

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.224 OF 2001

BETWEEN:

TATIS TRUDGE FRANCIS

Claimant

and

DONALD ALSON WILLIAMS

Defendant

Appearances:

Mr. Pamel R. Campbell Q.C. for the Claimant
Mr. Samuel E. Commissiong for the Defendant

2003: April 1
June 2

DECISION

- [1] **COTTLE, MASTER:** On December 14th 1989, Tatis Francis, then a 9 year old girl was struck by a truck driven by the Defendant, Donald Williams. She suffered horrible injuries. Her pelvis was fractured and there was extra peritoneal rupture of the bladder. The vesico urethral juncture was completely ruptured. There was petroperitoneal haematoma and laceration of the vagina, posterior fourchette and left labia minora. The accident also caused extensive abrasions over the supra pubic region, the inner aspect of the right thigh and over the right knee of this unfortunate young girl.
- [2] Upon attaining her majority Tatis brought an action against the Defendant who permitted judgment to be entered against him in default of defence for damages to be assessed and costs. At the assessment of damages Tatis swore to an affidavit outlining the extensive medical management she has had to undergo since 1989. She exhibited medical reports from 12 doctors and a Psychiatrist. She has had to undergo many surgical procedures in

several countries in an attempt to repair the damage done to her. Finally Dr. Padmore advised no more surgery. This was after Dr. Ellsworth Charles had operated in 1989, Dr. Cecil Cyrus in 1990, Dr. Emtage in 1992 Dr Kiruluta in 1993 and 1999 and Dr. Padmore in 2000.

[3] The best that could be achieved, even after all of the surgical procedures, is that Tatis will suffer for the rest of her life from persistent leakage of urine into the vagina. Dr Slater says that this will lead to increased risk of pelvic sepsis. Fertility will be severely affected. Sexual dysfunction will continue to be a major problem as partners may be repulsed by the presence of urine in the vagina. When she was seen by the doctor in November 2001 Tatis was still suffering pain.

[4] Tatis is now 23 years old. Dr. Rohan Deshong says that because of her urinary incontinence she will need to wear sanitary pads for the rest of her life.

[5] To arrive at an assessment of damages that will compensate her as far as money will do so I begin with the general heads enunciated by Wooding CJ in the case of **Cornilliac v St. Louis** (1965) 7 WIR 491. These are:

- [i] The nature and extent of the injuries sustained;
- [ii] The nature and gravity of the resulting physical disability;
- [iii] Pain and suffering;
- [iv] Loss of amenities;
- [v] The extent to which pecuniary prospects were affected.

The Nature of the Injuries

[6] The particulars of injuries are summarised above. I will not repeat them. Suffice to say they were extensive and severe. Counsel for the Defence suggested that this head of damages is a novelty that I should ignore. I disagree.

The Nature and Gravity of the Resulting Physical Disability

- [7] Even after the multiplicity of medical and surgical procedures that she has endured the accident left Tatis with 'a complete disruption of her distal urethra with the remnant opening into her vagina about 3cm proximal to where it should be at the introitus.' When Dr. Deshong tried to examine her in December 2002 he was greeted by 'a torrent of urine leaking into her vagina'. She has large scars on both thighs, on her hips and buttocks. She has the long prominent surgical scar on her abdomen. Dr. Charles describes these as 'disfiguring'. Defence Counsel suggested that I make no award under this head of damages. He says that "...it is important for the effective presentation of the claim that the defendant and the court be made aware of...the full impact of the injuries to the claimant." (Personal Injury Pleadings 2nd ed. by Patrick Curran QC at para 1-036). He says that the claimant ought to have included details of the injuries in her pleadings. I disagree for two reasons. Firstly, this case was commenced under the old rules. And in this case where the defendant elected not to defend at all I find that the demands of the imperative to do justice between the parties require that I disagree. The medical reports in this matter were procured at the instance of the defendant and his insurers. The claimant obtained the copies, which were appended to her affidavit in support of her application for assessment of damages, from the defendant in the main. The defendant could have been under no misapprehensions as to the "full impact of the injuries to the claimant".

