

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTIICE

CIVIL SUIT NO: 314 of 1998

BETWEEN:

JOHN WALKER

First Plaintiff

LISA WALKER

Second Plaintiff

And

PERRY ALAMA

First Defendant

GOMES ENTERPRISES LTD

Second Defendant

AVIS RENT A CAR SYSTEM INC

Third Defendant

Appearances:

Jason Martin for Harold Lovell for the Claimant

Tracy Benn of Roberts & Co. for the First Defendant

.....
2004: March 1st

April, 7th and 23rd
.....

Judgment on Assessment of Damages

(Negligence – Road traffic accident – personal injuries-
assessment of damages)

- [1] **Joseph-Olivetti J:** Many visitors to Antigua, the land of sea and sun, carry home with them happy memories of their stay here but John Walker, the First Plaintiff, has no such recollections. On the 20th September, 1992 he was a passenger in a rented car driven by Perry Alama, the First Defendant, when Mr. Alama lost control of the car and it ran off the road and hit a concrete embankment leaving Mr. Walker which

turned out to be seriously disabling. Mr. Walker filed suit and obtained interlocutory judgment on the 27th October, 2003 against Mr. Alama, for damages to be assessed and this is what we are concerned with now. Unfortunately, Mr. Alama resides outside the jurisdiction in the United States of America,("U.S.A.") and so this will not be the end of Mr. Walker's suit. It is also to be noted that Mr. Walker, is an American citizen who also resides in the U.S.A and was at the time of the accident engaged by his employers, Hoover Irrigation, on a project here and that Mr. Alama was a co-worker.

[2] At the hearing in Chambers Mr. Alama was represented by counsel of the Firm of Roberts & Co. which entered an appearance on the 9th December, 1999 . Counsel indicated to the court that she had had no instructions from her client and so took no active part in the proceedings. Mr. Walker relied on the affidavit evidence of himself and his wife, Lisa Walker, which were amplified in certain respects by oral testimony and the very comprehensive medical report of Dr. Craig Lichtblau filed on the 21st October, 2003 and referred to in his affidavit. Their evidence was uncontroverted.

[3] At the close of the hearing the court reserved judgment and directed that both counsel file written submissions on or before the 15th March, 2004. Counsel for Mr. Walker was granted an extension and filed submissions

on the 7th April. The court has had no assistance from counsel for Mr. Alama.

[4] The matters to take into consideration in assessing general damages are well established. They are the nature and extent of the injuries suffered, the nature and gravity of the resulting physical disability, the pain and suffering and loss of amenities suffered and the extent to which pecuniary prospects have been affected. See **Cornilliac v. St Louis (1964) 7 WIR 491**

[5] The evidence established that Mr. Walker sustained serious injuries to his neck, right shoulder, arm and wrist. The following injuries are detailed in the Medical Report which was made after his last follow-up visit on the 14th April, 2003: -

- (a) right shoulder strain/ sprain/ contusion;
- (b) cervical myofascial pain syndrome;
- (c) right carpal tunnel syndrome;
- (d) right shoulder acromioclavicular joint degeneration with impingement syndrome;
- (e) right thoracic outlet syndrome;
- (f) left thoracic outlet syndrome ;
- (g) chronic neck pain with cervical radiculopathy;
- (h) bilateral carpal tunnel syndrome;

- (i) acute functional decline as a result of chronic pain syndrome.

[6] The medical report establishes that Mr. Walker is right – hand dominant and the doctor was of the opinion and I quote, "*it is my medical opinion as a Board Certified Physiatrist that this patient will not be able to maintain gainful employment in the competitive open labour market or in a sheltered environment with a benevolent employer secondary to acute, intermittent exacerbations of chronic pain*" The report also recommends continuation of care for life and gives estimated costs of such care..

