

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2002/1113

BETWEEN:

CYRIL JOSEPH

Claimant

and

(1) KIMBERLY MARGARET COLETE DONALDSON
(2) YVONNE VERONA EDWARDS
Both operating under the business name of
UTNIMATE STEVEDORING SERVICES

Defendants

Appearances:

Mr. Alvin St. Clair for the Claimant
Defendants absent and not represented

2003: December 03
December 04, 08

ASSESSMENT OF DAMAGES...NO ACKNOWLEDGMENT OF SERVICE OR DEFENCE
BY DEFENDANTS...MATTER PROCEEDED WITH IN THE ABSENCE OF
DEFENDANTS...JUDGMENT FOR THE CLAIMANT

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** This is an assessment of damages arising out of an accident which happened on 10th August 2000 at about 9.15 a.m. at the Castries Dock when the Claimant, Mr. Cyril Joseph got injured while he was in the employ of the Defendants. He brought this claim against the Defendants seeking damages for the injuries which he suffered. At the trial, Mr. Joseph proceeded only against the Defendant,

Kimberley Margaret Colette Donaldson. Unfortunately, neither Defendant acknowledged service nor put in a defence. Damages were therefore assessed on the evidence given by Mr. Joseph and on submissions advanced by his Counsel, Mr. St. Clair.

The Facts

2. Mr. Joseph was 38 years old at the date of the accident. He was employed by the Defendants as a stevedore. His job entailed the loading of bananas and other cargo onto ships at the Castries Dock. On the fateful day in question, Mr. Joseph was injured as a result of an eroded C Hook which broke and caused the pallet being transferred from the dock onto the M.V. Santa Marie Voyage to fall onto his left leg causing a compression injury to his left hip and a fracture to the said leg. Two weeks after the incident, he saw Dr. Suls Wilson who diagnosed multiple fractures of the left foot and lower back muscle spasm. The doctor prescribed medication and voltaren cream.
3. On 23rd October 2000, Mr. Joseph went to the Accident and Emergency Unit at the Victoria Hospital. There he saw Dr. Lisa Charles. She examined him and observed tenderness to the left lower limb over the ankle and foot. An X-ray was done which revealed fracture of the foot. Mr. Joseph was placed in a cast for immobilization and referred to the orthopaedic review.
4. Mr. Joseph alleged that the Defendants were, among other things, in breach of their duty to provide a safe place of work in that they failed to ensure that all equipment used within the work environment were free from defects.

Special damages

5. There is a claim of \$500.00 for medical expenses and \$12,000.00 for loss of earnings for two years. Mr. Joseph has provided documentary evidence to substantiate his medical expenses of \$500.00. In respect of loss of earnings, Mr. Joseph claims that he was out of employment for two years and that he earns \$250.00 per week. There was no evidence to contradict his claim. If my arithmetic is correct, he has claimed loss of earnings for one

year and not two. I will therefore make an award of \$12,000.00 to represent loss of earnings and \$500.00 for medical expenses.

Pain and suffering

6. As a result of the accident, Mr. Joseph sustained a compression injury to his left hip and multiple fractures of his left foot. He claims to suffer from a consistent pain in his left foot whenever he wears a closed shoe.
7. Mr. St. Clair has helpfully provided the case of *Chatoor v Constantine*.¹ In that case, a 37 years old bank official suffered a fracture of the medial malleolus at the right ankle joint. He received approximately TT\$37,121.00(equivalent of EC\$18,000.00).
8. I will award Mr. Joseph the sum of \$15,000.00 under this head.

Outcome

9. I therefore assess Mr. Joseph's damages as follows:

(i)	Special Damages	\$12,500.00
(ii)	General Damages (for pain and suffering)	<u>\$15,000.00</u>
	TOTAL	<u>\$27,500.00</u>

Conclusion

10. There shall be judgment for the Claimant against the Defendant, Kimberly Margaret Colette Donaldson in the sum of \$27,500.00 and costs of \$3,500.00 making an aggregate of \$31,000.00.

INDRA HARIPRASHAD-CHARLES
High Court Judge

¹ High Court Civil Suit No. 2830/74 (Trinidad & Tobago) The Lawyer