Pain and Suffering

- [8] Tatis initially spent a month in the local hospital. Thereafter she has had to be operated on repeatedly for complaints arising from the accident. I was referred to the English case of **Hughes v Goodall** (1977) CA 100. There, the claimant suffered severe injuries including pelvic injuries resulting in permanent urinary incontinence. The Court awarded 20,000 pounds for pain and suffering. Defence Counsel says that I should make a similar award in this case, being careful not to convert pounds sterling into East Caribbean dollars. Britain has higher social and economic standards. I agree that awards should be at a level that is consistent with awards in societies of similar states of development. I therefore

prefer to look at awards from the region. In **Marcel Fevrier and Jenny Fevrier v Bruno Canchan and others** (St Lucia High Court case 313 of 1989) the learned trial Judge in 2002 awarded a sum of \$150,000.00 for pain and suffering and loss of amenities to a 25 year old claimant who had suffered abrasions and superficial lacerations over the body and a fracture of the right femur which had necessitated surgery. The claimant had her right leg shortened by one inch as a result. Obviously the injuries to Tatis are more severe.

Loss of Amenities

- [9] An obvious consequence of the injuries to Tatis is the effect that her condition will have on her enjoyment of those simple pleasures that mean so much. She is an attractive young lady whose reproductive organs have been severely impaired. Her ability to engage in satisfactory sexual congress is markedly diminished. Not only is there the physical presence on urine in the vagina but there is also the psychological impact that this has on a potential partner. This means that the ability to forge relationships with members of the opposite sex is impaired. Tatis, too, has to spend the remaining perhaps 40 to 50 years of her life with the knowledge of her inadequacy. Her prospects for marriage and child bearing have been drastically reduced. Dr. Slater tells us that "fertility will be severely affected" and if, against the odds, Tatis does get pregnant a normal delivery by the vaginal route will not be possible. Because of her urinary incontinence Tatis' ability to socialize normally has been adversely affected. Dr. Debnath offers the opinion that depressive illness will be among the potential sequelae which may face Tatis.

Loss of Pecuniary Prospects

- [10] Counsel for the defence argues that this head of damages ought not to be considered as it has not been pleaded. This argument was rejected in **Cornilliac v St Louis**. No such averment is necessary unless the claim for loss of pecuniary prospects was one for special damage, which it was not. Wooding CJ thought it "was but one of the class of items to be taken into account in the assessment of general damages and was very closely akin to the claim for loss of amenities." Her injuries and resulting disability have made Tatis sensitive

to room temperature. Her need for frequent voiding makes for some reduction in her career prospects. Counsel for the claimant also would have it that her scholastic performance has been adversely affected and consequently her marketability in the job search but I consider this to be too remote.

- [11] In addition to the above heads I am also asked to make an award for the medication and sanitary pads that Tatis will require for the rest of her life. Counsel for the defence says that in the absence of an amendment to aver this loss specially it must not be considered. I consider this element of future loss to be an item of general damages. It must always be remembered that the aim of an award of damages is to compensate the claimant, in as far as money will do so, for the loss she suffered. The need to wear pads every day for the rest of her life is a clear result of the accident for which the defendant is responsible. So too the incontinence medication she will require. She must be compensated for the additional expense to which she will be put. I hold that she is to be awarded a sum to cover the cost of the medication and sanitary pads for three weeks each month for the expected rest of her life.

The Awards

- [12] In arriving at the awards I have taken into account the uncertainties of life. I have also borne in mind that there is some element of duplication in the awards under the various heads and have discounted the amounts to reflect this. I considered merely making a global award but I have chosen to set out instead the amounts separately.

For the nature and extent of the injuries I award \$20,000.00.

For the nature and gravity of the resulting physical disability I award \$30,000.00

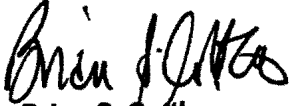
For pain and suffering and loss of amenities I award \$200,000.00

For loss of pecuniary prospects I award \$5,000.00

For future medical expenses including sanitary pads I award \$ 65,000.00.

This makes a total of \$320,000.00 but the claimant has already received an interim payment of \$10,000.00 and so I award the claimant the sum of \$310,000.00.

[13] I make no award for special damages as the defendant's insurers have already met these save for some \$1,250.00 for later medical reports which I subsume under the award for medical expenses above. I award costs to the claimant in the amount of \$35,000.


Brian S. Gottle
Master