

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2015/0916

BETWEEN:

LORENA LAMBERT

Claimant

and

MICHAEL SERAPHIN

Defendant

Before:

Ms. Agnes Actie

Master

Appearances:

Ms. Maureen John-Xavier for the claimant

Ms. Leandra Verneuil for the defendant

2016: December 15,
2017: April 24

JUDGMENT

1. **ACTIE, M.:** On 20th May 2016, the claimant obtained a judgment in default of acknowledgment of service for an amount to be decided by the court. The matter now comes on for the assessment of damages.

Background

2. On 23rd May 2015, the claimant, a Medical Doctor, was a front seat passenger on a motor car driven by the defendant. It is the evidence that the defendant fell asleep while driving. The vehicle veered off the road and collided with an electricity pole causing injuries to the claimant.

Special Damages

3. The claimant claimed special damages and the defendant concedes the following sums:

1. Medical Expenses - \$10,785.33
2. Legal letters and service- \$300.00
3. Loss of income = \$59,296.80
4. Medical Report - \$1000.00
5. Traffic Accident Report - \$200.00
6. Future Medical Expenses \$102,583.00

Total agreed sum for special damages = \$174,165.13

Domestic Assistance

4. The claimant seeks the sum of \$32,500.00 for domestic assistance. The claimant avers that she resides alone with three minor children ages nine, four and three. The claimant said that the caregiver had to provide additional assistance as she was unable to care for herself and her children during the period of her incapacity until March 2016.
5. The claimant in support cites the authority of **Mary Anderson v Kenson Donacien etal**¹ where Master Taylor-Alexander allowed compensation for domestic care at the rate of \$50.00 a day. The claimant claims the sum of \$100.00 a day as a reasonable amount to compensate her carer for the additional services having regard to her injuries and the onerous responsibilities.
6. Counsel for the defendant contends that the amount claim is extortionate and unreasonable. Counsel contends that the claimant is seeking an additional \$3250.00 monthly to compensate for a job that the carer had already been contracted to perform prior to the accident.

¹ SLUHCV2013/0965

7. It is an established principle that a claimant is entitled to compensation for care and services provided by a third party whether or not carer was under a moral obligation to provide those services. The dictum in **Donnelly v Joyce**² states:

“In an action for personal injuries in an accident, a plaintiff was entitled to claim damages in respect of services provided by a third part which were reasonably required by the plaintiff because of his physical needs directly attributable to the accident; the question whether the plaintiff was under a moral or contractual obligation to pay the third party for the services provided were irrelevant; the plaintiff's loss was the need for those services, the value which, for the purpose of ascertaining the amount of his loss, was the proper and reasonable cost of supporting the plaintiff's need.”

8. Dillon L.J in **Mills v British Rail Engineering Ltd**³ states that an award under this head is made in respect of “care by relative well beyond the ordinary call of duty for special needs of the sufferer”.
9. The claimant's averments are consistent with the medical reports which stated that she was unable to perform basic activities of daily living like bathing, cooking washing without support. I accept the evidence that injuries placed a greater burden on the caregiver in caring for both the claimant and her minor children. However, I am of the view that the additional sum of \$100.00 per day is excessive and would accordingly allow the sum of \$50.00 per day reducing the amount claimed under this head to \$15,750 .00.

Doctor's Visit/Consultation/ Rehabilitation

10. The claimant claims the sum of \$17,400.00 for doctor's visit; consultation and rehabilitation since the accident. The amount claimed is supported by receipts for home visits from May to October 2015.

² (1973) ALL ER 475

³ (1992) P.I. Q.R. Q130 at Q137

11. Counsel for the defendant states that the fees charged are exorbitant when compared to fees charged by other providers. Counsel referred to the cost of \$100.00 invoiced for physiotherapy sessions by Body Balance Physio & Fitness. The court notes that the projected invoice from Body Balance Physio & Fitness post-dates the invoices submitted by the claimant. The claimant avers that she required the home visits as it was difficult to make regular visits out of her home due to the injuries and immense pain. The defendant also takes issue with the duplication of the home visits along with physiotherapy sessions at St. Jude's Hospital on the June 18 and October 7,12,19. The claimant was unable to give a satisfactory reason and I will accordingly discount the amount claimed for the days challenged by the defendant making a total of \$16,200.00.

