

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV2003/0371

BETWEEN:

ELISHA LEWIS

Claimant

AND

WORELL JOHN

Defendant

Appearances:

Tonjaka Hinkson for Claimant

Dexter Theodore and Dara Modeste for Defendant

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2005: July: 7, 15
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JUDGMENT

Introduction

[1] The Claimant was seriously injured in a road accident caused by the Defendant's negligent driving on 30 August 2002. Judgment in default of Defence was entered on 27 May 2005. I must now assess damages.

[2] The evidence in the Claimant's affidavit of 29 June 2005 and the medical reports exhibited to it were not challenged and I am satisfied that everything stated therein is correct.

Facts

- [3] The Claimant was born in 1966 and was 35 at the date of the accident. She suffered a deep laceration to her left lower leg, ankle and foot. She also suffered fractures of the left clavicle, six ribs, the left superior pubic ramus and a number of bones in her left foot. She was kept in hospital from 30 August until 21 October 2002 during which time she suffered a chest infection and had to undergo secondary suturing on the left foot and surgery involving the left clavicle.
- [4] The rib and pelvic fractures have healed but the pelvic fracture is expected to cause pain from time to time.
- [5] Her left foot remains inverted with hypersensitivity of the sole and tenderness over a skin grafting site with an overriding of the left fourth toe from scar contracture and tenderness in the left heel. She also has a dislocated joint and osteoarthritis in the left foot and is left with serious scarring. She cannot walk without pain or limping and is not able to stand for long periods of time or her foot starts to swell and to give too much pain. This means she cannot go jogging or for walks on the beach as she used to every morning and she cannot drive or walk upstairs properly. She also has to wear special open shoes which show her scars and cannot wear elegant high heels as she used to.
- [6] On 7 June 2004 she underwent bone grafting and internal fixation of the left clavicle fracture which had not healed properly and it is now healed. However, the injury still gives rise to weather ache and intermittent episodes of swelling and there is scarring

there. This makes it difficult to wear clothes with straps as this would cause pain and discomfort and the visible scars would be a source of psychological trauma. She also says she has “intimacy problems” with her boyfriend due to the irritation of the clavicle bone and that she can no longer cuddle and show prolonged intimate affection. She told me however that she still lives with her boyfriend and there were no problems with the relationship.

[7] Shortly before the accident she had started work in sales for a company called Natmed Ltd. She was off work as a consequence of the accident until 8 February 2005 but happily she has been able to return to work for that company.

[8] She has been advised by Dr Dagbue in a report dated 1 July 2005 to have further surgery to correct her foot deformities and remove the implant from her left clavicle. It is expected that following the surgery she will have a plantigrade left foot and will be able to wear covered shoes. I am not expressly told but infer that the pain and swelling in the left foot will be less of a problem but that her mobility will still be restricted. Her left foot is likely to be one size smaller than her right. The pain in her clavicle will be reduced and the scar improved

Special damages

[9] These were not disputed. The Claimant claims medical expenses of \$25,575, net loss of earnings of \$25,400 and miscellaneous expenses set out at paras 1-5 of the special damages schedule in the statement of claim in the sum of \$2,418. Against these she accepts that she must give credit for \$4,485 received from the NIS and \$5,085 received from insurers. The net figure I make \$43,823.

General damages

[10] The Claimant's injuries clearly involve much pain and suffering and interference with her normal life and career prospects and will continue to do so even after she has had the recommended surgery. Mr. Hinkson suggested in his well presented skeleton argument that the right figure for pain suffering and loss of amenity was in the range \$185,000 to \$200,000. I am afraid I agree with Mr Theodore that this figure is completely excessive. Taking account of all the injuries and their effect on the Claimant to date and in the future and looking at the picture as a whole, I assess general damages at \$65,000.

[11] Mr Hinkson also suggested that the Claimant should be awarded a sum for loss of earning capacity. However, no evidence was presented to show that there was a real risk of her losing her current employment or being unable to obtain alternative work and I cannot therefore make a specific award for loss of earning capacity. Nevertheless the figure I have assessed for pain suffering and loss of amenity inevitably reflects the fact that her problems with walking and standing for long periods may affect her career prospects and should I believe compensate her adequately.

Future medical expenses

[12] The estimate for the proposed two surgical procedures is \$5,085. Although there was no evidence about loss of earnings while the operation is being carried out I will award a total of \$7,000 under this head to reflect this inevitable consequence of the surgery and the other uncertainties associated with it.

Result

[13] I award the following:

(1)	Special damages....	43,823
(2)	General damages....	65,000
(3)	Future medical expenses...	7,000
(4)	Interest on (1) and (2) at 6% for a period of 3 years	19,588

Total award...	\$135,411
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[14] There shall be judgment for this sum which is inclusive of interest. Subject to any submissions I would also propose to award the Claimant 60% of the prescribed costs on this sum in the normal way.

Murray Shanks

HIGH COURT JUDGE (Ag)