[7] Mr. Walker was constrained to quit his employment within a month of returning to work, as he was certified medically unfit to continue and there is no doubt that this was as a direct result of the injuries he had suffered. I am satisfied that he will not be able to obtain other employment because of the nature of his injuries and his limited skills - he left school at the ninth grade and was employed immediately prior to the accident as an irrigation technician doing mainly manual labour. He complains of constant pain on a daily basis and to date he says he is unable to get a good night's sleep, has headaches and pain in his neck and suffers from numbness, tingling and shooting sensations down his right arm which he described as, "**having a tourniquet constantly wrapped around it**". He will require medical care for the rest of his life, which includes therapy and pain control measures. At present he attends therapy twice a week and has a steroid injection once a year and takes oral medication for pain as

the need arises. Over the years he received various forms of medical treatment including several surgical interventions ,namely ,right arm nerve surgery, shortening of right shoulder bone, right and left rib removal surgery and bilateral carpal tunnel surgery. His injuries have taken their toll on his family (he has three young children) and on his family life including his sexual relations with his wife and he cannot anticipate fully in the normal activities expected of a husband and father. Fortunately for all, his wife has proved an excellent helpmate and has supported the family and borne more than her full share of their responsibilities as a result of her husband's injuries and .the court remarked how cheerful they both seemed despite their ongoing trials.

[8] Mr. Walker has been assessed as having a 20 per cent partial impairment of the whole person and 25 per cent functional impairment. I note that the Privy Council in the recent decision of **Peter Seepersad v. Persad and Capital Insurance Limited (Trinidad and Tobago) No.86 of 2002** delivered on the 1st April, 2004, like the Court of Appeal of Trinidad and Tobago, frowned at the practice of medical witnesses expressing a claimant's disability in terms of a percentage of incapacity. It is obvious that the court did not find that practice, which is becoming the norm and no doubt originally stemmed from the practice in North America, very useful.

[9] Counsel for Mr. Walker submitted that an award of \$160,200.00 or US \$60,000.00 would be reasonable for pain, suffering and loss of amenities. In support of this submission counsel relied on several cases but none from this jurisdiction or from jurisdictions with similar social and economic climates. One such case was the Peter Seepersad case in which a taxi-driver suffered injury to his back and as a result was partially disabled and was awarded US 24,290.24 or T.T.\$150,000.00 at first instance. However, the court of appeal reduced this award to T.T.\$75,000.00. It was patent that the Privy Council thought that sum inadequate but deferred to the court of appeal's knowledge of the general level of awards in its own jurisdiction. In any event I am of the view that Trinidad and Tobago does not have the same economic conditions as those prevailing here.

[10] Compensation must as far as possible put a claimant in the same position he would have been in had the accident not occurred and the court is entitled to look at recent comparable awards in its own and other jurisdictions with a similar social and economic climate to determine the proper level of general damages for pain suffering and loss of amenities. Above all the award must be fair and reasonable.

[11] The evidence establishes that Mr. Walker has suffered a great deal and will continue to live with chronic pain for the rest of his life. He was 30 at the date of the accident and 42 at the date of assessment. There is no evidence that his life expectancy has been shortened by the accident and so he can be expected to live until he is at least eighty-five years old.

There is every indication that his condition will worsen as the report speaks of right shoulder joint degeneration and acute functional decline. In the case of **Rosetta Mayers v. Deep Bay Development HCTANU No.241/1993** this court awarded the sum of \$ 230,000,00 for general damages for pain suffering and loss of amenities to a claimant with a chronic pain syndrome with extremely debilitating effects, namely reflex sympathetic dystrophy syndrome. That claimant's condition was far worse than the present claimant's. When one compares her disability with Mr. Walker's her injuries are much more severe, he is not in constant pain, does not have to wear an electric stimulator all the time and his ordinary functions are not impaired and his condition will not degenerate as drastically as was forecast for hers.. In all the circumstances I am of the view that an award of \$150,000.00 or US.\$56,179.78 (using an exchange rate of U.S\$1= \$E.C.2.76) is reasonable under this head as submitted.

Loss of future earnings.

