

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(CIVIL)
A.D. 2009**

Claim No. SKBHCV 0054/1998

BETWEEN

LINCOLN CARTY

And

LIONEL PATRICK

**ST. KITTS –NEVIS –ANGUILLA TRADING & DEVELOPMENT
COMPANY LIMITED**

Appearances: Dr. Henry Browne for the Claimant
Mr. Emile Ferdinand and Ms. Keisha Spence for the Defendants

**2008: November 11th
2009: June 29th**

JUDGMENT

- [1] **BELLE.J.** On June 24th 1998 the Claimant Mr. Lincoln Carty filed an amended Statement of Claim in which he stated that on or about the 17th day of October, 1994, he was driving his motor-car, P6053 along the public main road in Basseterre in the Island of Saint Christopher, when a concrete mixer which was hitched onto and being towed on the public highway by a pickup truck P6691, driven by the First Defendant and owned by the second Defendant, suddenly and without warning came loose and careened into the path of his motor car, colliding with it and thereby causing the him to suffer severe injuries , loss and damage.
- [2] The Claimant claimed that the accident was caused by the defendants' negligence and caused him certain injuries listed as follows:
- (a) Fracture of the right femur.

- (b) Fractures of the inferior pubic ramous (pelvis).
- © Fractures of the right 3rd to 8th ribs posteriorly
- (d) Laceration and contusion of the right knee.
- (e) Contusion of sciatic nerve in right leg.
- (f) Permanent dislocation of joint in the sternum.
- (g) Bruising and laceration of front left rib cage.
- (h) Cervical strain (neck).

[3] The Claimant outlined the pain and discomfort he had suffered and continued to suffer and claimed special damages of \$62,897.28 and General Damages with interest and costs.

[4] In a witness statement inserted in the Core Bundle not prepared in accordance with the CPR 2000 or other customary guidelines the Claimant outlined his experience since the accident in the following terms:

"1. Physical impact of accident: I suffer constant pain on a daily basis since the accident. Areas of pain include head, chest, lower back, hip, and knee. Sometimes there is pain in one area but more often than not there is pain in at least two areas at the same time. My most severe pain comes in the form of migraine headache. They sometimes take up to a week or more before subsiding with the longest one lasting twenty-eight 28 days from January 1, 1998, to January 28, 1998."

[5] No defence was filed by any of the defendants who accepted liability from the outset. But counsel for the defendants argued that a sum of money had already been paid to the claimant to cover certain special damages in the form of:

(i) Loss to wife	\$ 13,120.64
(ii) Pre-accident value of motor car	12,000.00
(iii) Prescriptions filled	287.00
(iv) Recliner and Ottoman	196.00
(v) Hospital fees	1,686.00
(vi) Dr. Richardson's Bill.	150.00

	\$ 27,439.64
Towards legal costs	1,000.00

28,439.64

[6] In his witness statement of March 18th 2003, the claimant had stated that his medical expenses in addition to the cost of incurred in his wife's travel to and from Jamaica

amounted to \$27,439.64. But the claimant failed to provide receipts or a breakdown of the costs to substantiate this claim. The defendant disclosed evidence to substantiate a response, which includes some of the same items but is more specific as to exactly what costs were covered by this figure. Counsel submitted that these costs were already met by the defendants. I find the defendants' position entirely credible and I therefore hold that the costs for special damages mentioned above have already been completely satisfied, as the defendants' counsel has submitted.

- [7] The defendants also rejected a claim for "loss of contractual work as a part-time draughtsman" on the basis that no evidence has been advanced by the claimant in support of the alleged "loss" as claimed by the claimant. This assertion of loss therefore cannot be properly measured by the court and will not influence any award either of Special nor General Damages.

