day walking from various points of the Argyle International Airport to the other. She is still able to do 9 hour shifts during the day and longer shifts at night. Counsel for the Defendant also stated that the Claimant stated in her witness statement that the injuries have made it difficult to perform efficiently on the job but yet she is still employed there some 3 years later. She has not indicated that her duties have changed or that she has been placed at a desk ora position where she can be seated for most of the day, despite these complaints. She has provided no evidence to suggest she is unable to perform her job in the manner she used to.
- [28] The Defendants also submitted that the most recent medical report dated 11th October 2017 does not state for certain that the injury will cause her serious financial disadvantage and handicap on the labour market or that her job is presently in jeopardy. The report states that her right ankle will improve with heat therapy and exercise and that it may progress into chronic arthritis. This is not a

¹⁰ANUHCv2007/0403

certainty. The Defendant asked the Court to consider the cases of **Gravesandy v Moore**¹¹ and **Casey Pigqott** and not to make an award under this head.

- [29] While I accept that the risk of the Claimant losing her job as a result of her injuries is not significant at this time, there is a real risk that she may develop chronic arthritis from a progression of the mild post traumatic degenerative disease of the ankle with which she is diagnosed to have. Given the nature of her job, this is not remote. Her injury may, at some future time cause her some financial disadvantage. It is more than a fanciful risk. She has approximately 15 more years of working life. Based on the reasoning in **Moeliker v A Reyrolle and Co Ltd**¹² I think that \$20,000.00 would be a fair amount in all the circumstances.

Future Medical Expenses

- [30] The Claimant urged the Court to consider making an award of Five Thousand Dollars (\$5,000.00) for future medical and physiotherapy expenses on the basis of her most recent medical report which stated that her condition may deteriorate.
- [31] I agree with Counsel for the Defendants there is no certainty that the Claimant will require costly medical care. However, considering the Medical Report of October 2017 and “weigh up the risks and chances in all the circumstance” I will award the sum of \$2,500.00 for future Medical Expenses. For the avoidance of doubt no interest is payable on this sum.

¹¹1986 (40) WIR 222

¹²[1977] 1 All ER 9 where it was stated in the headnote to the case that:

“In awarding damages for personal injury in a case where plaintiff is still in employment at the date of the trial, the court should only make an award for loss of earning capacity if there is a substantial or real, and not merely fanciful, risk that plaintiff will lose his present employment at some time before the estimated end of his working life. If there is such a risk, the court must, in considering the appropriate award, assess and quantify the present value of the risk of the financial damage plaintiff will suffer if the risk materialises, having regard to the degree of the risk, the time when it may materialise, and the factors, both favourable and unfavourable, which, in a particular case, will or may affect plaintiff’s chances of getting a job at all or an equally well paid job if the risk should materialise. No mathematical calculation is possible in assessing and quantifying the risk in damages. If, however, the risk of plaintiff losing his existing job, or of his being unable to obtain another job or an equally good job, or both, are only slight, a low award, measured in hundreds of pounds, will be appropriate”.

INTEREST

[32] Interest is usually awarded on general damages awarded to a claimant for pain and suffering and loss of amenities from the date of service of the claim form to the date of judgment at the rate payable on money in court placed on short-term investment. Similarly, with respect to special damages, the Claimant is also entitled to interest at the rate payable on short-term investment from the date of the accident to the date of judgment. This principle was addressed by the Court of Appeal in **Alphonso and Others v Deodat Ramnath**(1997) 56 WIR 183 and I find it as instructive.

[33] After judgment, the Claimant is entitled to interest at the rate provided in the Interest Act to the date of payment in full.

[34] In summary, for the foregoing reasons the Court orders damages for the Claimant as follows:

(1)	Special Damages	\$700.00
(2)	General Damages	
	(i) Pain and Suffering	\$80,000.00
	(ii) Loss of Earning Capacity/Handicap on the Labour Market	\$20,000.00
	(iii) Nursing and Domestic Care	\$3,000.00
	(v) Future Medical Expenses	<u>\$2,500.00</u>
	TOTAL	\$106,200.00

[35] It is hereby ordered and adjudged that the Defendants do pay to the Claimant damages assessed as follows:

- (i) \$700.00 as special damages with interest on special damages at the rate of 3% per annum from date of accident to date of judgment.
- (ii) \$80,000.00 for pain and suffering and loss of amenities with interest from the date of service of the claim to the date of judgment.
- (iii) \$20,000.00 for Loss of Earning Capacity/Handicap on the Labour Market. No interest payable.
- (iv) \$3,000.00 for nursing and domestic care. No Pre-judgment Interest is payable.
- (v) \$2,500.00 for future medical expenses. No Interest payable.

- [36] Interests on all awards, save and except for the award for future medical expenses and loss of earning capacity, following judgment is at the rate provided in the Interest Act to the date of payment in full.
- [37] The Claimant will also be awarded prescribed costs as per Rule 65.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

Yvette Wallace
MASTER

By the Court

Registrar