

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

DOMHCV 2011/0341

BETWEEN:

LEANTHIA PACQUETTE LEWIS

Claimant

and

IRVIN DURAND

Defendant

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Mr. Anthony Commodore of counsel for the Claimant

Mrs. Singoala Bloomquist-Williams of counsel for the Defendant

2012: November 20;
December 10, 28;
2013: April 30.

JUDGMENT

Part-heard and on written submissions

- [1] **ACTIE MASTER [AG.]:** This is an assessment of damages as a result of a motor vehicle accident.
- [2] The claimant by claim form with statement of claim and amended statement of claim filed on 26th January 2010 and 2nd February 2012 respectively claims for damages against the defendant for personal injuries and consequential loss caused by the negligent driving of the defendant.

- [3] The defendant admitted liability and by Order dated 24th August 2012 judgment with damages to be assessed was entered for the claimant pursuant to **CPR 2000** Rule 16.3.
- [4] The claimant by notice of application filed on 31st August 2012, made application for assessment of damages.
- [5] The matter was part heard and followed by written submissions after the parties agreed to meet with the medical doctor for further explanation of the claimant's prognosis.

The Facts

- [6] The claimant while driving stopped before a pedestrian crossing sign to allow an elderly pedestrian an opportunity to cross the road when the defendant drove his vehicle into the rear end of the claimant's vehicle. The defendant accepted liability. The claimant was compensated for damages to her vehicle by the defendant's insurance company.

The Nature of the injuries

- [7] The claimant's injuries were particularized in three (3) medical reports annexed to the statement of claim as follows:

(1) **The medical report of Dr. Julian De Armas, Orthopaedic Surgeon, dated 12th August 2010.**

The report states that the claimant was on 30th April 2010, complaining of cervical spine pain, unbalance and weakness in both upper limbs, which started on 29th April 2010 after the vehicle in which she was travelling was impacted by the back. The medical report outlines the physical examination as follows:

- Cervical Spine muscle contracture
- Decreased range of movement of the Cervical Spine
- Roomberg sign positive to the right

The diagnosis was stated in the report as (1) Post- traumatic Laberintitis and (2) Cervical Spine disc Prolapse C4/C5-C5/C6 Post traumatic.

A MRI test of the spine, recommended and done on 28th May 2010, reveals;

- Disc Herniation C4/C5-C5/C6 post traumatic with mass effect on the spinal cord and compression of left C5 nerve root; a bony contusion was noted in C4.

The report further states that the claimant was seen again on the 1st June 2010, complaining of pain, at which time a physiotherapy program was recommended but indicated that she would most likely need surgery by a neurosurgeon to decompress her spinal cord. However, there are no neurosurgeons practising in Dominica and therefore the claimant would have to travel overseas.

(2) **The medical report of Dr. Julian De Armas dated 18th January 2011**

The claimant was seen by the consultant on 18th November 2010. Her symptoms (tenderness of the cervical spine area and radiculitis left C5 nerve root) persist despite the physical therapy program. It was again recommended travelling overseas for a neurosurgical intervention. An appointment was made with Dr. Gottin, Chief of Spinal Surgical Services in Martinique on 2nd February 2011.

(3) **The medical report of Hendricks A. Paul**

Dr Paul was recommended by the insurance company. He states in his report as follows; "There was disc herniation. In view of the disc herniation recurrent pain and stiffness in the neck is likely and a "cure" is unlikely. Surgery is not expected to get her symptom-free."

The Claim – Special Damages

[8] The special damages claimed by the claimant are particularized in the statement of claim as follows;

(1) Police Report	\$250.00
(2) Medical Tests (Belmont Clinic Antigua)	\$3,400.00
(3) Medical examination (Dr. Julian DeArmas)	\$160.00
(4) Medical Reports (Dr. Julian DeArmas)	\$250.00
(5) EEZZEE Pharm Ltd.	\$76.70
(6) Overseas medical travel ticket(LIAT)	\$653.70
(7) Travel Head tax	\$45.00
(8) Housing accommodation/transportation/meals/Antigua	\$500.00
(9) Jolly's Pharmacy	\$31.95
(10)Meal at Airport(Antigua)	\$ 26.00
(11)Mally's Taxi Service	\$130.00
(12)Medical Loan Appraisal fee (NDFD)	\$104.00
(13)Exit Certificate (Inland Revenue Department)	\$5.00
(14)Helper at home (April – June 30, 2010)	\$1,500.00
(15)Loss of vehicle use (4/5-8/5/10)	\$1,258.00
(16)Loss of monthly salary(\$4,500 x 20)	\$90,000.00
(17)Physiotherapist	\$1000.00
(18)Massage Therapy	\$600.00
(19)Travel (Martinique - Ticket 24/01/2012)	\$365.82
(20)Meals & Stay (Martinique- 24/01/2012 - Euro 280.00)	\$980.00
(21)Departure Charges(Martinique 24/01/2012	\$45.00
(22)Medication(Martinique - 24/01/2012- Euro 80.38)	\$283.00
(23)Medication (Martinique - 24/01/201- Euro 6.73)	\$ 24.00
Travel insurance	\$ 25.60
Medical Report	\$ 50.00
Medical Report	\$ 10.00
(24)Legal Fees (Gildon Richards)	\$1150.00
(25)Legal Fees (other)	\$7500.00