General Damages

- [8] As far as General Damages are concerned the defendants' counsel set out the factors to be considered based on the decision **Cornillac v St. Louis** (1965) 7 WIR 491. These factors are the nature and extent of the injuries sustained the nature and gravity of the resulting physical disability, the pain and suffering which had to be endured, the loss of amenities suffered, and the extent to which the injured party's pecuniary prospects have been materially affected.
- [9] Apart from the injuries listed in the Statement of Claim the Claimant in his witness statement described his injuries as including "cervical strain bruising and laceration of my left rib cage, fractures of six (6) ribs, fractures of my pelvis, fractures of the right femur, contusion of the sciatic nerve in my right leg, medial and lateral facets of the right patella (knee cap), transverse tearing of the posterior medial horn and lateral meniscus in the knee joint."
- [10] Part of the pain and discomfort suffered is evident in the treatment of these injuries, which included the surgery the claimant underwent at the J.N. France General Hospital in St. Kitts on 20th October 1994 during which a steel rod was placed in his femur. He remained hospitalised there for 32 days and on his release from hospital he remained

at home for 6 months. Twelve months after the first surgery the claimant underwent a second surgical procedure to remove the steel rod and was away from work about 6 weeks. The claimant also claimed that he suffered from severe migraine headaches. The claimant's right leg is now shorter than the left leg. The claimant underwent surgery on his knee at Cedar Medical Center, Miami, Florida in July 1999. Over the years the claimant has received physical therapy treatment and chiropractic care and has been seen by many health care professionals

- [11] The claimant also complains that he is no longer able to engage in long distance running or training of athletes, which he did prior to the accident. He experiences pain when he attempts to play lawn tennis. The claimant also asserts that he was very much involved in sporting activities such as football, basketball, and lawn tennis, now he cannot run, nor play football nor basketball. In 1998 the claimant gave his age as 46 years old, and this has to be taken into account in assessing damages cognizant of the fact that the overall impact of his injuries may not attract as large an award of damages than it would have had he been younger with more to lose.

- [12] The claimant went further to outline the physical, emotional and social impact of his injuries along with observations on health care in the following terms:

"I developed a paunch (waist size 40" from and original 32" at the time of the accident). I have the problem of my right knee buckling on a regular basis and so I am forced more often than not to use a cane. As a result of the problem with my knee, the Doctor who performed the surgery advised I refrain from kneeling, bending, squatting or climbing stairs. I have not been able to avoid stairs since I am forced to use them on a daily basis in relation to my work. The impact of putting my weight on that knee every time I get in or out of my car is also noticeable.

Emotional impact: I suffered what is referred to as post traumatic stress and had much difficulty driving during the first two years after the accident. I also suffered severe bouts of depression coupled with fear of approaching large vehicles while driving. I visited Dr. Isben Williams who provides care and support. Still get depression, especially around the sports season when I realize I cannot run anymore or help to train athletes.

Social impact: Over the years my relationships both at home and at the workplace have suffered as a result of my difficulty at times to deal

with my pain. My lack of sex drive has caused much strain in my relationship with my wife and at times I am at wits end to know what to do. My involvement in social activities has been extremely limited and I have sidelined from many of the sporting activities in which I was involved before the accident.

Health Care: I have not yet been released from physical therapy and chiropractic care. At one point the Chiropractor indicated that I would have to attend a pain clinic to find ways to control my pain. However, lack of money has prevented me from pursuing that option. Note also that there is my neck surgery that is pending."

[13] The Claimant also spoke to the financial impact of the injuries suffered but these can only be substantiated by the relevant evidence in support, which is not forthcoming.

[14] The consequence of the state of the evidence is that general damages would be limited to the pain and suffering and loss of amenities addressed by the claimant. In this regard counsel for the defendants argued that the court should strive for a high measure of uniformity in assessing quantum of damages. In support of this proposition he cited the case **Aziz Ahamad Ltd v Raghubar** (1967) 12 WIR 352 at 356F. In that decision Wooding CJ quoted from the Privy Council judgment **Singh (Infant) v Toong Fong Omnibus Co. Ltd.** [1964] All.E.R. 925 at 927 where it was stated that:

"To the extent to which regard should be had to the range of awards in other cases which are comparable, such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbourhood locality where similar social, economic and industrial conditions exist."

