

**THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

Claim No. DOMHCV2013/0308

Between:

RONALD ROSSI

Claimant

And

STEPHANIE PETERS

Defendant

Before:

Master Fidela Corbin Lincoln

On Written Submissions:

Mr. David Bruney for the Claimant

No appearance by or on behalf of the Defendant

2016: March, 22

***Assessment of Damages – Rupture of Knee Ligament – No serious Resulting Disability –
Pre-Trial Loss of Earnings – Future Loss of Earnings***

JUDGMENT

[1] **CORBIN LINCOLN M:** The matter before the court is an assessment of damages following the entry of judgment in default against the defendant for negligence.

GENERAL DAMAGES

Principles for Assessing General Damages

[2] The legal principles governing the assessment of general damages are well established. The main factors to be taken into account are: 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

(1) Nature and Extent of Injuries Sustained

[3] The claimant is 50 years old. On 1st September 2010 the claimant, who was then 46 years old, was injured when a motor vehicle driven by the defendant collided with his motorcycle. As a result of the impact the claimant was thrown off his motorcycle and suffered injuries. He was transported to Princess Margaret Hospital by ambulance.

[4] The claimant's evidence is that he "*sustained life threatening severe injuries and in particular laceration to the left facial region which required sutures, laceration to the penis, abrasions to abdomen, Multiple trauma loc sprain, rapture [sic] of Right/Collateral Ligament in the right knee.*" The claimant states that he was hospitalised for a period of three (3) weeks during which he underwent surgery. He states that he was unconscious during the first three days of hospitalization and experienced memory loss when admitted to hospital.

[5] The claimant exhibited what he referred to as two "medical reports" of Dr. Julian De Armas dated 1st September 2010 and 27th September 2010 in support of his claim.

[6] The document dated 01/09/20 is headed "**Princess Margaret Hospital Casualty Notes**" and refers to a Ronald Rossi aged 32 years old. The claimant was 46 years old at the time of the accident. The document contains several pages of what appears to be handwritten notes. There appears to be various signatures interspersed in the document but no evidence of who are the signatories. More significantly, there is no evidence of who prepared this document. In the circumstance I place no weight on this document which in my view is not a medical report substantiating the personal injuries which the claimant alleges that he suffered as a result of the accident.

[7] The second document exhibited by the claimant is a one-page form headed "Medical Report". The form appears to be filled in by hand, contains a signature above the name Dr. Julian De Armas and is dated 27th September 2010. The contents of the report, save for the name and date of the accident, is reproduced below:

3. Date the patient reported for treatment	1-Sept-2010
4. Description of Injury suffered by the patient	Rupture Lateral Collateral Ligament Right Knee
5. Description of treatment given	Surgery – Repair L RT knee
6. Period of Total disability	1-9-2010 1-Jan-2011
7. Period of Partial Disability	BLANK
8. Details of fractures if any	No
9. Date by which patient is likely to get cured completely	1-Oct-2010
10. Opinion about chances of any partial permanent disability	Yes, Unstability RT...
11. Period of Hospitalisation	1-9-2010 to 16-9-2010
12. Details of operations done, if any	Repair L...L RT Knee
13. Any other relevant information	Patient Still under my care
Remarks.....	BLANK

[8] The medical report of Dr. De Armas therefore discloses that the injury sustained by the claimant was a rupture, lateral collateral ligament of the right knee for which he underwent surgery. The report states that the claimant was hospitalised for 16 days and is likely to be cured completely by 1st October 2010. The claimant has not provided any other medical report.

- [9] There is no medical evidence that the claimant suffered injuries to the left facial region which required sutures, laceration to the penis, abrasions to the abdomen and memory loss when admitted to the hospital.

(2) The Nature And Gravity Of The Resulting Physical Disability

- [10] The claimant states that as a result of his injuries he has unbearable pains in his bones on cold and rainy days and he experiences pain in the course of strenuous physical activity.
- [11] There is no medical evidence that the claimant suffered any resulting disability as a result of the injuries he sustained in the accident.

(3) Pain and suffering and Loss of Amenities

- [12] The medical report of Dr. De Armas confirms that the claimant was hospitalized for 16 days and had to undergo surgery.
- [13] The claimant's evidence is that as a result of the collision he suffered "*excruciating generalized body pain in the left thorax, right knee and hips.*" He states that following surgery he was bedridden for 52 weeks and was only able to stand with the aid of two crutches. He suffered severe pain even when he attempted to stand or walk with crutches and also experienced pain urinating due to injuries to his genital area.
- [14] While it cannot be disputed that the claimant would have experienced pain and suffering as a result of the injuries and may have been immobile for some time after surgery, I note that there is no medical evidence that the claimant was bedridden or would be bedridden for one (1) year following his knee surgery. The medical report by Dr. De Armas states that

the claimant would be totally disabled from 1st September 2010 to 1st January 2011 – a period of approximately four (4) months. No updated or further medical report was provided. I am therefore not satisfied on a balance of probabilities that the claimant was bedridden for one (1) year as a result of his injuries.

