

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT & THE GRENADINES**

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

CLAIM NO. SVGHCV2013/0077

BETWEEN:

(1) JESSICA LEDGER
(2) KAYSON WILLIAMS BY HIS MOTHER AND NEXT FRIEND
JESSICA LEDGER
Claimants

and

(1) HESLYN CODOUGAN
(2) LEERON PADMORE
(3) CHICA DAVIS
Defendants

Before:

Master. Agnes Actie

Master

Appearances:

Ms. Patricia Marks Minors with Mr. Jemalie John of counsel for the claimants

Mr. Israel Bruce for the defendants

2016: March 22
June 10

JUDGMENT

1. **ACTIE, M.:** The matter before this court involves an application for assessment of damages. The first claimant, Jessica Ledger and the second claimant, her son Kayson Williams, were on 24th February 2012 involved in a motor vehicular accident. Jessica was crossing the street carrying her 2 year old son, Kayson, in her arms when she was struck by a vehicle driven by the third defendant. Jessica fell to the ground and was rendered unconscious. Her minor son Kayson on impact was thrown out of her arms, fell to the ground and sustained injuries.
2. On 22nd April 2013, the claimants filed a claim against the defendants. The matter came up for case management on 20th November 2014 and, by consent, judgment was entered with liability against the defendants, with 75% of all costs and damages against the second defendant and the remaining 25% against the first defendant.

SPECIAL DAMAGES

3. The claimants seek special damages in the sum of \$2,135.00 which was reduced to \$875.00 due to lack of evidence to substantiate the total sum claimed.

GENERAL DAMAGES

4. General Damages are assessed and determined in accordance with the guidelines enunciated by Sir Hugh Wooding in the seminal case of **Cornilliac v St. Louis**¹. 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 awards, in comparable cases as represents the court's best estimate of the plaintiff's general damages².

JESSICA LEDGER

5. The claimant suffered head trauma and soft tissue injury to her knee and elbow. A medical report from the Milton Cato Memorial Hospital dated 11th June 2012 described the claimant's injuries as follows:

- (1) Superficial abrasion on the forehead with underlying hematoma,
- (2) Superficial was noted to the medial aspect of the right arm
- (3) Laceration approximately 1 cm on left lower extremity in length to the left knees as well as superficial abrasions were noted on the left leg

The claimant was admitted and was discharged after 3 days with follow up appointments for surgical outpatient clinic. Medical reports dated 18th October 2014 and 22nd April 2015 spoke of persistent headaches. A CT scan of the brain and neurological evaluation was recommended if the symptoms persisted or became more severe.

GENERAL DAMAGES

6. The first claimant, Jessica Ledger, seeks an award in the range of \$120,000.00 for pain and suffering and loss of amenities. The claimant speaks of the trauma suffered as result of her son having been knocked down from her arms on impact. The claimant in support cites the authority of **Mercedes Delppleshe v Samuel Emmanuele De Roche**³. In that case, the claimant was struck down by a vehicle, hospitalized and discharged after 4 days, following

¹ (1965) 7 WIR 491

² Wells v Wells [1983] 3 All ER 481

³ SVGHCV 2012/0041 delivered on 19th April 2013

which she attended the outpatient clinic for physiotherapy sessions. Her injuries were described as trauma to head and knee, abrasion to her face, laceration to the forehead, nose and lower lip with bleeding from the nostril. On further medical examination, the claimant was found to have complained of pain in the right side of her neck, lower back and knee. Further X-rays revealed degenerative disease of the lumbar spine. The claimant continued with severe pains which made it difficult for walking and standing for long periods. The court awarded the sum of \$65,000.00 for pain and suffering for loss of amenities.

