

COMMONWEALTH OF DOMINICA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO DOMHCV2011/0178

BETWEEN:

BYRON WILLIAMS

Claimant

AND

DAVID HOWE

Defendant

Appearances:

Ms Bernadette Lambert for the Claimant

Mr Gildon Richards holding for Ms Laurina Vidal for Defendant

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2012: January 31; August 24
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Judgment

[1] **LANNS, M:** Byron Williams is a farmer. He was on the verge of harvesting two and a half acres of bananas. Alas, that goal was not realized because on 16th June 2008, two days before harvesting, he was attacked by his cousin David Howe who beat him with a cutlass causing him significant injuries. He was hospitalized for nine days as a result of his injuries. In his Medical Report dated 9th May 2011, Dr H.A. Paul described Mr Williams' injuries as

- 1) 15 cm longitudinal wound to posterior aspect of shoulder;

2) 10 cm trauma wound to flexor surface of wrist involving flexor digitorum profundus superficially to 2nd and 4th fingers; flexor pollicis longus and median nerve.

3) He is likely to have permanent disability.

[2] Mr Williams endured intense pain and discomfort from the wounds from the moment the wounds were inflicted. He was prescribed pain killers. Up to the date of assessment, he was still feeling pain. The pain is exacerbated during the cold weather.

[3] The Claimant has had two operations thus far on his right hand and a third was scheduled for February 2012 with Dr Julien. During the first surgery, the lacerated tendons and the median nerves were sutured. The Claimant was given antibiotics and analgesics. When he was discharged from the hospital, he attended as an out-patient for eight months post surgery. The second surgery was performed to reopen the wound as the tendons were too tight. A cyst has since been growing on the hand. Further surgery is required to remove the cyst.

[4] Mr Williams was an avid cricketer. No longer can he enjoy that sport, as he is unable to flex his hand. Also, he is unable to hold on to a bat. The wound was inflicted on the Mr Williams' dominant right hand. Consequently, he is forced to learn to use his left hand to do certain things.

[5] On 8th June 2011, Mr Williams commenced an action against Mr Howe for damages for personal injuries, pain, suffering, and damage and loss caused by the injuries inflicted by Mr Howe. The issue of liability was determined on 25th August 2011 when Judgment in default of failure to defend was entered against Mr Howe for damages to be assessed.

[6] On 15th November 2011, the matter came before Mathurin M who gave directions on the assessment. Mr Williams only partially complied with the directions in that he only filed submissions and authorities. He failed to file and serve evidence as he was ordered to do.

- [7] However, as Mr Williams was present at the assessment, the court allowed him to give viva voce evidence in relation to his claims for damages.

Special Damages

- [8] In his Schedule of special damages, Mr Williams claims a total of \$20,866.00 as special damages made up as follows:

1.	Loss of earnings from date of injury for 12 months	\$18,000.00
2.	Physiotherapy	\$ 130.00
3.	Doctor's consultation fee	\$ 100.00
4.	Legal Aid Fees	\$ 15.00
5.	Prescription Medication	\$ 36.78
6.	Medical Report	\$ 50.00
7.	Hospital Fees	<u>\$ 2,625.00</u>
	Total	\$ 20,956.78

- [9] The figure of \$20,956.78 which I have computed, does not accord with the total claimed by Mr Williams. His claim is for \$90.78 less.

- [10] Mr Williams' testimony in relation to most of the items of special damages claimed was consistent with his claim. Additionally, he furnished relevant receipts and invoices. I am satisfied that Mr Williams has strictly pleaded, and proven and is entitled to special damages in the sum of **\$2,956.78** in relation to all the items of special damages listed at paragraph 8] above excluding item (1) - loss of income which I shall address below.

- [11] **Loss of income:** As a general principle, a Claimant is entitled to be reimbursed for any earnings loss caused by the Defendant's tort from the date of the incident to the date of trial. For his loss of earnings from his banana cultivation, Mr Williams pleaded \$18,000 representing loss of earnings for 12 months at \$1500 per month. However, his oral testimony contradicts that claim. When asked how much money he earned per month prior to the incident, Mr Williams answered

"When my hand get cut I did not start making any money. Before my hand get cut, I was planting bananas. The week for me to harvest, I could not harvest because of the cut. The bananas ripe and rotten."

[12] Mr Williams told the court that he lost about \$30,000.00 a year post incident because he was unable to cultivate any bananas. He said that it was only after 15 months had elapsed that he could do any work with his hand. Prior to that, he could not hold a cutlass to do anything. He could not lift any load. He could not hold salt or fertilizer in his hand.

