

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SVGHCV2010/0125

BETWEEN:

Peter Douglas

Claimant

and

Sean Roberts

Maurice O' Garro

Defendant

Appearances:

Mr. Jaundy Martin of Counsel for the Claimant

The Defendant absent and unrepresented

2014: April 7th

2014: April 8th

DECISION

[1] **TAYLOR-ALEXANDER, M:** This matter comes on for the assessment of damages for the personal injury loss and damage sustained by the

claimant as a result of a vehicular accident occurring on the 10th November 2009 on the Keartons public road in St. Vincent and the Grenadines. Judgment was entered in default against the defendant on the 3rd December 2010, in proceedings commenced on the 30th March 2010.

- [2] The facts are uncomplicated and undisputed. The claimant who was a bus driver and apparently in robust health prior to the accident, suffered severe whiplash injury from which he is still incapacitated. He suffers with excruciating pain, exacerbated by sudden or sharp movements, which compromised his ability to return to work immediately following the accident. As at the date of assessment he had not continued to work as a bus driver. He suffered other difficulties. Doing household chores was compromised, nor could he attend to his animals or play basketball. He continues to have difficulty sleeping.

Pecuniary loss/Special damages

- [3] The sum of \$1617.00 is claimed. I found the sum of \$1590.00 to have been pleaded and proven by the testimony of the claimant and by documentary evidence and that is the sum I award.

General Damages

- [4] The claimant relied on two authorities of **Danny Bramble v William Danny and Key Properties Ltd** ANUHCV1999/0160 and **Carter Smith v Nicholaas Bersma** ANUHCV2009/0718, both of which were comparable authorities to support an award of \$90,000.00, as due compensation for the injuries suffered by the claimant. The claimant relied on three medical reports, but placed particular emphasis on the final medical report of Dr. Woods dated the 22nd May 2012, as it, more than the earlier reports spoke to the maximum medical improvement of the claimant. Dr. Woods concluded in that report that there was long term impact resulting from the

injury sustained as Mr. Douglas had developed long term degenerative disease of the cervical spine initiated or otherwise exacerbated by the injury he sustained in 2009. Further examination revealed that he had severe limitation of movement of the neck, especially on turning to the right, limited flexion and extension of the spine. There was tenderness of the right paravertebral muscles. The claimant, Dr. Douglas concluded will require long term physical therapy to improve the condition of his cervical spine. It appears that even with treatment he will have lifelong neck pain and discomfort of variable intensity.

[5] Despite many opportunities extended to the defence to bring this case to conclusion by allowing the defendants to conduct a requested cross examination of Dr. Woods, the defendants did not vigorously pursue this examination and in fact severely wasted the court's time in the conduct of the assessment. This matter was scheduled for assessment well over a year ago and the court embarrassingly awaited the defence counsel who had insisted on cross examination of Dr. Woods, but then subsequently left the state for an indefinite period. Although returning to the state, he has not attended the proceedings today, nor has the court been offered the courtesy of an excuse for his absence. This is however is all in good stead as by the absence of the defendants without excuse at the hearing, the court has been freed to conduct this assessment. The court is reminded that justice must not only be done but it must be seen to be done.

[6] I have applied my mind to the guidelines accepted by the courts of our jurisdiction emanating from the dicta of Wooding CJ in in the locus classicus **Cornilliac v St. Louis** (1965) 7 WIR in order to assist me in identifying a sum in compensation for the damages suffered. I have also reviewed the evidence on assessment, the submissions of the claimant and the authorities referred to. I also considered the further oral submissions of the claimant. I have awarded for pain suffering and loss of

amenities the sum of \$85,000.00 which is comparable to the injuries sustained in the authorities provided. I also accounted for any further medical treatment and physiotherapy which the claimant has to undergo, and for the long term impact of the injury he has sustained.

Loss of earnings

- [7] A claim has been made for loss of earnings although I remain unconvinced as to the claimant's inability to work. I am more satisfied that continuing work as a bus driver in his current condition will present some challenges to the claimant for which he may have to consider the use of aids to make sitting more comfortable. He may also have to consider reducing his hours of work or otherwise changing the nature of his work entirely. But he is not incapacitated. More so the claimant had engaged in animal husbandry which he may be forced to explore on a full time basis. I have however considered that the evidence before me satisfies me that the claimant has been disadvantaged in the labour market by his injuries. The pain and stiffness he endured from the injuries can be particularly debilitating after long hours in one position. I am reminded that an award under this head may be granted where there is a substantial as oppose to a negligible risk of disadvantage. See **Moeliker v Reyrolle & Co** [1977] 1 WLR 132. I am satisfied having read Dr. Woods report that the claimant will face significant challenges should he return to work as a bus driver. I note that the awards under this head of damages have been small perhaps to account for the fact that it is based on supposition and without identifiable fact. I have awarded the claimant the sum of \$10,000.00.

Interest and Costs

- [8] Interest is awarded of special damages at the rate of 3% from the date of injury to date of judgment and on special damages, pain, suffering and loss of amenities form the date of judgment t the rate of 6% per annum. No interest is applied to the award for disadvantage in the labour market. Costs are awarded at the rate of 60% of the prescribed costs in the sum of \$8693.10.

V. Georgis Taylor-Alexander
High Court Master