7. The first defendant suggests an award of \$8,500.00 and cites an authority from the Jamaica Supreme Court in **Donald Henry v Robinson Car Rental**⁴ where in 1991 the court awarded the sum of \$25,000.00 to a twenty year old for pain and suffering and loss of amenities. The claimant in that case suffered cerebral concussion with closed undepressed fracture of the right frontal bone, head pain for a month with bouts of amnesia and spent ten (10) days in hospital. He fully recovered from his injuries after six weeks. The defendant avers that although the injuries were similar to the injuries in the case at bar however the period of hospitalization was much shorter with no evidence of amnesia as in the **Donald Henry** case.
8. I am of the view that the award sought by the first claimant is out of scale when compared with the severity of injuries and award made in **Mercedes Delppleshe v Samuel Emmanuele De Roche** cited above. I note the authority submitted by the first defendant in **Peter Cherry Etal v Trevor Trim**⁵ in which Master Talyor-Alexander citing the case of **Mandissaa Jacob v Boniface Romulus**⁶ where in 2010 a 20 year old who suffered abrasions to the left side of the face, forehead, back of left shoulder, contusion to the lower rib cage, commuted fracture of the mid shaft of the humerus; traction neuropia of the left median nerve, was awarded the sum of \$60,000.00 for general damages.
9. In the unreported case in **Carol Stapleton v Randolph Chambers etal**⁷ emanating from this jurisdiction where the claimant, as result of a motor vehicular accident suffered a deformed dislocated left shoulder was hospitalized for a day in great pain and unable to move her left arm. She remained in pain without treatment due to the absence of the Orthopedic Surgeon who was out of state. The claimant was taken into theater the following day and underwent a closed reduction operation. Her arm was strapped to her chest in an arm sling and was

⁴ Suit No. C.L 1989/H017 delivered on 29th January, 1991

⁵ SLUHCV2011/0073 delivered in 2013

⁶ SLUHCV2006 /0457

⁷ SVGHCV2007/0002- unreported delivered on 17th March 2016

discharged to attend physiotherapy sessions. The claimant did not have the full range motion in her left shoulder, was restricted from lifting heavy loads and developed arthritis. The claimant was advised to have continuous physiotherapy to help improve her condition. The claimant was awarded the sum of \$25,000.00 for general damages.

10. In **Shaunette Thompson v Owen Jones et al**, the claimant who was knocked down by a vehicle suffered the loss of her unborn child. She also suffered head, neck, back, knee and other injuries. She was rendered unconscious on impact of the accident and remained in hospital for nine (9) days. The court in 2014 awarded the sum of \$80,000.00 for pain and suffering and loss of amenities. The injuries suffered by the claimant are of less severity than the injuries in the cases mentioned above.

KAYSON WILLIAMS

11. Counsel for the second claimant, Kayson Williams, suggests an award in the sum of \$20,000.00 as general damages for pain and suffering and loss of amenities. Kayson, 2 years old at the time of the accident, suffered a superficial 2.5 cm laceration on his forehead with a small hematoma and laceration to the left leg. He had a decreased range of motion to the right foot secondary to possible pain. He was admitted to the pediatric ward for observation and was discharged 2 days later. He was reviewed by Dr Charles Woods on 22nd April 2015 and was described as having made full recovery from his injury with his right leg fully functional and pain free. The doctor opined that he should not have any further problems. The claimant cites the authority of **Master Marvin Cato v Raphael Olliver et al** ⁸ where the court in 2000 awarded the claimant a boy of 6 years \$15,000.00 for pain and suffering and loss of amenities. The court notes the claimant in that case suffered a head injury resulting in loss of consciousness for some hours, a crushed bone in his skull, contusion, pain, shock with temporary incontinence. He experienced school problems with headaches and memory loss among other injuries. I am of the view that the injuries are not comparable to the case at bar.
12. The first defendant on the other hand suggests an award in the sum of \$2500.00 and cites the case of **Perter Cheryy et al v Trevor Trim et al** ⁹ where the court in 2013 awarded the sum of \$2500.00¹⁰ to a claimant, 3 years old at the time of the accident who suffered a laceration to the right side of his head with some swelling to the right leg and an episode of vomiting. He was admitted for observation for a period of three (3) days and made significant recovery.

⁸ SVGHCV 1993/0498 delivered on 7th February 2000.

⁹ SLUHCV2011/0073

¹⁰ Paragraph 12(f)

13. 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**¹¹ 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”.

14. The court is of the view that the authorities cited by the claimants are not comparable with the injuries suffered by the parties in the instant case. The court on an assessment of damages must always strive to maintain uniformity of awards as far as is reasonably practicable by considering awards made in comparable injuries. Counsel is under a duty to assist the court and should endeavor to present suitable authorities in support of an assessment. The request for out of scale awards gives the claimant a false hope of a windfall, which should not be countenanced by counsel.

