

SAINT LUCIA

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SUIT NO: 571 OF 2001

BETWEEN

AUGUSTIN TATE

Claimant

and

RICKY PLANT

Defendant

Appearances:

Ms. S. Greer for Claimant

Ms. M. Anthony- Desir for Defendant

2003: June 4 & 6

JUDGMENT

[1] This is an assessment of damages arising out of an accident which happened on 26th December 1998 when the Claimant was run down in the street by a vehicle being driven by the Defendant. I have been provided with affidavits of the Claimant dated 19th July 2002 and 23rd April 2003 which exhibit medical reports dated 26th December 1998, 14th April 1999 and 16th July 1999; the Claimant was briefly cross-examined by Ms. Anthony-Desir; and I have received characteristically helpful submissions from Ms. Greer for the Claimant and Ms. Anthony-Desir for the Defendant.

Facts

- [2] The Claimant was 48 at the date of the accident. He was taken to Victoria Hospital in a coma. He remained unconscious until 31st December 1998 and was discharged on 1st January 1999. He was diagnosed as being comatose and having a head injury and as having suffered abrasions over both knees, left calf, left shoulder, right arm, nose and upper lip and a 5 x 6cm avulsion of scalp over the right temporal region. There was also a 2cm laceration to the mid-line over the mandible and an abrasion over the right side of the chest and abdomen.
- [3] On discharge from hospital he was still suffering severe pain in his neck, shoulders and left leg and chest. He could not walk and needed to take strong pain killers. On a review of the x-rays he was found to have a fracture of the left fibula. This fracture in due course mended itself. He continued to suffer severe pain particularly in his neck and in due course a fracture in C1 and C2 of his spine was also diagnosed and he was referred to Mr. St Rose. On 14th April 1999 Mr. St Rose reported that if the fracture caused instability (which he expected it to do) there would be chronic pain which would necessitate an "atlanto axial fusion". The doctor also said that the injury would produce a permanent 20% disability and a temporary 60% disability over six months which would prevent work.
- [4] The Claimant states that he took a second opinion in relation to the operation on his back and was told that he would need to go to the USA for it and that it would cost US\$20,000. He could not afford such a sum so he went to Martinique in (I think) July 1999 where he was fitted with what he describes as "a very strong brace". This has substantially improved his condition.

- [5] For the first three years after the accident he had headaches 24 hours a day; now he only gets them once or twice a month and has occasional bouts of pain in the neck which last for up to a day. However, he has developed an aversion to loud noises and cannot indulge in his hobbies which included cricket, playing steel pan and participating in jouvert. He is also left with scars on his head, face, hands and legs. Driving or walking for long periods cause him pain in the neck and headaches which have make it difficult for him to work as he did before.
- [6] As to work, at the time of the accident he was employed as Office Manager at the Star Agency (St Lucia) Ltd, where he had worked since 1990, at a salary of \$2,000 per month. He was off work (on full pay) as a result of the accident until June 1999 and because he was no longer as effective when he returned (e.g. forgetting details, not being able to drive or walk as required), he ultimately lost his job in June 2000.
- [7] Thereafter he tried to get permanent employment but he has been unable to do so and I accept that given his health and age this would be difficult. He did temporary work clearing goods through customs and in May 2002 took up work as a commission agent with British American Insurance Company. In this capacity he earned \$1,500 during his three month training and is now in the process of building up his clientele and accordingly his commission income. His total commission for the remainder of 2002 was \$455 and he received \$336 commission in February, \$30 in March and \$631 in May. The future is obviously a matter of speculation although I am satisfied he will not achieve \$2,000 per month.

Special damages

- [8] These were helpfully agreed at \$6,495. There was also a claim for US\$20,000 in respect of the operation. Since the evidence as to the cost of the operation and the continuing necessity for it was not satisfactory I do not propose to award anything under this head, but will adopt the approach suggested by Ms Greer of reflecting the continuing uncertainty in the award for pain and suffering.

Pain, suffering and loss of amenity

- [9] The most helpful case was produced by Ms Anthony-Desir: it is a decision of the current Chief Justice called *Lucas v Greaves* (no 210/1995), in which he awarded a lady who suffered similar multiple injuries in a road accident \$30,000 for pain suffering and loss of amenity in January 1989. Ms. Anthony-Desir suggested (and I do not think this was contentious) that an award of \$30,000 in 1989 was worth about \$50,000 today. Ms. Greer suggested that the injuries in this case are more serious in particular because Mr. Tate has suffered a fractured spine and the prognosis remains doubtful and suggests that the right figure is \$70,000. I can see that there are aspects of the *Lucas* case which are more serious than this one and others which are less serious. I think an award of \$55,000 is the right figure in this case.

Financial loss

- [10] The proper approach is to assess the known financial loss down to the date of trial or assessment and then to award a sum to reflect future financial loss from that date. It appears to be accepted that Mr. Tate lost his job at The Star Agency in June 2000 as a consequence of the accident. Since then it is clear that he has not been able to earn as

much as he did with The Star Agency. The evidence as to what he in fact received was sketchy, although he could have been questioned further about it cross-examination. All I know for sure is that he has earned at least \$3,000 since he has been with British American Insurance Company. Assuming that his total income over the three years since June 2000 has been double that, i.e. \$6,000, his loss of earnings to date will therefore have been \$66,000 (i.e. \$2,000 x 12 x 3 – \$6,000).

Future financial loss

[11] Mr. Tate is now 52; he is in the process of building up his commission business hampered by his continuing ill health. If he had not suffered the accident he would most likely have remained at The Star Agency on a good salary indefinitely. Various approaches to assessing his future financial loss were suggested. I think the best answer is to say that his likely annual loss will be \$12,000 (i.e. \$1,000 per month) and that, in light of his age, the proper multiplier is six. This will give a figure of \$72,000 for future loss.

Outcome

[12] I therefore assess Mr. Tate's damages as follows:

(1)	Special damages	\$6,495
(2)	Pain etc	\$55,000
(3)	Financial loss to date	\$66,000
(4)	Future financial loss	<u>\$72,000</u>
	Total damages	\$199,495
		=====
(5)	Interest on (1) and (3) at 6% for half period since accident	\$9,786

(6)	Interest on (2) at 6% from date of service of claim (2 years)	<u>\$6,600</u>
	Total interest	\$16,386
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There shall be judgment for \$199,495 and interest of \$16,386 and prescribed costs of 60% of the costs shown in Appendix B to CPR65 based on a value of claim of \$199,495.

Murray Shanks
High Court Judge (Ag.)