

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV 2013/098

BETWEEN:

TEMICIA SMITH

and

[1] BRIAN DEAN

[2] ST.VINCENT ELECTRICITY SERVICES LIMITED

Defendants

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Ms. Mandella Campell holding for Mr. Parnell Campbell Q.C counsel for the claimant

Ms. Zhingia Horne Edwards counsel for the defendants

**2014: June 2;
August 25.**

DECISION ON ASSESSMENT

- [1] ACTIE, M. [AG.]:** By order dated 27th June 2013, Lanns M. entered judgment for the claimant with damages to be assessed.

Background

- [2]** On 1st December 2009 the claimant 17½ years at the time was a passenger in a motor vehicle when a vehicle owned by the second defendant and driven by the first defendant violently struck the rear of another vehicle which in turn violently struck in the rear of the vehicle in which the claimant was travelling. Liability



having been established against the defendants it is now for assessment of damages.

Special Damages

- [3] The claimant in the statement of claim pleaded the sum of \$9848.50 as special damages. However she has since incurred further costs of medical reports in the sums of \$550.00 and \$4800.00 for physiotherapy sessions making a total of \$15,198.50 for special damages.
- [4] The defendants concede on the amounts claimed for special damages except for the amount claimed for physiotherapy in the absence of receipts. The parties agree to a nominal sum of \$630.00 for physiotherapy sessions for the period of May 2013 to December 2013 at \$30.00 per month making an agreed total award of \$11,028.50 for special damages.

General Damages

- [5] The claimant seeks a global award of \$150,000.00 for general damages for pain and suffering, loss of amenities and loss of her pecuniary prospects in keeping with applicable legal principles set out in the seminal case of **Cornilliac v St. Louis**¹.

The nature and extent of the injuries sustained

- [6] The claimant states that she experienced immediate excruciating neck pain when she was thrown violently forward as a result of the accident. She was taken to the Milton Cato Memorial Hospital immediately after the accident where she was diagnosed with soft tissue injury and whiplash of the cervical spine. She was fitted with a neck collar and discharged on analgesics. The claimant continued to experience back and neck pains, tingling of the fingers and increasing weakness in her hands. Greater clarity of the injuries was outlined in the medical evidence of Dr. Toby, Orthopaedic Surgeon and consultant, in a report dated 18th August 2010

¹ (1965) 7 WIR 491

following a MRI that revealed a posterior annular tear of the C 5-6 cervical disc and a small posterior central disc herniation. A further MRI done on 30th July 2012 outlines the claimant's injuries as:

- (a) loss of cervical lordosis, compatible with muscle spasms
- (b) posterior annular tear in C5-6 intervertebral disc;
- (c) posterior central small disc protrusion (4 mm TS x 3 mm AP) at C5-6 level causing mild narrowing of spinal canal.

The nature and gravity of the resulting physical disability

- [7] The prognosis of Dr. Toby states that the claimant's injury was significant for a young person and would not augur well for the future. The report states that the claimant is likely to have increased pain and will probably need surgical intervention to alleviate the conditions.

The pain and suffering endured

- [8] The claimant states that she continues to experience headaches, terrible back pains with intermittent swelling, muscle spasms with continuous numbness in her hands and feet. She is unable to stand for long periods and continues to wear a neck collar. The claimant in her oral evidence states that she only removes the neck collar for short intervals to exercise.

The loss of amenities

- [9] The claimant who was an active person in good health prior to the accident, is no longer able to do any vigorous exercise or engage in any demanding physical activity. The claimant's enjoyment of life has been curtailed by the unpleasantness of continuous pain and suffering. She also had to abandon her aspirations of becoming a nurse. The claimant who became pregnant in 2012, endured continuous pain throughout her pregnancy and up to now is unable to properly lift and bond with her 11 month old baby. The claimant who is engaged to be married alleges that the constant pain has affected her sexual activities as it

has become more challenging and sometimes painful. Also, the continuous use of a neck brace makes her uncomfortable and has severely affected her social life.

The extent to which pecuniary prospects are affected

[10] The claimant states that she had the aspiration of becoming a nurse. She further states that she had prior to the accident been interviewed and accepted in a nursing programme. She started the nursing studies in 2010 but had to give it up due to chronic pain that she suffers.

