

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO ANUHCV1999/0084

BETWEEN:

FRANCES CHAPMAN

Claimant

and

WADADLI CATS LIMITED

Defendant

Appearances:

Clare Roberts, Tracy Benn with him, for the Claimant
John Fuller for the Defendant

2003: December 2
2004: January 13, April 1

JUDGMENT

[1] MITCHELL, J: Wadadli Cats is in the business of taking paying guests on day cruises around Antigua and Barbuda on catamaran sailing vessels. Mrs Chapman was at the time of the accident in question a 47-year-old senior staff Nurse employed by the National Health Service in the Shetland Islands in Britain.

[2] The 9 March 1996 was Mrs Chapman's birthday. She was on vacation in Antigua with her husband and friends. They booked a cruise on one of the Wadadli Cats to Bird Island, an offshore cay. On the way back under sail, she was struck on the head by a rope or sheet attached to the mast. It yanked her out of her seat and struck her to the deck. She suffered a concussion and abrasions along her leg where she was dragged along the boat. Crewmen laid her flat on the deck and packed ice over her head. She does not remember coming off the boat, but recalls finding herself in a medical clinic. She was treated there, discharged, and then confined to her hotel room.

- [3] On her return to the Shetlands she found she was hardly able to walk. She visited her doctor. She was off work at home and in bed for the first month. The doctor's report indicates that even on 16 March, two weeks after the accident, she was still suffering from two black-eyes. She had difficulty with short-term memory, writing, arithmetic, muddling of words, sleepiness and nausea. She was unable to stand up on her own. She could not cross the room unaided. She was anxious to get back to work, but found she was not performing normally. A CT scan at the hospital in Aberdeen did not show any intracerebral abnormality. She was diagnosed as being in a post-concussional state. The dizziness and vertigo improved, and she was on 28 May 1996 certified fit for work.
- [4] She worked on and off for the following two years, with time off for periods of sick leave due to continuing problems. She suffered from falls as a result of vertigo and unsteadiness on her feet. She fell in 1997, 1998, and 1999. She fell down in the garden, and she fell down at work. The most severe fall was in 1999 when she collided with a shelf and had to have her head stitched. I accept that this vertigo and unsteadiness was a result of the injury she received to her head in the incident. In July 1998, her orthopaedic specialist noted a narrowing at the C6/7 disc space in the neck from where he thought her arm pain originated.
- [5] Some two years after the accident she was admitted to the Neurology Department in a hospital in Aberdeen. There she had X-rays and scans. She spent the following several months off work trying to rehabilitate herself. She was in constant pain and under medication. She is right handed. Gradually, she lost sensation in the forefinger and thumb of her right hand, a condition that persists to this day. Later, she attended a chiropractor at a private clinic for help with the pain. That helped for a while. The pain medication became stronger and stronger to help her to cope. One side effect was that it affected her ability to think and to perform at work. She became depressed and had to go to see a psychiatrist. She was put on more drugs. In total, she was off work for a year. In December 2000 a neurologist found evidence of a right-sided sensorineural hearing loss.

It seemed she had damage to the vestibular apparatus (which controls balance) on that side. She was also diagnosed as suffering from post-traumatic stress disorder.

[6] She had originally been working in the acute surgery department as a hospital staff nurse. That position required a high level of functioning from her. After the accident, she was not able to perform at the required standard. In the year 2000, 4 years after the accident, she applied for a less stressful position in the ophthalmology department. It required only 20 hours per week instead of the previous 39 hours. That lasted for a year. During this time she continued to suffer from poor coordination of her limbs, and she began to have serious falls.

[7] Mrs Chapman was made to retire early, in October 2001, by the health service. She was then 52 years old. She would normally have expected to retire at 60 years of age. She received a lump sum of £10,000.00 and since then a monthly pension of £300.00. If she had continued working, there is some suggestion that the pension would have been more. The exact figure was not produced. She thought it would have been nearer £800.00 per month. Her salary at the time had been £22,000.00 per year. She thought it might have increased to £26,000.00, without taking into account any promotion that she might have received. She had been in line for a more senior post at the time of the accident, but had not got it. Her promotion had first been postponed, but after a time the hospital where she worked had offered the post to someone else. She ascribed her failure to be promoted to her inability to perform properly as a result of her injuries from the accident. In addition, there were various add-ons to the basic salary, but she had not disclosed them to the defendants.

[8] She finds it difficult now to cook. It is difficult for her and her husband to entertain friends. She can no longer enjoy her hobbies of hill-walking and mountaineering. She cannot join in the local handicraft of knitting as she used to do before. She finds it difficult to drive a car, as a swift movement of the head is painful. Her social life has suffered. In her view, her biggest loss has been the loss of her employment. Since the age of 4 years she had

wanted to be a nurse. She had become a senior staff member of her hospital, and now that was all taken away from her. She was bereft.

- [9] Liability is not in issue at this stage. That was determined in Mrs Chapman's favour at an earlier hearing. This deals solely with the question of the amount of damages that Wadadli Cats ought to pay to her. The claim is for general damages, interest and costs only. No special damages have been pleaded or claimed. The headings under which her counsel submits she is entitled to general damages include (1) pain and suffering and loss of amenities; (2) injuries; (3) loss of congenial employment; (4) depression.
- [10] **Cornillac v St Louis (1965) 7 WIR 491** is the authority for the considerations to be taken into account of in personal injury cases. These include (1) the nature and extent of injuries; (2) the nature and gravity of the resulting physical disability; (3) pain and suffering; (4) loss of amenities; (5) the extent to which pecuniary prospects have been affected.
- [11] Counsel for Wadadli Cats submits that Mrs Chapman's problems more probably relate to a fall she suffered some years after the accident. I am satisfied that the cause of all the injuries she complains of can be traced back to the accident on board the defendant's catamaran. Her falls are all attributable to the damage that she suffered to her sense of balance as a result of the accident. There is unlikely to be any further improvement in her condition.
- [12] Counsel for the defendant submits that Mrs Chapman is minimally disabled, suffers little or no pain, has lost little or no amenities, and appears totally normal, well and equipped with all her functions. I am satisfied that the most significant personal injuries she has suffered from the accident are pain and loss of balance. Her pain is permanent and chronic. She will be vulnerable to further trauma through falls and exposure to injury from sharp instruments as a result of the lack of sensation in her fingers. Her counsel asks for damages for pain and suffering and loss of amenities in the sum of \$500,000.00. Given the extent and duration of her pain, that is not unreasonable or excessive. For the depression and other psychological symptoms she has suffered from in the aftermath of

the accident her counsel suggests a further \$40,000.00. This does not seem unreasonable.

[13] For loss of a congenial form of employment her counsel submits a proper award should be in the region of £7,500.00 or EC\$30,000.00. This does not seem unreasonable in the circumstances.

[14] Given the findings above, there will be judgment for the claimant for damages of \$570,000.00 together with interest at the rate of 6% from the date of the filing of the claim to the date of judgment and her prescribed costs on the total amount.

Don Mitchell, QC
High Court Judge