GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 3 of 1985

BETWEEN

CARMEN CHARLES - Appellant

and

1) DAVID MC QUEEN
2) DOYLE MC QUEEN - Respondents

Before: The Honourable Mr. Justice Haynes - President
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Liverpool

Appearances: C. Bristol, Q.C., for Appellant, Mrs. Grant with him.
E. Wilkinson for Respondents.

1986: July 21.

JUDGMENT

PETERKIN, J.A.

The Appellant on the 19th January, 1983, obtained interlocutory Judgment against the first Respondent for damages to be assessed in an action for Negligence. On 15th March, 1985, it was adjudged that the first Respondent pay to the Appellant the sum of $700.00 Special Damages and $15,000.00 General Damages. The first Respondent has since died, but substitution has been made by his Administratrix.

The Appellant has appealed against the award to her of $15,000 as General Damages on the following grounds:-

> The general damages awarded by the trial judge is inordinately low.
>
> The learned trial judge's assessment of damages is plainly disproportionate to and not reasonably commensurate with the gravity of the injuries suffered by the Plaintiff/Appellant.

/The relief......

The relief sought is an increase in the award of General Damages.

The Appellant who is a teacher employed by the Government of Grenada was on the 10th January, 1980, a passenger for reward in the first Respondent's bus No. 5465 then being driven by the Second Respondent. Through the negligence of the second Respondent the bus ran off the road and overturned, causing personal injuries to the Appellant. The injuries alleged by the Appellant are set out in the Particulars. at paragraph 3 of her Statement of Claim.

PARTICULARS OF INJURIES

(a) Lost tooth
(b) Blows on right side of face
(c) Injuried hip
(d) Spinal fracture
(e) Spontaneous abortion
(f) Dislocated ribs.

She was hospitalised for one month and five days where she was attended to by Dr. Rodriquez and Dr. Noel. It became necessary for her to wear a brace which proved to be painful, and she was referred to Dr. Robertson in Trinidad for surgery. She had a Harrington rod inserted. She was 3 weeks in a Nursing Home, and remained a further 2 months as an out patient. She has not resumed teaching, and still complains of pain in her back and head. She is a married woman and at the time of the accident was pregnant. She lost her baby as a result.

Dr. Rodriquez is no longer with us and so was not present to testify. The evidence, however, of Dr. Noel should be allowed to speak for itself in part.

> "I saw her on 12/2/80. On examing her, I found the uterus to be consistent with a 10-week pregnancy. I found the uterus to be smaller than the size expected. I consider it to be a missed abortion, in other words, the foetus had died in the uterus, it was still inside and was not growing.
>
> I took a conservative approach and decided to wait and see.

/She was........

> She was discharged home on 15/2/80 and was re-admitted on 19/2/80 at 1.35 a.m. with an incomplete miscarriage. The uterus was evacuated and the patient was discharged that very day.
>
> Apart from the gynaecological aspect, she was admitted to the hospital on the 10/1/80 approximately 1 month before I saw her initially. I know from being on the ward that she had sustained serious injuries allegedly from a motor accident. This aspect was dealt with by one of my colleagues.
>
> I examined the Plaintiff. On examination, I found that she had difficulty in breathing. Her breathing was abdominal in nature. I do not recall whether the Plaintiff was in a plaster cast when I evacuated the womb.
>
> I am definite that the injuries sustained in the bus accident could have caused the loss of the baby."

And again.

> "I was in consultation with Dr. Rodriguez from Cuba and I know exactly from him what was wrong with her.
>
> She had a fractured thoracic vertebra, she had had fractured ribs and these were responsible for her difficulty in breathing.
>
> Because I was not sure that the feotus had died, treatment consisted of bed rest.
>
> As a matter of fact, I cannot say when the feotus died.
>
> It is conceivable that the feotus could have died a few days before the accident.
>
> The injuries were serious enough to aggravate the situation. She was in a critical state, I say so because I saw it myself. By critical, I mean that her life was in the balance."

