

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO.111 OF 1996

BETWEEN:

**JAIMASON SAMUEL
acting herein by his next friend
CALVERT SAMUEL**

Plaintiff

and

LINCOLN PRESCOTT

Defendant

Appearances:

Ms Zenga Horne for the Plaintiff

Mr Joseph Delves for the Defendant

2000: February 19,22

JUDGMENT

[1] **MITCHELL, J:** This was a summons for assessment of damages. The Plaintiff had on 15 March 1996 issued a writ against the Defendant. The Plaintiff had been shot in the left eye by the defendant with an air gun. The pellet had caused a giant retinal tear on the inside of the eye. The Plaintiff can now count fingers with the injured eye at 1 metre. The matter came up on the call-over list on 2 December 1999, and was fixed for trial on 18 January 2000. On the day of trial, judgment for the Plaintiff was given on the admissions in the Defence, with damages to be assessed. There was no claim for special damages, though the Plaintiff had evidently undergone surgery in Trinidad in 1995. The only claim was for general damages. The Plaintiff was ordered to make himself available to the

Defendant to be examined by an ophthalmologist at the choice of the Defendant and at the Defendant's expense. The Summons for Assessment of Damages was filed on 21 January 2000, and came up on 11 February. On that day, the court was informed that the report of the ophthalmologist that the Plaintiff had been taken to for examination was not ready. The hearing was adjourned to 18 February. On 18 February the Court was informed that the medical report was not ready as the Defendant had not paid the ophthalmologist for it. The Defendant declared that he did not need the current medical report. He would rest on the Plaintiff's original medical report of Dr Bruno A Mitchell FRCS of Trinidad of 22 September 1995. The Plaintiff was then cross-examined on his affidavit evidence, and the court heard argument from both counsel on an appropriate award of damages in the circumstances of this case.

- [2] The facts are as follows. The Plaintiff was a 15 year old pupil at the Grammar School at the time of the incident in 1995. At a party at his mother's house on 2 July 1995, the Defendant had accidentally shot him in the eye with a pellet gun. The Defendant had been at the time the Plaintiff's virtual step-father as he was living with the Plaintiff's mother in the house at the time. He is now 19 years old. He has graduated from the Grammar School, and is presently enrolled at the Pratt Institute in Brooklyn, New York. He is studying Architectural Design and Building Construction. He has enjoyed technical drawing since his school days. His original ambition had been to become an airline pilot, but his injury had precluded that. Architectural Design was a second or fall-back choice for career. As a result of the loss of the sight in his eye, the Plaintiff no longer participates in body contact sports such as football, which he used to enjoy. The steady focusing on fine lines in his study of architecture causes his eyes to water and is accompanied by tears and pain. He will have to endure this discomfort all his life. At the time of the accident, he had suffered excruciating pain. This pain was particularly felt when his eye was open. As the left eye tended to open when the right one was opened, he was forced to keep both eyes shut for periods. He has a licence to drive now. He finds that in order to be able to see properly, he has to drive with

his head turned to an angle. This is in an attempt to let his right eye see both forwards and towards the left. Common sense tells us he has lost bi-focal vision. Depth perception would be a difficulty. On the other hand, the injury has healed nicely from an aesthetic point of view. Looking at the Plaintiff, you would hardly know that something was wrong with his left eye. There is no scarring or discolouration visible.

