

SAINT LUCIA

THE EASTERN CARIBBEN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO.SLUHCV 2002/0052

BETWEEN:

AUGUSTIN DUNCAN

Claimant

and

1.Commissioner of Police
2.The Attorney General

Defendants

Appearances: Ms. R.T St.Rose for Claimant
Mr. D.Lay for the Defendants

2006: September 28

DECISION

[1] **COTTLE, M:** The Claimant was awarded judgement against the Defendants. The special damages which were pleaded were awarded and the Court ordered that general damages, interest and costs be assessed. This is the assessment.

The Injury

[2] On October 10, 2001 the Claimant was shot and wounded by a member of a party of policemen. He sustained a wound to the head. During surgery the bullet which had remained lodged in his skull was removed. The broken bone and bits of damaged brain matter were removed. On July 18, 2002 Dr. S.R. Soni, a neurologist, examined the Claimant. He found

- 1) 6 cm oblique scar above and behind the left ear
- 2) Finger tip sized depression at the anterior end of the scar

- 3) Patchy loss of pin-prick and light touch sensation of the right hand and forearm
- 4) Possible, very slight diffuse weakness of the right arm and leg.

[3] Dr. Soni thought that the Claimant's residual symptoms of headaches, unsteadiness, vague weakness and loss of sensation of the right arm, could be directly attributed to his injury. He also considered that there was a 25% risk of the Claimant developing fits in the future. Such a risk of post traumatic epilepsy could occur as much as 10 years or more after the injury. Dr. Soni thought that the Claimant "should be able to work, but possibly not in a physically demanding job as the masonry he was doing before."

[4] On August 03, 04 Dr. Soni again saw and examined the Claimant. He found him to walk normally without a limp. Tender reflexes were brisk and equal. Muscle tone and power were normal other than a slightly reduced grip of the right hand pin-prick and light touch sensations were considerably reduced on the right side of his face, his right leg and arm.

[5] Dr Soni opined that the Claimant had "definite neurological deficits secondary to his brain injury". He had suffered no convulsions though the risk remained. The good doctor saw no reason why the Claimant should not try resuming his previous employment as a mason, despite the possibility that his sensory deficits would make it difficult for him to be as efficient as no doubt he would like to be.

The Claim

[6] The Claimant now seeks to recover compensation for 1) loss of earnings 2) loss of earning capacity 3) pain, suffering and loss of amenities 4) interest 5) costs.

Loss of Earnings

- [7] Earnings lost to the date of assessment are special damages. These must be pleaded to be recoverable. The Claimant only sought to recover \$1,647.00 as special damages. The Defendants did not contest this sum and it has already been awarded as special damages. The Claimant can recover nothing more under this head.

Loss of Earnings after assessment

- [8] Such prospective loss of earnings is recoverable. Here the Claimant swears that he earned about \$1,000 per fortnight from his trade as a mason. When he did not have a construction job he would sell coconuts and earn \$200.00 to \$300.00 per day. From these combined activities the Claimant says he earned approximately \$3,500.00 per month. The Claimant produced no supporting evidence of his income. No pay slips were seen. No evidence of payment of income tax was produced to demonstrate that the Claimant enjoyed the level of income he now claims. I find it difficult to see why the Claimant would even wish to persevere in his trade as a mason when he earned two to three times as much from the less demanding job of selling coconuts. I believe that the Claimant must have been earning some amount but the obvious effort to inflate his earnings makes it difficult to assess his true loss. And it always remains for the claimant to establish his level of loss.
- [9] The Claimant says that some seven months after the injury he again began earning an income from selling coconuts. He says he could not do the work himself but paid someone \$500.00 to sell the coconuts for him. He does not say whether that amount is daily or weekly or monthly. If this is a weekly sum as seems likely it means that the claimant's loss of income in future will be restricted to the amount he now has to pay someone to earn the income he once did by

selling his coconuts himself. This analysis proceeds on the assumption that the Claimant is in fact unable to sell coconuts.

[10] Dr Soni has a contrary opinion. He is clear that the Claimant can work. There is no suggestion by the doctor that the Claimant's slight neurological deficit renders him incapable of selling his coconuts. The Claimant seems to be saying that he is now completely incapacitated. He cannot grasp tools and must avoid the sunlight. The medical evidence does not support this. In the circumstances I find that the evidence produced by the Claimant does not permit me to make any award for loss of earnings.

Loss of earning capacity

[11] The Claimant has suffered some neurological deficit. He is less able to earn as a mason. However, I am not convinced that his ability to earn as a coconut vendor has been impaired. Since the Claimant earned more from selling coconuts I consider that his capacity to earn has not been adversely affected by his injury. I thus make no award under this head.

Pain suffering and loss of amenities

[12] The Claimant pleaded no special amenity which he has now lost. However, I consider it just to compensate him for the fact that his slight deficit has rendered his enjoyment of the ordinary pleasures of life somewhat less. I make a modest award of \$5,000.00 under this head.

[13] The Claimant would have suffered the pain of the injury. He would have had to endure the trauma of surgery. He says he still has headaches. This is likely to be permanent. He also claims persistent weakness to some small extent on the right side of his body. Counsel for the Claimant urged the Court to make an award along the lines of that made in Bauratt v Furniss a UK case reported – Kemp and

Kemp in 1992. That Claimant had significantly more severe injuries than the instant Claimant. The standard of living in the UK does not compare with that in Saint. Lucia. I decline to follow that case. Counsel for the Defendant referred to a number of regional cases involving Claimants who suffered brain injuries. I refer most especially to Donna Pelle v Shandy Hunte a decision from Antigua delivered in 2003 (195/99) The Claimant was awarded \$25,000.00 for general damages.

[14] I consider that an award of \$35,000.00 for pain and suffering is apt to do justice to this Claimant. The total award is thus \$40,000.00 for general damages.

[15] Interest is awarded on the special damages at 3%, and on the general damages at 4%, from date of service of the claim to today, and at 6% per annum on the global sum from today until payment.

Costs

[16] I award costs on the basis of prescribed costs in the amount of \$7,200 being approximately 60% of the costs that would have been payable on a full trial of a claim of this value. I do so as this was a default judgement with damages having been assessed.

BRIAN COTTLE
Master