(26)Medical Report	\$150.00
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Total of Special Damages	\$110,573.77
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[9] The defendant does not dispute items 1 to 11, 17, 18 and 26 but takes issue with the following amounts claimed under special damages:

(1) The medical loan appraisal as shown as item 12. The defendant contends that the medical loan date does not correspond with the date of the accident. The claimant during cross-examination states that the purpose of the loan was to travel to Antigua to get the MRI recommended by the medical practitioner. The claimant intimates that the loan was taken after the accident and not in January as alleged by the defendant. The Court accepts the evidence of the claimant. The receipt is dated 27th May 2010, a day before the medical visit in Antigua which lends credence to her assertion. In the circumstances the sum of \$140.00 claimed as item 12 is allowed.

(2) The defendant challenged the amount claimed for the home-helper in the sum of \$1,500.00. The claimant submitted a receipt from Suzette Fregiste for home-help from 30th April 2010 to 30th June 2010. The defendant suggested a sum of \$1000.00 for the two months period. The Court is minded to grant the amount in the absence of evidence to contradict the receipt presented by the claimant. It is reasonable for help to have been provided having regard to the nature of the injuries suffered by the claimant.

(3) The amount of \$90,000.00 for loss of salary for 20 months was challenged. The defendant contends that the medical report refers to a sick leave period from April 2010 to June 2010, and from 30th February 2011 to 31st January 2011, and accordingly the claimant should only be

compensated for period of 6 months as the claimant did not provide any information to substantiate her claim for 20 months. The court agrees with the defendant's contention. Dr. Julian De Armas during examination in chief held on 28th December 2012 states that there was no evidence present in the report to indicate that he gave the claimant leave for 20 months. Based on the evidence, the court awards the sum of \$27,000.00 for loss of salary for a period of six (6) months.

(4) The defendant challenges items 19-23 on the ground that no medical report was adduced in evidence to confirm that the appellant was seen by a specialist. The Court notes that the medical reports of Dr. Julian De Armas recommended overseas treatment that was not available in Dominica. An appointment was made with Dr. Gottin, Chief of Spinal Surgical Services in Martinique. The receipts supplied by the claimant make reference to a fee paid for consult de specialist and other fees. The court is of the view that the claim is substantiated on the receipts even in the absence of a medical report and allows the amounts claimed.

(5) The defendant contends that legal fees for Gildon Richards and Antony Comodore should not be under separate heading as **CPR 2000** allows the claimants costs based on quantum awarded. The court is of the view that the amount claimed for costs should be considered under the costs regime as prescribed by **CPR 2000** and not as special damages.

General Damages

[10] The legal principles governing the assessment of damages are well established in the seminal case of **Cornilliac v St. Louis** (1965) 7 WIR 491. Sir Hugh Wooding, CJ listed the main factors to be taken into account as (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities, if any; and (iv) the extent to which pecuniary prospects are affected. General Damages are damages

which will be presumed to be a natural or probable consequence of the wrong complained of; with the result that the claimant is required only to assert that such has been suffered.

1. The nature and extent of the injuries sustained

The claimant was 41 years old at the time of the accident. The nature and extent of the injuries were particularized in the medical reports referred to earlier.

2. The nature and gravity of the resulting physical disability

The evidence of Dr. Julian De Armas in examination-in-chief held on 28th December 2012 states that the claimant will have pain and suffering for the rest of her life. The gravity of her injuries requires surgery to decompress her spinal cord. The intervention of a neurosurgeon is required outside of Dominica as the expertise is not available locally. The evidence of Dr. De Armas is further buttressed by the evidence of Dr. Hendricks Paul, the medical consultant recommended by the insurance company where he concluded "Ms. Lewis has disc herniation which may have been caused by the accident.: In view of the disc herniation recurrent pain and stiffness in the neck is likely and "a cure" is unlikely. Surgery is not expected to get her symptom-free..."

3. The pain and suffering endured

The evidence of the claimant, as supported by the medical evidence of Dr. Julian De Armas indicates that the claimant suffered injuries to her neck and first segment of her upper back. The claimant complained of cervical spine pain, unbalance and weakness in both upper limbs. As indicated before, the claimant is expected to have pain for the rest of her life.

4. **The loss of amenities and extent of pecuniary prospects affected**

The evidence Dr. Julian De Armas in his examination-in-chief on 28th December 2012, states that the claimant cannot function effectively as a clerk as she will have pain for the rest of her life.

