

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2007/0530

BETWEEN:

ELIZABETH DALE JENNIFER CELESTINE

Claimant

and

THEOBALD VENTOUR

Defendant

Appearances:

Mrs. C. Edwards, Q.C, with her Ms. S. Khan for the Claimant
Mr. A John, with him Ms. Nicole Pivotte for the Defendant

2009: December 9
2010: January 14

JUDGMENT

- [1] **PRICE FINDLAY, J.:** On the 5th day of December 2002 the Claimant was struck by the Defendant's bus at the St. David's bus stand in the vicinity of the abattoir in the area of the Grenville Market. This fact is not disputed.
- [2] The Claimant suffered injuries as a result of this accident; these were described in the Statement of Claim as:
- (i) Contusion to the lower back;
 - (ii) Post-traumatic para-vertebral muscle spasm due to muscular strain;
 - (iii) Achilles reflex decreased on left side with decreased power in planar flexion of the ankle;
 - (iv) MRI of lumbo sacral spine showed a large L5-S1 central disc protrusion of lumbo-sacral spine.
- [3] The issue of liability was at trial and in the pleadings conceded by the Defendant. However, the Defendant pleaded that there was contributory negligence on the

part of the Claimant and set out the particulars of the alleged contributory negligence in their defence.

[4] In light of this concession, the legal issues to be decided in the case and agreed by both parties are as follows:

- (1) Whether the Claimant can be held to be contributorily negligent;
- (2) What quantum of damages is to be awarded to the Claimant and how that award ought to be arrived at.

FACTS

[5] The facts of this case are fairly simple. The Claimant was at the abattoir at Grenville in the area where buses going to St. David and Birchgrove congregate. She emerged from the building, walked in the direction of the St. David's bus stand. On her way she was struck by the Defendant's bus, driven by Leonard Simon. The Defendant's bus was reversing from the opposite end of the bus stand and was admittedly going in the wrong direction.

[6] As the Claimant walked from the abattoir towards the St. David's bus stand she was hit from behind by the Defendant's bus in the region of her lower back. She did not see the Defendant's bus coming towards her as her back was turned as she was heading to the entrance of the Grenville market.

[7] She heard a noise behind her, she heard an engine, she looked back, the bus was upon her. She was struck.

[8] It is admitted that the Defendant's bus was reversing in the wrong direction on what is a one-way street.

[9] The Claimant in her evidence said that the impact propelled her forward causing her bag to fall and her glasses to fly off her face. She said that the bus "slammed" into her.

[10] The Defendant's witness Shawn Mc Intyre says he saw the Claimant coming from

the rear of the bus and he asserts that the Claimant should have seen the bus reversing. This witness cannot say what the Claimant saw or ought to have seen and this particular portion of his evidence is of no consequence in determining whether or not there was contributory negligence.

- [11] The Claimant says that she was assisted by bystanders and that the driver of the bus was indifferent as to whether she was injured or not.
- [12] After the accident the Claimant went to the Emergency Department at the General Hospital and was attended to by a doctor who gave her an injection and a prescription for painkillers.
- [13] The Claimant says she was in pain and could not move, and that since the accident she has been experiencing severe pains continuously. She attended Dr. Jennifer Isaacs who ordered X-rays and referred her to Dr. Kester Dragon.
- [14] As a result of the accident she says she can no longer sit or stand for long periods. She was forced to close her business because of her ill health. Her husband divorced her. She presently works part time as a waitress. She also testified that she collapsed in 2007. She eventually went to Trinidad for an MRI in 2007, some five years after the accident.
- [15] The Defendant's case was that the Claimant ought to have seen the bus reversing as she left the abattoir. She had a clear line of vision from the entrance of the abattoir to where the buses were and ought to have seen the bus reversing and taken the necessary evasive measures. She did not and therefore she is contributorily negligent as a result.
- [16] The driver of the bus, Leonard Simon, admits that he was reversing the said bus and was proceeding the wrong way on a one-way street. He says he was reversing at snail's pace. He got out of the bus after the accident, offered assistance but was rebuffed by the Claimant. He says that if the Claimant had been hit it would have been a mere bump.