GENERAL DAMAGES

12. The claimant claims general damages in the sum of \$175,000.00 for pain and suffering and \$60,000.00 for loss of amenities.
13. General damages are usually determined taking into consideration the principles set out by Wooding CJ in the seminal case 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, a Medical Doctor, 32 years old at the date of the accident sustained:
- blunt head trauma
 - open type 11 commuted fracture of the left distal 1/3rd femur with intra-articular extension.

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

She was treated with skin traction, and had open reduction and internal fixation of the left distal femur with a dynamic condylar screw. She was admitted at hospital for 4 days and discharged with recommendation for follow up care in the orthopaedic outpatient clinic.

Nature and gravity of the resulting physical disability

15. The medical report states that the head trauma was mild and was expected to heal well but the claimant would most likely have headaches off and on. The open fracture commuted fracture of the left distal femur was described as a severe injury. The claimant was expected to heal with some degree of shortening of the lower limb and loss of motion of her left knee. The medical report stated that the claimant would most likely develop post traumatic osteoarthritis of the left knee in the future which may necessitate a total knee replacement. The medical report states that the claimant would have a permanent keloid scar on her left knee unless she undergoes plastic surgery to reduce its prominence.

Pain and suffering

16. It is the evidence that the claimant experienced pain in cold temperatures due to increased sensitivity of the nerves at these temperatures with a burning pain to the left foot as a result of traumatized nerves at the knee injury. The report states that the claimant would improve over a period of about 1 year.
17. The claimant was described as being emotionally distressed with the painful, burning sensation and shortening of her left foot with mild limping. The claimant was advised to wear closed shoes with insoles with recommended physiotherapy. The claimant was recommended to stay away from work for approximately 6 months.
18. A medical report dated 1st July 2016, describes the claimant as being generally well with lower back pain with ambulation along with anterior left knee pain associated with a feeling of giving way of the joint. Reconstruction surgery in the

form of distal bone lengthening combined with locked plate fixation was recommended to address the current leg length shortening of the left thigh. The claimant states that she continues to suffer from on-going lower back pain with ambulation along with anterior left knee pain and experiences persistent numbness of the margins of the now healed surgical scar.

Loss of amenities

19. The claimant states that the permanent keloid is very visible and causes her much embarrassment as she is unable to wear her usual clothes which she wore prior to the accident. She no longer feels comfortable to go the beach as she no longer feels comfortable wearing swim suits, short pants, short skirts or dresses as a result of the scar. The claimant states that she can no longer wear high heels or participate in the gym or related activities.

Extent to which the claimant's pecuniary prospects have been affected.

20. The claimant states that she is a medical doctor in emergency room services which operates on very cold temperature. She states that it is uncomfortable to work in the emergency room as the plates and screws in her leg cause much pain as a result of the cold temperature. The claimant states that she has become very sluggish in performing her duties and finds it very difficult to do proper CPR which is a frequent skill required in the emergency room.
21. Counsel for the claimant referred the court to several authorities but places heavy reliance on two comparable authorities namely **Marcel Fevrier et al v and Bruno Canchan et al**⁵ and **Ronald Rossi v Stephanie Peters**⁶.
22. The claimants in **Marcel Fevrier et al v and Bruno Canchan et al** were husband and wife who suffered severe injuries in a motor vehicular accident. The claimants were trapped in their vehicle for over an hour and half after the accident. The

