

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO: SLUHCV2004/0502

BETWEEN:

MICHAEL CHRISTOPHER

Claimant

and

P.C. 240 JOHN FLAVIEN

THE HONOURABLE ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Appearances:

**Mr. S. Innocent for the Claimant
Mr. D. Lay for the Defendants**

2007: **December, 19th**

JUDGMENT

1. This is an assessment of the damages due to the claimant to compensate him for the injury he suffered at the hands of the first defendant.

2. The claimant, who was 35 years old at the time, suffered a gunshot injury to the anterior aspect of his right knee.
3. The bullet penetrated the limb completely leaving an entry wound one centimeter in diameter and an exit wound one and one half centimeters across.
4. He was hospitalized and treated. He was discharged from hospital on the same day. The limb was encased in plaster of paris. He was restricted to bed for several weeks as he convalesced. About three (3) months after the injury he was fully ambulant and undergoing therapy.

A medical report in January 2004 revealed that his wound had healed. No note was made of any neurological deficit. He returned to work on April 5th 2004, some three and a half months after he was shot.

5. In his affidavit in support the claimant says that he was still unable to walk properly he could not flex his toes. He has not adduced any medical evidence in support of this claim. He further swears that his injury has impaired his mobility, crucial for his job as a waiter, to such an extent that his employer fired him on 12th October, 2004. Again he led no supporting evidence of this at the assessment of damages stage. He

seeks damages, special as well as general. He also wishes to be awarded exemplary damages.

SPECIAL DAMAGES

6. As has been noted many times in these courts, a claimant must plead particularize and prove his special damages. In this case the claimant only pleaded loss of \$ 695.23 as special damages. The defendants are content that this amount be awarded. I therefore award the claimant \$695.23 as special damages.

GENERAL DAMAGES

Pain suffering and loss of amenities.

7. No special loss of amenities was pleaded. The medical evidence suggests that the claimant has made a full recovery. Yet obviously during his recovery he would have been restricted in enjoying the simple pleasures of life. I made a modest award of \$1,000 in this regard.
9. For pain and suffering I award the claimant \$25,000.00. In arriving at this total I have carefully considered the authorities cited by both counsel including the cases of Augustin Duncan v Commissioner of Police claim NO. 2002/0052 decided in 2006 in St. Lucia and Mitcham Black v

Attorney General SLUHCV 20010728 decided in 2004.

10. The claimant, now happily recovered is once again in full time employment.

I make no award for any future loss of earnings.

EXEMPLARY DAMAGES

11. The claimant seeks to receive exemplary damages. Mr. Innocent on his

behalf submits that the conduct of the defendant is sufficiently outrageous to warrant punishment. At the trial at which Edwards J (as she then was) found the defendants liable she thought that the conduct of the first defendant was negligent. It was not advertent conduct. His behavior was exacerbated "because the alcohol he imbibed made him intemperate".

12. The legal position as I understand it, is that the courts will very rarely make an award of exemplary damages where the conduct is inadvertent. I accept that there "may be the one case where the defendant departed so far and so flagrantly from the dictates of ordinary or professional precepts of prudence or standard of care" that it will satisfy the test of outrageousness, leading to an award of exemplary damages. I do not consider this to be such a case. Here the defendant, impaired by his alcohol intake, and incensed by the taunting of a hostile crowd, discharged a single round. I do not consider an award of

exemplary damages justified. I am guided in my analysis by the reasoning of the Privy Council in A V Botnlll Privy Council Appeal NO. 10 of 2002 from which the quotation above is taken.

COSTS

13. I award the claimant the sum of \$6,000.00 in costs. I point out that on the basis of presented costs this award would have been higher but the conduct of the litigation by the claimant, so lamented by Edwards J at paragraphs 127 and 128 of her judgement has necessitated a separate assessment of damages. This extra expense ought to have been avoided. The reduction in the award of costs is intended to discourage future claimants from conducting their claims in a like manner.

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BRIAN S. COTTLE
HICH COURT JUDGE