[11] The court was referred to the several cases listed below in an effort to arrive at the figure proposed:

1. **Osley Baptiste v C.K Greaves and Co. Ltd²** where the claimant at the age of 72 years suffered injuries to his lower back and neck as a result of slipping in a pool of slimy water at the defendant's supermarket. The claimant whose injuries were categorized as pain in the back of the neck, stiffness, dizziness, pain in both legs and urinary incontinence at nights was awarded the sum of \$100,000.00 for pain and suffering and loss of amenities.
2. **Michael de Castro v Antigua Masonry Products Ltd³** where an award of \$100,000.00 for loss of amenities and diminution in pecuniary prospects was made to a labourer who suffered injuries in the course of his employment in a block making plant. The claimant sustained multiple injuries when the loader rack of a block machine caught his legs and suffered pain and injuries.
3. **Aubrey Smith v Calvert Fleming and Alvin White⁴** where the claimant 57 years old who was already suffering from a degenerating injury sustained injuries to his back and neck in a motor vehicular accident. The

² SVGHCV No 1997/192 delivered 10th May 2006

³ ANUHCV No. 2010/ 0456 delivered on 11th April 2012

⁴ AXAHCV No. 2008/0050 delivered on 27th May 2011

3. **Aubrey Smith v Calvert Fleming and Alvin White**⁴ where the claimant 57 years old who was already suffering from a degenerating injury sustained injuries to his back and neck in a motor vehicular accident. The court relying on the cases cited therein awarded the sum of USD \$25,000.00 for pain and suffering and USD\$20,000.00 for loss of amenities, approximating to a total of ECD \$122,260.00.

[12] The defendants contend that the sum of \$150,000.00 for general damages claimed by the claimant is not within the usual range of awards for the type of injury suffered by the claimant. The defendants suggest an award in the sum of \$50,000.00 contending that the injuries sustained by the claimant are "at the top end of the moderate category for back injuries" in accordance with the Judicial Studies Board (JSB) Guidelines for the Assessment of Damages in personal injury cases. The defendants suggested several authorities to be taken into consideration in an effort to arrive at an appropriate figure:

- (1) **Dawson v Claxton**⁵: - The Court of Appeal confirmed the award of USD \$36,000.00 for pain, suffering and loss of amenities made to a claimant who suffered C 3-C4 C4-C5 disc herniation and other injuries where the defendant's vehicle struck the claimant's vehicle from behind.
- (2) **Celia Hatchet v First Caribbean Int'l Bank Limited et al**⁶: - a 40 year old woman involved in a vehicular accident suffered fractured C3 vertebrae with degenerative disc disease. The claimant suffered injuries to her neck and lower back and complained of stiffness in her neck. The court awarded general damages in the sum of USD \$20,000.00.
- (3) **Anita Tobbit v Grand Royal Antigua Beach Resort et al**⁷: - The claimant suffered injuries to her back and neck in a vehicular accident with a prognosis of central and left lateral disk herniation at L5/S1. The

⁴ AXAHCV No. 2008/0050 delivered on 27th May 2011

⁵ BVIHCVAP No. 2004/0023 delivered on 23rd May 2005

⁶ BVIHCV No. 2006/0227 delivered on 29th November 2007

⁷ ANHUCV No. 2006/ 0026 delivered on 13th October 2010 et

court relying on the authority of **Celia Hatchet v First Caribbean Int'l Bank Limited et al** awarded the sum of \$50,000.00 for pain, suffering and loss of amenities for the injuries sustained. The court opined that the injury was at the top end of the moderate category for back injuries as described by the JSB guidelines.

- [13] In making an appropriate award I am minded by the principle enunciated in **CCAA Ltd v Julius Jeffrey**⁸, where Gordon J.A quoted Lord Hope of Craighead in **Wells v Wells** as saying;

"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 plaintiffs general damages."

- [14] I am also minded that the court in the assessment of general damages should strive for a high measure of uniformity of awards as is reasonably practicable, considering first of all awards in comparable injuries given in this jurisdiction or from jurisdictions with similar social and economic conditions.

