SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 72 OF 1992

BETWEEN:

MERLE KING

Plaintiff

and

EARL LATCHMAN

Defendant

[Jan. 17, 24; March 3, 30; Nov. 11, 2000]
[Delivered 16th January, 2001]

Appearances:

Mrs. Rene Baptiste for the Plaintiff.
Mr. Samuel Commissiong, Miss Mira Commissiong with him for the Defendant

In Chambers

DECISION

(ASSESSMENT OF DAMAGES)

[1] Adams, J: On the 23rd of December, 1989 the plaintiff who was then 39 years old was injured in a motor accident on the Windward Highway and sustained injuries therefrom. She was at the time a public servant attached to the Ministry of Finance. On 6th February, 1992 she issued a Writ claiming damages for negligence from the defendant. The defendant eventually conceded liability so that the issue left to be resolved is the quantum of damages to which she might be entitled. I restrict myself therefore in this segment of the judgment only to the assessment of such damages.

[2] The West Indian case of Cornilliac v St. Louis 7 WIR p. 491 provides a good starting point for an assessment of damages since it sets out the several considerations which a judge must bear in mind when making his assessment. Those considerations are:

(a) The nature and extent of the injuries sustained

(b) The nature and gravity of any resulting physical liability

(c) The pain and suffering which the injured person has sustained

(d) The loss of amenities suffered

(e) The extent to which consequentially the appellants pecuniary prospects have been materially affected.

[3] I shall deal now with the evidence of the plaintiff and the doctors, bearing in mind the heads referred to in the above paragraph for the purpose of making the assessment; but before doing so I should incidentally dispose of that aspect of damages referred to as special damages.

[4] In the case of British Transport Commission v Gourley 1956 AC at p. 206 Lord Goddard had this to say:

"In an action for personal injuries the damages are always divided in two parts. First there is what is referred to as special damages which has to be specially pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of the trial and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like and if the injuries suffered are such as to lead to continuing or permanent disability compensation for loss of earning power in the future"

[5] The special damages claimed by the plaintiff relating as it does to genuine expenditure incurred by the plaintiff, and arising out of the accident, have not

been challenged and accordingly I award the sum proposed by the plaintiff and conceded by the defendant of $3,775.16 (three thousand, seven hundred and seventy five dollars and sixteen cents).

[6] Moving on to general damages, I am required to make a comparison between the plaintiff's life before the accident with that after the accident so as to measure the extent to which her life has been disadvantaged but only in so far that any such disadvantage is a consequence arising from the accident. It is the evidence of the plaintiff and that of five doctors that must now be considered for the purpose of pursuing that objective.

[7] The plaintiff testified and I accepted her testimony that she had sustained injuries to her head, neck and knee. She swore and I accepted that after the accident she began the wearing of a cervical collar for a continuous period of three months and intermittently for two. I have no doubt that as a result of the accident the plaintiff experienced pain and suffering. The first doctor to have seen her was Dr. Maurice Robertson.

[8] Dr. Robertson did not testify before me but his medical report dated 9th November, 1990 was put into evidence. It suffices for the time being to say that the doctor's main finding related to the plaintiff's neck which had sustained what the doctor described as a ligamentous injury.

[9] Dr. Harold Rampersaud in a written report dated 12th March, 1991, which he sent to St. Vincent Insurance Limited on behalf of the plaintiff, expressed an opinion which goes to the very root of this assessment of damages, that "I have checked as is normal that these X-rays belonged to this patient to rule out mistakes. It was in fact the correct ones - Radiological evidence suggest a diagnosis consistent with cervical spondylosis which is a degenerative process and not caused by the accident."

[10] Dr. Rampersaud by virtue of this report and other evidence given by him was in layman's language saying that his diagnosis of the plaintiff's condition and in particular that relating to her neck led to his opinion that such condition was not the result of the accident. This doctor went on to say that the degenerative changes which he observed in the cervical spine were "without doubt one of life style exceptions which would have been responsible for the plaintiff's state of health"; again by this piece of evidence ruling out the accident as the cause, of what I would tersely describe as the "neck condition" of the plaintiff. Dr. Rampersaud had explained that degeneration of the bones would normally proceed with the aging process of a human being but exceptionally that degeneration would result from the lifestyle of the particular individual; he cited as examples the carrying of a load on the head, games such as netball, and trauma due to an accident. He ruled out (as I have already stated) accident in this case as the cause; though he did accept that the accident would have exacerbated the pre-existing condition of the plaintiff.

[11] Dr. Rosalind Ambrose described herself as a medical practitioner and a qualified radiologist certified by the Royal College of Radiologists of the United Kingdom. In giving her testimony she said that in 1989, her findings in relation to the plaintiff's condition and that of Dr. Miles a consultant radiologist from the United States of America were essentially the same. Dr. Miles had opined that there was no fracture of the neck and so did this witness. Dr. Miles spoke of degenerative osteoarthritis in the region of vertebrae C4 and C6 and so did this witness, Dr. Ambrose. Dr. Miles spoke of mild anterior subluxation of vertebrae C4 on C5 by 2 millimetres and this witness Ambrose confirmed that finding.

