

EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT & THE GRENDAINES

IN THE HIGH COURT OF JUSTICE (CIVIL)

Claim Number: SVGHCV2012/0354

Between

LAWRENCE JOHN

Claimant

and

JASON MINORS CARLOS JAMES

Defendants

BEFORE: AGNES ACTIE Master

APPEARANCES:

Mr. Richard Williams for the claimant

Mr. Jemalie John holding for Ms. Patricia Marks-Minors for the 1st named the defendant Ms Zhing Horne Edwards for the 2nd named defendant

RULING ON ASSESSMENT OF DAMAGES

2016: MARCH 22,

2017: FEBRUARY 2

1. **UPON** the matter coming on for an assessment of The court at trial entered judgment in favor of the claimant and directed the defendants to equally pay the damages as assessed together with prescribed costs.

Background

2. On 1st March 2012, a collision between the vehicles driven by the defendants caused the first defendant's vehicle to run off the road, entering in the claimant's yard, striking him and causing him loss and The nature and extent of his injuries were particularized in several medical reports.

SPECIAL DAMAGES

3. Special damages consist of out of pocket expenses and loss of earnings incurred up to The claimant claims out of pocket expenses in the sum of \$630.00 which the defendants do not challenge. Accordingly the sum of \$630.78 is awarded to the claimant as special damages..

LOSS OF EARNINGS

4. The claimant claims the sum of \$96,000.00 for loss of earnings from the date of the accident on 1st March 2012 to the date of the assessment of
5. The claimant is an elderly gentleman who was 71 years old at the time of the The claimant in his affidavit states that he is a mason by profession and has since the accident been unable to work. The claimant states that on the day of the accident he was employed by Mr. Arthur Holder as a skilled worker.
6. The defendants challenged the amount claimed by the The defendants contend that the claimant's employment as a mason was intermittent and not on a continuous basis as claimed. Counsel for the second named defendant contends that the amount claimed under this head is grossly inflated and suggests an award in the sum of \$5000.00. Counsel for the first named defendant suggests an award of \$7,500.00.

Analysis

7. The evidential burden in an assessment of damages lies on the claimant to prove the actual or potential earnings prior to the accident I had the benefit of seeing and hearing the claimant who although aged, appeared to be a very agile and robust His averment of continuous employment is buttressed by a letter dated 24th September 2013, from Mr. Arthur Holder, his former employer. Mr. Holder deposed that the claimant had worked with him for the past twelve (12) years as a skilled worker earning a daily rate of \$100.00. Mr. Holder described the claimant as his best worker who last worked during his contract from 28th February to 1st March 2012. Mr. Holder states that the claimant has been unable to continue working since the accident.
8. The defendants challenged the evidence in support but did not provide any evidence to contradict the claimant's
9. The claimant seeks an amount of \$96,000.00 using a 5 day week at \$100.00 being \$2000.00 per month from the 1st March 2012 to the date of the assessment. It is the claimant's evidence that he has been unable to work since the accident.
10. The court notes the medical report from Dr Woods dated 17th April 2013 stating that the claimant's condition improved after physiotherapy but he would continue to have recurrent episodes of knee pain due to ongoing preexisting osteoarthritis exacerbated by the injuries..
11. The claimant's evidence is silent on any attempts of employment since the accident or since the medical review in April 2013 which confirmed that his condition had improved.. He simply states that he was unable to obtain A plaintiff must take all reasonable steps to mitigate the loss to him consequent upon the defendant's wrong.

12. I accept the claimant's evidence, however he has failed to proffer any evidence on I take into consideration the claimant's age, preexisting medical conditions and will allow the amount claimed but to be discounted by 20% to compensate for mitigation, vicissitudes and uncertainties in life making an award of \$96,000.00.-
19,200.00 = \$76,800.00

Loss of Future Employment

13. The claimant claims for loss of future employment in the sum \$168,000.00. The claimant suggests a multiplier of 7 considering his age using a multiplicand of \$24,000.00.
14. The defendants in response state that the claimant who is now 74 years and had already showed signs of osteoarthritis prior to the accident should not be compensated under this
15. In deciding whether the claimant is to be compensated under this head I take into consideration the guidelines of Hariprasad - Charles J in **Mitcham Black v The Attorney General of Saint Lucia**¹ which referred to the test laid down by the Jamaica Court of Appeal in **Gravesandy v Moore**² which states:

"a plaintiff who seeks general damages for loss of earnings must show that there is a real or substantial risk that he may be disabled from continuing his present occupation and be thrown handicapped, on the labour market at some time before the estimated end of his working life. The risk in such a case will depend on the degree, nature, or severity of his injury and the prognosis of full recovery; and the evidence must be adduced as to these matters and also as to the length of the rest of his working life, the nature of his skills and the economic realities of his trade and location."

¹ SLUHCV 2004/0502 delivered on 19111 March 2007

² (1986) 40 WIR 222

16. The medical report of Dr Charles Woods dated 17th April 2013 states that the claimant's condition improved after physiotherapy but will continue to have recurrent episodes of knee pains due to ongoing osteoarthritis. The medical report of Dr Goodluck dated 23rd November 2015 states that since the accident the claimant has had chronic residual painful complaints to the chest wall, Lumba-sacral; back and left hip which are aggravated by movement or physical activities. The report further concluded that his age and medical complaints have rendered him ineligible for gainful employment.
17. An award under this head is intended to compensate the plaintiff for the money he would have earned during his working life but for the It is the evidence that the claimant is aged and way above the retirement age. However as I indicated before, he appears to be a very sturdy individual who has been disadvantaged by the accident coupled by pre-existing medical conditions. The conventional approach in an assessment of future loss of earning capacity is the use of the multiplicand and the multiplier method, taking the amount which the claimant has been prevented by injury from earning in the future (multiplicand) and multiplying it by the number of years during which he was expected to earn it {multiplier}.
18. However I am of the view that a multiplier of 7 as suggested by counsel for the claimant is unreasonable. The medical report concludes that his age and medical complaints preclude future According I will make an award for a lump sum payment of one year in the sum of \$24,000.00 to compensate the claimant under this head..

