

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO: 571 OF 1998

BETWEEN:

Halley Glasgow

Plaintiff

and

Cameron Veira

And

Veira Agencies Ltd

Defendant

Appearances:

Mr.. Joseph Delves for the Plaintiff

Ms. Nicole Sylvester for the Defendant

2001: 16 and 23, March

Delivered April 11

DECISION

- [1] **WEBSTER, J. (acting):** On August 22, 1998 the Plaintiff who was then 30 years old, was injured in a motor vehicle accident on the Leeward Highway. He was seated in the passenger seat of a Honda motor car driven by Orin Kelly. A motor car owned by the Second Defendant and driven by the First Defendant emerged from a minor road onto the Leeward Highway and collided into the Honda motor car. The Plaintiff was thrown forward and his head struck the windscreen causing the windscreen to break. He suffered injuries to his forehead and neck.
- [2] On December 29, 1998 the Plaintiff issued a Writ against the Defendants claiming damages. The Defendants eventually conceded liability and this decision is restricted to assessing the Plaintiff's entitlement to damages.

- [3] The main injury that the Plaintiff suffered, and the only one that is pleaded, is the injury to his neck. It is not disputed that this was a whiplash injury. I found the Plaintiff to be a truthful witness, not prone to exaggerate the extent of his injuries.
- [4] The Plaintiff's evidence is that he was treated on the morning of the accident at the Accident and Emergency Department at the Kingstown General Hospital. He was discharged and ordered to wear a soft collar around his neck. He suffered intense pain for the next three days. The pain became moderate but would not to away. It was more intense when he did certain things like turning his head. He had problems sleeping.
- [5] Concerned about the lack of progress with his recovery, the Plaintiff consulted Dr. Maurice Robertson on September 11, 1998. He visited Dr. Robertson four times in 1998. On the second visit Dr. Robertson prescribed a hard cervical collar, to be work continuously for three months. The Plaintiff's condition gradually improved and at the trial his only complaints were that at times he has problems looking upwards and bending over. This affects him in his work as a cabinet maker. He could not work for four months.
- [6] The Plaintiff had to stop playing lawn tennis after the accident. He was able to resume playing in March 1999.
- [7] Counsel for the Defendants objected to the admission of Dr. Robertson's report on the ground that the Plaintiff did not make him available for cross-examination. I am satisfied that Counsel for the Plaintiff made every effort to make Dr. Robertson available. Scheduled hearings for the assessment had to be adjourned to try to accommodate Dr. Robertson. Just before the commencement of the hearing on March 16, 2001 Dr Robertson requested an additional fee of \$1500.00. The Plaintiff could not afford to pay this fee and opted to proceed with the trial without the benefit of his expert being available to give oral evidence. In the circumstances I admitted his report into evidence, mindful of the fact that he was not cross-examined.

[8] I have had regard to the considerations for the assessment of damages in **Cornilliac v. St. Louis** [] 7 WIR 491 and I will assess general damages under the following heads:

- (a) Nature and extent of injuries sustained.
- (b) Pain and suffering.
- (c) Loss of amenities.

There is no acceptable evidence of resulting physical disability and the Plaintiff's pecuniary prospects are not affected.

[9] In assessing general damages I am guided by what was said by Chief Justice [] in **Azig Ahamed LID V Raghunan Raghuba** (1967) 12 WIR 352at page []:

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

[10] Accepting this principle I am guided firstly by the decisions of this Court dealing with whiplash neck injuries. Decisions of other Caribbean states cited by Counsel for the Plaintiff will only be referred if I am not satisfied that the local cases provide good guidance.

[11] **Charles, Forde and Charles v Mofford and John** (Suit No. 516 of 1994) is a decision of Adams, J. delivered on January 19, 2001. The second Plaintiff suffered a neck injury. She suffered severe pain and dizziness. She as away from work for two months. There was some limitation of movement of her cervical spine. She was awarded \$5000.00 general damages.

[12] **Roslyn Harry v. Grecia and Grecia** (Suit No. 449 of 1994) is a decision of Mitchell, J. delivered on June 10, 1997. The Plaintiff suffered a whiplash injury resulting in osteoarthritis. She spent one month at home after the accident. At the time of trial, some three years after the accident, she was still suffering severe pain, and continued to wear a

cervical collar at times. She was awarded \$25,000 general damages for pain and suffering and loss of amenities.

- [13] **Imperial Optical Company (St. Vincent Limited) and Jannifa Bradshaw v Osborne Ross** (Civil Suit No. 241 of 1982) is a decision of Mitchell, J. delivered in April 1987. The Plaintiffs suffered injuries including a sprained neck, (whiplash) concussion, cuts on her knees, haematoma on the forehead, and injury to one ankle. She suffered from headaches, dizziness and heavy periods. She developed osteoarthritis secondary to the whiplash injury. At the time of trial six years after the accident she was still suffering from her injuries. The trial Judge described the plaintiff's injuries as-

"...significant injuries, some of which are permanent, which make for a life of discomfort".

She was awarded \$10,000 for pain and suffering and \$10,000 for loss of amenities.

- [14] **Merle King v Earl Latchman** (Suit No. 72 of 1992) is a decision of Adams, J. delivered on February 16, 2001. The Plaintiff's had a pre-existing condition which was aggravated by the ligamentous neck injury she suffered in the accident. She wore a cervical collar continuously for three months and intermittently for two. She continued to suffer from her injuries up to the time of trial, eleven years after the accident. She was unable to continue her sewing and attend spectator sports. She is also disfigured at the back of her neck. The Judge found that her life is now devoid of sexual activity. She was awarded \$25,000 general damages.

- [15] **Samuel Barnwell v. Henderson Matthews** (Suit No. 395 of 1995) was decided by Cenac, J on May 2, 1996. The Plaintiff suffered a serious whiplash injury. He lost consciousness for forty minutes. At the time of trial two years after the accident he was still experiencing some dizziness and restricted movement. Secondary arthritis developed which could cause the pain to continue for several years. The Plaintiff also suffered a dislocated shoulder with resulting arthritis. The Plaintiff was a farmer, and because he could no longer function properly he had to employ two assistants. The trial judge awarded \$40,000 general damages. The figure is not broken down, but it would have included

compensation for the neck and shoulder injuries, and the fact that the plaintiff had to employ two assistants.

[16] I am satisfied that the injuries suffered by Mr. Glasgow are not as serious as the injuries suffered by the plaintiffs in the cases cited, except the Plaintiff in Suit No. 516 of 1994. I would award him \$15,000 for pain and suffering and 5,000 for loss of amenities.

[17] There is no dispute regarding the special damages and the following amounts are allowed.

[18] The Plaintiff will have as costs to be taxed if not agreed.

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Paul Webster
High Court Judge [Ag.]