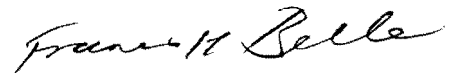
[15] This guideline was followed in the choice of cases referred to in support of the defendants' suggested level of award of quantum of damages. Three cases were cited these were **Marcel Fevrier and Anor v Bruno Canchan and Others**, St. Lucia High Court Civil Suit 313 of 1989 decided by d'Auvergne J on 28th March 2002. There were two claimants in this case. The second case was **Paula James v Ivor Douglas and Others**, Nevis Suit no. 36 of 1991 decided by Justice Velma Hylton Q.C. on 20th July 1994, and **Alphonso and others v Ramnath** (1997) 56 W.I.R. 183 at page 195. Counsel for the Defendant argued that the injuries of Ramnath were more severe than those of Mr. Carty.

- [16] Mr. Ramnath's injuries as reported included prognosis of violent convulsive seizures for the rest of his life, and as a result of post traumatic sequel the following conditions (a) hemiparesis of the left-hand side of the respondent's body, (b) grand mal seizures, (c) urinary incontinence (he had to wear Pampers, (d) anosmia and diminished sense of taste, and (e) poor memory recall levels. He also suffered a fractured rib, and fracture of the left ulna. There is reduction of his sex drive. Finally a chronic pain syndrome had developed which could in future develop arthritis.
- [17] At the other end of the spectrum counsel identified the most similar injuries to be those suffered by the second claimant in the **Marcel Fevrier and Anor** case. As reported the second claimant sustained abrasions, superficial lacerations over her body and a comminuted fracture of the right femur. She underwent surgery and was incapacitated for 6 months. She also had chronic joint pains and there an 1 inch shortening of her right limb with 10% permanent partial disability. The Court awarded the second claimant aged 25 at the time of the accident, EC\$150,000.00 for pain suffering and loss of amenities.
- [18] The injuries reported in the **Paula James** case were to the head requiring 18 stitches, injury to her right side, dislocated right hip, compound comminuted fracture of the right femur, compound comminuted fractures of the right tibia and fibula, a fracture of the right ulna, a laceration to the right forearm and laceration to her thigh. She was in severe pain and required to undergo five operations, one of which involved skin grafting. She walked with a limp and developed chronic bone infection. Her permanent physical impairment was assessed at 33% with great likelihood of and increase in physical impairment. She suffered very significant loss of amenities, particularly in view of her young age of 25 years. She was also unable to work as she had before. She was awarded general damages of EC200, 000.00 for pain suffering and loss of amenities and this award included and unspecified element for the cost of future treatment.
- [19] Counsel for the defendants argued that the similarities between Paula James' injuries and those of the claimant in this case were the fractured femur, the pain and the fact that they both walked with a limp. He added that although they both suffered physical impairment, Ms. James' impairment was greater and her future was bleaker as she

had lost the prospects of marriage and she was quite young at the time of the accident and therefore faced a longer lifetime of pain and loss of amenities.

[20] My own assessment of the cases leads me to conclude that the absence of more serious physical impairment when compared to the claimants in the cases cited is made up by the obvious loss of amenities in terms of inability to play sports or coach others, lack of sex drive causing strained marital relations, and apparent emotional stress and depression as a result of these losses.

[21] However I cannot say that the sum of \$175,000.00 identified by counsel for the defendants is not in the general ball park which ought to be awarded to Mr. Carty for his injuries in light of the fact that he would be awarded a lump sum payment and he is advanced in age and close to the age of retirement. However it was concede on the date of the judgment that the Claimant had already received the sum of \$20,000.00 from the Defendants towards general damages. I will therefore award Mr. Carty the claimant the sum of \$155,000.00 plus the costs due in the case of a judgment obtained in default of defence pursuant to Part 65 of the CPR 2000, which is 60% of the Prescribed Costs for \$155,000.00.



Francis H. V. Belle
High Court Judge