- [3] Both counsel submitted a number of cases from **Daly's Damages in Personal Injury Cases**, extracted from The Lawyer of Trinidad. The Plaintiff relied on Bailey v Holder No 258/1988, an unreported judgment of Davis J of the High Court in Barbados in 1990. In that case, the Plaintiff had had his eye punctured by a piece of glass in a motor accident. His forehead was injured, and his right shoulder lacerated. There were multiple scars on the cornea, and the eye had a traumatic cataract. After surgery a new lens was implanted, and he had recovered some vision. The consultant ophthalmologist put the maximum improvement that might occur to the plaintiff's vision at 50%. General damages for loss of future earnings were assessed in the sum of \$69,523.41. General damages for pain, suffering and loss of amenities were assessed at \$39,000.00.
- [4] The Plaintiff also produced an extract from The Lawyer dealing with the case of Paul v Seepersad & Kagoo, an unreported judgment in 1997 of Ramlogan J of the High Court of Trinidad and Tobago. The plaintiff was a cane field worker aged 39 when he was in a vehicular accident. He suffered lacerations of his face above his right eye, laceration of the right upper lip as well as something called the "medial canthus." More to the point, his right eyeball was ruptured and had to be removed after months of attempting to save it. He went through several operations. He suffered severe pain throughout. When he worked in the cane field, the prosthetic eye kept falling out, leaving him with an empty eye socket, and causing him embarrassment. He was awarded TT\$160,000.00 for the pain suffering and loss of amenities.

- [5] The Defendant produced a number of earlier decisions reported in The Lawyer. Hackett v. Shirkissoon was a decision in 1978 of Warner J of the High Court of Trinidad relied on by the Defendant. In that case the plaintiff was a 19 year old man who was rendered unconscious in an accident. He suffered severe lacerations to the right side of his face and eye. Some 8 months after the accident he had unsightly scars of numerous operations mainly on the right side of his face. The plaintiff had played championship cricket at the highest grade in Trinidad. As a result of the accident he could no longer play. He could not close his right eye as a result of the scarring. The scarring and condition of his eye were a social disadvantage. General damages were assessed at \$20,000.00. The Defendant also produced some Jamaican personal injury cases in the early 1980s in the High Court dealing with eye injuries, but he did not go into any of them.
- [6] Counsel for the Plaintiff asked for an award in the region of \$75,000.00. Counsel for the Defendant submitted, by contrast, that an award in the “high teens” would be reasonable in the circumstances. In this case there was no disfigurement, no proven loss of earnings, no proven significant social disadvantage, and the pain as compared to the cases submitted was conceivably less. Counsel for the Defendant also suggested that this was not an insurance case. In cases of motor vehicular accidents, he submitted, it was accepted that courts tended to award higher figures on the basis that an insurance company would pay. In this case, the Defendant would have to “foot the entire bill.” The court, he submitted, should use this circumstance to reduce the award. Let us dispose of that idea straight away. The court is not to be concerned with whether or not there is an insurance company behind the Defendant. The award of damages to an injured party in a personal injury action is never to be affected by the question of whether or not the defendant is covered by insurance. Insurance is not a relevant consideration in assessing the award of damages to an injured party.
- [7] The cases produced were helpful in assisting the court in coming to an award. The elements to be taken into consideration in this case were made clear by a

consideration of the cases. In this case there was no question of loss of earnings, as there was no evidence that the Defendant's earning ability had been affected by the accident. His claim fell under the heading of "pain, suffering, and loss of amenities." The amounts of the awards in the cases referred to the court by the parties were not of much guidance. The value of the Barbados dollar is somewhat fixed in relation to the EC dollar. What the TT or Jamaican dollars were worth at the times of the awards in the cases produced from those jurisdictions, is a mystery. The court will have to apply common sense in making an award to the Plaintiff in this case. The court must consider that the Plaintiff has been maimed for life. That has always been a serious thing. He will be adversely affected by this maiming in many ways, some apparent now and others not presently obvious. He will have to be cautious throughout his life. He will be less able to defend himself if under physical threat. He was put to a certain amount of pain and suffering through the carelessness of the Defendant. He will continue for the balance of his life to suffer inconvenience and discomfort as a result of the loss of the effective use of his eye. There is no way to accurately or objectively value "pain and suffering," or "loss of amenities." The court must do the best it can in the circumstances as they appear in the evidence. In all the circumstances of this case, an award of EC\$45,000.00 for pain and suffering and for loss of amenities seems appropriate. There will be judgment for the Plaintiff in the amount of \$45,000.00, with costs to be taxed if not agreed

I D MITCHELL, QC
High Court Judge