

THE EASTERN CARIBBEAN SUPREME COURT

THE HIGH COURT OF JUSTICE

St. Vincent & the Grenadines.

HIGH COURT CIVIL CLAIM NO. 36 OF 2001

BETWEEN:

WAYNE GLOSTER

Claimant

v

JOHN ASHTON

ST. VINCENT ELECTRICITY SERVICES LTD

Defendants

Appearances:

Mr. R. Williams for Claimant

Mr. O. Dennie for Defendant No. 1

Ms. Z. Horne for Defendant No. 2

2004: June 29

DECISION

[1] On 28th January 1999 the Claimant was riding as a passenger in the back of a truck driven by the first defendant. The truck collided with the stay wire which supported a pole erected by the second defendant. The claimant sustained injuries. The middle finger of his right hand was amputated. At the trial on the issue of liability Alleyne J found that the claimant had contributed to his injury to the extent of 10%. The remaining liability was equally apportioned between the two defendants.

[2] The compensation due to the claimant now comes before me for assessment.

Special Damages:

- [3] The claimant expended \$260 on medical reports and x-rays. He submitted receipts to evidence this. This amount is allowed.
- [4] For his loss of earnings the claimant says that he should recover \$40,720.00. At the time of the accident the claimant was employed at C.O. Williams Construction Company earning approximately \$880.00 per month. For seven months after the accident he could do no work.

Pain and Suffering and Loss of Amenities:

- [5] The Claimant suffered the amputation of the middle finger of his right hand. He says that because of the amputation the stump has developed a neuroma or sensitized nerve ending which causes excruciating pain whenever it comes into contact with another object. Dr. Woods offers the opinion that future surgery will be needed to alleviate this extreme sensitivity and improve the function of the hand. The claimant says that as a result of his disfigurement he no longer swims, which he formerly enjoyed and his girlfriend left him and he has not been able to get another girlfriend since then. The claimant was cross-examined on these points. I also had the opportunity to see the claimant when he testified. I do not accept either of these contentions. I do not propose to compensate the claimant for these items of loss of amenities. The stoic demeanour of the claimant during testimony was completely at odds with his claim for suffering constant pain over the past five years.
- [6] The claimant referred to a number of cases in support of his claim for the level of compensation he seeks for pain and suffering and loss of amenities. In *Austra Franklyn v M.A. Kharafit Sons No. 276 of 1999*, Mitchell J awarded a claimant \$20,000.00 for pain and suffering to a claimant whose right hand was crushed between a steel boat and a pile. He suffered immense pain and had to undergo

surgery and physiotherapy. He also required further surgery over a year later to remove metal plates and screws. Mitchell J also awarded \$40,000.00 for loss of amenities. The claimant had been an avid cricketer. The injury prevented him from being able to bat or bowl. He had also been a bodybuilder who represented St. Vincent at the 1997 OECS body building championship and had won the middleweight division. As he was no longer able to perform either discipline at national level or to represent his country the level of compensation for loss of amenities was held to be in the amount mentioned above. As I have indicated, the evidence in this claim does not satisfy me that the present claimant ought to be compensated for loss of amenities on the same scale.

- [7] The claimant also referred to the case of *Julius Jeffrey v CCAA Ltd* where Alleyne J awarded the claimant \$250,000.00 for pain and suffering and loss of amenities for a traumatic amputation of the thumb on his left hand and fractures of 4th and 5th fingers sustained when a large crane fell on the claimant's hand. His injury was more severe and his pain was accepted by the Court (and the defendant who consented to judgment) as "exquisite and excruciating".
- [8] The defendants in the present case point to the guidelines for the assessment of general damages in personal injury cases compiled by the UK Judicial Studies Board. The sixth edition of that work suggests that an award for general damages for the loss of a middle finger is in the region of 8,000 pounds sterling.
- [9] I find this to be useful guidance and while I am cognizant of the differences between the social circumstances in the UK and SVG I award the claimant the sum of \$20,000.00 for pain and suffering and \$10,000.00 for loss of amenities.

Loss of Earnings:

- [10] I award the claimant \$880 x 7 months that is \$6,160.00 to represent the period he was unable to work as a result of his injury. For the 54 month period after this

and up to trial the Claimant was able to earn as much as \$100 per week for working only 3 days each week. While he deposed to being able to earn only \$20.00 per day as a labourer he admits in cross-examination that at some period after his accident he worked with one Zulu as a mechanic and was paid \$100 per week for working only for three days each week. This item of pre-trial loss ought to have been capable of exact calculation. The claimant should have been able to say with certainty what income he has in fact earned up to trial. Unfortunately the evidence in this regard has been unsatisfactory. I am left to do the best I can in the circumstances. I award the Claimant the sum of \$880.00 less \$400.00 representing what I assess as his monthly earnings x 54 months that is 480×54 which gives \$25,920.00.

Future Loss of Earnings:

- [11] At the time of the accident the claimant worked as a labourer. He is now 38 years old. For this claimant I adopt a multiplier of 12.
- [12] The multiplicand that I adopt is based on his earnings as a labourer at the time of the accident. Although the claimant deposed to having received training as an auto mechanic, he confessed that he earned more money as a labourer with C.O. Williams Ltd. His earnings were \$880.00 per month. I deduct what he now earns which as I have said I assess at \$400.00. I further discount the result by \$80.00 to reflect the probability that the Claimant would not have remained in full-time employment with the particularly lucrative foreign firm of C.O. Williams who were only engaged in a temporary project in St. Vincent. Multiplying the remaining \$400.00 x 144 months I get \$57,600.00. I award this amount to the claimant for loss of future earnings.

Loss of Opportunity:

[13] This is an item of general damages. The claimant says that he has been denied the opportunity to complete his training as a mechanic and earn as much as \$1,400.00 monthly.

[14] But in cross-examination the claimant said that he had stopped his training as a mechanic some years before the accident. After his training he had not been able to secure employment as a mechanic and so he had embarked on his employment as a labourer. On these facts I find there is no loss of opportunity to the Claimant as a result of the accident.

[15] The claimant also says that he will need further medical care. I accept the evidence of Dr. Woods that the claimant will require a further operation. I award the claimant \$2,500.00 for this.

Total Award:

[16] The total award to the Claimant is:

Special Damages	\$ 260.00
Loss of Earnings 6,160 + 25,920	\$32,080.00
Future Loss of Earnings	\$57,600.00
Future Medical Care	<u>\$ 2,500.00</u>
 Total	 <u>\$92,440.00</u>

[17] This total must now be discounted by 10% to reflect the claimant's contributory negligence:

\$92,440.00

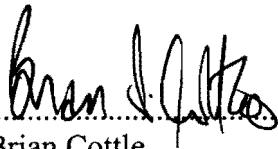
- 9,244.00

\$83,196.00

Each defendant is liable to pay to the claimant one half of that amount that is \$41,598.00.

Costs:

[18] Costs are awarded to the claimant of \$20,000.00 on the basis of prescribed costs for a claim of this value. Each defendant will be liable for one half of this sum.


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Brian Cottle
MASTER