⁵ SLUHCV1989/0313 delivered on 28th March 2002-

⁶ DOMHCV2013/0308 delivered on 22nd march 2016

medical report described Marcel Fevrier's injuries with a six inch laceration to the knee to the right knee; a six inch laceration to the outer aspect of the right leg. A commuted fracture of the left tibia and fibula, fracture dislocations of the metacarpals and metacarpals joints in both feet; he underwent operative reduction and K wire fixation of the fractures and dislocation of his feet ; the fractured tibia and fibula were manipulated, reduced and immobilized in a plaster cast and he was incapacitated for about 6 months with chronic pain with 2% permanent disability. He was hospitalized for two months and remained out of work on sick leave for a further 4 months. The second claimant, Jenny Fevrier injuries were described as: abrasions and superficial lacerations over her body and a commuted fracture of the right femur, she underwent surgery with a K wire inserted into her femur; she was incapacitated for about 6 months. There was a one inch shortening of the right lower limb which would produce chronic joint pains in the limb resulting in permanent disability of about 10%. She was hospitalized for three (3) months and remained on sick leave for leave for a further 6 months. The court in 2002 award general damages for pains and suffering and loss of amenities in the sum of \$50,000.00 to the first claimant and the sum of \$150,000.00 to the second named defendant.

23. In Ronald Rossi v Stephanie Peters⁷ the claimant 46 years at the date of the accident, suffered a ruptured collateral ligament of the right knee. He was hospitalized for 16 days. Following surgery, he was bedridden for 52 weeks and was only able to stand with the aid of two crutches. The court in 2016 awarded the sum of \$80,000.00 for general damages for pain and suffering and loss of amenities.

24. Counsel for the defendant in response suggests an award in the range between \$80,000.00 to \$100,000.00 and also cites the decision of Marcel Fevrier et al v and Bruno Canchan et al.

⁷ DOMHCV2013/0308 delivered on 22nd march 2016

25. An award of damages for pain and suffering and loss of amenities is incapable of exact estimation and an assessment must necessarily be a matter of degree based on the facts of each case. The court must strive for consistency by using comparative cases tailored to the specific facts of the individual case. The task of converting the one into the other to arrive at an award of general damages is necessarily artificial, and involves a value judgment. Lord Hope of Craighead in **Wells v Wells**⁸ 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”.

26. I reviewed the authorities cited and having conducted my own research came across the decision in **Gemma Clarke v Robert Nicholas**⁹:- The claimant, 27 years, suffered a compound fracture of her right leg. She underwent surgery on the same day with open reduction and internal fixation, along with debridement of the soft tissue. She underwent 34 surgical interventions and was detained in hospital in Dominica and Martinique for a total period of 12 months. She continued as an outpatient for about one year. The injury resulted with the claimant having a permanent limp; inability to flex her right ankle and toes; inability to kneel on the right leg and inability to stoop. In 2009, she was awarded the sum of \$120,000.00 for general damages.

27. I take into consideration the nature and extent of the claimant injuries, her age, profession and the resulting impact of the injuries. I also take into consideration that the permanent scars can be reduced with plastic surgery for which an award has been made to reduce the impact. Taking into consideration the dates on which the comparable awards were made I will accordingly award the sum of \$100,000.00 for pain and suffering and the sum of \$60,000.00 for loss of amenities.

⁸ [1998] 3 All ER 481

⁹ DOMHCV /2009 delivered on 20th April 2009

ORDER

28. In summary the defendant shall pay the claimant the following awards:

1. Special Damages

As agreed - \$174,165.13

Domestic Assistance -\$15,750 .00

Doctor's Visit/Consultation/ Rehabilitation-\$16,200.00

Total Special Damages in the sum of \$206,115.13 with interest at the rate of 3% from the date of the accident until judgment and at the rate of 6 % from the date of judgment until payment.

2. General Damages in the sum of \$100,000.00 for pain and suffering and \$60,000.00 for loss of amenities,with interest at the rate of 6% from the date of judgment until payment.

3. Prescribed Costs on the global sum in accordance with CPR 65.5.

BY THE COURT

REGISTRAR