

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NUMBER SLUHCV 2002/0329

BETWEEN:

AUDLYN FADLIEN

Claimant

AND

ATTORNEY GENERAL

Defendant

Appearances:

Mr. Hilford Deterville QC and Ms. Diana Thomas for the Claimant
Mr. Edwin Glasgow and Ms. Jan Drysdale for the Defendants

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2005: February 10
February 18
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JUDGMENT

Introduction

1. **SHANKS J:** The Claimant works as an Information Technology Administrator in the Ministry of Finance and Planning. On 3 September 2001 she suffered an accident at work and broke her left hip. She sued her employers and on 13 September 2004 obtained a default judgment for an amount to be determined by the court.
2. At the assessment hearing statements were produced from the Claimant herself, Desmond Astwood (the Information Technology Manager in the Ministry) and Isaac Anthony, the Director of Finance. Medical reports were also produced from an organization called Sports Medicine and Rehabilitation in Florida (dated 24 March 2003

and 19 August 2003) and from Mr St Rose dated 9 February 2005. The Claimant and Mr Astwood attended for cross-examination.

Facts

3. The Claimant, who was 34 at the time of the accident, trained as an Information Technology specialist at London Guildhall University. After various Information Technology jobs with the Government she was hired in July 2001 on a two year contract as Smart Stream Administrator under the FINMAN Project at the Ministry reporting to Mr. Astwood and Mr Anthony. The contract was renewed for another two years in July 2003. As Administrator, she is responsible for the proper functioning of the Smart Stream system. This is a large and intricate system which is used by the Government but no-one else in St Lucia. She has an important role in the functioning of this system and has developed a considerable expertise in its use both before and since her initial appointment as Administrator. She currently earns \$69,600 per annum.
4. On 3 September 2001 the Claimant tripped over a network cable. She landed hard on her left leg and felt excruciating pain. She was limping for two days and then appeared to recover until 25 September when she felt a sharp pain run through her leg and it gave way. Thereafter she was on sick leave more or less continuously until February 2002. On 12 October, having been diagnosed (wrongly) with damage to the Bursitis muscle, she underwent a painful surgical procedure at St Jude's hospital. She continued to suffer inflammation and pain and was unable to sit for any period of time so that it was impossible to work.
5. On 15 November 2001 a tentative diagnosis of fractured hip was made for the first time. She was put on therapy but nothing improved. Movement was almost impossible without pain ranging from mild to severe. She had by this stage been in almost continual pain for three months and was suffering ulcers from the anti-inflammatory medication she had been taking.
6. Having lost faith in the treatment she was receiving the Claimant went for treatment in Martinique on 26 December 2001. The doctor she saw in Martinique showed her x-

rays which showed that the thigh bone had pulled out of the socket. He immediately put her on crutches and prescribed new medication and treatment. From February 2002 the Claimant started working from home whilst carrying on the therapy and undertaking a follow up visit to Martinique.

7. In August 2002 she returned to work still on crutches. It was painful to drive and she could not sit for long periods so she worked a half day. By December 2002 things were not improving greatly and she decided to attend Sports Medicine and Rehabilitation in Florida. She had intensive therapy there at the end of which she was able to walk without crutches. She made a return trip to Florida in August 2003 and has continued with her exercises in St Lucia, using a personal trainer until this became too expensive in March 2004. The report from Sports Medicine and Rehabilitation dated 19 August 2003 states that as she continues to improve her strength and maintain flexibility she will improve her functional endurances.
8. In June 2004 she suffered an isolated relapse. The current position is that her left thigh is still suffering some wasting, hip motion at the extremes of rotation is painful and she still suffers intermittent pain. She can function at work sitting on a special cushion but she cannot go hiking, camping or jogging as she used to and she has not done any sports or been able to dance since the accident. She has been able to resume singing in a choir if there is not too much standing. There is an increased risk of arthritis in the left hip.

Special damages

9. The Claimant produced receipts for medical treatment in St Lucia, Martinique and Florida totalling \$19,704 which were not challenged. She has also claimed an additional \$6,170 for expenses associated with her trips to Martinique and Florida for which she does not have receipts. She was not cross-examined about these expenses and, although I agree with Mr Glasgow that it is surprising that she does not have receipts, I found her an honest and reliable witness and I accept her evidence that she incurred these expenses as a consequence of her accident and that they are reasonable.

