

SAINT LUCIA:

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D.1994

Suit No. 338 of 1993

BETWEEN:

DIONE JEANNE SIMON

Plaintiff

and

BERTHA SIMON

Defendant

Mr. D. Theodore for the Plaintiff
Defendant in person

1994: April 13 and 27;
May 11.

JUDGMENT

MATTHEW J. (In Chambers)

On May 19, 1993 the Plaintiff filed a statement of claim asking for damages for personal injuries caused by the negligent driving of the Defendant.

The Plaintiff alleged that she suffered a major avulsion laceration of her left forearm with open fracture of the radius and ulna. The Plaintiff alleged

that she remained in hospital for 26 days and had 7 operations while there. The Plaintiff also alleged that there was weakness and limitation of motion in her thumb as well as her wrist action. The Plaintiff further alleged that her forearm is weak and she may need to have her bone plates removed.

The Defendant was served with the writ of summons on June 1, 1993 and there was an affidavit filed by Arthur Isidore to this effect on July 9, 1993.

The Plaintiff obtained a judgment in default against the Defendant with damages to be assessed.

At the assessment the Plaintiff alone gave evidence. The Defendant did not give evidence neither did she cross-examine the Plaintiff.

The Defendant is the Plaintiff's sister.

On the day of the accident the Plaintiff who was then about 19 years old was a passenger in the vehicle driven by the Defendant. The Plaintiff said there was an accident and she suffered injuries. She attempted to tender in evidence medical reports by the doctor who attended her and the physiotherapist. I said I would not allow the evidence.

The hearing was adjourned to allow the Defendant who was not present

on the first day to appear. The matter was adjourned to April 27, 1994. On that day the Defendant appeared and said she had no objection to the admissibility of the reports.

The three reports were tendered in evidence. There was the surgeon's report dated December 7, 1992; a report from the Physiotherapy Department of St. Jude's Hospital dated February 4, 1993 and another undated report from the Physiotherapist in Castries.

The Plaintiff stated that she had seven operations while in hospital and she was not able to use the hand as before. She said she worked at Julian Hunte at the time of the accident as a secretary but she was not still working there because she was dismissed. She did not say why she was dismissed or when.

She said she is still able to type but not as before the accident.

She said she suffered a lot of pain at the time of the accident and the pain was intense for the first couple of weeks but became less so afterwards. She said she still feels pain when the weather is cold and when it rains.

She said that after the accident she worked temporarily at Lucelec and at the Methodist Church. She said she earned \$700.00 a month at Julian Hunte and she obtains the same salary with Caribbean General Insurance Ltd. where she is presently employed.

She said the Defendant's insurance company paid her hospital bills. She said she has metal and screws in her hand which have to be removed.

She said she spent money for transportation from Castries to Vieux Fort to receive therapy. She said before the accident she was in a dance group and she used to model for the Church when there were tea parties. She said she does not model now and she does not dance.

Counsel directed my attention to two ~~cases~~ ^{cases} Trinidad ^{cases} for my consideration in arriving at the quantum of damages. The cases are:

- (1) **Lied v Cannings Industries Ltd** decided on May 15, 1973; and
- (2) **Paragg v Bharath and Sankar** decided on January 7, 1974.

Counsel also gave two extracts from the "Lawyer" which indicated what the value of the judgments would have been in December, 1989.

Although Counsel submitted that the decisions were offered as a guide I am of the view that they could only be difficult guides; firstly because the economic and social conditions of Trinidad are so different to this country and also because the Trinidad currency is much lower. Perhaps these two factors react in opposing directions.

Be that as it may I read the cases. In **Lied** general damages of \$9214.00 was awarded to the Plaintiff but \$6214.00 was given in respect of

prospective loss of earnings and only \$3,000 in respect of pain and suffering. In this case the Plaintiff has not shown that she cannot earn as she did before like the Plaintiff in **Lied**.

In 1989 the amount for pain and suffering was doubled. I hope I can do better than that.

In **Paragg** there were two Defendants who attracted awards for personal injuries. In the case of the first Defendant the loss of earnings assessed at \$4,800 seems to have taken a big slice of the \$12,000 awarded. As I said before this Plaintiff has not proved loss of earning capacity. She was dismissed from her employment and I cannot speculate the reason. She is working now.

It seems as though **Paragg's** case was quoted in respect of the second Defendant's award for the adjusted amount only takes into consideration the second Defendant's award of \$15,000 as general damages. But how does that assist me when it does not say how that award is made up? General damages comprise:

- (a) pain and suffering/inconvenience;
- (b) loss of facilities/loss of amenities;
- (c) future medical and related expenses;
- (d) loss of earning capacity.

So quite apart from the fact that the decisions emanate from Trinidad and Tobago the cases themselves do not assist me too much on the essential items which I need to consider in this case.

Counsel has not drawn my attention to any local case and I must say it is a long time since I have assessed a personal injuries case in St. Lucia. Neither has he drawn my attention to any decision in an O.E.C.S. country. Only recently in a decision I gave I referred to cases from St. Kitts, Montserrat and Grenada to guide me as to an appropriate award.

The last personal injury case I remember doing was the **St. Vincent** case No. 258 of 1987 **Godfrey Gilbert and Carlton Samuel**. I gave judgment on October 19, 1990. In that case the Defendant, a top Civil Servant, had shot the Plaintiff, a teacher. The latter became a paraplegic and confined to a wheel chair. He continued teaching. I referred to **Cornilliac v St. Louis 1965, 7 WIR 491** where Chief Justice *Wooding* laid out the several conditions which the judge has to bear in mind in making an assessment of general damages. I set them out at page 15 of the judgment and I shall take note of all five of them accordingly in the application of this judgment.

The Plaintiff claimed four heads of special damages in her statement of claim. The cost of therapy of \$500.00 and \$10,000 for the cost of operations and medical treatment were not proved. She did not know what was the cost of the hospital bills and in any case the Defendant's insurers had paid for them. She never mentioned the cost of physical therapy in her evidence far less to prove what she had pleaded. She has sufficiently proved the amount of \$866.00 for loss of wages and \$500 for transportation. So for

special damages I award the Plaintiff \$1,366.00.

I shall now turn to the general damages, I had a good look at the Plaintiff's arm. For pain and suffering past, present and future I shall award the Plaintiff \$10,000. I shall also allow \$10,000 for future medical expenses. For loss of facilities, loss of amenities, the nature and extent of the injuries sustained and the nature and gravity of the resulting physical disability I award the Plaintiff \$25,000 making a total of \$45,000. I also award the Plaintiff costs in the sum of \$3,500.00.

A.N.J. MATTHEW
Puisne Judge