

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV 2014/0211

BETWEEN:

LORNA FRANCIS LAURENT

Claimant

and

[1] STEVENSON CLARKE

[2] KURT VALMOND

Defendants

Before:

Ms. Agnes Actie

Master

Appearances:

Ms. Gina Dyer- Munroe for the claimant

Ms. Singoalla Bloomquist- Williams for the defendants

2015: December 17;
2016: January 6.

JUDGMENT

- [1] **ACTIE, M.:** This matter involves an application for assessment of damages arising out of a motor vehicular accident involving a bus owned by the first defendant and driven by the second defendant. The claimant filed a claim form with a statement of claim on 18th June 2014 seeking damages for the injuries sustained. The second defendant was charged and pleaded guilty in the Roseau Magistrate's Court. Summary judgment was entered in favour of the claimant on 1st June 2015, with damages to be assessed.

Background

- [2] The accident occurred on 28th October 2011 when a mini bus driven by the second defendant collided with the claimant while crossing as a pedestrian on King George V Street. The claimant who was 43 years' old at the time of the accident sustained injuries as a result. She claimant was taken to the general hospital, examined and was discharged on the same day.

General Damages

- [3] The claimant claimed for general damages in the sum of \$80,000.00. General damages are usually determined taking into consideration the principles set out by Wooding CJ in the seminal case of **Cornilliac v St Louis**¹ 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 and resulting disability

- [4] The medical report of Dr. Julian De Armas described the claimant's injuries as contractive paravertebral muscles cervical spine; decrease reflex right triceps and decrease muscular power right triceps. The claimant underwent a MRI test and was diagnosed with posttraumatic cervical spine disc herniation C5-C6 with compression of the cervical spinal cord.

[5] Pain and suffering

The claimant avers that she has been in severe pain since the accident and is constantly taking pain killers to help suppress the pain. She further avers that she sleeps with a neck brace to try to alleviate the pain and discomfort in her neck.

[6] Loss of amenities

The claimant avers that subsequent to the accident she commenced a training programme for care of the elderly in the USA but had to abort the programme due

¹ Cornilliac v St Louis (1965) 7 WIR 491.

to the excruciating pain that she experienced. She avers that she is unable to carry out her household chores and requires the assistance of friends and her husband most times. The claimant avers that the injuries have affected her ability to exercise as she did prior to the accident. She also avers that her sex life has been severely affected because of the continuous pain.

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

[7] Dr. De Armas in examination in chief states that the claimant will be able to work although she will experience pain in her right arm. He stated that due to the pain in her neck she may not be able to perform clerical work which requires the constant bending of her neck over a period of time. He also advised that the claimant would not be able to perform any job which involves pressure on the upper limb.

[8] The claimant in support of the assessment cites the following authorities to assist the court:-

- (1) **Oscar Frederick v Liat (1974) Ltd:** The claimant sustained injuries to his left ankle and lower back pain and a rotation of his lower spine from a fall on the premises at his work place. The court awarded \$80,000.00 for pain and suffering and \$60,000.00 for loss of amenities.
- (2) **Danny Bramble v William Danny et al**²:- the court in 2004 awarded general damages in the sum of \$50,000.00 to a 56 year old who suffered from a pre-existing degenerating joint disease suffered injuries in the knee and lower back from a motor vehicular accident. The injuries aggravated his pre-existing degenerative joint disease. He experienced considerable pain in his right loin and right hip region.

²ANUHCv 1999/0160 delivered on 15th January 2004

[9] The defendants suggest an award in the sum of \$25,000.00 and referred the court to several authorities including two emanating from the Commonwealth of Dominica namely:-

- (1) **Martha Leblanc v Augustus Thomas et al**³: - The court in 2011 awarded \$16,000.00 to a claimant who suffered a traumatic disc prolapse C5- C6 vertical vertebrae and experienced neck pain.
- (2) **Leanthia P. Lewis v Irvin Durand**⁴:- The claimant in 2013 was awarded \$50,000.00 for pain and suffering and loss of amenity. The claimant was diagnosed with disc herniation C4/C5- C5/C6 with post traumatic with mass effect on the spinal cord and compression of left C5 nerve root with a bony contusion. The claimant experienced tremendous pain and had recurrent pains and stiffness in her neck with no possible relief even with surgery.

