

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2012/0940

BETWEEN:

CYRIL DONELLY

Claimant

and

[1] ALDRICK OCTAVE

[2] THE ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Before:

Ms. Agnes Actie

Master

Appearances:

Ms. Antonia Auguste of counsel for the claimant

Mrs. Karen Bernard of counsel for the defendants

2015: March 12;
June 5

JUDGMENT

- [1] **ACTIE, M.:** This is an application for assessment of damages for consequential loss suffered as a result of a motor vehicular accident which occurred on 7th July 2012 when a vehicle owned by the Government of Saint Lucia and driven by the first named defendant collided with the claimant's vehicle. Liability was acceded by the defendants and summary judgment was entered on 21st November 2014. The matter now comes to the court to determine quantum of damages.

Special Damages

- [2] The parties agreed to a partial sum of \$3,779.00 as special damages for the costs of medical reports, doctor visits, medication, police reports and incidentals.
- [3] However, the claimant made a further claim for the sum of \$4,140.00 as costs for employing a driver from 8th July to 15th September 2012 at \$60.00 a day. The claimant states that he was unable to drive due to the injuries and was forced to hire a driver to take him to the beach and to assist him with other chores during the period of his convalescence. The claimant is also claiming the sum of \$10,000.00 for acting allowances for two junior employees at a salary of \$5,000.00 each. The claimant deposed that he managed a construction company and other businesses at the time of the accident and needed the assistance of the junior employees to take on his responsibilities during the two and a half (2 ½) months on medical leave.
- [4] The court notes that the amounts claimed for both the driver and temporary employees were not supported by any palpable evidence. The unsubstantiated amounts claimed are challenged by the respondents. It is trite law that special damages must be pleaded and proved. The claimant has not provided a scintilla of evidence to prove the amounts claimed. Bald assertions without proof cannot assist the claimant. An affidavit from the employees, payment slips or cheque stubs would have buttressed the claimant's assertions to enable full compensation. However in the absence of tangible proof, the court maintains a residual discretion to allow a nominal amount for loss occasioned as a result of an injury. The Privy Council in **Greer v Alstons Engineering Sales and Services Ltd**¹ states:

"When such evidence is not provided, however, it is open to the trial judge to give consideration to an award of nominal damages. In **McGregor on Damages** 13th ed at para 295 it is stated:

'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

¹¹ (Trinidad and Tobago) [2003] UKPC 46.

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.”

The Privy Council held that though the loss was unquantified, it is the duty of the court to recognise it by an award that is not out of scale.

- [5] I am persuaded that the claimant as a contractor and having regard to the extent of his injuries would have required some assistance in conducting his business. However the court is hamstrung in the absence of salary slips, cheque stubs or other evidence of payment. In the absence of any proof I am not convinced that the claimant needed the assistance of a driver for two months. I would allow a nominal award for one (1) month at \$60.00 a day for a 5 day week totalling \$1,200.00 to compensate for the driver and a nominal award of \$1,500.00 each for the two junior employees who assisted in the construction business making a total award for special damages in the sum of \$7,979.00 being \$4,200.00 plus the agreed sum of \$3,779.00.

General Damages

- [6] The claimant was 62 years old at the time of the accident and alleges to have suffered injuries as outlined in his witness statement and medical reports. The claimant seeks an award of \$60,000.00 for general damages for pain and suffering and loss of amenities. The medical report of Dr. Ogunlusi dated 13th September 2013 describes the claimant injuries as a fracture of the right 8th rib with pain to the right lateral chest area and left upper quadrant after the accident.
- [7] The medical reports of Dr. Charles Isidore summarised the claimant's injuries as follows:
- Severe whiplash
 - Pins and needles sensations in chest
 - Headaches

- Moderate to severe pain in cervical, thoracic and lumbar regions, cervical strain/sprain; thoracic sprain/strain; lumbar sprain/strain
- Chest pain
- Cervicobrachial syndrome

[8] The defendants challenge the whiplash injuries diagnosed by Dr Charles Isidore. The defendants also alleged that Dr. Isidore is not a registered medical practitioner. The defendant in an assessment of damages is entitled to cross examine any witness relied called by the claimant. The defendant or any party may challenge or cross examine any witness called by the claimant. The court notes the failure of the defendant to request the attendance of Dr Isidore for cross-examination as required in Form 31. Having so failed it is deemed to have accepted the evidence and report presented by the claimant. In the circumstances the court accepts the medical reports Dr. Isidore as a guide in the assessment.