- [12] Mr. Walker is entitled to loss of future earnings for the rest of his working life. The traditional multiplier /multiplicand approach is applicable. In the Seepersad case a multiplier of 16 was used for a 37-year-old claimant. Mr. Walker is now 42 years old and ordinarily would have had an estimated working life left of 23 years based on the normal retirement age of 65. A multiplier of 14 is reasonable. The multiplicand is U.S. \$.31,200.00 based on his annual pre-accident earnings without any

allowance for prospects of increase. Making deductions for expected social security benefits of U.S. \$150,840.00, the sum awarded is \$ U.S. \$285,960.00.

Past Medical Expenses

- [12] The claim is for U.S. \$63,164.77. I am satisfied that this is made out and that sum is awarded.

Future Medical Expenses

- [13] The evidence is that Mr. Walker would need chronic pain management for the rest of his life at the cost of U.S. \$4,500.00 per year. Based on an estimated life of 40 years a multiplier of 18 is appropriate. This would result in an award under this head of U.S. \$81,000.00

Loss of earnings from accident to date of final judgment

- [14] Mr. Walker was employed with Hoover Irrigation as an irrigation technician for a period of one and a half years prior to the accident. He left the company about a month after due to his inability to perform his duties. He earned U.S. \$15.00 per hour for a 40-hour week, which averages out at U.S. \$600.00 per week or U.S. \$31,200 per annum. He claims past loss of earnings from November 1992 to 23 April 2004 which is roughly 11 years 2 months and 3 weeks of U.S. \$349,800.00. Mr. Walker's counsel properly submitted that as he has received social security benefits for the period

20th September 1992 to 20th March, 2004 in the total sum of U.S.\$173,466.00 that in keeping with the case of Hudson v. Trapp and Another [1989] A.C.87 this should be deducted from the award under this head. The real loss therefore is U S \$176,334 .00 and I award this sum.

Interest

- [15] Mr. Walker claims interest in keeping with the authorities cited of **Alphonso and Others v. Deodath Ramnath (1997) 56 WIR 183** and **Jefford v. Gee (1970)2 Q.B. 130**. He is entitled to interest on all awards of special damages at the rate of 2 1/2 per cent from the date of the accident to the date of judgment i.e. from 20th September 1992 to 23 April, 2004 and interest of 5% per annum on all awards of general damages save those in respect of loss of future earnings and prospective medical costs from the date of the filing of the writ (18th September, 1998) to date of judgment, 23rd April, 2004.

Judgment in foreign currency.

- [16] Mr. Walker claims judgment in a foreign currency and submits that this is just as the expenses incurred are in U.S. currency and he resides outside the jurisdiction. Counsel relied on the cases of **The Despina [1979] A.C. 685** and **Attorney General of Fiji, Dr. Hubert Elliot v. Paul Praveen Sharma (Civil Appeal No. 41 of 1993)**. The court is of the view that this is a proper case for so doing and will therefore give judgment in the currency of the United States of America.

Conclusion

[17] In conclusion for the reasons advanced I give judgment for the First Plaintiff as the first Defendant as follows: -

- (1) General damages for pain, suffering and loss of amenities of US\$56,179.78 with interest at the rate of 5 per cent per annum from date of filing of writ, 18th September 1998, to date of assessment, 23rd April, 2004;
- (2) Loss of earnings from date of accident, 20th September, 1992 to 23 April, 2004 of US\$176,334 .00 with interest at the rate of 2 1/2 per cent per annum from 18th September 1998 to 23rd April, 2004;
- (3) Past medical expenses of US\$63,164.77 with interest at the rate of 2 1/2 per cent per annum from 18th September 1998 to 23rd April, 2004;
- (4) Loss of future earnings of U.S.\$285,960.00
- (5) Costs of future medical care of U.S.\$81,000.00
- (6) Prescribed costs in accordance with CPR 2000 Part 65.5

Rita Joseph-Olivetti
High Court Judge