

IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

NO: 524/2005

BETWEEN:

MARK ANDREW CARTER

CLAIMANT

V

ST. CLAIR LATHAM
CONCRETE & AGGREGATES LTD.

DEFENDANTS

Appearances :

Mr. R. F. Williams for the Claimant.

Mr. R. Andrew Cummings for Defendants

DECISION

April 21, 2006

- [1] The Claimant received severe injuries when a bulldozer was driven over his body. He brought the present claim. The defendants suffered judgment in default of defence to be entered against them for damages to be assessed and costs. This is the assessment.
- [2] The claimant who was born on 29th April, 1968 is now almost 38. He had been tying a rope to the bulldozer when it was driven off. He was knocked to the ground and the vehicle ran over his body. He suffered injuries which were detailed in the medical report of Dr. P. De Freitas. The most important of these were
1. Crush injury to the right leg resulting in amputation
 2. Fracture to the lateral metacarpals proximal 1- 3
 3. Fracture to the ischio/ilio pubic rami bilaterally
- [3] The accident occurred on 28th May, 2004. By the time of his last visit to Dr. De Freitas on 26th November, 2004 the claimant was doing quite well. The stump, where the right leg

had been removed above the knee, was completely healed. The claimant was mentally normal.

THE ASSESSMENT

SPECIAL DAMAGES

- [4] The Claimant seeks to recover the following items of special damages.

Replacement worker farming	\$ 8,400.00
Replacement worker droguing bamboo	\$ 1,800.00
Domestic care	\$ 6,000.00
Yard Care	\$ 900.00
Loss of earnings	\$13,104.00
Examination and medical report	\$ 150.00
Medical Report	<u>\$ 25.00</u>
TOTAL	\$30,379.00

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- [5] I have had cause to observe in many claims for special damages that these items must be pleaded, particularized and proved to be recoverable.

- [6] **Loss of earnings:** The Claimant was earning \$936.00 per month at the time of the accident. He had some hopes of earning twice that amount at some later date. I restrict the special damages claim to his actual loss that is \$936.00 per month. This amount has been paid to the claimant up to December, 2005.

- [7] I thus award him 936×4 to represent lost earning up to the date of assessment. (\$3,744.00).

- [8] **Medical report:** I award the \$25.00 claimed.

DOMESTIC CARE

- [9] The Claimant swears that he will require domestic care for the rest of his life. He is assisted in this regard by his common law wife and her mother. He values their services at \$400.00 per month. I am not satisfied by the evidence provided by the claimant as to the cost of domestic care. However, Mr. Cummings for the defendant is willing to concede an amount of \$200.00 per month in this regard. In light of this I award the claimant \$200.00 x 23 = \$4,600.00.

YARD CARE

- [10] No supporting evidence has been produced to show that the sum of \$30.00 per month has been spent on yard care. I find this not proven to my satisfaction. I disallow this item.
- [11] Similarly I do not allow the sums claimed for replacement workers to farm or fetch bamboo for the claimant. He could easily have supplied receipts to evidence such payments. He did not do so. This leaves a total award of special damages of 25 + 3,744 + 4,600 = \$8,369.00.

GENERAL DAMAGES

- [12] **Pain Suffering:** A claimant with a near identical set of injuries in *Bernard Walker et al v. Kevin Peters et al* No. 377 of 1997 from the High Court in Antigua was awarded \$85,000.00 for pain and suffering. In *CCAA Ltd. V. Jeffrey* Appeal No. 10 of 2003 from St. Vincent and the Grenadines Court of Appeal awarded \$40,000 for pain and suffering to a claimant whose hand had been crushed and his thumb amputated. I was also referred to a number of cases from Trinidad. Having regard to all the authorities, including those I have specifically mentioned I consider that an apt award for pain and suffering in this case is \$60,000.00 Not only did this claimant lose a limb, his hips were also fractured when the vehicle rolled over him.

LOSS OF AMENITIES

- [13] The claimant says he was an avid footballer. He practiced Judo in his spare time. He can no longer do these things. He says he loved swimming and night fishing from the rocks at

Bambareaux. He no longer does these things. He also says his sex life is destroyed. No medical evidence has been adduced to demonstrate that the claimant is now physically incapable of sexual congress. His mental state is normal. I see nothing which would prevent his return to sport fishing from the shoreline. But it is clear that his injuries have robbed the claimant – still a young man – of much of the pleasures that life in a balmy tropical isle can bring.

- [14] I award him 50,000 for loss of amenities.

FUTURE LOSS OF EARNINGS

- [15] The claimant says he is now permanently unemployable. This is not supported by the medical evidence. Apart from his lost limb the claimant is doing quite well according to Dr. De Freitas. Obviously he will be handicapped on the labour market. I have heard no evidence of the cost of obtaining a prosthetic limb as advised by Dr. De Freitas. I have not been told that this is even being considered by the claimant. The claimant is an experienced crusher operator. I have not been told whether he can still pursue this calling with or without a replacement prosthetic limb. I have been referred to the case of Warner v. Coastes 237/96 from Antigua where the claimant, an 18 year old above the knee amputee was awarded \$20,000 for loss of earning capacity with no award made for loss of future earnings.

- [16] I do not accept that the claimant is now permanently unemployable. I do believe that in capacity to earn has been significantly reduced. But the claimant is still a relatively young man. I feel confident that he can equip himself to earn a living in some way given time for some training in this regard. There are many fields of endeavour in which the loss of a limb is not a complete handicap.

- [17] I award the claimant loss of earnings at the rate of \$936.00 per month or \$11, 232.00 for 5 years. During that time he ought to be able to secure some form of training to equip himself to engage in some type of gainful activity. This amounts to \$56,160.00. I also award him a sum of \$20,000.00 for the reduction in his capacity to earn.

- [18] For further domestic care I adopt a multiplier of 13 for this claimant now aged almost 38. For the multiplier I adopt the figure of \$200.00 per month that I used earlier. I consider this the best estimate of the cost of domestic assistance I can make given the state of the evidence. The award under this head is thus $200 \times 12 \times 13 = \$31,200.00$.

Total Award

Special Damages	\$ 8,369.00
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General Damages

Pain & Suffering	\$ 60,000.00
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Loss of amenities	\$ 50,000.00
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Future loss of earnings	\$ 56,100.00
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Loss of earning capacity	\$ 20,000.00
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Future domestic care	\$ 31,200.00
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\$225,669.00

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Interest is awarded on the special damages at 2½% from the date of the accident to today.

Interest is awarded on the global sum at 5% from judgment until payment.

- [19] **Costs:** I award the claimant prescribed costs in the amount of \$25,710.00 as 60% of the costs of a full trial.



Brian S. Cottle
MASTER