- [15] The claimant's evidence is that prior to his injuries he was able to clean by stretching to high places and he could climb ladders and high places but he can no longer do this as he is required to avoid strenuous activity and all activities, which require him to exert heavy pressure on his legs.

(4) Impact on Pecuniary Prospects

- [16] The claimant states that as a result of his injuries his productivity has been reduced. He spends substantially longer periods completing jobs which he was previously able to complete in less time. This has reduced his attractiveness as a mason and labourer for prospective employers. This aspect of the claimant's claim will be addressed under the heading of loss of earning capacity and future loss of earnings.

Quantification of General Damages for Pain Suffering and Loss of Amenities

- [17] Counsel for the claimant submits that an award in the range of \$120,000.00 and \$160,000.00 would be reasonable compensation to the claimant for pain, suffering and loss of amenities.
- [18] The court exercises its discretion in determining the quantum of damages that would be fair and reasonable compensation in all the circumstances. In determining how to exercise its discretion on the question of general damages for personal injuries it is well established that:

“ 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 a field. 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".*¹

- [19] In **Darel Christopher v Benedicta Samuels dba Samuel Richardson & Co**² Hariprashad-Charles J stated:

"It is obvious that damages for pain and suffering are incapable of exact estimation and their assessment must necessarily be a matter of degree, based on the facts of each case. They must be assessed on the basis of giving reasonable compensation for the actual and prospective suffering entailed including that derived from the plaintiff's necessary medical care, operations and treatment."

- [20] The medical report of Dr. De Armas states that the injury sustained by the claimant was a rupture of the knee ligament.

- [21] In **Danny Bramble v William Danny et al**³ the claimant suffered injuries to his knee and lower back from the accident. The medical evidence disclosed that the accident caused a severe whiplash injury to his lower spine and aggravated his existing degenerative joint disease. The claimant was awarded \$50,000.00 as general damages in 2004.

- [22] While the injuries sustained by the claimant in **Danny Bramble** have some similarities to the injuries sustained by the claimant in this case, the differentiating factors are that the claimant in this case was hospitalized for 16 days and had to undergo surgery. An award to the claimant in this case should therefore in my view be higher.

¹ CCCA Limited v Julius Jeffrey SVGHCVAP2003/0010

² BVIHCV2008/0183

³ ANUHCV1999/0160

- [23] In **Francis Maurice v Clarence Mangal et al**⁴ the claimant suffered a commuted fracture to the left patella (kneecap) and later patella osteo-arthritis. The Claimant suffered a permanent disability of 20% which he would continue to suffer with for the rest of his life. □As result of his injury the claimant was unable to play cricket and unable to umpire cricket which he used to do because his injury made it extremely painful to stand for long periods. The claimant was awarded \$87,300 in February 2003 for pain suffering and loss of amenities.
- [24] Unlike the claimant in the above case, there is no evidence that the claimant suffered any permanent disability as a result of his injuries.
- [25] In **Bernice Jeremiah et al v Royston Gilbert et al**⁵ the claimant suffered injuries which included a left knee effusion and a fracture of the tibia. The claimant had an initial surgery to repair the fracture and subsequently underwent further surgery to the knee for manipulation of her left knee as flexion and extension of the knee were limited. Two years after the accident the claimant had limited flexion of the left knee and could fully weight bear on the left leg with some pain. She was no longer an independent sexually active female, could no longer jog daily and could not help herself around the house like she did prior to the accident. She was left with a 10-inch scar on her leg and had a shortened left leg. The claimant was awarded \$80,000.00 as general damages in 2010.
- [26] Having regard to all the circumstances, the awards in the above cases and taking into consideration the passage of time since those judgments I find that an award of \$80,000.00 is reasonable compensation to the claimant for pain suffering and loss of amenities.

⁴ SLUHCV2005/0176

⁵ GDAHCV2008/0038

Loss of Earning Capacity & Future Loss of Earnings

[27] Counsel for the claimant submits that using a multiplier of 13 and a multiplicand of \$8,400 (being half of the claimant's annual salary) the claimant should be awarded \$109,200.00 for loss of earning capacity.

[28] In **Martin Alphonso et al v Deodat Ramanath**⁶ the Court of Appeal upheld the award of \$10,000 for loss of earning capacity and reduced the damages for future loss of earnings. In relation to loss of earning capacity, the Court, citing the cases of **Moeliker v. A Rey Rolle and Co. Ltd**⁷ and **Fairley v John Thompson (Design and Contracting Division Ltd)**⁸ stated:

*"The learning from the aforementioned two cases is that this head of damage would arise where a plaintiff is, at the time of trial, in employment but there is a risk that he may lose this employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job. The cases show that it is a different head of damages from an actual loss of future earnings which can already be proved at the time of the trial. As **Denning MR** put it in the **Fairley** case.*

"It is important to realize that there is a difference between award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution of earning capacity is awarded as part of general damages."

