

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

CLAIM NO DOMHCV2009/0341

BETWEEN:

FRANCIS BENJAMIN

Claimant

AND

[1] SHERITA NEWTON

[2] SANDRA K GREGOIRE

Defendants

Appearances:

Ms Laurina Vidal holding for Mrs Dawn Stewart Yearwood for Claimant
Mr Geoffrey Letang for Defendant

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2010: May 31

2011: February 10
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JUDGMENT

[1] **LANNS, M:** On 7th January 2010, following the Defendant's admission of liability, the Claimant obtained judgment in a personal injury case against the Defendants for damages to be assessed. This is the assessment.

[2] The Claimant was born on 25th August 1986, and is now 24 years of age.

[3] On 23rd January 2009, the Claimant was hit by a motor vehicle driven by the first Defendant and owned by the second Defendant. He sustained a communitive fracture upper third right tibia. He was taken to the Princess Margaret Hospital bleeding. His wound was cleaned; the right lower limb was placed in a cast. He was warded, and given a course of intravenous antibiotics. He was discharged from the hospital seven days later, and attended the Out Patients Department for follow-up treatment. On discharge, his father took care of him and helped him to bathe and dress. He used crutches for 6

months. This was uncomfortable. He felt stiff and sore. He no longer plays basket ball or foot ball for fear that he would cause further injury to his leg.

- [4] When on 23rd July 2009 the Claimant visited Dr DeArmas for consultation, his fracture showed signs of healing and Dr DeArmas reported that the Claimant will be on physiotherapy management for 12 weeks during which time he would not be able to engage in any gainful employment. Dr DeArmas stated that at the end of the 12 weeks, period, he would issue a definite report, since complications can appear during that period.
- [5] On 30th March 2010, the Claimant attended Dr DeArmas for further assessment. In his updated Medical Report dated 30th March 2010, Dr DeArmas found that the Claimant's right leg was fully healed; he had a full range of movement of his right knee; there was no pain and he had a normal gait. There was no permanent disability from the injury. Dr DeArmas went on to opine that the Claimant can return to his normal activities.
- [6] The Claimant himself in his affidavit sworn on 4th February 2010 admitted that his fracture has now healed and that he is able to resume fishing and continue to sell to the Mahaut Community. However, he deposed that he was still unable to walk without difficulty over rough surfaces; that he cannot kneel, squat or climb the stairs without some measure of discomfort.

The issue

- [7] The main issue to be decided is what quantum of special damages and general damages the Claimant should recover?

Special damages

- [8] The Claimant is claiming \$5,470.00 as special damages, made up as follows:

(a)	Medical Reports	\$ 310.00
(b)	Hospital Bills	\$ 250.00
(c)	Nursing care for 24 weeks	\$4,800.00
(d)	X-rays	\$ 80.00
(e)	Transportation	\$ 30.00
Total		\$5,470.00

- [9] The Defendants have challenged the Claimant's claim for home care. They argue that there is no documentary evidence apart from his mere say so to substantiate the sum claimed. I agree. He who asserts must prove. It would have been helpful if the Claimant's father who allegedly provided home assistance, had sworn to an affidavit in relation to the claim for nursing care. I am not satisfied by the evidence provided by the Claimant as to the cost of home care. Nevertheless, I accept that the Claimant would have required some assistance in his daily domestic activity upon his discharge from the hospital, and that his father did in fact render some form of assistance to him gratuitously. On the authority of

Greer v Alston's Engineering (2003) 63 WIR 388), I award the Claimant the nominal sum of \$1000.00 for home care.

Summary of special damages awarded

(a)	Medical Reports	\$ 310.00
(b)	Hospital Bills	\$ 250.00
(c)	Nursing care	\$1,000.00
(d)	X-rays	\$ 80.00
(e)	Transportation	\$ 30.00
	Total	\$1,670.00

[10] I turn now to consider general damages

General Damages

[11] Upon considering the submissions of learned counsel for the respective parties; and taking into account the age of the Claimant, the nature of the injury sustained by him, the pain and suffering endured by him; his loss of amenity, and being satisfied by the Medical Report of Dr DeArmas dated 30th March 2010 stating that the Claimant's fracture is now fully healed and that there is no pain; no permanent disability; and that the Claimant can return to his normal activities; and being guided by the awards in cases presented by counsel for the parties; in particular the case of **Soraya Lewis v Eardley Browne** Claim No SVGHCV2006/164 delivered 4th June 2009; I consider that the sum of \$35,000.00 is a reasonable and fair compensation for the Claimant's pain and suffering and loss of amenity. I have not been presented with any comparable case from this jurisdiction for guidance.

Interest

[12] Rule 8.6 (4) of the CPR 2000 states that a Claimant who is seeking interest must say so expressly in the claim form and include, in the claim form or statement of claim, details of the basis of the entitlement, rate and period for which it is claimed.

[13] The Claimant has not complied with this Rule. In her submissions on behalf of the Claimant, Mrs Yearwood Stewart sought, for the first time to make a claim for interest on the sum claimed for general damages at the rate of 3 per cent per anum from the date of service of the claim to the date of hearing of the assessment. I am of the view that this claim is misconceived.

- [14] The Judgment Act Chapter 4:7 of the Revised Laws of Dominica confers jurisdiction to award interest on Damages for the period after judgment. It confers no jurisdiction on the court to award interest between the arising of the cause of action and judgment. I therefore propose to award post judgment interest only. (See **Dominica Agricultural and Industrial Development Bank –v- Mavis Williams**) (Dominica Civil Appeal No. 20 of 2005 at paragraphs 60 to 65)).

Costs

- [15] I propose to award the Claimant prescribed costs in accordance with CPR 65

Conclusion

- [16] **IT IS HEREBY ORDERED** that:

- [1] The Defendants do pay the Claimant the sum of \$1670.00 as special damages
- [2] The Defendants do pay the Claimant the sum of \$35,000.00 for pain and suffering and loss of amenity.
- [3] The Defendants do pay the Claimant prescribed costs in accordance with CPR 65.5, Appendices B and C.
- [4] The total judgment of \$36,670.00 attracts interest at the rate of 5 per cent per annum from today until final payment.

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Pearletta E Lanns
Master