

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO: 1041 of 2002

BETWEEN

CHRISTOPHER FLERMIUS

Claimant

V

(1) ANDRE SOLOMON
(2) FIMBER LOUIS

Defendants

Appearances:

Mr. Francois for the Claimant
Ms. Anthony for the Defendants

2003: May 29
June 3

JUDGMENT

[1] **Shanks J:** This is an assessment of damages following a motorcycle accident on 26th October 2001. The parties helpfully agreed special damages in the sum of \$24,147 which has already been paid. This assessment relates to general damages for pain suffering and loss of amenity and future financial loss.

Facts

- [2] Mr Flermius is now 31 and was 29 at the time of the accident. In the accident he suffered a compound comminuted fracture of his right tibia and fibula. The first report of Mr St Rose (dated 26 October 2001 but it must have been made later) records that there was bone loss and the existing fragments were reduced and fixed with external fixators which were left in place for two months following which a knee plaster cast was applied. At the time of the report Mr St Rose anticipated bony union about nine months after the accident and stated that bone infection was a real possibility in the future. He assessed the disability at 60% for a period of nine months during which there would be pain and discomfort and an inability to work and in the long term some leg shortening and extensive scarring with a permanent disability of 30%.
- [3] In his second report dated 10th March 2003 Mr St Rose states that the tibia has not re-united and that there has indeed been infection and that Mr Flermius will need a bone grafting operation which will cost \$5,000. Following the surgery there will be a further nine months of inability to work. Two inch shortening to his right leg will be permanent and will produce an obvious limp. The report states that a successful outcome of the bone grafting operation will allow him to continue his trade as a carpenter.
- [4] I sought further clarification from Mr. St. Rose as to the chances of a successful outcome of the bone grafting operation which he supplied in a hand-written report on 2nd June 2003. It seems Mr. St. Rose is optimistic that the operation will have a

successful outcome and that bone union will result and full weight bearing will be a real possibility allowing Mr. Flermius to perform "full actions as a carpenter". He also states that the procedure can be done in the very near future.

[5] Mr Flermius came to court. He was using crutches and I understand that he normally uses a wheel chair to get around. He showed me the lower part of his right leg. To my untrained eye it looked in bad shape.

[6] Mr Flermius's trade, as stated, is carpentry. Before his accident he worked free lance for Peter's Construction. The proprietor of that business, Peter Mercier has written in a letter dated 5th March 2003 that he was a definite asset to the company and "a very skilled carpenter". He expresses the view, which I accept, that the 30% permanent disability which Mr Flermius will undoubtedly suffer will prevent him working to the full extent of his abilities in construction work. The parties were agreed that his average monthly income before the accident was \$1,575.

[7] He will undoubtedly be prevented from playing his main sport, basketball, as a result of the accident.

Pain, suffering and loss of amenity

[8] I turn to pain suffering and loss of amenity. By the end of the hearing counsel were not too far apart on what they said the appropriate figure was. Mr Francois for the Claimant said it was \$55,000 and Ms Anthony was prepared to accept a total global figure of \$45,000, though she told me that the court is encouraged

these days to split awards between pain and suffering and on the one hand and loss of amenity on the other. The most helpful case on this aspect of the assessment was produced by Ms Anthony: it is *Paul v St Croix* case no 225/1988, a decision of the current Chief Justice made on 2nd August 1989. In that case there were similar injuries and the award was \$30,000. I think there must be a fair amount of allowance for inflation and increased living standards since 1989 and, taking account of the particular circumstances here, including the need for a further operation, I would assess these damages at the figure suggested by Mr Francois in court, namely \$55,000. I am afraid I do not feel able to divide this award in the way suggested by Ms Anthony.

Future financial loss

[9] There is no doubt that the Claimant will be prevented from working for the next nine months. For this he should be compensated for nine months loss of earnings: that is \$14,175.00 (\$1,575 x 9). The difficulty relates to assessing his financial loss thereafter. He will undoubtedly be left with a limp and a right leg two inches shorter than the other and with a permanent 30% disability. Common sense and the opinion of Mr Mercier indicate that this will put him at a disadvantage when working or seeking work as a carpenter and probably in any other similar line of work since, although he will be able to handle tools, he will not be as agile and able to move about a building site as others. It seems to me the only way to compensate for this, given all the uncertainties, is by the court awarding a global sum as *Smith v Manchester* type damages. Taking account of all the relevant material I have, I assess these damages at a global figure of

\$60,000. I reach this figure on the basis that it is $30\% \times \$20,000 \times 10$, but I stress that there is nothing scientific about that approach and it should not be an automatic rule, as I think Mr Francois was suggesting in his skeleton argument, that a 30% disability entitled one to damages representing 30% of earnings as at date of accident projected into the future.

Outcome

[10] Damages are therefore assessed at \$134,175.00 (\$5,000 for the operation, \$55,000 (para 8) and \$14,175.00 plus \$60,000 (para 9)). I will also award interest on the damages for pain suffering and loss of amenity at the rate of 6% from the date of service of the claim form (November 2001) to the date of this assessment, ie \$4,950.00 ($\$55,000 \times 6\% \times 1.5$) in accordance with the practice followed by Singh JA in the case of *Auguste v Neptune* (civil appeal 6/1996, 24 November 1997).

[11] There will therefore be judgment for the sum of \$139,125.00 inclusive of interest. I would propose to award the Claimant prescribed costs at the appropriate rate which I hope counsel will be able to agree.

**Murray Shanks
High Court Judge(Ag.)**