

SAINT LUCIA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SUIT NO: 645 of 2000

BETWEEN

Augustin Biscette

Claimant

v

Club Mediterranee

Defendant

Appearances

Ms. L Faisal for the Claimant

2003: May 8

JUDGMENT

[1] **Shanks J:** This is an assessment of damages in a personal injury case following a default judgment entered on the 3rd December 2002. The Defendant, Club Med, is a French company which no longer operates on the Island of St. Lucia. I am satisfied that they were properly served with the proceedings in August 2000 and that they failed to acknowledge service or put in a defence and that the default judgment for damages to be assessed dated 3rd December 2002 is a valid judgment.

[2] Club Med closed their business sometime in 2001 and so had no notice of this assessment hearing. However under CPR 16.2 (2) it appears that there is no

requirement for notice to be given to a defendant of such a hearing (compare CPR 16.3 (3) 16.4 and see CPR 12.13) and, although in practice it may normally be sensible to notify a defendant of such a hearing, given that Club Med have moved away without apparently taking any steps to deal with outstanding liabilities, and given the impracticality and expense of serving them, I have proceeded with this assessment in their absence. I have heard oral evidence from the Claimant and seen two medical reports, one from St. Jude Hospital dated 19th January 1999 and the other from Victoria Hospital dated 4th April 2003.

- [3] The Claimant was born in 1971. He did a two-year apprenticeship in carpentry. In 1995 he started work in Club Med as a carpenter. He earned on average about \$850.00 per month including tips from his employer. On the 2nd December 1998 he suffered the accident at work which gives rise to this claim. His right hand was caught cut in a table saw and he suffered a partial amputation of the 3rd, 4th and 5th fingers of his right hand. He is right handed. He was conscious during the accident. He was taken to St. Jude Hospital and had an operation. He was discharged from the hospital after two days, and was off work for three months recovering from his injuries, although he was paid in full by his employers and the National Insurance Scheme during this time.

- [4] On his return to work he found he could not continue to do carpentry because he could not grip tools or materials properly. He was therefore put on house keeping

duties and though the salary for a housekeeper is substantially less for a carpenter he was paid at his old salary.

- [5] In 2001 Club Med closed the hotel and presumably made all the staff including Mr. Biscette redundant. Since then Mr. Biscette has not had formal work although he tried one of the hotels for work and they said they had no vacancy for housekeeping jobs. He has a child and he hopes to get work some time but he has not thought too much about what to do in future.
- [6] The report from Dr. Richardson St. Rose dated 4th April 2003 states there is a partial nail growth in the third finger, which will require further surgery and which would prevent work for a further month. The report also states that as a result of his injuries Mr. Biscette's grip will be inadequate making it difficult to carry on his work as a carpenter, and the report assesses his permanent disability at 21%.
- [7] I turn to deal with general damages for pain, suffering and loss of amenity. Ms Faisal very helpfully put before me a written argument dealing with general damages. She drew my attention to a case called **Medford v Attorney General** decided in Barbados by **Chief Justice Williams on 4th January 1991** which is reported in the Lawyer Magazine for July 1992 at page 75. That case involved similar injuries but a very much older man and the award was equivalent to about \$27,000.00 at to-day's money. Ms Faisal also showed me the Lawyer Magazine

for March 2001 which contains a helpful supplement on damages for personal injuries and a consolidated table of Trinidad & Tobago awards adjusted to October 2000. Looking at **Medford v Attorney General** and the awards from Trinidad and Tobago under the section “Arms, Hands and Fingers” in the table, my judgment is that the proper awards here is E.C.\$45,000.00 for pain, suffering and loss of amenity.

[8] It also seems clear the Mr. Biscette’s position in the job market has been substantially impaired and that he has lost his trade, so that although he would have lost his job at Club Med in any event I think he should be awarded something for loss of earning capacity. I accept his evidence that the difference income between a skilled carpenter and a housekeeper is about \$400.00 a month. Doing my best with the available material I therefore assess his loss of earning capacity at \$48,000.00, that is \$400.00 a month for a period of ten years. In assessing this figure, I have taken account of the Claimant’s young age, the difficulty of finding work in any event and the fact that the loss of three fingers is likely to be a handicap on the job market regardless of what employment one is seeking.

[9] I will also award the cost of the operation which he requires to have and if Counsel can supply a figure for that it should be added to the final judgment figure. I have considered whether to award interest under article 1009 A of the

Code, but given that all the figures are approximations, I will not make an award for interest.

- [10] There will therefore be judgment for \$93,000.00 plus the figure supplied by Ms. Faisal for the operation. I will also award costs at the prescribed rate based on the final judgment sum. I direct that Ms. Faisal must file a draft order by 16th May 2003 under CPR 42.5.

**Murray Shanks
High Court Judge**