[13] Obviously, Mr Williams has failed to prove to my satisfaction his pre-incident or post incident earnings. He has not suggested a figure for expenses and labour on his bananas up to the time of the incident. Nor has he suggested a figure for the bananas that ripened and rotten. In fact, when asked what the estimated fair market price he would have gotten for the two and a half acres of bananas that he could not harvest, Mr Williams answered thus:

“I cannot estimate the price I would have gotten for the two and a half acres, but I would have gotten about \$25.00 per box. A van load of bananas would be about ninety something boxes. Twenty two bunches of bananas gives 50 boxes. So if you have two and a half acres you must know that is a lot of bananas.”

This kind of breakdown is unsatisfactory. It does not assist me. He did not give estimate as to how many boxes or van loads he would have gotten from the two and a half acres, thus leaving the court to speculate which the court must not do.

[14] However, our courts have held that the fact that a Claimant cannot establish his earnings by way of pay slips and the like is no bar to his recovering special damages. (See **Andre Winter & Another v Charles Richardson** Antigua High Court Civil Appeal No 0125 of 2006, wherein the Court of Appeal was faced with a similar contention. See also **Greer v Alstons Engineering Sales and Services Ltd** (2003) 63 WIR 388 at paragraphs 7, 8 and 9 which is to the effect that notwithstanding the fact that a Claimant cannot prove loss of earnings, he may still be awarded a nominal sum for loss of earnings.

[15] On the authority of **Greer**, I am prepared to award a nominal sum which is not out of scale for loss of earnings. I assess the value of the crops lost and the labour expended therein up to the time of the incident at **\$10,000. 00**. Further, I assess Mr Williams' post-incident

loss of earnings or his inability to farm post incident at \$1500.00 per month for 15 months. This computes to **\$22,500. 00**. I award that amount as post incident loss of earnings.

[16] The claimant is therefore awarded special damages in the aggregate sum of \$40.456.78

General damages

[17] Pain, suffering and loss of amenities

Taking into account Mr Williams' age, the nature and extent of the injury sustained, the pain and suffering endured by him; his loss of amenities, and upon considering the authorities cited by counsel, including,

1. **Sylvena Morson v Leron Lewis**, ANUHCV2005/0166
2. **Kariyma Abdul Lateef v Michael Armstrong**, DOMHCV1991/0124, delivered 2003

I award the Claimant the sum of \$20,000.00 for general damages for pain and suffering and loss of amenities.

[18] Future medical expenses:

The Claimant was expected to undergo a third operation on 7th February 2012. He produced a copy of the invoice of the estimated cost of the surgery from the Princess Margaret Hospital, together with a copy of the pre-admission form. The estimated cost of the surgery was \$910.00. I have no hesitation in awarding the Claimant the sum of \$910.00 for future medical expenses.

[19] **Loss of pecuniary prospects**

Dr Paul expressed the opinion that the Claimant is likely to have permanent disability of his right wrist. At the hearing of the assessment, the Claimant testified that he has no feeling at all in the 2nd to 4th fingers on his right hand. He is unable to bend or flex the fingers. His right wrist is visibly deformed. The court saw it.

[20] Loss of pecuniary prospects is determined in accordance with a multiplier and a multiplicand.

[21] The Claimant claims \$72,000.00 for loss of pecuniary prospects using a multiplier of 12 in accordance with the guidelines laid down in the case of **Alphonse v Ramnath** (1997) 56 WIR 183, and a multiplicand of \$6000.00. I am satisfied that an award of \$72,000.00 for loss of pecuniary prospects is reasonable. However, I would discount by 15 per cent to allow for the lumpsum nature of the award. The amount awarded for loss of pecuniary prospects is therefore \$61,200.00.

Conclusion

[22] I give judgment for the Claimant in the sum of **\$117,566.78** made up as follows:

Special damages

Medical fees	\$ 2,956.78	
Damaged crops/labour	\$10,000.00	
Post-incident loss of earnings	<u>\$22,500.00</u>	
Sub Total	\$35,654.78	\$35,456.78

General Damages

Pain and suffering	\$ 20,000.00	
Future medical expenses	\$ 910.00	
Loss of pecuniary prospects	\$ 61,200.00	
Sub Total	<u>\$ 82,110.00</u>	<u>\$82,110.00</u>
Grand Total	\$117,566.78	\$117,566.78

Interest

[23] The Claimant is entitled to post judgment interest at the rate of five per cent per anum from the date of the delivery of this judgment until date of payment.

Costs

- [24] The Claimant is entitled to 60% of prescribed costs in accordance with CPR 65.5 Appendices B and C

Pearletta E Lanns
Master

