

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 475 OF 2002

BETWEEN:

Kendol Fredericks

V

Carlton Cunningham

Complaint

Defendant

Appearances:

Mr. Richard Williams for the Complaint

Mr. Olin Dennie for the Defendant

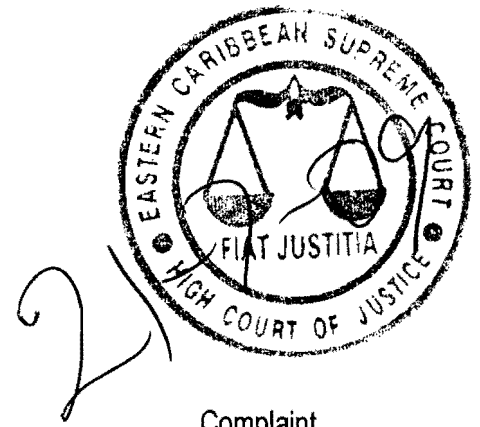
2009: 9th May;
21st July

ASSESSMENT OF DAMAGES

- [1] **Cottle J.** : The claimant, who was 12 years old at the time, suffered injury to his leg which was crushed by a banana laden truck driven by the defendant.
- [2] Liability has been found in the defendant and the special damages payable to the claimant have also been agreed. The issue of the amount of general damages was to be determined on written submissions by the parties with authorities in support. Submissions by the claimant were filed on 9th May 2009. The defendant has filed no submissions.

THE INJURY

- [3] A heavy truck was driven over the claimant's left leg and foot and his right foot. The right foot suffered minimal damages. There were lacerations swelling and



tenderness. The injury to the left leg was extensive and severe. At the time of his admission to the Kingstown General Hospital there was a large wound extending from the back of the left knee right down to the medial aspect of the ankle. The tibia was fractured and exposed. The muscles of the leg were visible. The wound was dirty with sand, gravel and black tire marks on the remaining skin of the left leg and foot.

- [4] The injuries were surgically managed. The claimant remained hospitalized for three and one half months.
- [5] A medical examination in February 2004 found that there was still a raw wound 4cm x 3cm with infected and exposed bone. The fracture to the left tibia was malunited. There was bowing medially. Fortunately there were no signs of systemic infection and the neurovascular status of the limb was stable. Dr. Salian, the examining surgeon opined that there were only localized signs of chronic infection of the wound exposing the underlying bone with a possibility of the development of osteomyelitis. He thought that the attention of a plastic surgeon to perform a fasciocutaneous flap – a procedure not available in St. Vincent – was required.
- [6] The claimant followed the advice of Dr Salian and traveled to the United States of America to have the surgery done.
- [7] Dr. Charles Woods saw the claimant after the surgery. At present the claimant has satisfactory range of movement of his left knee and ankle. He has some loss of sensation in the area of the injury covered by a skin graft. There was still some swelling and mild tenderness of the ankle in November 2005. Dr Woods says that the vascular compromise and sensation deficit is most likely irreversible. There is a high risk of precocious development of osteoarthritis of the knee and ankle.

- [8] No local cases were referred to by counsel for the claimant in support of his submissions as to an appropriate award for pain, suffering and loss of amenities.
- [9] One UK case Hesssion v Hession [2003] 1EHC 142 was cited. The claimant in that case was a 14 year old school girl. She was crushed by a car against a wall. She suffered severe soft tissue injury. She had to be operated on twice. She spent ten weeks in hospital. Her degloving injury of the right leg had to be debrided and a skin graft applied. The court found that the treatment was a very distressing and painful experience for her. The award of 85,000 euros took into account that this young lady would suffer for the rest of her life from the disfigurement caused by the injury.
- [10] In the case before this court the claimant is also a very young man. He has suffered a horrible and disfiguring injury. His left leg remains bowed and the site of the fracture of the libia. He remains extensively scarred. He would have suffered terrible pain at the time of the injury and during his convalescence from the multiple surgeries he has had to endure.
- [11] Without the benefit of any applicable local authorities and in the absence of any submissions from counsel for the defendant I am content to award the claimant the sum of \$150,000 for pain and suffering and loss of amenities.
- [12] The special damages have already been agreed at \$222.85 and an interim payment of \$10,000 has already been made by the defendant.
- [13] The total award to the claimant is thus \$140, 222.85. The defendant will also pay prescribed cost on this amount in the sum of \$30,033.43.


Brian Cottle
High Court Judge