

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT

CLAIM NO: SVGHCV2012/0121

BETWEEN:

ELROY MATTHEWS

Claimant

and

- (1) SHAWN SUTHERLAND
- (2) MAYA HOHAND

Defendants

IN MASTERS COURT BEFORE MASTER V. GEORGIS TAYLOR-ALEXANDER

APPEARANCES:

S.E Commissiong of Counsel for the Claimant

S Louise Mitchell Joseph of Counsel for the Defendant

The Parties present

DATED:

The ^{11th} 26 day of ^{April} January, 2014 2015

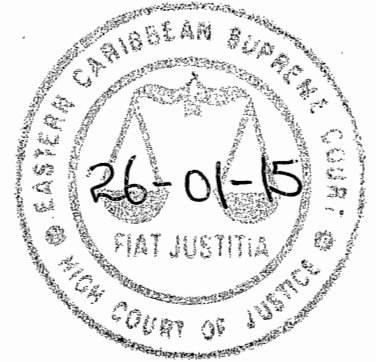
ENTERED:

The day of , 2014

THIS matter coming on for assessment of damages;

AND UPON the court having read the claim form, statement of claim, the application and the affidavits in support of assessment,

AND UPON and upon the submissions of the parties;



IT IS NOW ORDERED:

- [1] Damages be and are hereby assessed to the claimant in the sum of \$19,741.74 for special damages, together with interest at the rate of 3% from the date of injury to the date of award and thereafter at the rate of 6% to date of payment in full; Past loss \$56,200.00 - \$14,735.00 - \$4,187.50 = \$37,277.50; Pain suffering and loss of amenities of \$35,000.00; Future medical care; \$4,500.00 together with interest at the rate of 6% per annum from the date of award to payment in full.
- [2] No award is made for future loss of earnings.
- [3] Deductions are to be made from the global award of the interim award made.
- [4] The claimant is further awarded costs calculated on 60% of the prescribed costs.

Handwritten signature and date:
26-01-2015

BY THE COURT

REGISTRAR

Reasons for Decision

- [1] The Claimant Elroy Matthews, is a 44 year old man who was injured on the 11th December 2010 where he worked as a carpenter on the construction of a dwelling house in Mustique in St. Vincent and the Grenadines belonging to the Second Defendant. The First Defendant was the onsite contractor / Project Manager. The facts are undisputed and are that the claimant fell from the ceiling where he was installing a sheet of plywood and sustained injuries to his back and shoulder.

[2] Despite there being two defendants none of whom defended the proceedings, the Default Judgment is reflected as having been entered against one defendant for an amount to be decided by the court, and that was pursuant to a request for failure to file a defence. This requires clarification as to against whom judgment has been entered if not against both defendants. I am nevertheless satisfied that any error and /or clarification can be dealt with under the slip rule and does not prevent an assessment of damages attendant to the injuries sustained.

[3] Of note, by order of the court dated the 11th December 2012, and upon the application of the Claimant the court awarded an interim payment of \$55,000.00 which included agreed physiotherapy expenses of \$9320.00; \$4000.00, salary for the period March 2011; US\$1,500.00 the costs of a medical report.

General Damages

[4] The claimant was examined by Dr C Woods in February and March 2011 and again on the 14th of March 2012. I have also had sight of the report of Dr. Dennis Byam, Dr. Jerry Thorpe; and Dr Prasad Chode.

[5] Dr. Woods found evidence of a dislocated shoulder which had to have been immobilized for three weeks and for which the claimant required physiotherapy to regain full movement and the use of his shoulder.

[6] The claimant continued in pain despite prolonged physiotherapy which commenced in December 2010 and continued past to the 15th August 2012 Dr. Woods found the pain to be aggravated by his work as a carpenter. On later examination his x rays showed signs of degenerative changes in the affected shoulder joints. As of his examination on the 14th February 2012 and August 2012, Dr. Woods found some limitation of abduction of the shoulder and pain on extreme movement. By the 15th day of August 2012 physiotherapy helped to greatly improve his range of motion to the affected area. He now has degenerative disease caused by the trauma of dislocation, which will cause the claimant mild to

moderate pain and stiffness of varying intensity. His right shoulder has permanently weakened.

