

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CIVIL SUIT NO. 516 OF 1994

BETWEEN:

**EILETT CHARLES
SUSANNA FORDE
DE SHAWN CHARLES
(a minor by his next friend
PATRICIA CHARLES)**

Plaintiffs

v

**SANDFORD MOFFORD
VIVIAN JOHN**

Defendants

Appearances:

Ms. Nicole Sylvester for Plaintiffs

Mr. J. Delves for Defendants

[1998:15th June, 16th November; 1999: 2nd February, 28th September,
1999: 26th November, 2000: 30th March, 3rd & 10th April]
[Delivered 2001: 19th January]

In Chambers

JUDGMENT (ORAL)

[1] **Adams J:** This is an assessment of damages which the Court is undertaking by virtue of an order made on the 11th of October, 1999 by Mitchell J in which he ordered that liability should be determined first in open Court and the issue of quantum be brought up in

Chambers in the event that the plaintiff should succeed on the issue of liability.

- [2] The Court also ordered that the affidavits in support of the assessment of damages should exhibit all documents intended to be produced and such affidavits to be sufficiently extensive so as to serve as the evidence in chief of the deponents, they being only available for cross-examination.
- [3] The up-shot of that was that instead of having a trial on the question of liability Counsel for the defendant Mr. Delves admitted liability and I proceeded immediately to the question of assessment of damages.
- [4] Now there were three plaintiffs here and awards have been made in relation to all three of them. The first-named plaintiff, i.e. Eilet Charles is awarded here, damages in relation to her motor vehicle, i.e. in effect the cost of repairs to the motor vehicle which amounts to \$6,510.85. In relation to loss of use of the car I have awarded the sum which relevant documents suggested, if only for the reason that no challenge was made by Mr. Delves; that amount of \$7,600.00 represents the use of a car for 76 days at \$100.00 a day. It may well be that Mr. Delves forgot that these deponents' affidavits, it had been agreed, would take the place of evidence so that when the deponents appeared in the case to be cross-examined, though he cross-examined them, no challenge was made to the plaintiffs' evidence as to what had been the loss of use, in financial terms, of her vehicle.
- [5] Similarly, in relation to clothing which she suggested had been damaged in the course of the accident no challenge was made by Mr. Delves, although he cross-examined this witness; accordingly I think that the amount of special damages claimed should stand. The total amount of damages would be the figures in relation to the motor car of \$6,510.85; loss of use \$7,600.00; damage to clothing \$100.00 and two medical bills amounting to \$154.00. I have not computed what the total is but those are the figures that make up the special damages.
- [6] Now this lady Eillet Charles received some injuries which are set out in her affidavit and which are not of major consequence. They

involve swelling of the right side of the upper lip and some pain according to her of the arms, legs and the lower back. In relation to the award of general damages, having regard to the injuries which she suffered, I do not think really that she should be given more than I would say \$3,000.00. I make that my award of general damages.

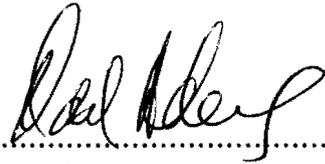
[7] Now the second-named plaintiff Susanna Forde received injuries which were somewhat graver than the first-named plaintiff with whom I have just dealt. In relation to her special damages, she expended the sum of \$70.00 in medical prescriptions and the sum of \$220.00 for traveling expenses to see the doctor and claimed that she had to have a helper for the two months she was unable to attend work. She said that the helper cost her \$160.00. Her claim for the cost of two washing machines as a result of the accident (one of which she suggested was a hand operated machine, that went bad causing her to buy a second one) having been put forward was withdrawn by her lawyer as being too remote to be added to special damages; accordingly the special damages awarded to her are restricted to those figures just mentioned.

[8] As I indicated she suffered greater injuries than the No. 1 plaintiff Eilette Charles. The doctor expressed the opinion that the paracervical muscles were swollen and markedly tender. He spoke of some hyperextension injury to the cervical spine and he said that she needed some treatment of a physiotherapeutic nature. She had been suffering for at least about two months. I believed her when she said that she had complained of severe pain, and genuinely so, in the neck and was getting headaches followed by dizziness. She was away from work for a period of about two months.

[9] She was also seen by Doctor Debnath and he seemed to be of the conclusion that she was honest when she said she had lost the capacity to grasp at articles when she wanted to pick them up. I should have added that Dr. Regisford also said that the range of motion of the cervical spine was reduced. That obviously suggests that something had gone wrong with the cervical spine reducing its capacity for motion, and that the muscles there was swollen in spasms and markedly tender. That is essentially the evidence in relation to this witness and in relation to general damages awardable to her.

- [10] I have looked at some West Indian cases which have been submitted for consideration by Ms. Sylvester for the plaintiffs, and in relation to this lady, Susanna Forde and I am of the view that \$5,000.00 general damages is an appropriate award bearing in mind the matters which the Judge is required to examine and which are to be found in the case of Cornilliac vs Louis 7 WIR 359 and which sets out the different headings, i.e. the nature of the injury, the gravity of the injury, the pain and suffering, the loss of amenities and so on under which an award is made. I award that amount of \$5,000.00 as general damages in favour of this lady Susanna Forde.
- [11] The last plaintiff is a minor. He was seven years old at the time, DeShawn Charles. He was in the car at the time of the injury. He suffered a blow on the head, and a bruising of the forearm. He testified that he was getting more than the usual headache but by the time of the hearing of the assessment of damages he said that the headaches were not so bad. I am not prepared to treat the headache as something which is substantially the result of the accident for a longer period than maybe two or three weeks; but I am mindful that he must have suffered some pain. He went to the doctor and the first plaintiff, Eilett Charles, she swore on his behalf, as he was a minor that he had expended a certain sum of money as part of his medical examination and that amount is \$290.40. So I award \$290.40 to young DeShawn Charles as medical expenditure and therefore as special damages.
- [12] There is no evidence of any loss of amenities in relation to this young man so I make only a nominal award of general damages of \$50.00.
- [13] That then is the evidence upon which I have acted on arriving at the special and general damages in relation to the three plaintiffs.

[14] I award costs to be paid by the defendants to the plaintiffs to be taxed if not agreed.



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Odel Adams
HIGH COURT JUDGE