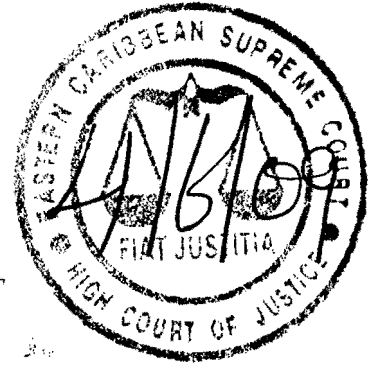


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 164 OF 2006



BETWEEN:

SORAYA LEWIS

(by her mother and next-of-kin Lily Lewis)

Claimant

V

EARDLEY BROWNE

Defendant

Appearances:

Ms. N. Fraser for Claimant

Mr. Cecil Williams for Defendant

2009: 25th May
4th June

DECISION

BACKGROUND

- [1] **Joseph Monica J.:** This is an assessment of damages in respect of personal injuries sustained from a motor vehicle accident on 26th January 2005, in Kingstown, when the now nine year claimant was six years.
- [2] The claimant who is a student of the Anglican Primary School, had just ended her school day and was attempting to cross the road to reach her transport, when she was knocked down by a vehicle driven by the defendant.
- [3] The Court heard evidence from the claimant, her mother Lily Lewis and the defendant. In assessing damages, the Court considers the factors referred to in **Corneliac v St. Louis (1965) 7 WIR 491**.

NATURE AND EXTENT OF INJURIES SUSTAINED

- [4] The claimant was seen by three doctors. Dr. Keizer's examination of the claimant at the Milton Cato Memorial Hospital revealed that there was deformity of the distal third of the left leg with laceration. X-rays revealed fractures of the distal ends of both the tibia and fibula of the left leg with displacement. Dr Woods account: multiple contusion to the left foot and a swollen deformed right leg with a small wound to the distal leg. X-rays showed, he reported, a displaced compound fracture of the distal tibia. There was also much soft tissue trauma to the foot.
- [5] According to Dr. Woods, the claimant's leg was splinted and she was taken to the operating theatre where closed reduction of the fracture and casting were performed. After discharge from hospital, she was reviewed in out-patient clinic, her cast removed and ambulation commenced with crutches.
- [6] Dr. DeFreitas saw the claimant in January 2008 (three years after the accident). Following an x-ray report the doctor diagnosed that she was suffering from weak ligaments of the left ankle on the lateral side. X-ray of 25th January 2008 showed evidence of soft tissue swelling. He recommended physiotherapy at the Milton Cato Memorial Hospital for the rehabilitation of the ligaments of her left ankle.
- [7] The medical documentation indicates that the claimant was hospitalized for two days. At the assessment hearing the evidence for the claimant was that she was hospitalized for six days. I accept the medical documentation that she was hospitalized for two days.

NATURE AND GRAVITY OF RESULTING PHYSICAL DISABILITY

- [8] The claimant had a cast on her leg for about six weeks after which she attended out-patient clinic and it was removed. She then used crutches. It is unclear how long crutches were used by the claimant. Her mother testified that the claimant did not like to use the crutches.
- [9] Dr Woods' opinion was that she is eventually expected to make a full recovery but will be moderately incapacitated for several weeks as healing progresses. When Dr. DeFreitas saw her in January 2008, he considered that rehabilitation of the ligaments of her left ankle would take three to six months. There was no evidence of permanent damage to the ankle.

PAIN AND SUFFERING

- [10] Dr. Keiser stated that the claimant did not lose consciousness at the time of the accident and complained of pain in her left leg. She had surgery, and after surgery there was swelling of her foot.
- [11] Dr Woods' report shows that on 25th March (2005) she was still complaining of pain to the dorsum of the foot and still had difficulty in walking due to the soft tissue trauma sustained to the foot. He considered that she may have long term chronic pain of the foot as a result of ligament damage.
- [12] Dr. DeFreitas' report of 5th February 2008 was that, since the removal of the cast, the claimant has been experiencing swelling with intermittent episodes of pain. He examined her ankle which was swollen. An x-ray showed evidence of soft tissue swelling. She was given medication to assist with swelling and pain experienced at the ankle.
- [13] I accept that she suffered pain from the time of the accident, before and after surgery, up to 25th March 2005 and even after that date as Dr. Woods recorded the possibility of long term chronic pain. I understand that statement to mean that the claimant is likely to experience constant pain for a lengthy period of time.

