

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 171 OF 2009

BETWEEN:

MICHELLE JONES

Claimant

v

THE SAINT VINCENT AND THE GRENADINES PORT AUTHORITY

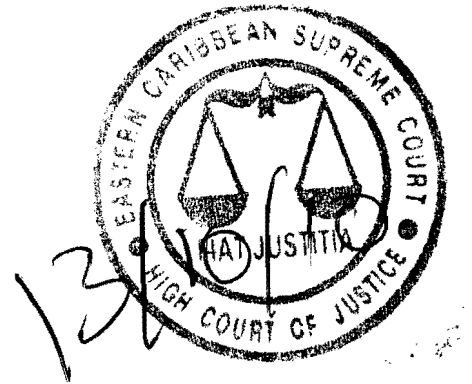
Defendant

Appearances: Mr. E. Robertson Snr. and Mr. E. Robertson Jnr., for the Claimant
Mr. G. Bollers, for the Defendant

2010: September 22nd
October 13th

BACKGROUND

- [1] **JOSEPH MONICA J:** This is the hearing of two applications: One application filed on 1st July, 2010, on behalf of the defendant for an order a) that the claimant be medically examined by neurologist Dr. A. Esau of Medical Associates, Trinidad, with all expenses associated with the medical examination and travel to be paid by the defendant: b) the claimant to disclose to the defendant any medical certificates issued by a doctor in respect of any personal injury or prolonged serious and/or chronic illness prior to the date of the accident: c) that certain statements be struck from witnesses statements of the claimant and her mother Ms. Sandra Jones.



- [2] The grounds of the application: by a Case Management Order, the Learned Master ordered that all interlocutory applications be filed by 2nd July 2010. The defendant wishes to have the claimant medically examined by a neurologist of its choosing which is necessary in order for a fair and just determination of the proceedings.
- [3] One of the issues arising from the pleadings is whether the claimant suffered from a pre-existing injury. The claimant was under a duty to disclose all medical certificates in her possession prior to the incident and has failed to satisfy the disclosure required by the Rules.
- [4] The other application filed on 2nd July, 2010, on behalf of the claimant, applied for the Dr. Randolph Cheeks, Consultant Neurosurgeon and Dr. M. Sean Marquez, Neurologist/Epileptologist/Electrodiagnostician to be deemed experts in their respective fields and the acceptance of their medical reports as evidence without proof.

CLAIM

- [5] On 3rd June 2009 the claimant employee filed a claim against the defendant employer for damages for negligence and nuisance, in failing to provide a safe place of work as a result of which the claimant tripped and fell on her job at the Port Authority compound, Kingstown on 27th February 2008. The claimant was, at the time, exiting the lower floor of the Administrative Building. She sustained personal injuries and damage. Particulars of injury: shock and severe pain: bruising to left knee: trauma to head and knees and post-traumatic epileptic seizure disorder.
- [6] The defence filed on 25th August 2009, admits that the claimant had an accident at the workplace but has no knowledge of how the accident took place. The defendant denies that the accident was a consequence of any negligence by, or breach of any statutory duty of, the defendant. The defendant contends that her epilepsy was a pre-existing condition and was not a consequence of her fall.

EXPERT EVIDENCE

[7] I refer to paragraphs 4.9 and 4.14 of the statement of claim:

4.9 - (quoted from Dr. Cheeks' diagnosis in his medical report):

"The recurrent pattern of intermittent episodes of dizziness followed by twitching and involuntary muscular activity and associated with impairment of consciousness approximately one week following a head injury is highly suggestive of posttraumatic epilepsy....."

4.14. The claimant will further rely on the reports of the doctors served with the statement of claim.

[8] From the above it is seen that the medical reports of the doctors (including Dr. Cheeks) would be relied on at the trial. There has been compliance with Part 31.1:

- (1) A party who intends to rely at a trial on evidence which is not -
 - (a) to be given orally; and
 - (b) contained in a witness statement, affidavit or expert report;must disclose that intention to the other parties in accordance with this rule.
- (2) If a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given.
- (3) Subject to paragraphs (4) and (5) a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention no later than the latest date for serving witness statements.
- (4) If the evidence referred to in paragraph (1) forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.

[9] The defence filed on 25th August 2009, reads:

In paragraph 15: ".....At the trial of this action the defendant shall refer to the claimant's medical reports which have not established conclusively that her epilepsy was a consequence of her fall. At the trial of this action the defendant shall contend that her epilepsy was a pre-existing condition and was not as a consequence of her fall."

In paragraph 24: "With respect to paragraph 4.9 of the statement of claim, the defendant states that the medical opinion of Dr. Cheeks is not a conclusive finding that the alleged epileptic seizures were as a result of the fall and shall contend that the alleged epileptic seizures were not caused by the fall but by a pre-existing condition."

