

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

COMMONWEALTH OF DOMINICA

DOMHCV2009/0018



BETWEEN:

SHELDON JULES

Claimant

and

BRENT WILLIAMS

Defendant

CLEOPETRA CUFFY

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Noelize Knight Didier for Claimant

Mrs. Zena Dyer for Defendant

JUDGMENT

2011: December 15th

2012: May 5th

June 12th

- [1] **COTTLE J:** The defendant having admitted liability for injuries sustained by the claimant after having been struck by a motor vehicle driven by the first defendant, this matter proceeded to trial only on the issue of quantum of damages.
- [2] The claimant suffered multiple injuries including:
- (i) Fractures to the facial bones
 - (ii) Wound to the face
 - (iii) Multiple abrasions to the iliac fossa and the limb
 - (iv) Wounds to the left arm and elbow involving muscle no bone
 - (v) Internal bleeding due to wound to the mesentery and a torn mesocolon.
- [3] The claimant was taken to hospital where he remained for 9 days. He was operated on to deal with the internal bleeding. At the time of his admission to the hospital it was noted that there was severe deformity of the face of the claimant. After his discharge from the hospital, the claimant was experiencing pain to the mouth. He attended Dr. R. Green the dentist who referred him to the ENT specialist Dr. Pascal. Dr. Pascal considered that he required further management and sent him to an ENT colleague in Barbados who referred him to Dr. Judy Ward a plastic and reconstructive surgeon. This was because it was discovered that the claimant has "malocclusion, inability to open his mouth and loss of sensation of his lower lips." In her medical report Dr. Ward diagnosed fracture of several bones in the face. The claimant was operated upon. Arch bars were inserted. He has to return for follow-up surgery several weeks later to remove these bars. A metal plate was inserted which remains in the claimant's face.
- [4] The claimant describes his ordeal as involving considerable pain. He says the appearance of his face is permanently altered. The claimant was 26 at the time of the accident. He was an amateur boxer who had represented his country. He worked at an enterprise run by Mr and Mrs Bernard St. Clair earning 315 per week.

Special Damages

- [5] The need for a claimant to strictly plead particularizes and proves his special damages in order for him to recover them has repeatedly emphasized in these court. Master Taylor- Alexander did so again as recently as a few days ago in the **Tewodros v Malik and Malik SLUHCV 2009/0746.**
- [6] In his statement of claim the claimant pleaded \$38,719.83 as special damages. The amount was not particularized. When I add up the amounts particularized I arrive at a total of \$7,545.84. In his witness summary, the claimant sets out his expenses and supplies to the total sum of \$35,614.83. It was obvious to the court that the claimant had incurred substantial pretrial expenses which were capable of exact quantification and proof. But the claimant, having failed to strictly plead and particularize these, is unable to recover these sums of special damages.

I will thus restrict the award of special damages to the sum pleaded and particularized that is \$7,545.84.

General Damages

- [7] The principles which are to guide the court on assessment of the compensation to a litigant for personal injuries are clearly set out in **Cornilliac v St. Louis 1965 7 WIR 491**. These are well known. I do not repeat them. In making this award this court also aims to stay in line with comparable cases concerning awards for personal injury in the region.
- [8] Counsel for the claimant cited the cases of **Philmore Skepple v Joseph Weekes ANUHCVP2009/010** and **RandyJames v Leroy Lewis et al ANUHCVP2007/043**.
- [9] The claimant in **Skepple's** case was awarded \$100,000 for pain, suffering and loss of amenities or injuries which were
- I. Laceration of about 2 cm long in the right supraorbital area with mild ipsilateral periorbital hematoma.
 - II. Fracture of the mandible with displacement and active bleeding.
 - III. Fracture of the hard palate with loss of the upper incisors and canine teeth with active bleeding.
 - IV. Dislocation of the right sternoclavicular joint.
 - V. A bulging deformity in the dorsum of the base of the first metacarpal bones of the left hand with tenderness and limited range of movements.
 - VI. Laceration of about 3cm long in the thenar region of the left hand and tenderness and crepitations in the distal phalanx of the ipsilateral thumb.
 - VII. Swelling and tenderness of the right shoulder, through with full range of movements.
 - VIII. Abrasions of about 4 x 1cm on the anterior aspect of the left leg.
- [10] The claimant in **Randy James** sustained:

Facial injuries

Injury to right eye

Injury to right ear

Fracture of both bones of the right forearm

Severe internal de-arrangement of the left knee with rupture of all ligament support.

In Particular the claimant suffered:

- (i) Rupture to both Collateral Ligaments of the knee
- (ii) Complete rupture of the Anterior Cruciate Ligament
- (iii) Meniscus tear and injury to Posterior Cruciate Ligament.

[11] He was awarded \$70,000 for pain and suffering and \$60,000 for loss of amenities. The award for the loss of amenities is especially interesting as the claimant was a cricketer with hopes of representing his country and the wider region. The claimant in the instant case has lost all prospects of advancing himself by his boxing skills.

[12] Having regard to the authorities cited, the applicable principles and the uncontradicted evidence of the suffering of the claimant I consider a fair award to be \$55,000 for pain and suffering and \$45,000 for loss of amenities.

[13] The total award in this:

Special Damages \$7,545.84

General Damages \$100,000.00

Costs:

Prescribed costs on the award for damages amounts to \$15,943.19

The defendant will pay interest on the award at the rate of 5% from judgment until payment.

 *Brian K. Cottle*
Justice Brian Cottle
High Court Judge