Analysis

[10] An award of general 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**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 plaintiff’s damage”.

[11] In striving to maintain consistency I considered the authorities cited emanating from the Commonwealth of Dominica. I am of the view that the injuries suffered by

³ DOMHCV 2009/0926 delivered on 6th July 2011

⁴ DOMHCV 2011/0341 delivered 30th April 2013

⁵ [1998] 3 All ER 481

the claimant in **Martha Leblanc v Augustus Thomas et al** are somewhat similar to those suffered by the claimant in the case at bar. An award of \$16,000.00 was made in 2011 for pain and suffering and loss of amenities. I also considered the award of \$50,000.00 made in 2013 in **Leanthia P. Lewis v Irvin Durand**⁶. I note that the claimant in **Lewis** case was diagnosed with disc herniation of C4/C5-C5/C6. She experienced tremendous recurrent pains and stiffness in her neck with no possible relief even with surgery. I am of the view that the injuries in the **Lewis** case were of more severity than those of the claimant at bar. It is the evidence of the medical doctor that the claimant's pain can be ameliorated if the surgery recommended is performed. It is the evidence of Dr. De Armas, that the claimant is able to cook and perform light typical household chores such as cleaning and cooking. It is also the doctor's evidence that the nature of the injuries should not have any significant impact on her conjugal life as contended by the claimant and the oral testimony of her husband.

- [12] I take into consideration the nature of the injury sustained, the medical evaluation together with the authorities cited by the parties and would allow an award in the sum of \$25,000.00 for pain and suffering and loss of amenities.

Future medical care

- [13] The claimant seeks an award of \$54,535.32 for future medical care. Dr. De Armas in his report states that the claimant needs a discectomy to release the compression of her cervical spinal cord. The procedure is to be performed by a neurosurgeon either in Martinique or Guadeloupe as this type of specialist is not available in the Commonwealth of Dominica. Dr. De Armas gives an estimate cost of €17,000.00 which is equivalent to ECD\$54,535.32 for the procedure. The claimant seeks an additional sum of €10,000.00 or ECD\$32,079.60 for contingencies and a further sum of €4,000.00 or ECD\$12,831.84 for out pocket money and travel expenses.

⁶ DOMHCV 2011/0341 delivered 30th April 2013

- [14] The defendants concede to the amount of €17,000.00 as advised by the medical doctor but object to the unsubstantiated additional sum of €14,000.00 requested by the claimant for incidentals and out of pocket expenses.
- [15] I accept counsel's averment that the claimant will need the assistance of an individual to accompany her to the French Territory for the surgical procedure. It is a reasonable assumption that the claimant and the individual will require financial assistance to cover out of pocket expenses and other incidentals such as lodging, meals and transportation during their stay for the surgical procedure. Dr. De Armas suggests a recovery period of approximately ten (10) days post-surgery. The court notes that the claimant did not provide any tangible evidence to support the amounts claimed for the out of pocket expenses and incidentals. It is always the responsibility of the claimant to provide the evidence to substantiate amounts claimed in an assessment of damages. In the absence of evidence a nominal amount which is not out of scale is usually considered where the issue is proof of the amount claimed. In the circumstances I make a nominal award of €5000.00 equivalent to ECD\$16,039.80 to cover the costs of travel expenses, lodging and other incidentals thus making a total sum of \$70,575.12 for future medical care.

