

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 192 OF 1997

BETWEEN:

OSLEY BAPTISTE

Claimant

v

C.K. GREAVES AND COMPANY LIMITED

Defendant

Appearances:

Mr. Richard Williams for the Claimant

Mr. Samuel Commissiong and Ms. Suzanne Commissiong for the Defendant

2005: April 19

2006: May 10th

JUDGMENT

- [1] **BRUCE-LYLE, J:** The Claimant suffered injuries as a result of slipping in a pool of slimy water at the Defendant's supermarket on the 16th July 1994. As a result of that slip the claimant fell. He was 72 years old at the time.
- [2] The Claimant suffered serious injury and pain. He categorized his injuries as pain at the back of the neck, stiffness and pain in both legs and dizziness. For a time he also suffered or experienced urinary incontinence at nights.
- [3] On the 21st May 2001, Mitchell, J as he then was, after trial, gave judgment in favour of the Claimant on the issue of liability, with damages and costs to be assessed. On the 19th April 2005 the matter came before me for Assessment of Damages and Costs. This is the assessment.

SPECIAL DAMAGES:

[4] The Defendant has made a payment of \$10,000.00 E.C. as per a Court Order dated the 3rd April 2004. This was an order of the Learned Master Brian Cottle.

[5] At the assessment the Court relied on the Statement of Claim filed by the Claimant and further and better particulars supplied by him on the Defendant's application for such.

[6] The Claimant particularized his claim for special damages as follows:

- | | | |
|-----|------------------|----------|
| (a) | Loss of Earnings | \$10,000 |
| (b) | Airfare | \$ 5,000 |
| (c) | Medical Expenses | \$ 5,000 |

This making a grand total of \$20,000. But in his further and better particulars filed on the 7th December 1999 he claimed that he worked for \$3,000 monthly and was claiming for loss of earnings for half the month of July 1994, for the whole of the months of August, September and October 1994. This makes a total of \$10,500 E.C. There is only a difference of \$500.00 between what is contained in the Claim for special damages and what was contained in the further and better particulars filed. I would therefore grant the Claimant the sum of \$10,500 E.C for loss of earnings. As the Claimant has already been paid the sum of \$10,000 by the Defendant this sum can conveniently be offset from the sum of \$10,500 E.C. leaving a balance of \$500 under that head.

[7] In his claim for airfares and incidental expenses as provided in his statement of further and better particulars, the Claimant is claiming the sum of \$24,744.36 for visits to his doctor Debnath in Saint Vincent, and various trips to consult specialists in Trinidad and Canada, including incidental expenses like room and board and transportation in Canada and Trinidad. There has been no real dispute emanating from the Defendant as regards this head of the claim. The Claimant has provided evidence which on a whole satisfies me that he did incur these expenses. There has been no strenuous contradiction of these expenses by the Defendant. I would therefore award the Claimant the amount of

\$24,744.36 to satisfy the claim under special damages relating to airfares and medical expenses.

GENERAL DAMAGES:

Pain, Suffering and Loss of Amenities -

- [8] The Claimant, then aged 72 years, suffered injuries to his lower back and neck as a result of his fall in the Defendant's supermarket. He categorized his injuries as pain at the back of the neck, stiffness and pain in both legs and dizziness. He said he also experienced urinary incontinence at nights. This fall was as a result of the Claimant stepping into a pool of bloody water which had collected in front of a leaking refrigerator in the Defendant's supermarket, causing him to slip and fall in an awkward manner thereby exerting pressure on his lower back area, with attendant extension of the injury up to his neck area.
- [9] There is no doubt that the Claimant would have suffered a considerable amount of pain as a result of his injuries having regard to the various medical reports supplied as evidence. This would have involved also considerable amounts of suffering. The Claimant stated that since the date of the accident he has suffered severe continuous pain, disability and weakness. He said this pain affects him day and night with the additional discomfort of feeling pins and needles in his fingers, toes and soles of his feet. He describes his condition as getting worse as time goes on – paragraph 14 of his affidavit filed on the 30th May 2002.
- [10] In paragraph 15 of this same affidavit the Claimant states that there is nothing he does without suffering from substantial pain and discomfort. He further stated that even walking is painful and arduous and that his very existence as a human being is now very painful, including sleeping; except when he used valium. The Claimant further stated that after the accident he was unable to work on a daily basis and on the days he attended the factory he could only spend a few hours because of the pain and discomfort and spent most of the

time lying down in his office. This he said has very negatively affected his business which has all but collapsed at this time.

[11] It is essential to state that the Claimant is the owner and manager of a clothing factory at the Camden Park Industrial Estate known as Venus Textiles. He is the sole Manager of the said factory which at the time of the accident was a successful enterprise. He stated that his responsibilities were to manage, cut, spread and design, and also repaired the machines. The business, he said, had fiscal incentives and as such was exempted from paying income tax and duty. He took \$3,000 per month for salary, benefits and expenses. He also said his wife assisted him at the factory after the accident and in his absence for the three months and a half, he did not draw the usual sum of \$3,000 per month from the business.

[12] Again, before the accident the Claimant said he enjoyed an active lifestyle for a man his age. He said his greatest joys were swimming, fishing, boating and refurbishing vehicles. These he accomplished by purchasing a house at Indian Bay; close to the sea and became a qualified auto mechanic. Since the accident he said, he cannot even think about swimming, boating, nor fishing in any way. He cannot work on his automobiles which now rot in his yard. He cannot socialize at parties and picnics or playing pool as he used to do quite a lot. This, because of the pain, stiffness of his limbs and disability that he suffers, and rather stays at home away from his friends. He now considers that his retirement days which he should be spending enjoying his life and doing the things that make him happy, have been totally ruined and has put a bitter ending to an otherwise beautiful life. He finally said that his wife has to attend to his every need as walking or bending down has become difficult and painful.

