

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT No. 434 OF 1996

BETWEEN

CLAREY FONTENELLE

PLAINTIFF

VS

(1) TRANSPORT & HANDLING SERVICES LTD

(2) LINUS AMBROISE

DEFENDANTS

Appearances

Mr. Kenneth Monplaisir Q.C with Dale Lee of the Plaintiff

Mr. Marcus Foster on file for Defendants but absent without excuse

2000: MAY 2nd
DECEMBER 19th

JUDGMENT

[1] **History**

d’Auvergne J: On the 24th day of May 1996 the Plaintiff bought an action against the Defendants for damages for personal injury and consequential loss arising as a result of a road accident which occurred on the 1st day of March 1996, at La Toc road in the City of Castries. It was alleged that the accident occurred as the result of the negligent driving of the Second-named Defendant of truck Registration No. TA6380. It was further alleged that at that time the Second-

named Defendant was acting as servant or agent of the First-named Defendant who was the owner of the said truck.

- [2] The Defendants entered an appearance on the 11th day of June 1996 but did not enter a defence and on the 13th day of August 1996 a Judgment in default of defence was granted against the Defendants; and filed on the 26th day of August 1996 in the following terms:

“No defence having been served by the Defendants herein it is this day adjudged that the Defendants do pay the Plaintiff Special Damages in the sum of \$14,897.92, and damages to be assessed, interest from the day of Judgment and Costs.”

- [3] The said Default Judgment was registered on the 26th August 1996 in **Vol 149A No 174617** and on the 25th September 1997 an ‘Assessment of Damages’ was filed.

The documents were served on the Defendants and the date set for the hearing was 10th December 1997 which after many adjournments was eventually heard on the 5th day of November 1998 and then set aside by Mitchel J. on the 11th November 1998 for improper Service.

- [4] On the 17th November 1998 an amended writ was filed pursuant to an order of the Court dated 5th day of November 1998 in which the special damage pleaded was amended, that instead of \$14,897.92, the amount of \$65,362.11 was substituted.

[5] At a pretrial hearing on the 24th day of November 1998 where both parties were represented the following order was made.

“That leave be and is hereby given to file and serve affidavits in reply to the Plaintiff’s affidavits on the issue of Quantum of Damages on or before the 15th January 1999. The said order was entered on the 8th December 1998.”

[6] On the 4th March 1999 an application was filed on behalf of the Defendants that the judgment in default of defence entered on the 26th day of August 1996 be set aside. That application was supported by an affidavit of the manager of the First Defendant who deposed that the judgment was irregular and that Statement of Claim never disclosed any cause of action against the First named Defendant nor did it state that the tort alleged was committed in the course of the Second-named Defendant’s employment.

[7] After many adjournments the application for assessment for damages was heard on the 2nd day of May 2000. At the hearing only Counsel for the Plaintiff were present despite the fact that Counsel for the Defendants had been present on the last adjourned date viz the 30th March 2000 and had given assurances that he would be present.

[8] It is to be noted that while there were lengthy affidavits filed by the Plaintiff and his sister Gertrude Fontenelle, no affidavit in reply was filed by the Defendants,

resulting in the fact that the Court can only guided in its deliberations by the evidence of the Plaintiff.

[9] **Facts**

The Plaintiff is now a paraplegic who was born on the 11th day of August 1975; he is single and was a mason by profession who lived and took care of his very ill diabetic father who has been confirmed to a wheel chair for about fifteen (15) years and a middle aged mother who stays home to care for his father. The various medical reports show that the Plaintiff sustained a fracture of the 11th thoracic vertebrae as well as other serious injuries which rendered him permanently and totally paraplegic and that this was as a result of an accident which occurred between the Plaintiff and the First Defendant's truck which was being driven by the Second Defendant on the 1st March 1995 while the Plaintiff was standing on the grass verge of the La Toc Road.

[10] The evidence discloses that the Plaintiff now has a urinary tract infection and that he has to wear pampers and diapers and uses much bedding since he cannot control his natural functions; that he needs constant nursing care in order to prevent bedsores. He is permanently on medication, that he can only move about by means of a wheel chair and therefore his parents' premises had to be extended to accommodate him and also an access road had to be constructed to facilitate his moving to and from the main road as the former path to the parents' premises was not suitable for wheelchair access. He deposed that he earned \$80.00 per day as a

mason and exhibited references from previous employers. He also exhibited an extract of conviction which indicated that the Second named Defendant was convicted for the offence of driving without due care and attention on the day in question and which caused the Plaintiff to sustain the injuries which resulted in his present position.

[11] **Arguments**

At the hearing Learned Senior Counsel for the Plaintiff quoted two cases which he said were his authorities for the areas of damage to be assessed. The said cases are **Lim Poh Choo vs Camden and Islington Area Health Authority (1977)** **2ALLER910** and **Civil Appeal No 6 of 1996 Saint Lucia Fenton Auguste vs Francis Neptune**.

[12] He urged that Court to grant the following \$200,000.00 for pain, suffering and loss of amenities; the said \$65,342.11 as detailed in the amended settlement of claim as special damage; Cost of Nursing Care from the date of the accident, 1st March 1995, to date of judgment at \$30.00 per day.

Cost of pampers from 1st March 1995, Chunks at \$20.00 per day.

Loss of Earnings \$80.00 per day or \$400.00 per week from 1st March 1995 to date of judgment.

Cost of future care using a multiplicand of 18 and loss of future earnings.

[13] **Conclusion**

Based on the above, Learned Senior Counsel has submitted that the Plaintiff is entitled to receive over One Million Eastern Caribbean dollars.