- [17] There is no evidence before the Court which convinces me that the Claimant in any way contributed to the injuries she received. There is no evidence that she saw the bus reversing. In fact, she was hit by the bus from behind. There is no evidence which suggests that the Claimant ought to have known or reasonably anticipated that the driver of the Defendant's vehicle would attempt to reverse in the wrong direction on a one-way street.
- [18] The driver, Leonard Simon, admitted that the manoeuvre he attempted that day was illegal. He was not looking or observing the side of the vehicle where the Claimant was hit. He was focusing on the deep drain to the right side of the vehicle, on the opposite side of the vehicle to where the Claimant was struck.
- [19] I find as a fact that the bus did hit the Claimant, but it did not slam into her as she has stated in her evidence. I find that the bus bumped her and that the bus was at the time travelling at a slow rate of speed. Had he been travelling at a faster rate of speed the injuries would have been more extensive. By her own testimony the Claimant states that when she was hit she did not fall. She said "The bus push me forward, I stuttered in my steps." This I think is indicative of the fact that the bus bumped the Claimant and I so find.

CONTRIBUTORY NEGLIGENCE

- [20] The case of **Ramnath v Alphonso** Civil Appeal No. 9 of 1996 [1997] 56 WIR 183, Justice of Appeal Singh at page 187 stated:

"It is accepted that the guiding principle in proving contributory negligence is whether the respondent by his acts or omissions contributed to his injuries in the sense that he failed to take reasonable care for his own safety taking into account as he must that other users of the road are likely to be negligent."

- [21] The Defendant would like the Court to accept that the Claimant saw the moving bus and stepped into the road behind the bus knowing that it was moving thereby facilitating the accident.
- [22] The Court does not accept that this is what happened. The Court accepts the

Claimant's evidence that she came out of the abattoir and headed to the entrance where the St. David's buses were. She did not see any bus reversing. She had no reason or cause to suspect or expect that a bus would reverse, going in the wrong direction on a one-way street and hit her.

- [23] In the circumstances the Defendant has failed to prove contributory negligence on a balance of probabilities.

GENERAL DAMAGES

- [24] The Defendant having admitted that the bus did strike the Claimant and the Defendant having failed to prove contributory negligence on the part of the Claimant, it is left for the Court to assess the damages.

- [25] The Court must look to the guidelines set forth in **Cornilliac v St. Louis** [1964] 7 WIR 491. The Learned Chief Justice Hugh Wooding set out the considerations which are to be borne in mind when assessing general damages. These are:

- (a) The nature and extent of the injuries suffered
- (b) The nature and gravity of the resulting physical disability
- (c) Pain and suffering
- (d) Loss of amenities
- (e) The extent to which pecuniary prospects were affected.

- [26] The Claimant says that she has lost income as a result of the accident. She was self-employed running a bar and that since the accident she has been unable to work. In fact, the bar was closed. She failed to produce any documentary evidence of this loss and told the Court that the notebook she kept the notes of her takings in was destroyed by Hurricane Ivan.

- [27] The Defence disputed her claim of an income of \$3,000.00 per month, but were unable to show that the Claimant made less than the \$3,000.00 per month that she claimed.

- [28] The Claimant's evidence is that the bar closed. When she closed the bar, no evidence was led of this. Was it closed as a result of the accident, or some other occurrence unrelated thereto, we do not know.
- [29] But in her witness statement at paragraph 21, the Claimant asserts that "Sometime in 2004 I was briefly employed with a security firm for 3 months ..."
- [30] Interestingly, the Claimant did not deny that the Defendant and his witness observed her at the bar three days after accident, working in the said bar, serving drinks without any sign of distress.
- [31] This evidence is of particular interest to the Court, bearing in mind the Claimant's assertion of constant pain and her inability to work, hence the closure of the bar. According to the Defendant, some three days after the accident the Claimant "bent to pick up beers from a fridge behind the bar, and did so effortlessly".
- [32] I find as a fact that the divorce of the Claimant was not activated by the accident. The accident took place in December 2002; the Petition was filed by the Claimant's husband in January 2003, approximately six weeks after the accident. The facts pleaded in the Petition bear no relationship to any of the injuries suffered by the Claimant in the accident.