- [15] The medical evidence of Dr. Toby states that the claimant's injury was significant for a young person and would not augur well for the future as she is likely to have increased pain. However there is no evidence before me to suggest that the claimant is totally incapacitated as the medical report surmise that future surgical intervention may alleviate the conditions. After reviewing the authorities provided I am of the view that the case of **Anita Tobitt v Grand Royal Antiguan Beach Resort Ltd et al** bears similarities to the injuries suffered by the claimant. In that case the court in 2010 awarded \$50,000.00 for pain and suffering and loss of amenities. In the circumstances I take into account the nature of the injuries and the fact that the claimant has been in continuous pain since the accident in 2009. It is to be noted that the claimant in the **Tobitt's** case had been in previous employment prior to the accident and the medical evidence indicated that earning

⁸ St Vincent Civil Appeal No 10 of 2003

capacity had been reduced as a result of the accident. In the present case the claimant was unemployed. It can reasonably be assumed that she would have been in gainful employment had she completed her nursing programme. However there is no evidence before the court to indicate the length of the nursing programme and the prospective earnings she would have obtained had she completed the trainee programme. Further there is no evidence to suggest that the claimant is totally incapacitated in the job market, rather the medical evidence suggests that surgical intervention may alleviate the claimant's condition. I am aware that the claimant is entitled to a fair and reasonable compensation. Accordingly I would make an elevated award for \$70,000.00 for pain and suffering and loss of amenities with interest at the rate of 6% from the date of judgment until the date of payment in full.

Future Medical Expenses

- [16] The claimant seeks an award in the sum of \$20,000.00 to cover costs of future medical care and expenses particularly for physiotherapy treatments and for the prospective purchase of medication possibly for the rest of her life. The court notes that no evidence has been led in support of the amount claimed.

- [17] In **Ronald Fraser v Joe Dalrample et al**⁹ in making an award of \$10,000.00 for future medical support Michel J said:

"The next head of damages to be addressed is future medical expenses. The evidence on this is very unsatisfactory, because although this is an item of general damages (as a matter of pleading) yet the Claimant must clearly provide evidence of amount. The Court however has no choice but to make an award based on the evidence put before it. Dr. Singh testified that the Claimant would require physical therapy, pain medication, clinical follow up and the Lord's blessing for his rehabilitation. The Court certainly did not expect a value to be placed on the last of the four requirements, but the Court ought to have been provided with sufficient information to value the other three requirements."

⁹ANUHCv 2004/0513 delivered on 5th May 2010 at Para 36

- [18] The Privy Council in **Persaud v Persaud**¹⁰ held that where there was the possibility that the claimant might have surgery, the court should award a sum to reflect that possibility. Having reviewed the medical evidence I make an award of \$10,000.00 for future medical care and a sum of \$105,000.00 to cover the costs of the proposed surgery plus incidentals such as air fare, hospital fees and other associated costs. A global award in the sum of \$115, 000.00 is made for future medical care.

Nursing Care/Domestic Assistance

- [19] An award of damages can properly be made to recompense in respect of nursing care given to the claimant as a result of the accident. The claimant seeks an award for domestic assistance in the sum of \$17,800.00 calculated at \$250.00 per month since the accident and \$100.00 per month up to possible surgery for approximately 4 years. The claimant states that injuries have incapacitated her ability to perform domestic chores. She has been dependent on her parents and other family members for care and domestic assistance for both herself and her young child. The defendants in response contend that the claimant's parents were under a moral obligation to continue to provide the care which they provided prior to the accident.

- [20] In **CCAA Limited v Julius Jeffrey**¹¹ the Court of Appeal awarded the sum of \$300.00 per month for cost of care provided by the claimant's mother. Having regard to the nature of the injuries it is accepted that the claimant needed domestic help. Accordingly an award in the sum of \$250.00 per month x 55 months since the accident is made for cost of care. The claimant seeks a further sum of \$100 per month for 4 years for care up to possible surgery. The claimant has not justified the 4 year period suggested and according I would discount the period to 2 years in anticipation that the surgery is pursued sooner rather than

¹⁰ (2004) 64 WIR 378

¹¹ St. Vincent & The Grenadines Civil Appeal no 10 of 2003 delivered on 2nd March 2004

later in an effort to alleviate the pain and discomfort of the claimant. Accordingly an award in the sum of \$16,150 is made for nursing and domestic assistance.

Award

[21] In the final analysis an award is made to the claimant as follows:

- (1) Special Damages- an award in the sum of \$11,028.50 with interest at the rate of 3% per annum from the 1st December 2009 to the date of judgment and at the rate of 6% per annum from the date of judgment to the date of payment in full.
- (2) General Damages- an award in the sum of \$70,000.00 for Pain and Suffering and loss of amenities together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment in full.
- (3) An award in the sum of \$115, 000.00 for future medical care together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment in full.
- (4) An award in the sum \$16,150.00 for nursing and domestic assistance together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment in full.
- (5) The claimant is awarded Prescribed costs in accordance with CPR 65,5

[22] I wish to express my gratitude to counsel for the respective parties for their very helpful submissions.


Agnes Actie
Master [Ag.]