10. Mr Glasgow also said that the evidence about the expenses which were not supported by receipts was inadmissible as a consequence of Article 1163 of the Civil Code which limits the circumstances in which “proof may be by testimony” as opposed to “by writing”. Admittedly in the face of a rather sceptical reaction from me he did not press this point very strongly. I think it is sufficient to say that I think the evidence is admissible under Art 1163 by virtue of sub-paragraphs 1, 5 and/ or 6. I therefore award a total sum of \$25,875 for special damages.

General damages for pain suffering and loss of amenity

11. In my view this injury is properly classified as a severe to moderate injury to the hip under the Guidelines for the Assessment of General Damages in Personal Injury Cases published by the English Judicial Studies Board. Having seen the Claimant give evidence and having regard to that guidance and to the West Indian cases and the written submissions produced by the parties I propose to award her \$55,000 for pain suffering and loss of amenity. If forced to divide the damages up I would say \$25,000 for pain and suffering and \$30,000 for loss of amenity. I have taken account in this assessment of the additional problems caused by the initial diagnosis and the risk of arthritis in future.

Cost of future care

12. A claim was made for \$35,000 for future monitoring and rehabilitative treatment and for a further \$35,000 for the cost of a hip replacement operation. The claim for a hip replacement operation is entirely speculative and no explanation is given for the quantum of the other claim. Nevertheless, it is the case that the Claimant will require further treatment if only in the form of check-ups and further services from a personal trainer although there is no reason to think another trip to Florida will be necessary. On the limited evidence I have seen I think \$10,000 is the most that I can award under this head.

Loss of earning capacity

13. It was common ground that the principles on which an award like this are made are set out in the case of *Moeliker v Reyrolle* [1977] 1 WLR 132, a decision of the English Court of Appeal. The court must first conclude that there is a real risk of the Claimant losing her current employment before the end of her working life; if that is the case, the court then quantifies the risk of financial damage on the basis of the degree of risk of the Claimant losing her job, the time when such risk is likely to materialize and the chances of her getting another job paid as well, taking into account the nature of the injury and the prognosis. Mathematical calculation is impossible. If the risk of losing the existing job and or not being able to obtain another equal job is slight the award will be low, a few thousand EC dollars.
14. I have no doubt that the Claimant is a very valuable employee to the Government because of her special experience with the Smart Stream system. I also accept Mr Astwood's evidence that he regards her work performance as high in terms of technical knowledge and work ethic and that his intention is to recommend that she continues to be employed when her current contract expires in July 2005. The Claimant feels that she is being "eased out" and pointed to various events as evidence of this. I accept Mr Astwood's explanations for these events and, although I believe the Claimant's feelings are quite genuine, I think she is perhaps over-reacting to events based on her (slightly unfair) impression that she has been treated badly by her employers in relation to the injury from which she has suffered so badly. I do not therefore think there is a big risk of her losing her employment in July, although the possibility cannot be excluded. In the long run there must of course be a much larger risk that she will lose her job at some stage before the end of her working life.
15. The Claimant maintains that if she loses her employment she will be less employable than a fully fit person because her hip problems may involve time off work and arthritis in the long run. She also says that her computer skills, which were very rare in St Lucia when she came back from London, are now less so. Having seen her and heard about her training, I am satisfied that she would make a highly competent employee wherever she went and I do not think that any on-going problems with her hip are likely to prejudice her ability to work very much. In those circumstances, I think there is only a modest risk of her not being able to obtain an equal job if need be.

16. Taking account of all these factors this seems to me a case for a low award, which I fix at \$7,500.

Result

17. Adding up those four heads of damage gives a total of \$98,375 which is the sum I assess as the Claimant's damages. I will award her interest on the part of that sum which represents past loss at the rate of 6%, which gives a further \$16,983 (3.5 x 80,875 x 6%). I will hear the parties on costs.

MURRAY SHANKS
High Court Judge (Acting)