She was also seen by Dr. Friday, but this was many months later. The Judge's evaluation of the evidence is set out in his written Judgment, and in my view shows just how serious a view he took of her injuries. It needs to be repeated:-

> "I have no doubt that the plaintiff suffered intense pain and physical discomfort from her experience as well as some emotional and psychological trauma from the spontaneous abortion. She wore a brace, but that was extremely painful. Subsequent examination revealed the need for an operation to have a harrington rod inserted. Up until the 14th of March, 1984, she was not well enough to resume her occupation as a

/teacher.......

teacher and she still complained of a lot of pain in her /back and / in her head. She wears a brace now and then; no doubt as circumstances demand since from a cosmetic point of view, the spectacle can be unappealing. The tenor of her evidence suggests the necessity to wear that brace continually and perhaps indefinitely. Were the circumstances not so serious, one can conjure up the comic situation of the plaintiff dressed up in a brace to perform her conjugal duties. She was unconscious as a result of the accident, she lost some teeth; but most of all, she lost her baby.

On examination after the accident by Dr. Noel, a specialist in obstetrics and gynaecology, the foetus was dead. She had difficulty in breathing, which the doctor attributed to a fractured thoracic vertebrae and fractured ribs. Those injuries were serious enough to aggravate the obstetrical situation and she was in a critical situation, said the doctor.

Although the doctor said that it was conceivable that the foetus could have died a few days before the accident, in the absence of any evidence whatsoever to the contrary, I find that the dead foetus was a direct result of the accident."

Moving on from here the trial Judge, quite rightly in my opinion, adopted the criteria propounded by Wooding C.J. in Cornilliac v St. Louis, (1965) 7 W.I.R., 492. They are:-

(a) The nature and extent of the injuries sustained;
(b) The nature and gravity of the resulting physical disability;
(c) The pain and suffering endured;
(d) The loss of amenities suffered; and
(e) The effect on pecuniary prospects.

It is common ground that there was no loss under (e) above. The Appellant has continued to draw her salary.

Taking these criteria into account the learned Judge quantified the General Damages in the sum of $15,000.00.

During the course of the submissions by learned Counsel for the Appellant, the Court indicated to learned Counsel for the Respondents that they wished to hear him as they were all of the view that the award was inordinately low. Learned Counsel then in arguing the case for the Respondents submitted that the award was reasonable, and referred the

/Court.....

Court to a number of cases from Daly's Damages, including:

(i) Escalante v Ramdass, 2573 of 1970 - (Trinidad).
(ii) Patrick v Melville, No. 8 of 1964.
(iii) Browne vHunte, No. 807 of 1971 - (Trinidad)
(iv) Phillips v Morris, No. 521 of 1972 - (Trinidad)

While it may be useful to refer to other regional awards, it should be borne in mind that they must not merely be of the same nature, but also should be such that the injuries must have had similar consequences. I have not been able to find any such similar cases.

Where the award of damages is made by a judge sitting alone the Appellate Court will substitute its own assessment if it decides to interfere at all with the judge's award. It will interfere only for the reasons set out by Haynes, C. in Heeralall v Hack Bros., 1977, 25 W.I.R. at p. 122.

> "The principles this appellate court will apply in an appeal on a question of quantum of damages are clear and well-established. Because a finding on damages is generally so much a matter of speculation, of estimate and of individual judicial discretion, this court will not increase or decrease an award only because every member or a majority of it would have awarded something more or something less. If the judge in making his assessment applied a wrong principle of law, we can interfere, for example, if he took into account some irrelevant factor or left out of account some relevant one or gave too much or too little weight to it. But even if this court is unable to locate, isolate, and identify any specific error of law, it can still interfere. If we are satisfied that the award at first instance is in one direction or the other plainly disproportionate to or not reasonably commensurate with the gravity of the injuries suffered and the consequences entailed, then we may conclude that somewhere along the line there was a faulty estimate or an error of judgment, sufficient to justify our interference on the ground of excess or insufficiency."

These are the considerations which warrant Appellate interference. In the instant case, (it is difficult to say where because the Judge made a global award), I am of the view that somewhere along the line he fell into error. He made what I consider to be an entirely erroneous

/estimate.....

estimate of the damages to which the Appellant is entitled. I say so particularly because of the medical testimony in support of the Appellant's case, and, indeed, of his own evaluation of it.

Accordingly, it now falls to this Court to substitute its own assessment of the damages. I would allow the appeal and award to the Appellant under heads (a) and (b) the sum of $10,000 on each, and under heads (c) and (d) together the further sum of $10,000, making a total of $30,000.

The Appellant should in my view have her costs of this appeal.

PETERKIN, J.A.

I agree.

HAYNES, P.

I agree.

LIVERPOOL, J.A.