Case Law

[11] Counsel for the claimant cited several authorities which should assist the determination of the quantum of damages, namely;

(1) **Michael De Costro v Antigua Masonry Products Limited**¹ and the cases referred to therein where an award to the claimant in the sum of \$100,000.00 by way of general damages for pain and suffering, loss of amenities and diminution in his pecuniary prospects. The claimant, a labourer, was injured in the course of his employment in a block-making plant. The claimant as a result of the injuries suffered, could no longer perform heavy manual labour with little or no prospect of obtaining future employment as a labourer.

(2) **Cedric Dawson v Cyrus Claxton**². In that case the Court of Appeal awarded \$36,000.00 for pain, suffering and loss of amenities; \$15,243.00 for loss of future income; \$36,582.00 for loss of earning capacity; \$16,000.00 for cost of future medical attention. The respondent was injured in a motor vehicle accident where the appellant's vehicle struck the respondent's vehicle from behind. The respondent suffered C3-C4, C4-C5 disc herniation. The claimant asked the court to note that the claimant suffered disc herniation in only one area, there being no evidence of lifetime pain and suffering as in the case at bar.

¹ ANUHCv 2010/0456 delivered on 11 April 2012

² Civil Appeal No. 23 of 2004 delivered on May 23, 2005

(3) **Anita Tobitt v Grand Royal Antiguan Beach Resort Limited et al**³ a case for assessment of damages as result of a motor vehicle accident. The claimant suffered back injuries and an award of \$100,000.00 was made for general damages.

(4) **Piggot v Galeforce Windows & Doors Inc.**⁴ Where the claimant was struck with a reinforcement steel frame when he was assigned to assist with the offloading of materials from a container. The court awarded \$50,000.00 for pain, suffering and loss of amenities; \$130,000.00 for prospective loss of earnings.

[12] The defendant referred to cases in which similar injuries were sustained for guidance.

[13] In **Isaac v Solomon et al**⁵, the court awarded \$40,000.00 for pain and suffering and loss of amenities; \$212,032.00 for future loss of earnings as a result of a motor vehicular accident where the claimant suffered chronic neck and back pain secondary to whiplash injuries with permanent partial disability.

[14] The defendant states that the case of **Martha Leblanc v Augustin Thomas et al**⁶ is almost on all fours with the case at bar. The court awarded \$16,000.00 for pain, suffering and loss of amenities in a motor vehicular accident where the claimant suffered a traumatic disc prolapse of the C5-C6 cervical vertebrae and experienced neck pain. Dr. De Armas stated in his report that the pain would persist.

[15] In **Celia Hatchet v First Caribbean International Bank et al**⁷, the court awarded \$20,000.00 for general damages for injuries sustained in a motor vehicle accident. The medical report confirmed that the claimant, 40 years old, suffered from

³ ANUHCv2006/0026 delivered October 13,2010

⁴ ANUHCv2004/0069 delivered January 11,2007

⁵ Republic of Trinidad & Tobago CV 2007/04400 delivered 17.12.2009

⁶ DOMHCv 2009/0296 delivered on July 6,2011

⁷ BVI 2006/0227 delivered on 29th November 2007

fractured vertebrae with lower back pain. The defendant also cited **Piggot v Galeforce Windows & Doors Inc** (supra).

Quantum of General Damages

- [16] The court is guided by the authorities and the principles enunciated in the decided cases. The Court is mindful that the purpose of general damages is to put the claimant in the same position as much as possible as she would have been in had the accident not occurred.
- [17] The court is asked to take into account that the claimant has had to seek alternative employment as she is not certain as to when the symptoms of her injuries could affect her and prevent her from providing services to her customers as she did when she was self-employed. The claimant in cross-examinations states that she is experiencing swelling of her feet and legs. Dr. De Armas confirmed that there were areas of swellings on the claimant after the accident.
- [18] I had the opportunity to observe the claimant during examination-in-chief and noted the swelling of her hands and feet after sitting for an extended period. Dr. Julian De Armas in examination-in-chief states that the claimant cannot function effectively as a clerk as a result of the injuries sustained.
- [19] The injuries suffered by the claimant are comparable to the injuries suffered in the Court of Appeal decision in **Cedric Dawson v Cyrus Claxton** and **Cecilia Hatchett v First Caribbean International Bank** (supra). The Court takes into consideration all the evidence, authorities, inflation since the decisions and all the circumstances of the case and makes an award of \$50,000.00 for pain, suffering and loss of amenities.
- [20] An award of interest is generally made for general damages and as a result an award of 5% interest is made from the date of this Order until payment.

Conclusion

[21] The claimant is awarded;

- (1) Special Damages in the sum of \$38,923.77 with interest at 5% from the date of service of the claim to the date of judgment. .
- (2) General Damages for pain, suffering and loss of amenity in the sum of \$50,000.00 with interest at 5% from the date of the Order until payment.
- (3) The defendant shall pay the claimant prescribed costs in these proceedings.



Agnes Actie
Master [Ag.]