Special Damages

- [16] The claimant claims special damages in the sum of \$109,023.84. The amount claimed includes the sums of \$48,940.20 for the costs of airfare and a course of study in the USA and \$49,210.00 for loss of wages from the date of the accident to the date of the assessment. It is the claimant's evidence that she left Dominica in November 2011 immediately after the accident to pursue a training course for care of the elderly in the USA. She avers that she had to abort the course of study and returned to Dominica due to the excruciating pain that she experienced. The court notes that the claimant has not provided a modicum of evidence such as the name of the institution enrolled in for the course of study, the courses attended or any other evidence to prove the costs of study in the USA. The claimant's failure to provide the proper documents ineluctably leads to difficulties in attempting to

prove her claim for special damages under this head. In the absence of evidence I have to decline an award for the sum claimed for the course of study and travel expenses to the USA.

- [17] The claimant's claimed the sum of \$49,210.00 for loss of wages from 28th October 2010 to present. The claimant furnished the court with an Employee's Contribution Statement dated 19th June 2015 from the Dominica Social Security office. The statement details contributions made from March 2011 to August 2011. The statement did not reference contributions made during the month of September and the early part of October. The court notes that the accident took place on 28th October 2011. It is the evidence that the claimant left the jurisdiction on the 11th November 2011, a few days after the accident. The claimant did not provide any proof that she was employed at the time of the accident. The claimant states that she was in part time employment with the company which has closed down since the accident. The claimant has not sought alternative employment since the accident.
- [18] Loss of income of a person who works sporadically can be verified with a letter from the employer detailing pay rate, the hours lost, and the total amount of compensation lost by not being able to work due to the injury. The claimant has not furnished such information. The claimant avers that the place of employment has since closed but did not furnish any evidence as to the date of closure. The defendants contend that the claimant was unemployed at the time of the accident. The court notes that the claimant failed to provide a job letter or any supporting evidence, other than the contributions to the social security to prove the period of employment. The evidence submitted does not substantiate the claimant's averment that she was in employment at the time of the accident.
- [19] It is trite law that special damages must be pleaded and proved by evidence capable of supporting the conclusions to which the court is invited to reach in the assessment. Loss of income as special damages includes all wages and other

earnings lost as a result of the accident from the date of the injury to the date of assessment. The claimant failed to prove that she suffered loss of earnings from the date of the accident up to the date of the assessment to satisfy the requirement for special damages under this head. It is the evidence that the claimant left the jurisdiction on the 17th November 2011, a few days immediately after the accident and returned in February 2012. The purpose of awards for special damages is to compensate the claimant for out of pocket expenses and loss of earnings incurred down to the date of trial. I am of the view that the claimant was not in gainful employment at the time of the accident. Accordingly in the absence of proof of employment and loss of income I decline an award for loss of earnings as special damages.

- [20] In the circumstances the sums of \$49,210.00 and \$48,940.20 claimed by the claimant as special damages are not allowed. Also, it is conceded by the parties that the sum of \$250.00 for cost of care for the month of February should be discounted as the claimant returned to the jurisdiction in February 2012 and did not receive care for that period. Taking into consideration all the evidence and authorities I make an award in the sum of \$10, 623.64 for special damages.

Loss of Future Earnings

- [21] The claimant seeks the sum of \$11,760 .00 for loss of earnings for one year for recuperation after the surgery. The defendants conceded the amount claimed. The court also accepts the amount claimed to be reasonable and accordingly allows the award of \$11,760.00 for loss of future earnings.

Order

- [22] In summary I make the following orders in favour of the claimant:

1. General damages in the sum of \$25,000.00 for pain and suffering and for loss of amenities.
2. Special Damages in the sum of \$10, 623.64.

3. Loss of future earnings in the sum of \$11,760. 00.
4. Future Medical Care in the sum of \$70,575.12
5. Interests on the global sum of \$117,958.76 at the rate of 5% from the date of judgment to the date of payment in full.
6. Prescribed costs in the sum of \$8846.90 pursuant to CPR 65.5.

Agnes Actie
Master