[29] In **Randy James v Leroy Lewis et al**⁹ the evidence disclosed that the claimant, an airport security officer, was doing the same type of work he did prior to the accident and was generating a higher salary at the time of trial than he did at the time of the accident. However, the claimant expressed his fear of being able to retain his employment and not being able to pass a fitness test to retain his employment and that if he were ever to have

⁶ BVIHCVAP1996/0001

⁷ [1977] 1 All E.R. 9

⁸ [1973] 2 Lloyd's Rep. 40

⁹ ANUHCv2007/0403

to seek employment outside of his present employment he would be handicapped as a direct result of his injury. □The learned trial judge noted

“Kodilyne, in Commonwealth Caribbean Tort Law, 3rd ed. at pp 380, says that a claimant can recover damages for loss of earning capacity (in similar circumstances of this case I note) “...where there is a real risk he could lose his existing employment at some time in the future and may then, as a result of his injury, be at a disadvantage in finding an equivalent employment or an equally well paid job”

[30] The evidence of the claimant is that he is still in employment. However, there is no evidence that the claimant is at risk of losing his existing employment some time in the future and that he would then be at a disadvantage in finding equivalent employment. In the circumstance I do not find that there is a basis to make an award for loss of earning capacity.

[31] Further, counsel has provided no authority for using the multiplier/multiplicand method for calculating loss of earning capacity.

[32] The claimant states that prior to the accident he earned \$350.00 per week. This is supported by the evidence of Earl Warrington, the claimant's employer. The claimant states that he remains in employment but as a result of his injuries, he is less productive and only able to work for two to three days a week. It therefore appears to me that this is a real assessable loss which can and should be proved by evidence under the heading of future loss of earnings.

[33] However, future loss of earnings is usually calculated using the multiplier/multiplicand method. Ascertaining the multiplicand requires the court to take into consideration the claimant's current earnings. The claimant has led no evidence of the quantum of his current earnings. Any effort to ascribe a figure as the claimant's current earnings would in my view be speculative.

[34] In the absence of the claimant leading evidence of his current earnings I am unable to ascertain the appropriate multiplicand and apply the conventional multiplier-multiplicand

approach. The failure of the claimant to lead the necessary evidence does not in my view mean that no award should be made under this head of damages, as this would not in my view be just having regard to all the circumstances and specifically to the evidence that the claimant's ability to earn in the future has been impaired.

- [35] In **Greer v Alston's Engineering Sales and Services Ltd**,¹⁰ Sir Andrew Leggatt, who delivered the opinion of the Court, quoted with approval from **McGregor on Damages**, 13th Edition, paragraph 295:

"Nominal damages may also be awarded where the fact of a loss is shown but the necessary evidence as to its amount is not given. This is only a subsidiary situation, but it is important to distinguish it from the usual case of nominal damages awarded where there is a technical liability but no loss. In the present case the problem is simply one of proof, not of absence of loss, but of absence of evidence of the amount of loss."

- [36] Sir Leggatt stated further:¹¹

"Although the loss under this head was unquantified, it is the duty of the court to recognise it by an award that is not out of scale."

- [37] Applying the principle enunciated in **Greer**, I propose to award the claimant nominal damages. The term "nominal damages" does not mean small damages.¹² Having regard to all the circumstances I find that an award of \$15,000.00 is not unreasonable.

Future Medical Care

- [38] Counsel for the claimant submits that the claimant should be awarded the sum of \$30,000.00 for future medical care. There is no medical evidence that the claimant requires further medical treatment and consequently no award is made to the claimant under this head of damage.

¹⁰ [2003] UKPC 46

¹¹ *ibid* paragraph 9

¹² Lord Halsbury LC in *Owners of ss 'Mediana' v Owners, master and crew of the lightship 'Comet' ('The Mediana')* [1900] AC 113 at page 116

SPECIAL DAMAGES

[39] The claimant pleaded special damages of \$18,200.00 being loss of earnings for 52 weeks at a weekly rate of \$350.00. The claimant's evidence is that he was bedridden and unable to work for 52 weeks after his surgery. While I did not accept that the claimant was bedridden for 52 weeks following his surgery due to the absence of any supporting medical evidence, the evidence of his employer Mr. Warrington supports the claimant's evidence that he was unable to work as a labourer for 52 weeks. I therefore award the claimant the sum of \$18,200.00 as special damages.

[40] In summary, the claimant is awarded damages as follows:

1. Loss of Earnings	\$ 18,200.00
2. Pain, Suffering and Loss of Amenities	\$ 80,000.00
3. Future Loss of Earnings	\$ 15,000.00

[41] No pre - judgment interest is awarded having regard to the case of **Dominica AID Bank v Mavis Williams**¹³ which held that in this jurisdiction the court has no power to award pre-judgment interest.

[42] The claimant is awarded prescribed costs.

Fidela Corbin Lincoln
Master

¹³ DOMHCVAP2005/0020