This decision concerns only the question of quantum of damages and I will proceed to consider the awards under the various heads of damage using the principles laid down in **Civil Appeal No.6 1996 Saint Lucia Fenton Auguste vs Francis Neptune**. [Supra]

[14] **The Multiplier**

Using the principles as mandated by **Alphonse vs Ramnanth Civil Appeal No. 1 1996 BV1** at page 13 and re-iterated in **Fenton Auguste vs Francis Neptune** [Supra]. I should give the Plaintiff a working life of up to 65 years and fix the multiplier at 18.

[15] **Multiplicand**

Plaintiff earned \$80.00 per day or \$400.00 per week therefore applying simple mathematics the correct figure should be \$400.00 per week multiplied by 52 weeks per year or \$1600 per month multiplied by twelve months per year which would amount to \$19,200.00 per year. I am cognisant of the principle that for the purpose of arriving at the multiplicand, the basis should be the least amount the Plaintiff would have been earning if he had continued working without being injured. I would therefore adjust the multiplicand from \$19,200 per year to

\$15,000 per year. It is my considered opinion that in the course of his trade the Plaintiff would have suffered some injury, albeit not major before retirement

[16] **General damages.**

Pain, suffering and loss of amenities.

This Plaintiff will remain with all his suffering for the rest of his life for he is now, as stated before a paraplegic and will certainly suffer the loss of all his amenities as long as he lives.

[17] In my judgment I would award the same amount as was awarded in **Francis Neptune** [Supra] for indeed both Plaintiffs were very young men at the time when the accidents occurred. In the case of **Francis Neptune** the Plaintiff was only 21 years old whereas in this present case the Plaintiff is even younger a mere 20 years and seven months old.

[18] I therefore award the sum of \$200,000.00 for pain and suffering and loss of amenities; the sum of \$75,000.00 for pain and suffering and \$125,000.00 for loss of amenities.

[19] In **Lim Poh Choo v Camden and Islington Area Health Authority** [Supra] it was held that damages for loss of amenities are awarded for the fact of deprivation whether the Plaintiff is aware of it or not.

[20] **Loss of Future Earnings**

I would use my multiplier of 18 with a multiplicand of \$15,000.00 and award under the head of loss of future earnings the sum of Two Hundred and Seventy Thousand dollars (\$270,000.00).

[21] **Cost of Nursing Care**

With regard to the issue of future nursing care Doctor Gene T Hamilton states that “the patient will require wheelchair mobilization for the rest of his life”...the patient is troubled with chronic urinary tract infections which are likely to be a lingering problem for the remainder of his life.”

[22] The above indicates that the Plaintiff would need someone to look after his personal hygiene on a daily basis and be give proper nutrition. He would need regular antibiotics for the urinary tract infection and for the complications which are certain to arise.

[23] The affidavit of his sister Gertrude Fontenelle details the various periods of hospitalization and that he has to wear pampers which must be changed at least three times a day and when he is suffering from bedsores he has to wear a special disposable bedding called “chunks” which have to be imported, he also has to use catheters at least four (4) per month at a cost of \$15EC dollars and catheter gell at a cost of \$20 EC which last for maximum eight (8) weeks. She concluded by stating that the Plaintiff needs nursing care daily and also in the evening.

Following **Auguste v Neptune** the award of \$60 per day or \$21,600.00 per year using the same multiplier of 10 the approximate cost of future actual nursing care would be \$216,000.00.

[24] **Doctor's Visit**

It is expected based on the Plaintiff history since the accident that he would need occasional doctor's visit. The affidavit evidence discloses that he Plaintiff lives in the South of the island where medical visits are cheaper. (Judicial notice taken) I would therefore award \$4,000.00.

[25] **Pampers and "Chunks"**

I would award under that heading the sum of \$6.00 per day or \$2,190.00 per year and using the multiplier of 18, award \$39,420.00.

[26] **Special Damages**

The amount spent was itemized and receipts were tendered amounting to \$26,379.26. Exhibited was "expenses arising out of injuries to Clarey Fontenelle" under various headings. Not all the bills were tendered and while I agree with the amount stated for construction costs in order to accommodate vehicular access to home and the many times the Plaintiff was transported to and from hospitals I must say that I find tickets to New York for "Chunks" and for accommodation at Hotels excessive and extravagant.

[27] Learned Senior Counsel, Mr Kenneth Monplaisir has addressed the Court on the amount of \$65,262.00 as stated in the statement of claim. Taking into account the amounts of the exhibited receipts. I would award the sum of \$45,000.00 and interest in the sum of 6% and I would also award 6% interest on the amount for loss of pain and suffering and loss of amenities which I have placed at \$200,000.00.

[28] My order would be as follows:

Pain suffering and loss of amenities \$200,000.00. Interest at rate of 6% per annum from the service of the writ, 5th June 1996 to date of trial 2nd May 2000.

Loss of future earnings	\$ 270,000.00	no interest
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Nursing care	216,000.00	no interest
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Doctor's visits	4,000.00	no interest
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Pampers and Chunks	39,420.00	no interest
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Total general damages rounded off at 700,000.00

Special damages	45,000.00	Interest at the rate of 3%
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per annum from date of the accident 1st March 1995. Total damages \$745,000.00 from accident to date of trial 2nd May 2000.

The Defendants are to pay the amount of \$745,000.00 as damages to the Plaintiff.

Costs to be agreed or otherwise taxed.

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Suzie d'Auvergne
High Court Judge