

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO ANUHCV1999/0160

BETWEEN:

DANNY BRAMBLE

Claimant

and

WILLIAM DANNY
KEY PROPERTIES LIMITED

Defendants

Appearances:

Adlai Smith for the Claimant
Stacy Richards Anjo for the Defendants

2003: June 26, December 11

2004: January 15

JUDGMENT

[1] MITCHELL, J: This is an assessment of damages in Chambers in a personal injury action. Liability was not contested and the claimant obtained judgment in default since March 2000. Damages were assessed on the basis of written submissions.

[2] The claimant is presently 60 years old. He was at the time of the accident 56 years of age. He is a businessman, the sole proprietor of Danny B Auto Parts, an automobile spare-parts business. On 12 August 1998 the first defendant negligently drove the truck of the second defendant and collided with his vehicle. At the time of the accident, he suffered from a pre-existing degenerative joint disease. He suffered injuries to his knee and lower back from the accident. He was examined by Dr Singh who concluded that the accident had caused a severe whiplash injury to his lower spine and had aggravated his existing degenerative joint disease. He experienced considerable pain in moving around after the

accident. He had to stay in bed to recuperate from his injuries. He has difficulty in sleeping comfortably.

[3] Later examinations by other doctors record that he continues to complain of intermittent pain in his right loin and right hip region. He has had no fewer than 28 follow-up visits to and treatments by his family physician, Dr Ramsey. He has also sought therapy from Nurse Crump. While the loin pain disappears after a while, the hip pain takes much longer. The loin region is mainly muscular while the hip is a weight bearing joint. Since the accident, Mr Bramble has difficulty moving from a sitting to a standing position, particularly when getting out of a car. When he is driving he feels distinctly numb in the region of his right lower back accompanied by a burning sensation with accompanying pain. He can no longer exercise at Binkey's Gym, play softball, or go for walks. His business is falling off as he cannot any longer give it the time he previously did, but he does not attempt to quantify this loss.

[4] The Defendants urge that they should not bear any liability for the medical problems associated with his pre-existing condition. They point out that there is no evidence relating to his loss of profits, and in any event, his falling income may be due to the failing Antiguan economy or may be due to his advanced age and pre-existing condition. The medical report is to the effect that there Mr Bramble's prognosis is excellent in that there are no bony injuries or joint abnormality except for degenerative changes in the lumbar sacral spine expected at his age and for his physique.

[5] **Corneliac v St Louis (1965) 7 WIR** sets out the headings of damages which the court ought to consider in personal injury cases such as this. These include the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability; the pain and suffering which had to be endured; loss of amenities; and the extent to which the claimant's pecuniary prospects have been affected.

[6] The amount of special damages of EC\$8,336.84 sought by Mr Bramble is not contested and is awarded. He asks for general damages for pain and suffering and loss of amenities

of “between \$20,000.00 and \$60,000.00.” His pain and suffering resulting from his whiplash injury and the aggravation to his pre-existing condition is difficult to quantify in terms of money. The amount of general damages he seeks is not abnormally high. There is little on which to base an estimate of the value of the different headings of damages to apply in this case. I take into account the general knowledge that a severe whiplash injury while not leaving much physical evidence is likely to be very painful and uncomfortable. The Defendants must take Mr Bramble as they found him. If their negligence aggravated his injury and pain (as it did) because his pre-existing condition made him more sensitive to injury, that is something for which they are responsible. I take in to account the nature and gravity of his resulting physical disabilities and the additional pain and suffering he has had to endure. It seems reasonable that some of his subsequent loss of amenities and loss of pecuniary prospects must have been due to the injuries he received. An amount of EC\$50,000.00 is not unreasonable.

[7] There will accordingly be judgment for Mr Bramble for

- (a) special damages of \$8,336.84;
- (b) general damages of \$50,000.00;
- (c) costs in the prescribed amount on the above sums.

Don Mitchell, QC
High Court Judge