[10] It is evident from the pleadings that Dr. Cheeks' medical opinion would be subject to strenuous counter suggestions. That application for examination of the claimant by another doctor ought to have been made earlier (whether it would have been granted is another matter) but that point would have been decided on earlier.

[11] The Learned Master at Case Management on 19th April 2010 left the door open for applications with a deadline of 2nd July 2010, in the sequence of events moving towards Pre-Trial Review. These applications were filed on 1st July 2010 on behalf of the defendant, on 2nd July 2010 on behalf of the claimant. It seems to me that both sides were "jockeying for position". If that is so that is not the purpose of the Rules.

[12] I do not grant an order for the medical reports of the doctors to be received without further proof. In the circumstances of this case and to do justice in the matter, the doctors are to attend the trial so that they may assist the Court fully. The defendant in its defence has put the claimant to strict proof.

[13] I do not grant an order for examination of the claimant by another neurologist as applied for by the defendant. In the defence filed on 25th August 2009, (a year ago), the defendant contends that the claimant's epilepsy was a pre-existing condition and was not a consequence of her fall. If the defendant considered that it would not have obtained what

it desired by counter suggestions of the claimant's experts, and that another expert was necessary, an application ought to have been made earlier.

[14] It is to be remembered that the expert is expected to be impartial and to be of assistance to the Court, not merely to be a witness on behalf of the party who called him. Part 32.3 of CPR 2000 provides:

- (1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.
- (2) This duty overrides any obligation to the person by whom he or she is instructed or paid.

DISCLOSURE OF DOCUMENTS: Part 28 of CPR 2000

[15] I order the claimant to disclose to the defendant any medical certificates issued by a doctor in respect of any personal injury or prolonged serious and/or chronic illness prior to the date of the accident.

STRIKING OUT: Part 29.5 of CPR 2000

[16] Mr. Bollers applied for striking out of a number of statements in witnesses statements. These are:

From Michelle Jones witness statement:

Para 21: "My medical condition has been due to the defendant's negligence in not providing me with a safe place of work and my illness is directly attributable to the injury I sustained on my job."

I do not strike out that statement as that is the claimant's case.

Para 24: "I was subsequently informed and verily believe the same to be true that before I tripped and fell other persons by the names of Mrs. Camille Shallow-Duncan and Mrs. Shirley Cox sustained falls in the said building and since after my fall Ms. Jacintha Richards tripped and twisted her ankle."

I do not see witness statements from the named persons and conclude that they will not be witnesses in the trial of the matter. I strike out that statement.

Para 25: "I am reliably informed by Mr. Pedro Abreau, a former Port Authority Engineer and believe the same to be true that he was instructed by Mr. Paul Kirby to evaluate the safety of the steps and the steps were painted to make them more visible when entering through the dark door as several persons were injured whilst using them."

I have not seen a witness statement from Mr. Abreau and I conclude that he will not be giving evidence at the trial. The claimant cannot give evidence for Mr. Abreau. I strike out that statement.

From Sandra Jones' witness statement:

Para 14: "My daughter's present medical condition has been due to the injury she sustained from the job."

This is a statement of her opinion. Ms. Jones cannot speak about the medical condition of her daughter as that is not within her competence and I strike out that statement.

[17]

ORDER:

1. The claimant to disclose to the defendant any medical certificates issued by a doctor in respect of any personal injury or prolonged serious and/or chronic illness prior to the date of the accident.
2. That following statements are struck from witnesses statements of the claimant and her mother:

From Michelle Jones witness statement:

Para 24: "I was subsequently informed and verily believe the same to be true that before I tripped and fell other persons by the names of Mrs. Camille Shallow-Duncan and Mrs. Shirley Cox sustained falls in the said building and since after my fall Ms. Jacintha Richards tripped and twisted her ankle."

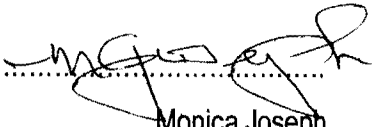
Para 25: "I am reliably informed by Mr. Pedro Abreau, a former Port Authority Engineer and believe the same to be true that he was instructed by Mr. Paul Kirby to evaluate the safety of the steps and the steps were painted to make them more visible

when entering through the dark door as several persons were injured whilst using them."

From Sandra Jones' witness statement:

Para 14: "My daughter's present medical condition has been due to the injury she sustained from the job."

3. I do not make an order that the claimant be medically examined by neurologist Dr. A Esau of Medical Associates, Trinidad.
4. Dr. Randolph Cheeks, Consultant Neurosurgeon and Dr. M. Sean Marquez, Neurologist/Epileptologist/Electrodiagnostician are deemed experts in their respective fields.
5. I do not order that those doctors' medical reports be accepted as evidence without further proof. They are to attend the trial of the matter.
6. I make no order as to costs.



Monica Joseph

HIGH COURT JUDGE (ACTING)

1st September 2010