

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

CLAIM NO.: 29 OF 2002

BETWEEN:

DWIGHT MAYERS

Claimant

and

CARL WILLIAMS
SHELL ANTILLES AND GUIANAS LTD

Defendants

Appearances:

Mr. R. Williams for Claimant
Mr. S.K. John for Defendant

2006: March 17

DECISION

- [1] **COTTLE, MASTER:** The Claimant suffered injuries in an accident at Port Kingstown in Saint Vincent. After a trial the Defendants were found to have been negligent. Judgment was entered for the Claimant for damages to be assessed and costs. This is the assessment.

SPECIAL DAMAGES:

- [2] The Defendants have already paid the medical and hospital expenses of the Claimant. The Claimant restricted his pleadings for special damages to two items:
- (1) Loss of Earnings - \$500.00 per month x 21 = \$10,500.00
 - (2) Domestic care \$20.00 per day x 630 days = \$12,600.00



[3] The Claimant was injured on the 22nd February 2000 when he was aged 25. At the time of the injury he worked as a driver's mate and earned \$500.00 monthly. He continued to receive his salary from the Defendants until December 2000. He was unemployed until 2001 when in May he obtained employment as a security guard. He lasted only 3 months at this job. From the evidence of the Claimant under cross-examination I find that he stopped working for reasons which are in no way connected to his injuries. Had it been otherwise he would not have been able to hold down this employment for a prolonged period such as three months. His earnings from his job as a watchman were not less than his wages as a driver's mate. I thus find that by May 2001 at the latest the Claimant was fit enough to secure employment which would have caused him no diminution of earnings. I award the Claimant four months' salary as loss of earnings, that is $\$500 \times 4 = \$2,000.00$.

DOMESTIC CARE:

[4] The Claimant says that his injuries – which I will detail below – required him to avail himself of domestic help. Mr. Williams for the Claimant cites the case of Donnelly v Joyce [1973] 3 ALL ER 475 as authority supporting such an award. It is clear that the Claimant's injuries would have necessitated assistance in his daily domestic activity. However, it is also the duty of the Claimant to plead and prove his special damages. He says that the cost of such assistance is \$20.00 per day. No evidence has been led to demonstrate any payment for domestic assistance. In the circumstances I cannot make any award for domestic assistance as special damages.

GENERAL DAMAGES:

Pain, Suffering and Loss of Amenities

[5] The Claimant, then aged 25, suffered severe injuries when his right hand was crushed between the motor vessel he was refueling and another vessel that was berthed alongside. All the digits of the hand save the thumb were crushed. The fourth and fifth fingers had to be amputated. There were multiple fractures of the index and middle fingers. The

Claimant says he suffered excruciating pain for approximately three weeks before the pain became more bearable. The index and middle fingers remain deformed. The Claimant says they are functionally useless. Before the accident the Claimant was an avid swimmer. He was an amateur boxer. He played football in the Armos Vale and Brighton Leagues for the well known Vintage Football Club. He was the goalkeeper. Since the accident he can no longer box. He no longer plays football as he does not play any other position but goalkeeper. He no longer swims as he is conscious of the resultant deformity to his right hand.

[6] Counsel for the Claimant referred to the Court of Appeal decision of Julius Jeffrey v C.C.A. a case from this country. There the Claimant suffered similar injuries to this case but only a thumb was amputated. The Court of Appeal considered that an award of \$80,000.00 for pain, suffering and loss of amenities was adequate.

[7] Mitchell J, in Austra Franklyn v M.A. Kharafi & Sons Ltd Civil Suit 276 of 1999 also from St. Vincent awarded a Claimant \$60,000.00 for pain, suffering and loss of amenities. That Claimant had his hand crushed between a steel boat and a pile. He did not suffer the amputation of any digits. He was a cricketer and body builder. His injuries curtailed these activities.

[8] I consider that an award of \$80,000.00 for pain, suffering and loss of amenities will meet the justice of this Claimant.

Future Loss of Earnings

[9] At the time of the accident the Claimant earned \$500.00 monthly. Persons who perform the duties of driver's mate at present earn \$750.00 per month. The Claimant earns \$464.05 per fortnight – he works only two weeks each month as a watchman for the Government of Saint Vincent and the Grenadines. I find I can make no award for future loss of earnings.

Loss of Earning Capacity

[10] The Claimant says that he intended to apprentice himself to a plumber and thus increase his earnings after he qualified as a plumber. The injury has made realizing this aspiration impossible. The Claimant is handicapped on the labour market. He is now severely restricted in the kind of work he will be able to perform. For loss of his capacity I award the Claimant \$10,000.00.

THE NATURE AND EXTENT OF THE INJURY SUSTAINED AND THE RESULTING PHYSICAL DISABILITY

[11] The case of Comelliac v St. Louis [1965] 7 WIR 491 neatly encapsulates the factors the court should consider in assessing general damages for personal injury. Here the Claimant will have to live with a severely disfigured hand, a hand that is functionally useless. The nature of the disability is such as will require the Claimant to obtain assistance to do many things which normal persons take for granted.

[12] He is handicapped in matters of personal hygiene. Cooking and cleaning are immeasurably more difficult. While evidentiary difficulties prohibited his recovering the cost of domestic assistance as special damages, there is no reason why such prospective expenses cannot now be considered. The Claimant is still a young man. He has many years ahead of him in the normal scheme of things. I award the Claimant the sum of \$25,000.00 under this head.

TOTAL AWARD

[13] The total award to the Claimant is thus –

Special Damages	\$ 2,000.00
General Damages – Pain, suffering and loss of amenities	\$ 80,000.00
Loss of Earning Capacity	\$ 10,000.00
Physical Disability	<u>\$ 25,000.00</u>
TOTAL	<u>\$117,000.00</u>

COSTS

[14] I award the Claimant prescribed costs in the amount of \$26,550.00.


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Brian S. Cottle
MASTER