

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: 107 OF 1999

BETWEEN:

JAMES DANIEL

Claimant

v

MATTHEW McGUIRE

Defendant

Appearances:

Mr. R. Williams for the Claimant

2003: October 31

RULING

- [1] The Claimant was riding a motorcycle along the Casson Hill road when he was struck by a vehicle driven by the Defendant. He suffered severe injuries. So severe were those injuries that bystanders seem to have believed that the claimant had died. It is only upon his regaining consciousness that the need to rush him to hospital became apparent.
- [2] At the Kingstown General Hospital he was attended to. He was subsequently seen by Dr. A.C. Cyrus, Dr. A. Salian and Dr. J. Thorne, an orthopaedic specialist from Barbados. His injuries are catalogued in the medical reports which have been filed. These injuries include injuries to the head and numerous wounds caused by glass, sand and grit. These have healed to leave unsightly keloid scars. The claimant suffered a simple fracture of the

right scapula. His left wrist was broken. His right radius and ulna bones were broken. His right femur was broken as were his right tibia and fibula. He had to endure painful and complicated surgery which has also left him with additional scars.

- [3] He is now functionally impaired as a result of his injuries. His right forearm now has half the normal range of motion. His right knee can now bend only to 10 degrees, whereas the normal range is 180 degrees. There is almost complete loss of movement of the right ankle. The entire right leg is now more than 3 inches shorter than the left. The right leg is also now bowed at the site of the fracture in two planes – to the front and to the side. He will require special built-up shoes for the rest of his life.
- [4] In support of his application for assessment of damages the Claimant has filed an affidavit with supporting exhibits. The Defendant has not contested the assessment and the court only had the evidence of the Claimant to consider. For the pain and suffering that the Claimant has endured, along with the loss of amenities he has pleaded, I award the amount of \$200,000.00.
- [5] This court in the case of Sylvester Pringle v Desmond Herbert in 2001 awarded a Claimant with similar injuries the amount of \$180,000.00 for pain, suffering and loss of amenities.

SPECIAL DAMAGES:

- [6] As the Defendants have not contested the amounts claimed and as I consider them to be reasonable I award the Claimant \$38,500.00 for replacement labour and \$21,300.00 for domestic services.
- [7] For his loss of earnings thus far I award the Claimant \$63,690.00.
- [8] For medical expenses I award \$4,947.90. For taxi fare to and from the hospital I award \$1,320.00

FUTURE LOSS

[9] Applying a multiplier of 15 to this 31 year old Claimant whose annual income was \$14,560.00 gives a figure of \$218,400.00 for loss of future earnings. But from this amount is to be deducted the amount the Claimant would have expended on his own living expenses. No evidence has been led in this regard but I consider that the future living expenses ought to be deducted as otherwise this would lead to duplication. This approach was also followed in the case of Lim Poh Choo v Camden and Islington Area Health Authority [1972] 2 ALL E.R. 910. I award the Claimant \$100,000.00 under this head.

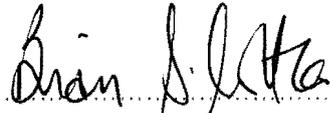
[10] For future replacement labour and domestic services I award the Claimant the amounts claimed that is \$97,500 and \$54,000.00 respectively.

TOTAL AWARD

The total award as I have outlined is as follows:

Pain, suffering and loss of amenities	\$200,000.00
Cost of replacement labour	38,500.00
Domestic Services	21,300.00
Medical Expenses	4,947.90
Transport	1,320.00
Loss of Earnings	63,690.00
Future loss of earnings	100,000.00
Future Domestic Services	\$ 54,000.00
Future Replacement Labour	\$ 97,500.00
	<u>\$ 581,257.90</u>

I award costs to the Claimant in the amount of \$50,000.00.


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Brian S. Cottle
MASTER