Law and analysis

[9] In making the award for general damages I am reminded by the principles enunciated by Lord Hope of Craighead in the House of Lords case of **Wells v Wells**³ where he said:

"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 best estimate of the plaintiff's general damages."

[10] The basis of an award for general damages is set out by Wooding CJ in the seminal case of **Cornilliac v St Louis**² namely (1) The nature and extent of the injuries, (2) The nature and gravity of the resulting disability (3) The pain and suffering as a result (4) Loss of amenities as a result (5) the extent to which, consequently the injured person's pecuniary prospects have been materially affected.

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² Cornilliac v St Louis (1965) 7 WIR 491.

- [11] The court must strive to maintain a high measure of uniformity on the awards in the Eastern Caribbean by considering awards in comparative cases to reach a realistic and fair quantum. Both parties referred the court to authorities in support of their submissions. I have considered the authorities and believe that the cases closest to the case at bar to serve as benchmarks are **Mercedes Delplesche v Samuel Emmanuel De Roche**³ and **Peter Douglas v Sean Roberts and Maurice O'Garro**⁴.
- [12] In **Mercedes Delplesche v Samuel Emmanuel De Roche**, the claimant 54 years old was struck by a motor vehicle and suffered trauma to her head and knee, abrasions and lacerations to face, forehead, nose and lower lip. The claimant was admitted at hospital and discharged 4 days later. She continued physiotherapy sessions as she continued to suffer from severe pains in her lower back, head and knee and had difficulty walking. The claimant was diagnosed with degenerative disease of the lumbar. The court awarded \$65,000.00 damages for pain and suffering and loss of amenities.
- [13] In **Peter Douglas v Sean Roberts and Maurice O'Garro**⁵ the claimant suffered severe whiplash and was still incapacitated at the time of the assessment was awarded \$85,000.00 for pain and suffering and loss of amenities. The medical report indicated that the injuries exacerbated a condition which the claimant may have long-term degenerative disease of the cervical spine initiated or otherwise exacerbated by the injury sustained in the car accident.
- [14] The defendant seeks a diminution in an award on the ground that the claimant had pre-existing unrelated ailment or condition. It is trite law under the “**egg-shell skull**” principle that a tortfeasor takes his victim as he finds him even the harm suffered was greater than would have been suffered by a normal person. The

³ SVGHCV2012/0041 delivered 19th April 2013

⁴ SVGHCV2010/0125

⁵ SVGHCV2010/0125

court rejects the defendants' suggestion as the claimant's pre-existing condition is of no consequence in the assessment of damages.

- (1) [16] The court notes that claimant suffered a fracture of the 8th rib which resulted in intense pain and tenderness to the upper chest area. The medical reports did not suggest any permanent impairment. The claimant at the assessment appears to have made good recovery. Guided by the decisions and awards made in **Mercedes Delplesche v Samuel Emmanuel De Roche**, and **Peter Douglas v Sean Roberts and Maurice O'Garro** above and noting that the injuries, pain and suffering and loss of amenity and damages awarded. I am of the view that the claimant's injuries and loss of amenities are not as severe as the injuries suffered in the cases above. Accordingly I make an award of \$40,000.00 for pain and suffering and loss of amenities to the claimant.

Costs

- [17] The court notes that an offer to settle made to the claimant which was rejected by the claimant was significantly less than the award made on assessment. Accordingly an award for prescribed costs is made in keeping with CPR 35.16 (2).

Order

- [18] In summary I make the following awards:
- (1) Special damages in the sum of \$7,979.00 with interest at the rate of 3% from the date of the injury until payment.
 - (2) An award in the sum of \$40,000.00 for general damages for pain and suffering and loss of amenities at the rate of 6% from the date of the filing the claim until payment.
 - (3) Prescribed costs in the sum of \$4,318.11.
- [19] I thank counsel for their helpful submissions

Agnes Actie

Master