

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.27 OF 2003

BETWEEN:

VAUGHN MANNER

Appellant

and

TASHAYLA WEEKES (a minor by next her
of friend JASMINE PARRIS-WEEKES)

Respondent

Before:

The Hon. Mr. Brian Alleyne, S.C.
The Hon. Mr. Michael Gordon, Q.C.
The Hon. Madame Suzie d’Auvergne

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Mark Brantley with Ms Denise Lee for the Appellant
Dr. Henry Browne with Mr. Patrice Nisbett for the Respondent

2004: November 2;
November 23.

JUDGMENT

[1] **d’AUVERGNE J.A. [AG.]:** This is an appeal on quantum of damages, liability having been admitted. The Appellant further has not appealed against the amount of EC\$2,115.00 awarded for special damages.

[2] The appeal is therefore solely concerned with the trial Judge’s award of general damages. The respondent was awarded the sum of EC\$44,000.00 for pain and suffering and EC\$8,000.00 for future medical expenses under the heading of general damages.

[3] On the 2nd of January 1997, the respondent who was only five [5] years old was walking with her father along a footpath in Sheriff’s Village, Nevis when she was struck by a stone

thrown by the appellant. The stone caused a 1 1/2 inch long laceration on the left parietal area with a depression of one [1] inch. An X-ray confirmed a depressed fracture of the skull.

- [4] Dr. Chandy Jacob, the doctor who first examined the respondent said that "she was bleeding moderately and was dazed and in a semi-conscious condition but was responding to questions but later developed convulsions lasting a few seconds". He advised the parents that because of Tashayla's complaint of severe headaches and pain at the site of the injury and difficulty in focusing her left eye, that she was not to participate in games and outdoor activities and to avoid sunlight. That she should wear a cap or hat to protect her brain from further damage.
- [5] His evidence was that after the taking of medication the headaches would get better but recur within a few weeks. He said that she had a permanent depression of her forehead which will remain unless corrected by plastic surgery. Tashayla remained at the hospital from the 2nd to 7th of January, 1997. The doctor's final words to the Court were "my prognosis is that headaches will be a constant feature of her life as she is always complaining only on the left side."
- [6] The respondent is now eleven [11] years old and has been wearing glasses since the incident and, from all appearances, will do so for life, since her sight is poor without them.
- [7] She is very frequently absent from school due to the constant headaches which last between 2 to 3 days. Very often her mother has to take time off work, stay home and comfort her.
- [8] As the trial judge stated, at paragraph five [5] of her judgment, when damages have to be assessed in a case of this kind there are many elements for consideration; the pain and suffering undergone and that which may occur in the future; the loss of some of the amenities of life; the fact that a child with such an injury, the constant headaches which cause her to be dizzy and weak, will always require some measure of help. I also bear in

mind that it is impossible to standardize damages. As was said in **Bird v Cocking & Sons Ltd** 1951 2 TLR 1260 at page 1263:

“The assessment of damages in cases of personal injuries is, perhaps one of the most difficult tasks which a judge has to perform and certainly the task is no lighter when the appellate court is asked to consider the assessment made by a judge in the Court below. The task is so difficult because the elements which must be considered in forming the assessment in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the amounts for these particular elements.”

- [9] Counsel for the appellant said that damages awarded are inordinately high and urged the Court to follow cases decided in the jurisdiction rather than those further afield. I agree with him.
- [10] Counsel placed much emphasis on the decision in a case decided in St. Vincent and the Grenadines namely **Master Marvin Cato by his best friend Sheron France vs Raphael Oliver and General Equipment Services Corporation; Suit 498 of 1993**.
- [11] That case concerned an assessment of damages in a running down case. The defendants did not contest liability only quantum was being considered.
- [12] The facts upon which the decision was arrived at are as follows. The plaintiff was a six [6] year old boy at the time of the accident. On 5th June 1992 he was struck by a Land Rover owned by the 2nd defendant and driven by its employee the 1st defendant. He was unconscious for 3 to 4 hours after his admission to the hospital and the same day of the accident. He was discharged from hospital 2 days later but was kept at home for two [2] weeks. This young boy was examined by four [4] medical doctors. His X-ray examination revealed a comminuted depressed fracture of the right frontal bone; the bone was broken in several pieces and pushed in. His mother stated the boy's complaints were as follows: affected by noise; frequent headaches; dropping back in school work; loss of memory; poor appetite; hyper activity, unstable sleeping habits; stooling in his uniform.

- [13] The differences between the boy Marvin in the Vincentian case and the respondent in this case are many. Marvin had always been a poor student, he ranked within the last seven [7] places in class whereas the respondent had been a bright student, "one of the ten [10] best children in class, she would be in the 4th position in her class" said her mother. This was not contradicted.
- [14] Counsel for the appellant quoted **Rushton v National Coal Board** 1 QB 495 and once again urged the court to be guided by the general principles which have been applied in decisions in comparable cases.
- [15] In **Master Marvin Cato (by his best friend Sheron France) v Raphael Oliver and General Equipment Services Corporation; Suit 498 of 1993**, the plaintiff sought an award of EC\$30,000.00 whereas the defendant submitted that EC\$9,000.00 would be a fair level of damages. The judge however awarded special damages as well as EC\$10,000.00 for pain and suffering and \$10,000.00 for loss of amenities.
- [16] The above was decided in early 2000 whereas the matter under consideration is being considered in the eleventh month of 2004-almost five years after.
- [17] I pause here to note, that at paragraph 28 of her decision the learned judge stated that the respondent spent one month in hospital. In reality she spent only five [5] days. It was submitted on behalf of the appellant that the error could have contributed to the inordinate amount awarded since it may have been felt that the injury was so severe that the respondent needed hospital care.
- [18] It was further submitted that in the Jamaica case **Donald Henry v Robinson's Car Rental and Errol Robinson; Suit No. C.L 1989/ H017** delivered on the 29th January, 1991 by Reckord J. an award of \$25,000.00 was made for pain and suffering and loss of amenities to a twenty [20] year old claimant who had suffered cerebral concussion with closed undepressed fracture of the right frontal bone, head pain for one [1] month with bouts of

amnesia and who spent ten [10] days in hospital and was fully recovered without disability after six weeks.

[19] The respondent will certainly need glasses all her life and it is my view that she should be given an award towards this necessity.

[20] I would therefore vary the award of the Learned Trial Judge as hereunder. The award is therefore summarized as follows:

Special Damages	\$2,115.00 (as above)
General Damages	\$30,000.00
made up as follows:	
Pain and suffering	\$15,000.00
Loss of amenities	\$10,000.00
Cost of future medical Expenses	<u>\$ 5,000.00</u>
	\$32,115.00

[21] Costs awarded in accordance with CPR 2000 in the sum of \$9,529.00 to the Respondent in respect of costs below and \$4,889.00 to the Appellant in respect of costs of the appeal being 2/3 of the prescribed costs under Part 65 relating to the reduction of the award.

Suzie d'Auvergne
Justice of Appeal [Ag.]

I concur.

Brian Alleyne, S.C.
Justice of Appeal

I concur.

Michael Gordon, Q.C.
Justice of Appeal