

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 506 OF 2005

BETWEEN:

RONALD WOODS

Claimant

V

IRVIN JOSEPH

Defendant

Appearances:

Mr. O. Dennie for the Claimant

2007: August 31

JUDGMENT

[1] **Cottle J:** The Claimant suffered severe injuries in a motor vehicle accident at Georgetown on March 1, 2005. The Defendant suffered judgment in default of defence to be entered against him. Judgment was consequently entered for damages to be assessed. The Claimant now applies to have his damages and costs assessed.

[2] The Claimant was a pedestrian who was struck by a motor vehicle driven by the Defendant. The Claimant suffered multiple small lacerations to the face and left elbow. His left leg was fractured in two places. He was hospitalized and the left leg was surgically repaired. He was released from hospital after 9 days. He swears that he now walks with a limp.

SPECIAL DAMAGES

- [3] The Claimant sought to recover special damages totaling \$5,175.00. In his affidavit in support his evidence is very much at odds with the pleaded amounts. He does not plead the hospital expenses of \$247.25 that he refers to in his affidavit. He pleads 10 visits to the doctor. The affidavit reveals 12. The cost of each visit in terms of transportation is said to be \$20.00 in his pleadings and \$10.00 in his affidavit.
- [4] He also seeks to recover loss of earnings before trial as special damages. No supporting evidence was adduced by the Claimant. He pleads that he was a labourer and earned \$20.00 per day. In his affidavit in support of his application for assessment he deposes that his earnings per day as labourer was at a rate of \$40.00.
- [5] It is for the Claimant to provide the court with the evidence on which to assess his loss. In the unsatisfactory state of the evidence I find that I am not able to assess the loss of the Claimant. Clearly he would be entitled to some sum as special damages but the unreliability of the evidence when contrasted with his pleadings which were certified to be true by the Claimant leaves me unable to arrive at any award with confidence. I therefore decline to make any award for special damages.

GENERAL DAMAGES

- [6] In his written submissions on the issue of assessment of general damages counsel for the Claimant submitted that the Claimant should be entitled to an award for pain and suffering and loss of amenities and loss of future earnings.

PAIN, SUFFERING AND LOSS OF AMENITIES

[7] Counsel cited the decision of the Court of Appeal in *CCAA v Julius Jeffrey Civil* Appeal No. 10 of 2003. While the injuries of this Claimant are significantly different from those in the *Jeffrey* case, I am content to award the Claimant a sum of \$40,000 for pain and suffering as was done in that case. I make no award for loss of amenities. None was pleaded.

LOSS OF FUTURE EARNINGS

[8] I am unclear why the Claimant is to be compensated under this head. No evidence has been led which suggests that he is incapacitated and unable to work in the future. The medical report of Dr. Woods which the Claimant has produced reveals that the Claimant would make “a good recovery from his injuries.” Dr. Woods expected the Claimant to have some permanent mild to moderate disability of his left leg.

[9] The Claimant says that since the accident he has not been able to work. Alas, the medical evidence does not lead to the same conclusion. I hold that the Claimant has failed to satisfy me that he is incapacitated permanently and unable to work.

[10] The total award to the Claimant is thus \$40,000.00 for pain and suffering. The award carries interest at the rate of 6% per annum from judgment until payment. Prescribed costs of \$6,900 are also awarded.

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 Brian S. Cottle
 HIGH COURT JUDGE