

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.528 OF 1998

BETWEEN:

ANN MITCHELL

Plaintiff

and

ST VINCENT ELECTRICITY SERVICES LIMITED

Defendant

Appearances:

Mira Commissiong for the Plaintiff

Zhinga Horne for the Defendant

2000: July 28, 31

JUDGMENT

[1] **MITCHELL, J:** This was a matter for assessment of damages. No question of liability arose. A judgment in favour of the Plaintiff on the Defendant conceding liability had been entered since 19 April 2000. This matter came up on a Summons for Assessment of Damages filed on 22 June 2000. The Plaintiff's Affidavit in Support sworn and filed on the same date constituted the bulk of the evidence. She was cross-examined by counsel for the Defendant.

[2] The facts as I find them are as follows. The Plaintiff was at the time of giving her evidence an 81-year-old retired lady. She was sprightly and clear-headed, and well able to explain herself. In about March 1996, when she had been 77 years of age, she had fallen and had been injured by stay-wires on an electricity pole in the care and control of the Defendant. Her elbow had been fractured in the fall, though neither she nor the doctors and nurses in the Accident and Emergency

Department of the Kingstown General Hospital immediately discovered this. About 3 days afterwards, when a technician became available, an X-ray revealed the fracture. At this point a cast replaced the bandages previously placed on her elbow by the helpful nursing staff. This cast was removed in April 1996. Not surprisingly, perhaps, the injury has not healed very well. Physiotherapy has only given her back a small range of motion of her arm. She cannot lift her arm to touch her head. The pain in her elbow and arm is severe. She has had to purchase medication. She is unable to perform all her household functions as she did previously. For some months immediately after the injury she was unable to bathe herself, comb her hair, or even dress herself. She had to replace her part-time maid with full-time help. She will always need a personal maid to help her perform basic functions. In October 1996, she learned that she had developed post-traumatic osteoarthritis in her left elbow. In the year 1997, when the Plaintiff was in the USA, she sought further medical advice and treatment.

- [3] Several medical reports were put in evidence at the hearing. The most recent one was from Dr Kagbala of Kingstown dated 29 May 2000. It explains that the Plaintiff had suffered a fracture of the capitulum left humerus due to the fall. There was arthritis in the elbow at the time of the injury. The fracture "with its treatment" has made the osteo-arthritis in the left shoulder worse. The pain, restriction of movement, and crepitus found in the left upper limb are results of a fracture disease on arthritic joints.
- [4] The special damages were not, at the close of cross-examination, in dispute. The Plaintiff proved medical expenses of \$961.39. She also proved additional expenses relating to her personal maid of \$5,675.00 up to July 2000. She presently spends \$175.00 per month more than she used to previously on her now full-time maid service. She is entitled to be compensated for this expense. This expense will inevitably go up in cost as the years pass. What the amount of increased cost over the years due to the accident will be is not known. An increase of \$25.00 per month averaged out and commencing immediately will not

be unreasonable. That would give an annual cost of \$2,400.00. How many years will she have to bear this cost, is a question. Counsel for the Plaintiff suggests a multiplier of 6. Counsel for the Defendant suggests that, given the age of the Plaintiff, there should be no multiplier. The Plaintiff will be put to the expense of a full-time personal assistant earlier than might otherwise have been the case. Given the vicissitudes of old age, it is possible that, even without the accident, the Plaintiff might one day have required personal assistance of the type she is now receiving. There is no way to know at what point in the future she might have required such assistance. She was at the time of the accident a known hypertensive and already suffering from some degree of arthritis. A multiplier of 5 on a multiplicand of \$2,400.00 would seem to be fair and reasonable.

[5] Counsel for the Defendant has suggested that a suitable range of general damages should be in the \$5,000.00 to \$10,000.00 range. Counsel for the Plaintiff suggests \$25,000.00 as being reasonable. A number of cases from The Lawyer of Trinidad were submitted. **Pickett v British Rail Engineering (1979) 1 All ER 774** and **Alfred v Thomas and Another (1983) 32 WIR 183** were relied on by the Plaintiff, though it was difficult to see the strict relevance of either of these cases. There was no specific attempt made by either counsel to refer the court to comparative awards made in this or other jurisdictions. The court was left to make an award it considered fair and reasonable in all the circumstances. The Plaintiff in this case has suffered permanent partial incapacity of her left elbow. The joint contains painful spurs and is deformed. She suffers continuous pain, and her previous activities are much restricted. I have considered the range of damages normally given in this jurisdiction for pain and suffering and loss of amenities. The age of the Plaintiff is not particularly important in regard to her entitlement to be compensated for the pain and suffering caused to her. I consider an award of \$20,000.00 to be fair and reasonable.

[6] Given the findings above, the Plaintiff is entitled to the following awards:

(1) Medical expenses	961.39
(2) Maid service to July 2000	5,675.00
(3) Future maid service	12,000.00
(4) General damages for pain and suffering and loss of amenity	<u>20,000.00</u>
Total	\$38,636.39

There will be judgment accordingly for the Plaintiff for damages of \$38,636.39 and her costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge