

IN THE SUPREME COURT OF GRENADA AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2000/ 0128

BETWEEN

EUGENIA CHARLES

Claimant

AND

CECIL GILBERT

Defendant

Appearances:

Mr. I Sandy for the Claimant

No Appearance for the Defendant

2002:March 12

2002: May 2

2002: July 15

DECISION

JUSTICE CHARMAINE PEMBERTON

[1] By Summons filed on 12th March, 2001, the Plaintiff applied for an Order that damages be assessed for personal injuries as a result of a motor vehicle accident, which took place on 22nd May, 1999 in Perdmontemps, St. David's, Grenada. The Claimant was a pedestrian

and was at the side of but off the road at the time of the accident. On 5th February, 2001 a judgment in default of appearance was entered on behalf of the Plaintiff with damages to be assessed.

[2] The Court heard the evidence of the Claimant and one witness, her son and took into account the following factors in assessing General Damages for the injury suffered by the Plaintiff.

[3] **NATURE AND EXTENT OF INJURIES SUSTAINED**

The Statement of Claim particularizes the Plaintiff's injuries as follows:

- Open fracture, left distal fibula;
- Multiple superficial abrasions;
- Deep abrasions to left thigh and leg;
- Lacerated wound to left leg;
- Extensive loss of skin and exposure of the peroneal muscle and tendon and the distal fibula

The Claimant testified that she suffered injuries to her leg, neck, back, waist and chest but that the injuries to her neck, back, waist and chest were not as bad as those to her leg. The Claimant testified that her foot was X-rayed five times and that the doctors performed surgery on her leg three times. She remained in hospital until August of that year.

[4] **NATURE AND GRAVITY OF THE RESULTING PHYSICAL DISABILITY**

The Claimant produced evidence from a Consulting Physician by way of his report dated 21st August, 2001. The Report stated that the Claimant presented the following:

- Stiffness in the left leg and pain and stiffness in the left knee and left ankle;
- Cannot move around and has a lot of difficulty with household chores of sweeping, mopping, cooking and washing;

- Gross depigmented scarring of the left leg on the lateral aspect which was 45 cm long and varied in width from 1 cm to 9 cm;
- Reduced range of motion of the left ankle for dorsiflexion left 15 degrees right 25 degrees and the left knee had a 10 degree flexion contracture due to scarring.

It may be worthwhile reproducing that part of the report titled "Prognosis". It states in part:

She (has) been left with a left knee and a left ankle which have a reduced range of motion due to extensive permanent scarring on the lateral aspect of the left leg.

There is no clinical assessment of the permanent partial disability suffered by the Claimant, but the evidence suggests that there has been some suffered by the Claimant.

[5] **PAIN AND SUFFERING**

The Claimant testified that at the time of the accident, she experienced severe pain and that her injured leg was bleeding profusely. She was hospitalized for a period of three months during which time the excruciating pains to the injured leg continued. Apart from the pain, she felt frightened as though she could not walk again. She said that she was given pain killers to help with the pain. She still suffers from pain and that she treats with pain killers. She now walks with a limp.

[6] **LOSS OF AMENITIES**

At the time of the accident the Claimant was an active 64 year old woman. She used to cultivate a kitchen garden, wash, cook and clean her house for herself. She assisted others as well with household chores. She used to walk from St. Paul's to the capital St. George's and back a distance of approximately 4 miles every morning as part of her daily exercise. She used to visit her friends and attend church regularly. The Claimant told the

Court that because of the pains in her foot, she cannot walk properly. She cannot go to church anymore and cannot do the things she used to do and enjoyed doing. She stated that she was not as outgoing as she used to be. She does not visit her friends, as she is ashamed of the scar on her leg, which is unsightly.

[7] **EFFECT ON PECUNIARY PROSPECTS**

The only evidence presented to the Court was that the Claimant used to receive an income of \$400.00 per month when she assisted others with household chores. Bearing in mind the Claimant's age it is not envisaged that this activity would have continued for more than another 6 years. Taking into account the fact of an accelerated lump sum payment and vicissitudes of life the Court will apply a multiplier of 3 to a multiplicand of \$400.00 per month giving a total of \$14,400.00.

[8] **SPECIAL DAMAGES**

Special Damages must be specifically pleaded and proved. According to Lord Goddard in **BRITISH TRANSPORT COMMISSION v GOURLEY [1956] A.C. 185 at p. 206**, special damages "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". The Claimant's son testified as to the amount of money that he expended on his mother during her period of incapacity as a result of the accident. Unfortunately, he could not substantiate the amounts with bills or receipts, since he said that that period was inordinately stressful for him and the receipts have been misplaced.

[9] In the case of **GRANT v MOTILAL LOONAN LIMITED (1988) 43 W.I.R. 372** the Court of Appeal in Trinidad and Tobago was faced with the issue of the Plaintiff's inability to produce receipts to prove damages pleaded. The case arose out of a claim for loss of chattel. At the hearing for assessment, the learned Master disallowed the claims as stated but allowed an *ex gratia* payment on the ground that the value of the articles was not strictly proved. In allowing the appeal, the learned Chief Justice Bernard held that although

special damage must be strictly pleaded, particularized and proved strictly, the appellant had prima facie established the cost of the articles and the respondent did not challenge the amounts. The court went on to say that the only courses open to the Master at the assessment hearing were to accept the claim as put forward or to apply her mind judicially to each item and its value. Since the values ascribed were not unreasonable, the claim was allowed in full. This court will be guided by this approach. The sums given in evidence were as follows:

• Cost of medical treatment	\$1,500.00
• Payment for nursing care	\$2,100.00
• Cost of Crutches and walker	\$1,600.00
• Loss of earnings from the date of the accident, 22 nd May, 1999 to the date of discharge from hospital at \$400.00 per month	\$1,200.00
Total	\$6,400.00

In this case the Defendant did not appear at the hearing so that the figures given were unchallenged. On the review of each item claimed, the Court accepts the sums as claimed and therefore allows them.

[10] Counsel for the Claimant gave an extensive and in depth review of authorities coming from the Commonwealth Caribbean. These included **TYSON v JUGMOHAN (1972) 21 W.I.R. 485** (High Court, Trinidad and Tobago); **JOHN v SKEETE (1970) 17 W.I.R. 7** (Court of Appeal, Trinidad and Tobago); **GRAVESANDY v MOORE (1986) 40 W.I.R. 222** (Court of Appeal, Jamaica) and **GRANT v MOTILAL MOONAN LTD & ANOR. (1988) 43 W.I.R. 372** (Court of Appeal, Trinidad and Tobago). The Court has examined the following authorities, **PUBMARYA BABOOLAL v POORAN NARINE H.C.A. 2821 of 1990** a decision of Bharath J. of the High Court of Justice of Trinidad and Tobago and **GAFFAR v PADMORE H.C.A. S 953 of 1997** another decision of the High Court of Justice of Trinidad and Tobago of Bereaux J.. In those cases the Court awarded the Plaintiffs the sums of EC\$38,000.00

(adjusted) and EC\$20,587.00 (adjusted) respectively for pain and suffering and loss of amenities. In the former case the permanent partial disability was assessed at 15 % to increase to 35% seven years later and in the latter, the permanent partial disability was assessed at 40%.

[11] As this Court has said in another jurisdiction, it is settled law that in an assessment of damages, the court need not set out arithmetical calculations under separate heads of damage provided that all the relevant heads under which damages are awarded are taken into account and the correct principles applied: *per Wooding C. J. CORNILLIAC v ST. LOUIS op cit. page 494*. The Court adopts that approach in this matter as well.

[12] Counsel has proposed, based on the authorities that the Claimant should receive the sum of \$25,000.00 as general damages. The Court will award the Claimant in this case the sum of \$20,000.00 as general damages for pain and suffering and loss of amenities.

[13] **INTEREST**

PRE JUDGMENT INTEREST

- On Special Damages, interest at the rate of 3% per annum from the date of the accident 22nd May, 1999, to the date of the default judgment, 5^h February, 2001;
- On General Damages for loss of amenities and pain and suffering at the rate of 4% per annum from the date of service of the writ, 27th July, 2000 to the date of the default judgment, 5^h February, 2001

POST JUDGMENT INTEREST

- On Special Damages and General Damages for pain and suffering and loss of amenities as calculated above, at the rate of 6% per annum from the date of the judgment to the date of payment.

[14] IT IS THEREBY ORDERED AS FOLLOWS:

The Defendants to pay to the Plaintiff damages under the following heads:

- General Damages comprising pain and suffering and loss of amenities in the sum of \$20,000.00 together with interest at the rate of 4% per annum from the date of service of the writ to the date of the consent judgment;
- General Damages for loss of pecuniary prospects in the sum of \$14,400.00. No interest to be awarded.
- Special Damages in the sum of EC\$6,400.00 together with interest at the rate of 3% per annum from the date of the accident to the date of the consent judgment;
- Statutory Interest on the global figure at the rate of 6% per annum from the date of the consent judgment until payment;
- Costs to be paid by the Defendants to the Plaintiff in the sum of \$5,000.00 EC.

The Court gratefully acknowledges the assistance of Counsel.

Charmaine Pemberton
High Court Judge.