SPECIAL DAMAGES

- [33] The Claimant claims that she had many expenses as a result of the accident. These expenses were:
- 1) Medical report
 - 2) Physiotherapy
 - 3) Prescriptions
 - 4) MRI
 - 5) Transportation
 - 6) Airfares including departure tax
 - 7) Accommodation and meals in Trinidad

8) Loss of income

- [34] This is a case where the Claimant suffered injuries to her back, and as I have already indicated, these injuries were as a result of the negligent operation of the bus by the servant or agent of the Defendant. When the Claimant attended the hospital on the day of the accident she complained not of her back but was, from the Emergency Department documents tendered at trial, treated for shoulder, neck and back pain.
- [35] Dr. Kester Dragon saw the Claimant on the 21st December 2002, some sixteen days after the accident. He found at that time that the Claimant had tenderness on palpation of the spinous processes of the lumbar spine. There was spasm of the lumbar para vertebral muscles. There was no neuro vascular deficit. X-rays showed loss of lumbar lordosis with dorsolumbar scoliosis.
- [36] She visited Dr. Dragon again on 31st July 2003. At that time she continued to complain of back pain associated with numbness on the lateral aspect of the left leg and foot. The doctor found no spinal deformity.
- [37] She saw Dr. Dragon again on the 12th June 2007. On examination he found her gait normal and she had stated that the pain had intensified, associated with numbness radiating down her left leg. She had difficulty carrying out her daily chores. Again (in 2007) he found her gait to be normal. He formed the view that the Claimant had sustained an L5-S1 disc prolapse as a result of the accident.
- [38] The Physiotherapist, Nicole Forte, in her report dated 18th October 2007, stated the treatment she subjected the Claimant to, and according to her after the eight-week period of treatment the Claimant had little or no pain in her back, no cramps and numbness in the legs and she was discharged with a program of back exercises. She also stated that a relapse was possible and this would warrant further physiotherapy. She did not say that there was swelling in the Claimant's spine.

- [39] The MRI Report from Dr. Allen Thomas indicated that the vertebral alignment was normal with reversal of lumbar lordosis. There was a large protrusion at L5-S1 with loss of disc height. The spinal cord and cauda equina are normal, and there was no exit foraminal disease elsewhere. His diagnosis was a large L5-S1 central disc protrusion.

GENERAL DAMAGES AWARD

- [40] Having regard to the principles set out in **Cornilliac v St. Louis** [1964] 7 WIR 491 as well as the helpful authorities provided by both Counsel, and on examination of several comparative awards, taking into account the nature and extent of the injuries, a fair sum for pain and suffering and loss of amenities is EC\$35,000.00. I find no evidence of any pre-existing condition.

SPECIAL DAMAGES AWARD

- [41] From an examination of the various heads claimed by the Claimant, and bearing in mind that special damages must be specifically proved, the Claimant falls short in some of her claims as she has failed to satisfy the Court with accompanying receipts and bills that she has had the expenses claimed. The award under this head is as follows:

Prescriptions	\$ 108.01
Physiotherapy	1,540.00
MRI	1,695.45
Airfare	1,000.00

I make allowance for future physiotherapy as alluded to in the Physiotherapist's report in the amount of \$1,400.00, that is, a further twenty sessions.

- [42] With respect to the claim for loss of income, the Claimant has offered no proof apart from her say so that she was in fact earning \$3,000.00 net profit per month from her business enterprise.

- [43] In **Ashcroft v Curtin**, Edmund Davies, LJ. citing Lord Goddard, CJ. in **Bonham-Carter v Hyde Park Hotel Ltd.** [1984] 64 TLR 177 said:

"Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; and it is not enough to write down particulars and so to speak, throw them at the head of the Court saying: 'This is what I have lost, I ask you to give me these damages'. They have to prove it."

- [44] The Court cannot accept such evidence without more and will not speculate as to what, if any, profit the Claimant made from her business. Therefore, in the absence of any documentary proof, the Court can make no award under this head.

CONCLUSION

- [45] For all the foregoing reasons given, damages are awarded as follows:

1. General Damages –

(a) Pain & suffering and loss of amenities	\$35,000.00
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2. Special Damages	5,743.46
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- [46] The above awards of general damages will have interest at the rate of 6% per annum from the date of the institution of proceedings to the date of payment.

- [47] The above award of special damages will have interest at the rate of 6% per annum from the date of the accident to the date of trial.

- [48] Costs awarded to the Claimant in the sum of \$8,000.00.



Margaret Price Findlay
High Court Judge