

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2005/0459

BETWEEN:

SYLVESTER HUBERT

Claimant

AND

JAMES LAURENT also known as
DEE DEE

Defendant

Appearances: Mrs. Shirley Lewis, Attorney at law for Claimant
Defendant not present, unrepresented

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2005: April 12
April 27
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DECISION

Mason J

[1] This is an application for assessment of damages consequent upon the default judgment obtained by the Claimant on 2nd November, 2005.

[2] The uncontroverted facts are as stated in the legal submissions of Counsel for the Claimant:

- a. *The Claimant was a mechanic and refrigeration technician and lived with his common-law wife at Savannes Bay, La Toc, Castries at the date of the incident on June 24th 2002, he was visiting his child's mother and they were watching television when the Defendant, who also resided in the same house entered the room with a cup in his hand and proceeded to throw the liquid contents in the Claimant's face including his eyes. The liquid burned the Claimants eyes very badly and he was taken to Victoria Hospital where he continued to suffer extreme pain.*

- b. *The Claimant remained in the hospital for two (2) weeks and was discharged with medication. After leaving the hospital he continued to receive treatment by local and visiting doctors from Martinique and recently from Cuba: but the Claimant's condition did not improve and the Claimant is fully blind, with no hope of any improvement or of ever seeing again.*

- c. *The Claimant had two other children who lived with him and his common-law wife in a two bedroom wooden house at Savannes Bay, Castries they were ages 13 and 14 then, and both attending Secondary*

School. The common law wife worked as a ward maid at the Victoria Hospital and the Claimant as a Refrigeration Technician at the Fisheries Complex, Castries where he maintained the deep freezers in Saint Lucia for the Fisheries Complex.

- d. For this job he earned \$1,352.32 per month. He also had a hobby repairing motor vehicles as a motor mechanic repairman which earned his extra.*

- e. The Claimant liked diving as a hobby. He drove his children to school and he drove himself to work in Vieux Fort, Dennery, Castries and Anse La Raye the locations where the Fisheries Department had Deep Freezers.*

- f. The Claimant maintained his home and his family in the sum of \$500.00 monthly. After the accident he ceased working. His common-law wife did everything for him and she solely supported the home and she continued to do so until March 2006.*

- g. The Claimant's house is on a rugged hill at Savannes, Castries and he cannot move or go anywhere outside his home without the help of someone, for fear of falling*
- h. He has had to pay a taxi often to take him back and forth to the Victoria Hospital and elsewhere for treatment and to go about his business. Recently his common-law wife left him and he has had to pay daily help of \$30.00 off and on when he can afford it.*
- i. The Claimant's children have grown up and moved away from home and he has a grandchild whom he has never seen and never will be able to see*
- j. The Claimant is now dependant on friends to take him for drives or in town to do his business and to get out of his house whenever he wishes.*
- k. Immediately below the Claimant's house is a football field and his past time was to watch the young footballers from the area play the game.*

This is no longer possible neither can he meet his friends at the mechanic shop to "lime" or enjoy his hobby.

- [3] It is left to the Court to make the award of damages. To do this, the multiplier and multiplicand must first be determined. In so doing I am mindful of and are guided by the decision of the Court of Appeal Fenton Auguste and Francis Neptune Civil Appeal No.6 of 2996.

"In determining the multiplier, a court should be mindful that it is assessing general and not special damages. That is evaluating prospects, and then it is a once and for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that the Plaintiff is getting a lump sum instead of several small sums spread over the years and that the award is intended to compensate the Plaintiff for the money he would have earned during his normal working life but for the accident".

- [4] The Claimant being aged 44 at the time of this application and following the decision in the English case of Goodiffe V Snyder and Harding found in Kemp and Kemp. "The quantum of damages in personal injury and fatal accident claims Volume 2 where the multiplier was fixed at 8, the Plaintiff being 52 at the time of trial, I would fix the multiplier at 9. According to the decision, in the aforementioned case of Fenton Auguste.

[5] The multiplicand is arrived at by using simple mathematics – the basis being the least amount the Claimant would have been earning if he had continued to work without being injured.

[6] In this instance the Claimant's annual salary (based on the sum of \$1,352.32 per month) is \$16,227.84.

[7] **Pain and Suffering and Loss of Amenities**

It has to be accepted that when the liquid was thrown in the Claimant's face, he must have suffered excruciating pain. No evidence of a precondition regarding his eyesight has been given. He is now totally blind. In addition to the physical suffering, his condition must have some psychological effect. He has been rendered temporarily helpless.

[8] Under this head, the amount will be \$30,000.00.

[9] Taking into account that the Claimant can no longer enjoy or participate in the pastimes and hobbies that he previously enjoyed, I would assess the award for loss of amenities at \$30,000.00.

[10] **Loss of future earnings**

The Claimant received the sum of \$1,352.32 per month as a refrigeration technician. Using the previously determined multiplier of 9 and the multiplicand the Claimant is entitled to the sum of \$146,050.56.

[11] **Cost of future Housekeeping Care**

The evidence given is that the Claimant's common law wife has now left him and he can therefore no longer depend on her assistance. In addition the children are now living on their own and he receives no NIS benefits. He will have to employ someone to assist in his housekeeping activities because of his total blindness and if only until he can later learn to help himself as most persons with his affliction manage to do. To assist him in this the court must make an award which will be based on the going daily rate of \$30.00 per day for household help. $\$30.00 \times 5 = \$150.00 \times 52 = \$7,800.00 \times 9 = \$70,200.00$.

[12] **Cost of Future Doctor's visits**

It has been stated that his condition of blindness will not improve and so no award will be given in this area.

[13] **Special Damages**

Loss of Earnings

The Claimant is entitled to his loss of earnings from the date of the incident 24th June, 2002 to the date of the judgment 2nd November 2005. Thus at the rate of \$1,352.32 per month X 40 months, the Claimant is entitled to \$54,092.80.

[14] For other special damages the amount has been given as and the Court accepts the sum of \$52,086.20.

[15] **Taxi Services**

It is noted that the Claimant must pay taxi to take him wherever he has to go. A ballpark figure of \$5,000.00 will be allowed, which is based on the opinion that the Claimant will need to travel around by this mode of transport since he lives in the rugged hilly area of Savannes.

[16] **Interest**

Interest will be allowed as follows:-

6% per annum for pain and suffering and loss of amenities with effect from the date of service of the claim form that is 11th July, 2005 to date of default judgment 2nd November, 2005 and at 3% per annum on special damages from the date of the incident 24th June, 2002 to date of default judgment 2nd November, 2005.

[17] **Summary:**

General Damages

Pain and suffering	\$ 30,000.00
Loss of amenities	\$ 30,000.00
Loss of future earnings	\$146,000.56
Cost of future household care	\$ 70,200.00

\$276,250.06

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Special damages

Loss of Earnings \$54,092.80

Special damages \$52,086.20

\$106, 179.00

Total to be awarded in the sum of \$382,429.56

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Costs awarded are prescribed costs.

SANDRA MASON Q. C.

High Court Judge