15. In my own research I found the case of **Avaline O’Garro etal v Neil Ross**¹² emanating from Saint Vincent & the Grenadines where the claimant, 30 years at the time of the accident, sustained a fracture of the acetabulum with dislocated right and all range of motions to the right hip was restricted and very painful. She was hospitalized for over a month. Following her discharge from the hospital she continued visiting the outpatient clinic and orthopedic surgeon on a monthly basis. The claimant walked with assistance of a cane and wore a knee brace to keep her injured leg in place. She incurred medical and travel expenses and had to hire domestic assistance. She lost her income as she was unable to work and could no longer participate in certain activities as customary. The court in 2012 awarded the claimant the sum of \$60,000.00 for pain and suffering and \$40,000.00 for loss of amenities.

16. As previously indicated, I am of the view that the award of \$120,000.00 claimed by Jessica Ledger, the first named claimant, is disproportionate to the injuries suffered in **Mercedes Delpleshe v Samuel Emmanuelle De Roche** and **Avaline O’ Garro etal v Neil Ross**. I

¹¹ [1998] 3 All ER 481

¹² SVGHCV2004/0329 delivered in 2012

take into account the injuries suffered by the claimant, the trauma of having witnessed her son being flown out of her hands on impact, the continuous headaches being experienced and accordingly make an award in the sum of \$30,000. 00 for pain and suffering and \$10,000 for loss of amenities.

17. In relation to second defendant, Kayson Williams, I am guided by the decision in **Peter Cherry et al v Trevor Trim et al** cited by the defendant where in 2013 an award of \$2500.00 was made to a six (6) year old claimant. I am mindful that the injuries suffered by the minor in this claim are more severe as he suffered decreased range of motion in the right foot and endured much pain. The medical report in 2015 indicates that the claimant has made full recovery and accordingly I award the sum of \$5000.00 for pain suffering and loss of amenities.

FUTURE MEDICAL CARE

18. The first claimant seeks the sum of \$10,000.00 for future medical care. The amount claimed is unsubstantiated. The evidence before the court is a recommendation for a CT scan for an evaluation of her persistent headaches. Evidence on oral examination indicates that the cost of a CT scan is between the sum of \$1600.00 to \$1800.00. I take into consideration the medical evidence requiring the CT scan and pain killers to suppress the persistent headaches and accordingly make a nominal award in the sum of \$2000.00 for future medical care.

NURSING CARE

19. The claimant seeks an award in the sum of \$5000.00 for nursing care. The first claimant pleaded that they both experienced intense pain and were unable to walk for up to three (3) weeks after the accident during which time family members provided care and assistance with household chores. The first claimant states that the persistent headaches sometimes affect her ability to do her household chores and requires assistance to care for her son. It is the law that a person is entitled to claim damages in respect of gratuitous assistance provided by a third party which was reasonably required by the plaintiff because of her physical needs directly attributable to the accident¹³. The claimant has not supported her averments with evidence either by witness statements or affidavits of the persons who assisted during the recovery period. The court accepts some level of discomfort during the convalescence with the fact that both claimants were injured. However the court is not convinced that the sum of \$5000.00 for the 3 weeks recovery period and post hospitalization should be awarded in the absence of evidence. Accordingly I make a nominal award of \$500.00 made for nursing care.

¹³ Donnelly v Joyce [1973] All ER 475

Conclusion

20. For the forgoing reasons I make the following awards:-

The defendants shall pay the claimants:

(1) Special Damages in the sum \$875.00 with the interest at the rate of 3% from the date of accident to the date of the assessment of damages.

(2) **General Damages – Jessica Ledger**

(i) General Damages for pain and suffering and loss of amenities in the sum of \$40,000.00.

(ii) Future Medical care for Jessica Ledger in the sum of \$2000.00

(iii) Nursing care for Jessica Ledger \$500.00

(iv) Interest on the global sum with interest at the rate of 3% from the date of filing of statement of claim to the date of judgment and at the rate of 6% from the date of assessment until full payment.

(3) **General Damages - Kayson Williams**

(i) General Damages for pain and suffering and loss of amenities in the sum of \$3500.00 with interest at the rate of 3% per annum from the date of filing of statement of claim to the date of judgment and at the rate of 6 % per annum from the date of assessment until full payment.

(4) Prescribed costs pursuant to CPR 65.5 on the global award in the sum of \$4, 218.75. .

(5) The awards made are to be paid in accordance with the consent order with, 75% of all costs and damages against the Second defendant and the remaining 25% against the First defendant.

AGNES ACTIE

MASTER