

SAINTE LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 OF 1977

BETWEEN:

FRANK DANIEL APPELLANT

VS.

GODFREY PAUL RESPONDENTS

JOSEPH EMMANUEL

Before: The Honourable Sir Maurice Davis, Q.C. Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: Kenneth Monplaisir for Appellant
Primrose Bledman for Respondents

1977 May 18, 23

J U D G M E N T

ST. BERNARD J.A.:

The appellant was seriously injured in a motor accident which took place along the Castries/Dennery Road on the 11th November, 1974. He was awarded the sum of \$7,500 damages against the respondents who admitted liability. The appellant contends that the damages awarded were inordinately low having regard to the nature and extent of the injuries suffered and also that the judge was erroneous in law when he failed to consider the probability of the risk of loss of the earning capacity before the estimated end of the appellant's working life and the effect of the injury on the chances of his obtaining further employment.

The appellant who was 49 years of age at the time of the accident and who was employed by the Land and Surveys Department as a driver of a Land Rover earned between \$80 and \$130 per fortnight depending upon the amount of overtime earned. According to the surgeon specialist who attended him, the appellant suffered severe injuries to the right arm and hand which resulted in gross deformity and curvature of the right limb, reduction of pronation and super-action, reduction of flexion in

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the little finger and the ring, middle and index fingers, and reduction of apposition of the right thumb. He stated that he still had pain on movement of the arm which would continue for the rest of his life and that it would get worse. He gave a reasonable estimate of the loss of use of the arm as 75%.

The appellant himself testified that although he was still employed as a driver he could not use his right hand and had to drive with his left hand but could not grip the steering as he wanted with that hand. He could not drive on roughroads and could only place the palm of the right hand on the steering wheel. At any time when his duties require driving on rough roads he could not perform them. He was not in a pensionable post. There was no evidence for the defence which accepted the medical report.

The trial judge accepted the fact that the appellant suffered severe injuries but stated that in his view the appellant was gainfully employed and suffered no diminution in earnings as a result of his injuries.

Counsel for the appellant submitted that the evidence showed that there was a substantial or real risk of the appellant's losing his present employment before the estimated end of his working life and as there was such a risk the Court should assess and quantify the present value of the risk of the financial damage the appellant would suffer if the risk materialises. He cited the case of *Moeliker v. A. Reyrolle & Co. Ltd.* (1977) 1 A.E.R. 9 in support. He contended that in any event the damages were inordinately low.

Counsel for the respondent although he conceded that the judge did not appear to have taken the loss of earning capacity into account submitted that the award was not inordinately low and should not be disturbed.

Both counsel referred to the case of *Cornilliac v. St. Louis* (1965) 7 W.I.R. 491 where the injuries received by the appellant in that case were perhaps more serious but of a similar nature and the Court of Appeal increased the award of general damages. In my view, on the evidence in the present case the appellant is unfit to drive and there

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is a substantial or real risk that he will lose his present employment at any time and certainly before the estimated end of his working life. When this event takes place he would have to seek some employment which does not involve the use of his hands. Prior to working with the department as a driver he had worked as a stevedore, mechanic and a shoemaker. All these occupations require manual effort and the appellant would be unable to perform them satisfactorily. There is a real likelihood that his earning capacity would be considerably reduced before the end of his working life. No mathematical calculation is possible in assessing and quantifying this risk but under this head I feel a reasonable estimate would be an additional \$7,500. Although I feel that the damages awarded under the other heads appear low counsel has not satisfied me that they were so inordinately low that they should be increased. Accordingly I would allow the appeal with costs and vary the judgment by substituting the figure of \$15,000 in place of the award of \$7,500.

(E.L. St. Bernard)
JUSTICE OF APPEAL

I agree.

(N.A. Peterkin)
JUSTICE OF APPEAL

I also agree.

(Sir Maurice Davis)
CHIEF JUSTICE