

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO.: 247 of 2002

BETWEEN:

FANCY ROTARY CORPORATION

and

GARNET HENDERSON

Petitioner

Respondent

CONSOLIDATED WITH:

CLAIM NO. 33 OF 2003

BETWEEN:

GARNET HENDERSON

and

FANCY ROTARY CORPORATION
LENNOX JACKSON

Petitioner

Appearances:

Mr. O. Dennie for Garnet Henderson

Mr. S.E. Commissiong Fancy Rotary Corporation

2006: March 17

JUDGMENT

- [1] **BRIAN COTTLE, MASTER:** Garnet Henderson suffered injuries in a motor vehicle accident involving his vehicle H 7646 and HT 2785 owned by the Fancy Rotary Corporation and driven by Lennox Jackson.



- [2] At the trial of the consolidated claims the Learned Trial Judge found that Lennox Jackson, the servant or agent of the Fancy Rotary Corporation was solely responsible for the accident. Judgment was given for Garnet Henderson for damages to be assessed and costs. This is the assessment

SPECIAL DAMAGES

- [3] Garnet Henderson pleaded the following items as special damages:

Pre-accident value of H 7646	\$24,000.00
Cost of wreck	- <u>7,000.00</u>
	\$17,000.00
Insurance Excess	<u>3,500.00</u>
	<u>\$20,500.00</u>
Medical Expenses	\$1,470.00
Transportation Cost	840.00
Loss of Earnings	\$1,000.00 per month

THE EVIDENCE ON SPECIAL DAMAGES

- [4] The insurers of Mr. Henderson accepted that the pre-accident value of his vehicle was \$24,000.00 less 10% for depreciation. The value I accept is thus \$21,600.00. From this amount, I must deduct \$7,000.00 as the cost of the wreck. I arrive at a total of \$14,600.00. Mr. Dennie suggests that to this must be added \$3,500.00 – the insurance excess. I do not agree. That sum is payable under his contract of insurance and cannot be recovered. Mr. Commissiong argues that this amount should be deducted from the value of the vehicle. I fail to see why this should be so. I award the sum of \$14,600.00 as special damages for this item.

MEDICAL EXPENSES

- [5] No supporting evidence has been led of any medical expenses. Given the nature of the injury which I will detail later, there must have been expenses but it remains for the Claimant to prove his case. I find I can make no award for this item as special damages.

Similarly the item of transportation cost is not allowed as the claimant has not proved this to my satisfaction.

LOSS OF EARNINGS

- [6] The Claimant pleaded a loss of earnings of \$1,000.00 per month from the date of the accident on 30th July 1999. The medical report of Dr. Nicholas dated 25th November 1999 discloses that the claimant required a walker to ambulate. It said nothing about his ability to work as a bus driver. Dr. Rao's certificate dated 15th February 2002 reveals that by then the claimant was fit to drive a vehicle.
- [7] In his affidavit in support of his application for assessment of damages the claimant swears that as at July 2005 he had not been able to resume his activity as a bus driver. This is inconsistent with the medical evidence.
- [8] Additionally there is no supporting evidence to show the level of the claimant's earnings before the accident from his van. The claim for \$1,000.00 a month is merely the claimant's assertion. I accept that it must be for the claimant to prove his damages – especially the special damages. But while the state of the evidence is unsatisfactory it is only logical that the claimant must have had some earnings as a van driver. In the absence of any definite evidence apart from the claimant's version and doing the best I can, I find the claimant's loss of earnings to be \$500.00 per month. In arriving at this figure I take account of the claimant's age and the likelihood that he would work shorter hours than a man of more youth and vigor. I award this sum over a period of one year – again doing the best I can in the state of the evidence – as it is not possible to say exactly when the medical condition of the claimant permitted him to resume driving. Thus for loss of earnings as special damages I award the claimant $\$500.00 \times 12 = \$6,000.00$.
- [9] In his affidavit the claimant also sought to recover lost earnings from farming and animal husbandry. I can make no award for this as this has not been pleaded at all.

GENERAL DAMAGES

Pain, Suffering and Loss of Amenities

[10] The claimant suffered a concussion, lacerations to the neck, elbow and forearm. There was a fracture of the acetabulum and a dislocated right hip. The right leg was injured – it was externally rotated and shortened. The surgeons performed an open reduction with internal fixation some six weeks after the accident as the initial attempt at closed reduction with skeletal traction was not successful. The claimant was eventually discharged from the hospital two months after the accident. In November 1999 he required a walker to ambulate. By the time of the trial the claimant could walk with the aid of a stout stick. I have been referred to several cases by counsel for both parties including Austra Franklyn v MA Kharafi WLL Ltd (St. Vincent) No. 276/99 and Fenton Auguste v Francis Neptune Civil Appeal 6 of 1996 (St. Lucia). I consider that an appropriate award for pain and suffering is \$50,000.00. I make no award for loss of amenities. None were pleaded.

Future Loss of Earnings

[11] Given the age of the claimant it is not likely that he would have continued as a van driver for very much longer. The claimant had passed what is normally regarded as retirement age in St. Vincent. I therefore adopt a multiplier of 1. The multiplicand is the figure of \$6,000.00 which I find the claimant to have been earning from his van. I make no award for farming income. I have noted the deficiency in the pleading and proof of this aspect of the claimant's claim.

Future Medical Care

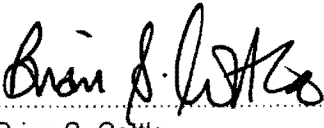
[12] No medical evidence was led as to the cost of any future medical care but Mr. Commissiong for the defendant suggests an award of \$1,000.00 under this head. I will thus award the claimant \$1,000.00 for this item.

THE TOTAL AWARD

[13] Special damages are awarded in the sum of	\$14,600.00
	<u>\$ 6,000.00</u>
	<u>\$20,600.00</u>

General Damages	\$50,000.00
	<u>\$ 1,000.00</u>
	<u>\$51,000.00</u>
TOTAL	\$71,600.00

- [13] On this award I order costs to be paid to the claimant on the basis of prescribed costs in the amount of \$18,320.00. I award interest on the global sum from today's date until payment at the rate of 6%.


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Brian S. Cottle
MASTER