GENERAL DAMAGES

19. General Damages are assessed and determined in accordance with the guidelines enunciated by Sir Hugh Wooding in the seminal case of **Cornilliac v Louis**³. 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 board criterion of what is reasonable and in line with awards in comparable cases as represents the court's best estimate of the plaintiffs general damages⁴.

The Nature and Extent of injuries

20. A medical report dated 13th March 2012 describes the claimant as having tenderness to the anterior chest wall with abrasions on his left knee, 4 cm laceration on the left and great toes and 1 cm laceration on the right. Both palms were tender on palpitation. He was treated

3 (1965) 7 WIR 491

4 Wells v Wells [1983] 3 All ER 481

with analgesics, lacerations were sutured and discharged. A medical report on 21st June 2012 described the claimant as continuing to experience chest and left knee pains as well as discomfort from the sutured lacerations on both great toes. He also experienced left knee swelling secondary to small fluid collection. He was advised to rest the joint as much as possible. A report of 16th October 2012 recommended continued physiotherapy. Medical report evidence reveals that osteoarthritis was exacerbated by the trauma as he continued to receive recurrent episodes of knee pain.

21. Lord Hope of Craighead in **Wells v Wells**⁵ 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 plaintiffs damage".

22. The claimant suggests an award in the sum of \$80,000.00 for general damages for pain and suffering and loss of. The claimant referred the court to the decision of **Shaunette Thompson et al v Owen Jones et al**⁶ as a guide in making a comparable award. In that case the claimant 29 years was 5 months pregnant, as a result of a motor vehicle accident, suffered 6 cm deep laceration to frontal region together with abrasions and small laceration on both knees amongst other injuries. She continued to suffer from headaches and other body pains and had difficulty standing for long periods as her legs became swollen. The court made an award of \$80,000.00 for general damages.
23. The 2nd named defendant contends that the amount claimed under this head is completely out of scale with the level of awards made for similar type. Counsel for the first named defendant joins issue with the second named defendant and states that the case of **Shaunette Thompson et al v Owen Jones** bears no relevance and should not be used as a comparative case as the injuries and trauma suffered were more severe than the instant case.
24. Counsel for both first and second defendants suggests an award of \$7,500.00. Counsel for the first defendant referred the court to the decision in **Kathy Badenock v Coreas Hazells Inc**⁷. In that case the claimant was walking along an aisle at the defendant's premises when her big toe was sliced on a metal kitchen sink that was on display on the. The claimant complained of decrease range of movement to the left great toe. The claimant underwent a

5 [1998] 3 All ER 481

- SVGHCV 2012/0138 delivered 14 August 2014
- SVGHCV 2013/0114 delivered on 20th March 2014

surgical procedure where her foot was casted post operation for 6 weeks. The wound was complicated by post-operative wound infection causing chronic pain to the toe when wearing shoes. The court in 2014 concluded that there was no evidence of impairment of pecuniary prospects or physical disability and made an award in the sum of \$17,000.00 as general damages for pain and suffering.

25. Both counsel cited the decision of **Winston Mc Millan v Clifren Warren et al**⁸ emanating from this jurisdiction delivered on 25th June. In that case the claimant sustained blunt injuries to the side chest as a result of a traffic accident. The claimant was diagnosed with fluid in the lung and lower lung pneumonitis and was ordered to rest for at least one month and was completely healed. In 2015, the court held that there was insufficient evidence to prove that the injuries sustained had any significant impact on the claimant's pecuniary prospects. The court awarded the sum of \$10,000.00 as general damages for pain and suffering.
26. I join the defendants' contention that the case of **Shaunette Thompson et al v Owen Jones** is not a suitable comparative in considering an award in this. The court must always strive for consistency by using comparable cases tailored to the specific facts of the individual case. The court notes that the claimant's injuries in **Winston Mc Millan** were sufficiently healed within one month. The court also notes the nature and extent of the injuries in **Kathy Badenock v Coreas Hazells Inc** and the respective awards made in the two cases.
27. I am of the view that the nature, extent and resulting injuries of the claimant's injuries in the instant case are more serious than the cases presented by the defendants especially **Kathy Badenock v Coreas Hazells Inc**⁹ where an award of \$17,000.00 was made in 2014[•]. Considering all the relevant evidence and authorities, I will accordingly award the sum of \$25,000.00 for pain and suffering and loss of amenities.

ORDER

28. In summary it is ordered and directed that the defendants shall equally pay the claimant as follows::

1. Special damages

- Out of pocket expenses as agreed in the sum of \$630.78
- Loss of earnings in the sum of \$76,800.00

9 SVGHCV 2013/0114 delivered on 20th March 2014⁸ SVGHCV2013/0183

- Interest on special damages at the rate of 3% from the date of the accident to the date of judgment

2. General Damages

1. General damages for pain and suffering and loss of amenities in the sum of \$25,000.00
2. Pecuniary loss in the sum of \$24,000.00
3. Prescribed costs on the global sum pursuant to CPR 5.

29. The defendants shall equally pay the damages as assessed together with prescribed costs

30. I wish to apologize for the delay in delivering this judgment and wish to thank counsel for their helpful submissions and

Agnes Actie

Master