[12] In her report of findings dated 7th August, 1990, Dr. Ambrose referred to the "degenerative changes" as being "long-standing".

[13] It is this opinion as to longstanding degenerative changes given by Dr. Ambrose that Dr. Rampersaud suggests supports his testimony and opinion that there was a pre-existing condition (that is before the accident) from which the plaintiff was already suffering at the time of the accident and that her condition which she laments up to the time of this litigation was not primarily due to the accident.

[14] But in her report of 1st November, 1994 she referred to the condition of the plaintiff as the result of "premature degeneration". According to Dr. Rampersaud there is a substantial difference between what was called "longstanding degenerative changes" and "premature degenerative changes". The latter was simply something referable to change in the condition of bones at an earlier age than would be expected, while the former related to changes which existed not because of a natural process, but sometimes the lifestyle of the individual involving for example athletics and in a case such as this such changes might have been evolving for a considerable length of time. This difference in the evidence of the witness Dr. Ambrose to my mind considerably reduced the weight of her evidence since no explanation emerged for this explicit change of opinion.

[15] I return to the testimony of Dr. Maurice Robertson for the purpose of seeing whether he added weight to the strength of the Plaintiff's case and concluded that he manifestly did not. This witness's medical report indicated that in his view C5 to C6 of the plaintiff's neck were fractured. On this important factual concern he was contradicted by Dr. Rampersaud who saw no such fracture and by Dr. Miles the consultant radiologist who like Dr. Rampersaud found none. It is important to note that Dr. Ambrose agreed with both of her colleagues Rampersaud and Miles on this aspect of the matter.

[16] Dr. Cecil Cyrus is to be commended for the frankness with which he confessed to errors he made in relation to the opinion given by him as to the condition of the plaintiff. It is appropriate to quote him verbatim -

"There was no X-ray report as there was no radiologist at the time. The result is that my finding at paragraphs 1 and 2 under the caption "X-ray examination" may be questionable" (underlining mine).

Then later:

"I would say my report exhibit C4, in the last line thereof worded "Healed fracture of the bodies of C5 and C6" is wrong" (underlining mine).

He admitted that the reference to "fracture" and "healing" was the result of a "not accurate opinion". All of the remaining doctors had testified that there was no fracture in the vertebrae of the plaintiff's neck.. Having in his report not made any reference to pre-existing authorities he said he would say there was none, and that he would "bow to the contrary evidence of Dr. Ambrose". Dr. Cyrus went on to say that "in relation to paragraphs 1 and 2 of exhibit C4 i.e. his report "I would concede that there is difference between Dr. Ambrose's opinion and mine. I may be wrong".

[17] These answers of Dr. Cyrus seemed to indicate that he was himself uncertain of some of his findings and therefore removed the sting that might otherwise have been found in the plaintiff's case.

[18] My conclusion has been, that having regard to the evidence of the doctors I am unable to say that it preponderates in favour of the proposition that the accident was the cause of the degenerative changes. Like Doctor Rampersaud I am prepared to conclude that the accident more probably than not aggravated a pre-existing injury from which the plaintiff seemingly suffered before the accident.

[19] Let me say at this stage that I am very mindful of the injuries sustained by the plaintiff and I do not for one minute doubt the truthfulness which dominated her testimony. I accepted without reservation that the pain she spoke about was real, and that largely as a consequence of her motor accident she is restricted to sleeping on her back, and needs a special pillow to support her neck when she

sleeps. I accepted her evidence that office work by which she makes her living imposes discomfort upon her. She has been unable to continue her sewing, and unable to attend sports as a spectator. A disfigurement, she swore, is now to be seen at the back of her neck. Her life is now devoid of sexual activity. Surely the amenities of her life have been diminished considerably.

[20] It is against this background that I must now award general damages and in doing so seek to "measure the immeasurable" as Romer LJ described it in Rushton v National Coal Board 1953 1QB 495.

[21] In considering general damages I am mindful of what was said by Chief Justice in Aziz Ahamed Ltd v Raghunan Raghuba 1967 12 WIR 352:

> "In a jurisdiction such as ours in which assessments of general damages are made by judges without the aid of juries it has become accepted principle that the Courts should strive for a high measure of uniformity of awards as is reasonably practicable....."

Fortunately for the plaintiff the nature of the job she does (that of a public servant) has ensured her continuance in office and understandably no loss of earnings has been established; but the loss of amenities is considerable and must bear influence on the award.

[22] I have looked at the Caribbean authorities provided by Counsel, and dealing with the quantum of damages, while bearing in mind that socially and economically the Caribbean region is not homogenous.

[23] I have looked at the cases coming out of this jurisdiction of Saint Vincent and the Grenadines cited by counsel, namely, Roslyn Harry v Philmore Grecia and Joseph Grecia Suit No. 447/94 and Imperial Optical Company (St. Vincent and the Grenadines) Ltd. and Janilla Bradshaw v Osborne Ross Suit No. 241/92 with the principle of uniformity of awards in mind.

[24] Having regard to all that I have said I consider an award of twenty five thousand dollars to be appropriate in the circumstances of this case. Costs in favour of the plaintiff are to be taxed if not agreed.

Odel Adams

HIGH COURT JUDGE