

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 277 of 1993

BETWEEN:

EDDEION BALLANTYNE

Claimant

V

DONALD JOHN

Defendant

Appearances:

Mr. J. Martin for Claimant

Mr. S. E. Commissiong for Defendant

2006: October 04

2007: October 26

JUDGMENT

[1] **Cottle J:** I must begin with an apology to the parties for the delay in delivery of this assessment. The evidence was heard on 4th October, 2006. The judgment was reserved pending receipt of written submissions with authorities in support by counsel on both sides.

[2] The Claimant filed his submissions on 4th October, 2006. The Defendants submissions were not filed until 12th December, 2006. And there the matter languished. It was not until the latter part of October 2007 that counsel enquired and it was discovered that the submissions, having been filed, were not brought to the attention of the relevant judicial officer.

- [3] In fact this entire claim seems to have met with extraordinary and inordinate delay.
- [4] The Claimant was injured in 1993 on April 12th. The writ was issued on 22nd June, 1993. On 14th January, 2002 Mitchell J heard the claim and entered judgment for the Claimant for damages to be assessed and costs. The Claimant applied to have his damages assessed on 27th September, 2004 but it was not until 16th February, 2005 that he adduced any evidence in support of his application for assessment.
- [5] The Claimant was born on 6th February, 1966. He was struck by a motor vehicle and pinned against a bank. He suffered severe injuries including fractures to his ribs but his most severe injury was to his left leg which was crushed. Surgical attempts failed and the leg eventually had to be amputated above the knee. The then 27 year old Claimant worked as a bartender at the young Island Hotel. He seeks to recover both special and general damages.

SPECIAL DAMAGES

- [6] The Claimant in his statement of claim listed as special damages medical treatment in Trinidad \$18, 171.00, cost of travel to hospital and return \$60.00, Cost of one pair of crutches \$287.00.
- [7] He also sought to recover 'miscellaneous expenses' of \$250.00 but as this is not particularized it is not recoverable as special damages.
- [8] Loss of earnings of \$900.00 per month plus \$300.00 per month in tips was also pleaded as special damages.
- [9] On the issue of loss of earnings up to the date of the assessment Mr. Commissiong for the Defendant was content that the sum to be awarded would be \$84,820.00

over the period 1996 when the Claimant was forced to stop working and 2006 at the assessment. To be fair Mr. Commissiong also submitted that this sum be discounted by one third to reflect “ accelerated payment”. But given that this head of damages is meant to compensate the Claimant for sums already lost at the time of trial I cannot accept that this payment is in any way accelerated. It is settled law that a Claimant must plead particularize and prove his special damages. The Claimant has signally failed to do so as far as his loss of earnings is concerned, however given the concession by counsel for the Defendant I award the sum of \$84,820.00 for lost earnings.

[10] As far as the other items of special damages pleaded, I accept that the Claimant has proven TT\$18,876.00 which as Mr. Commissiong again points out, amounts to EC\$9,438.00.

[11] Thus the total award for special damages is \$94,258.00.

GENERAL DAMAGES

Pain suffering and loss of amenities.

[12] The Claimant filed an affidavit in support of his application for assessment of damages. He swears that immediately after the accident he was conscious and in intensive pain. This continued throughout his transfer first to the Georgetown Hospital then to the Kingstown General Hospital. He continued to experience pain and discomfort for sometime thereafter. He endured operations in St. Vincent and Trinidad and eventually underwent amputation. I have carefully reviewed the authorities submitted by both counsel on the issue of pain and suffering and loss of amenities. No two cases are alike. There is a very subjective aspect to feeling pain but the Court must do the best it can. For the pain and suffering of this claimant I award \$90,000.00.

Loss of amenities.

[13] No special loss of amenities was pleaded yet the Claimant, then a young man in the prime of life lost his left leg. He would necessarily have lost the simple pleasure of all those pursuits that young men revel in which require two legs. I award him \$40,000.00 for loss of amenities.

Loss of future income.

[14] The Claimant suffered his injury in 1993. After his amputation he was fitted with a prosthetic limb. He continued working with no loss of income until 1996 when he was discharged because of limited mobility.

[15] The Claimant led no evidence of his efforts to seek alternative employment. In cross examination he reluctantly admitted that he had secured some part time employment. He is now forty-one (41) years old. He has many years of useful working life ahead of him. There is no reason why he cannot equip himself for employment in a field which would not require too much mobility. Additionally with the use of a modern prosthesis he can regain much of his mobility.

[16] He has training as a barman but must be able to pursue some, perhaps clerical, career. Alas, the evidence in this regard was very unsatisfactory. It remains for the Claimant to establish his loss but again Mr. Commissioning for the Defendant has come to his aid. He suggests a multiplicand of \$4,242.00.

[17] In the absence of sufficient evidence by the Claimant I accept this. Given the age of the Claimant I adopt a multiplier of 10. This makes an award of \$42,420.00 under this head of damages.

Future Medical Care.

[18] The Claimant's prosthetic limb fitted in 1993 had badly deteriorated by 2006. It must be replaced. Both counsel agree that a replacement every 10 years is reasonable.

[19] If the Claimant attains the usual life expectancy for males in St. Vincent he will require more replacements. Again, no evidence of the estimated cost of the type of prosthesis required (and recommended) has been led. In his statement of claim the Claimant included an estimate in the sum of \$10,000.00 but no reason for that sum has been adduced apart from the word of the Claimant in his affidavit.

[20] Yet in the absence of all else I will allow a sum of \$20,000.00 under this head as the Claimant gets now money that he will need to expend in the distant future.

Interest.

[21] I have above outlined the various periods of delay in this matter. No explanation was given by the Claimant for his delay in applying for assessment. The delay after the assessment is blamed on the Court only. I award the Claimant interest on the special damages at 3% from the date of filing to the date of the judgment of Mitchell J. I award interest on the global sum at the rate of 6% from judgment until payment (this judgment).

The total award is then:	\$94,258.00
	\$90,000.00
	\$40,000.00
	\$42,420.00
	<u>\$20,000.00</u>
	<u>\$286,678.00</u>

Cost.

[22] This matter was begun under the 1970 Rules of the Supreme Court.

[23] I invite counsel to agree on costs failing which the Claimant may apply to have his costs assessed under part 65.12 of the CPR 2000.

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Brian S. Cottle
HIGH COURT JUDGE