LOSS OF AMENITIES

- [14] After the accident the claimant was unable to enjoy the amenities of life as at prior to the accident. At age six she would have enjoyed the normal healthy life of a young girl. The injury sustained from the accident restricted her movement in that she was not able to participate in games. Her mother testified that she had to intervene and share with the teacher, the doctor's report indicating the claimant's inability to join in games.
- [15] The injuries sustained by the claimant may seem to have been very serious. The claimant was hospitalized for two days and that in itself tells a story: that the injuries were not serious to necessitate longer hospitalization. I accept that she would have been uncomfortable with a heavy cast on her foot.
- [16] I do think that the claimant was denied the amenity of looking after herself for six weeks while wearing the cast. During that period of time she relied on her mother's assistance in the performance of many regular duties or functions. Two examples of help with those amenities: assisting in moving from bed to bathroom: carrying claimant on her back to

get to the transport to take her from the hospital to her home. I am taking those factors into consideration in awarding general damages.

- [17] At the assessment hearing, I saw an alert, bright young lady who answered questions intelligently. Her mother's evidence, under cross examination, was that she is doing well at school.

- [18] Counsel for the claimant invited the Court to award her general damages of \$50,000.00 and Counsel for the defendant's invitation was to award the Claimant \$18,000.00. I have examined awards made in the region in the cases provided by counsel for both parties. Some of the cases considered:

- [19] Williams "Bing" Malone (by his next friend Orpha Malone) v Jerome Michael BVIHC 2004/0058 : six year boy suffered fracture with displacement, hospitalized for one month with follow up care for four months. His left leg appeared to be shorter than his right. Cast on his leg for four weeks. Doctor's report three years after the accident was that occasional pain was experienced. Award: US\$9000.00 (EC\$24,452.10.)

- [20] Ronald Woods vs. Irvin Joseph SVG 506/2005. Claimant suffered multiple small lacerations to the face and left elbow and his leg was fractured in two places which was surgically repaired. He was hospitalized for nine days and walks with a limp. The doctor expected the claimant to have some permanent mild to moderate disability of his left leg. Award for pain and suffering: \$40,000.00.

- [21] Eugenia Charles vs. Cecil Gilbert GDA 2000/0128. Claimant suffered open fracture, left distal fibula; multiple superficial abrasions; deep abrasions to left thigh and leg; lacerated wound to left leg; extensive loss of skin and exposure of the peroneal muscle and tendon and the distal fibula. Surgery was performed three times on her leg between May and August in hospital. Award for pain and suffering and loss of amenities: \$20,000.00.

SPECIAL DAMAGES

- [22] Special damages totalling \$900.00 are claimed and a sum of \$2000.00 for nursing care. Two sums are challenged on behalf of the defendant \$550.00 for medical expenses for lack of documentation and \$2000.00 for nursing care.

- [23] Sum of \$550.00 has not been specifically proved. There was evidence that the claimant used crutches and received medication for pain. I think that \$550.00 is a reasonable figure for those medical expenses and I allow that figure. \$2000.00 claimed is not

proved and I do not allow it under special damage. Special damages of \$900.00 are allowed.

GENERAL DAMAGES

[24] Every assessment of personal injuries case is different in that injuries sustained by claimants may be similar but unlikely to be identical. There was no evidence that the claimant would have a permanent disability. I have considered generally the injuries sustained and the awards made in the cases that both counsel have presented to the Court. I award general damages of \$29,000.00.

[25] The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) **Act (Cap18) section 27** empowers the Court to award interest on judgments.

ORDER

- [26]
1. Award of Special damages \$900.
 2. Award of General damages: \$29,000.00.
 3. Costs to be agreed or otherwise assessed in Chambers on 17th June 2009
 4. Interest payable at the rate of 6% from date of judgment.

Monica Joseph
High Court Judge
8th June, 2009