

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 278 OF 2004

BETWEEN:

FABIAN HAYWOOD

Claimant

AND

ANDREW OLLIVIERRE

Defendant

Appearances:

Mr. R. F. Williams for the Claimant

Ms. N. Sylvester for the Defendant

2007: April 4th

DECISION

- [1] **COTTLE, M.:** The Claimant brought an action to recover damages for the injuries he suffered as a result of the defendant's unlawful act. The defendant consented to judgment being entered against him for damages to be assessed and costs. This is the assessment.

The Injury

- [2] On 14th December, 2002 the defendant stabbed the Claimant with a knife. The Claimant suffered a wound which Dr. St. Clair Thomas the consultant surgeon described as "a 3cm laceration involving the left eyebrow. The wound penetrated into the left orbit, left eyeball and left anterior ethmoidal (sinus) wall." The left superior orbit was shattered. The left eyeball was ruptured including the lens and the eye contents herniated. The left lateral

nasal wall was also fractured. The result was complete loss of the left eye. He was hospitalized for two days. He was not able to work for 9 months after the incident.

Special Damages

- [3] In his statement of claim the Claimant sought \$21,683.60 as special damages. Of this sum \$16,233.60 represented medical expenses. In his affidavit in support of the assessment of damages, no evidence was led of medical expenses. As a consequence this item of damages cannot be awarded. I award the Claimant \$50.00 for the cost of the medical reports as he has provided receipts to show that this sum has been paid. I am also content to award him the sum of \$5,400.00 for loss of earnings at the rate of \$600.00 per months over 9 months as he was deposed in his affidavit. The total award for special damages is thus \$5,450.00.

General Damages:

Pain, suffering and loss of amenities.

- [4] The Claimant was born on 6th March, 1981. At the date of his injury he was 21 years old. The loss of his eye means that he has lost depth perception. He can no longer judge distances. He cannot engage in the recreation of soft ball cricket as he was wont to do before his injury. He is now forever debarred from engaging in any activity which would demand the ability to judge distances. He is at a significant handicap in the labour market. Before the accident he worked as a security guard. He still does so but it is undeniable that many opportunities to improve his lot in life are now closed to him.
- [5] Master Pemberton, in the case of Winston George v Anderson Franklyn et anr in Claim No. 346/2000 from Grenada, awarded a Claimant \$9,000.00 for pain and suffering, for the loss of an eye in a traffic accident. That Claimant also suffered from frequent headaches and loss of balance. This Claimant makes no such complaint. However his loss of an eye is not the result of an accident. Rather it is the product of a deliberate attack by the defendant. The Claimant in George's case got his award in 2001. I am content to award the Claimant herein a sum of \$8,000.00 for pain and suffering. For loss of amenities the Claimant in George's case got an award of \$75,000.00. He was an otherwise healthy 42

year old who lost some sense of job satisfaction as he had to switch vocations. Despite the fact that his earnings were greater in his new job the Learned Master considered that his loss of job satisfaction should be a factor to be kept in mind when assessing compensation for loss of amenities. He could no longer enjoy outdoor activities. I take this to mean that the loss of his eye and binocular vision restricted his participation in outdoor activity. The loss of the eye also had a debilitating effect on the Claimant's family life.

[6] The Claimant in this case is a much younger man. He will in all probability have to bear his loss for a far longer period. He will forever be acutely aware of all the simple pleasures that life can bring to a person with normal eyesight which are now denied him. I do not consider that the award to him for loss of amenities should be any less than that in the **George's case**. I award the Claimant \$75,000.00 under this head. The total award for general damages is thus \$83,000.00. I pause to note that no claim was made for loss of earning capacity.

[7] I award the Claimant prescribed costs of \$12,078.00.

[8] Interest is awarded at 6% per annum from judgment to payment.

BRIAN S. COTTLE
MASTER