- [7] Dr. Woods noted that the success of rehabilitation depended on the degree of compliance with regular physical therapy. The additional complication of degenerative disease decreases the possibility of pain free function of the shoulder. Dr Woods found that the claimant would be challenged to continue work as a carpenter.
- [8] Physiotherapist Denis Byam found that the deltoid and other muscles in the location of the scapular, clavicular humerus and glenohumeral muscles were affected.
- [9] On examination Dr. Jerry Thorpe orthopedic surgeon's clinical findings of the left shoulder were of a residual mechanical dysfunction for which an arthroscopic examination was taken of the shoulder. Dr. Thorpe concluded that the claimant had suffered a significant injury to his left shoulder, which has a 50% chance of recurrent dislocation such that he was assessed with a 7 % whole person physical impairment. He is disabled from work as a carpenter in particular the overhead weight bearing and overhead activity. He will suffer impairment in recreational activity such as his football. Dr. Thorpe suggested surgical intervention to reduce the impairment and to return to his previous employment. The claimant has since undergone this intervention.
- [10] The interim award was to have met the costs related to the surgical intervention.
- [11] Dr. Chode as the most recent medical consultant reported full movement with no swelling or deformity of the shoulder and that the joint is now stable. He noted that the strength of the muscle of the left shoulder is equal to the right however that pain is elicited with terminal abduction and external rotation. Physiotherapy was recommended to attain full strength of the shoulder.

- [12] The claimant claims to have been unable to work from the 3rd of January 2011 - 30th November 2013 and continuing.
- [13] I have concluded that the disability which resulted from the injury has now improved as a result of the surgical intervention such that the impairment that affected his future employability has been removed.
- [14] The claimant has provided this court with the case of **Randy James v Leroy Lewis and Alden Samuel** ANUHCV2007/0403 (unreported) and a judgment of this court **David Balcombe v Vaughn Lowman** SVGHCV2006/0375 (unreported) and **Michael Laudat et al v Danny Ambo** HCVAP2010/016, and submits a figure of \$50,000 for pain suffering and loss of amenities. The authorities submitted were not comparable. The defendant relied on **Tortola Yacht Club and Denroy Baptiste, Anne Benn v Community First Cooperative Credit Union**, and **Sylvena Morson v Leron Lewis**, to suggest an award of \$35,000.00 for pain suffering and loss of amenities. I have applied my discretion to the facts, authorities and usual guidelines, and I concur with the conclusions of the defendant and agree an award in the sum of \$35,000.00.

Future Medical Expenses

- [15] These it would appear have been agreed at \$4500.00.

Future Loss of Earnings

- [16] I make no award on future loss of earnings there being no indication of continuing disability affecting the employability of the claimant after the 25th March 2013.

Past Loss of Earnings

- [17] I have read the submissions of both sides on this issue and I have spent considerable time on the findings of the medical practitioners. I accept the

defendants submissions that the average daily wage of a self-employed carpenter is \$100.00. I also accept their submissions that the claimant's loss should be calculated on the average daily wage.

[18] The claimant's submits that he is entitled to loss of earnings in the sum of \$312,000.00, while the defendant alleges that the sum of \$56,200.00 being 562 days at \$100 a day is a more appropriate award.

[19] It is unusual for self-employed tradesmen to be in full time employment, the nature of their work being occasional, and I am reminded that the purpose of such an award is not unjust enrichment but it is compensatory in its objective. I have assessed an average working week at 4 days and I am of the view that the claimant is entitled to loss of earnings from the date of injury being the 11th December 2010, to the 25th March 2013 for a total of 456 days, a total of \$45,300.00.

[20] Despite my findings the defendant has submitted that an award should be made of 562 days at \$100.00. There is no basis to disturb the sum proposed by the defendant. I therefore award the sum of \$56,200.00 agreed by the defendant. From this amount is to be deducted sums earlier paid by the claimant:

• Loan Arrears	-	\$12,000.00
• St Vincent Electricity Services	-	\$ 400.00
• CWSA	-	\$ 235.00
• Finishing and Furnishing Ltd.	-	<u>\$ 1,500.00</u>
Total		<u>\$14,735.00</u>

[21] Further deductions should be made for compensatory salary of \$550.00 paid in December 2010; \$2,500.00 paid for January 2011; \$1,137.50 for February 2011.

[22] The total award is therefore:

Past loss:	\$56,200.00 - \$14,735.00
	- \$4,187.50 = \$37,277.50
Pain suffering and loss of amenities:	\$35,000.00
Future medical care:	\$4,500.00
Special damages:	\$19,741.74

[23] From the total award there is to be the deduction of the interim award. Prescribed costs are to be calculated on 60% of the global award.



V. GEORGIS-TAYLOR-ALEXANDER

HIGH COURT MASTER