[13] It is interesting to note that despite these painful conditions suffered as described by the Claimant, he attended Court, climbed the stairs to the upstairs Court Room, and walked unaided to the witness stand to give evidence. Despite that I refer to the last paragraph of the Report from Dr. Charles Woods, an Orthopaedic Surgeon attached to the Milton Cato Memorial Hospital (Ex. C.W. 1) –

"Mr. Baptiste is presently severely incapacitated by his condition, he walks slowly and with difficulty and is unable to lift anything of significant weight. Even the most basic everyday tasks become painful and tedious due to his spinal pain and generalized weakness. He cannot be expected to have much recovery from his condition even with further conservative or surgical measures."

[14] I am more inclined to go along with the report and findings of Dr. Charles Woods. I find the report of Dr. Jerry Thorne to contain very unnecessary innuendoes with no factual basis except a bid to convince the Court that the Claimant suffered only what can be described as soft tissue injury. I am not convinced with his report at all which to my mind does not aid the Court. The report of Dr. Charles Woods of the 25th November 2003 instant also states –

"Mr. Baptiste's life has in effect been totally destroyed by circumstances which clearly were initiated by his fall on 16th June 1994. That is an undeniable fact. The last nine years of his life have been a living hell that we can only imagine. He is in the sunset of his years and has nothing to look forward to. I think he deserves better."

[15] Having regard to the cases of Gailus Mathurin and Joachim Mathurin v Andrew Paul SLU HCV2002/0867 and the case of Austra Franklyn v MA Kharafi WLL Ltd (St. Vincent) No. 276 of 1999 and Fenton Auguste v Francis Neptune, Civil Appeal 6 of 1996 (St. Lucia), I would award the Claimant for pain and suffering and loss of amenities \$100,000 E.C.

FUTURE LOSS OF EARNINGS:

[16] At the time of the accident the Claimant earned \$3,000 monthly. This has not been contradicted. His textile factory has ground to a halt as he could not mitigate his loss. The Claimant is 72 years old. Given his age, it is not likely that he would have continued in this business endeavour for very much longer. He has long passed what is normally regarded as the retirement age in Saint Vincent. I would therefore adopt a multiplier of 1. The multiplicand is the figure of \$3,000 which I find the Claimant to have been earning from his business at the textile factory. I make no award for the income he might have generated for refurbishing and selling automobiles. There is a deficiency in the pleading and proof of this aspect of the Claimant's claim. Therefore I would award the Claimant under this head - \$3,000 x 12 - \$36,000, for future loss of earnings.

Loss of Earning Capacity

- [17] Having regard to what I have stated above in regard to the Claimant's age of 72 years and his having passed what would normally be considered the retirement age of persons in Saint Vincent and the Grenadines and really being in the twilight of his years I would make no award under this head.

The Nature and Extent of the Injury Sustained and the Resulting Physical Disability

- [18] There are certain factors which the Court should consider in assessing general damages for personal injury – Cornelliac v St. Louis [1965] 7 WIR 491. In this case as evidenced by the reports of Dr. Charles Woods and the other medical reports, it is obvious that the Claimant will have to live with his debilitating condition for the remainder of his years on this earth. He is 72 years old. The nature of his disability is such that he will require assistance to do many things which normal persons take for granted.

- [19] In his witness statement he stated at paragraph 27 –

"Since the date of the accident my wife has been required to nurse me and give me special attention and assistance, she now has to give me massages on a very frequent basis, she has to make my beverages and meals and bring them for me, I can no longer cook nor look after myself properly nearly everything I need must be fetched for me as walking is difficult and painful. Bending down to pick up an object that has fallen to the ground is difficult and painful"

- (28). "I can no longer cut the lawn and have to pay \$25.00 per month to have this service performed, I can no longer wash my car and have to pay \$5.00 per week to have the car washed."

- (29) "I also cannot service and repair the machines at the factory and has had to engage the services of Mr. Dwight Bacchus whom I pay a minimum of \$40.00 per month to perform technician services."

- [20] I am afraid I cannot entertain any award under this head owing to the age of the Claimant, and the fact that he himself has stated in his evidence that his business has all but collapsed if not collapsed entirely because of his injured condition. If he has to rely on his

wife for meals and massages, it is my contention that wives are expected to perform these roles when the situation so necessitates. I make no award under this head.

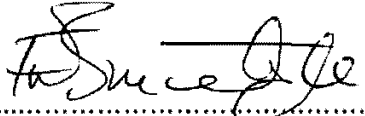
TOTAL AWARD

[21] The total award to the Claimant therefore stands as follows –

Special Damages	-	\$25,244.36 E.C.
General Damages –		
Pain, Suffering and Loss of Amenities	-	\$100,000.00
Future Loss of Earnings	-	<u>\$ 36,000.00</u>
TOTAL	-	<u>\$161,244.36</u>

COSTS

[22] I award the Claimant prescribed costs in the sum of \$25,000. Interest is awarded to the Claimant at six per cent (6%) from this judgment until payment.


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Frederick V. Bruce-Lyle
HIGH COURT JUDGE