

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

VIRGIN ISLANDS

CLAIM NO. BVIHCV 2006/0227

BETWEEN:

CELIA HATCHETT

Claimant

and

FIRST CARIBBEAN INTERNATIONAL BANK
AZIM EDWARD

Defendants

Appearances:

Ms. Asha Johnson of Samuels-Richardson & Co for the Claimant

Mrs. Hazelann Hannaway-Boreland of Harney Westwood & Reigels for the First Defendant

Ms. Cheryl Edward for the Second Defendant

2007: November 1st, 29th

Judgment on assessment of general damages for personal injuries

(Personal injuries – compensation – 40 year old woman involved in road traffic accident – fracture of 3rd cervical vertebra without displacement – contusion of medullary bone of same spine - suspension of laborious activities for 4 months – further evaluation shows no significant improvement - quantum of general damages)

- [1] **Joseph-Olivetti J:** The Claimant, Mrs. Hatchett, claimed against First Caribbean International Bank (“the Bank”) and Mr. Azim Edward (“Mr. Edward”) for damages for injuries that she sustained in a motor vehicle accident on 8th January 2001. A trial was held on 5th June 2006 which was restricted to liability only. I gave an oral decision on June 8th giving judgment against the Bank and Mr. Edward. Mr. Edward was held responsible for the accident in his capacity as servant/agent of the Bank. The Bank was held vicariously liable. The issue of quantum of damages was adjourned to Chambers.
- [2] At the hearing on 1st November no oral evidence was led. Mrs. Hatchett relied on her witness statement and the reports of several doctors namely that of Dr. Alejandra Dominguez Brito, a radiologist dated 28th February, 2002; Dr. Wilfredis Laureano Rosario,

a trauma specialist dated 16th May 2003; Dr. Arvind Salian, a consultant orthopedic surgeon dated 31st December 2005 and Dr. M. Naggy Darwish, an orthopedic and spinal surgeon dated 26th April 2007. These medical reports were exhibited to the Statement of Claim filed on 21st September.

- [3] Learned Counsel for Mrs. Hatchett and the Bank relied on their written submissions supplemented by oral submissions. Counsel for Mr. Edward did not file submissions as she was served with the submissions of Mrs. Hatchett and the Bank the day before the hearing. Nevertheless, Counsel made oral submissions on the Bank's request that Mr. Edward be ordered to make a contribution to the damages.
- [4] Special damages was agreed on by Counsel for Mrs. Hatchett and the Bank in the sum of \$37,222.63. This is made of as follows: - (1) Medical Expenses: analgesics and medication, physiotherapy - \$3,489.64, (2) Cervical collar - \$25.00, (3) Medical reports - \$250.00, (4) Travel expenses/accommodation - \$4,925.41, (5) Loss of earnings (3 years) \$35,656.71 less earnings and benefits - \$16,631.47 and (6) Interest - \$11,901.11. I therefore make an award for special damages in that sum. Accordingly, the only issue arising is the quantum of general damages. However, the Bank appears to be seeking contribution from Mr. Edward as it was found to be vicariously liable for his negligent driving and I will also address this issue.

Legal Principles - Assessment of Damages

- [5] The legal principles governing the assessment of damages are well established and the leading authority on this is **Cornilliac v St. Louis**¹, a case from the Trinidad and Tobago Court of Appeal which has been followed in this jurisdiction. See **Alphonso and Others v Deodat Ramnath**.² Sir Hugh Wooding CJ listed the main factors to be taken into account as (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the impact on the claimant's pecuniary prospects

The Nature and Extent of the Injuries Sustained

- [6] Mrs. Hatchett was 40 years old at time of the accident and 46 at the time of hearing. To the court she appears to be a well-nourished, heavy-set person bordering on the

¹ (1965) 7 WIR 491

² (1997) 56 WIR 183

overweight. Prior to the accident she worked as a boat cleaner but since the accident she was unable to continue in that capacity. She has since found part-time employment as a Spanish teacher.

[7] Mrs. Hatchett first visited Dr. Orlando Smith immediately after the accident. He reported that her cervical spine muscle and lumbar muscle were strained. She was given a cervical collar and muscle relaxant analgesics and he referred her to the Peebles Hospital for therapy.

[8] Sometime later because of the pain she was experiencing, Mrs. Hatchett opted to see a doctor in her native country of Santo Domingo and later a doctor in Puerto Rico. The reports from these doctors show that Mrs. Hatchett sustained a fracture to her 3rd cervical vertebrae without displacement, with contusion of medullary bone of the same spine and that she was treated with "bland" cervical collar, analgesics and absolute rest.

The Nature and Gravity of the Resulting Physical Disability

[9] The medical report of Dr. Arvind Salian disclosed that Mrs. Hatchett still complained of pain and stiffness in her neck as well as her lower back when she saw him on 2nd December 2005.

[10] His evaluation confirmed that Mrs. Hatchett "suffered from fractured C3 vertebrae without displacement of her cervical spine and also central disc herniation of her lumbar L5/S1, vertebrae with degenerative disc disease at L4/L5 disc level". His prognosis is that this injury will deteriorate as a result of age resulting in radicular symptoms, stiffness, muscle, motor and sensory loss and that continued treatment will be necessary or maybe surgery.

[11] The medical report of Dr. Nagy Darwish confirms that he saw Mrs. Hatchett on 13th April 2007 and that she suffers from degenerative disc disease at L5-S1 with herniation. Dr. Darwish also recommended facet joint injection for pain. Dr. Darwish also stated that the lower back pain she suffers has limited Mrs. Hatchett's lifestyle.

[12] In the final analysis the reality is that Mrs. Hatchett has a degenerative disc disease and she will never fully recover from the injury sustained. She has and will continue to have great difficulty in engaging in any strenuous work or activity which involves exerting any sort of pressure on her back. I do not find that she has a predisposition to this type of injury.

The Pain and Suffering and Loss of Amenities

- [13] I accept as Mrs. Hatchett testified and which was not disputed as she was not cross-examined on this that she suffered severe pain in her back from the time of the accident and still does. She said that she could not bend down properly and that when she tried to bend it felt as though her back was going to break. She confirmed that she pursued the recommended therapy which was also painful and which included the wearing of a neck collar. Initially, he had to abstain from strenuous activities for 4 months.
- [14] The medical reports indicate that Mrs. Hatchett experienced and is still experiencing chronic pain and discomfort in her neck and lower back. I have no doubt that Mrs. Hatchett has suffered and is still suffering from some degree of pain and discomfort.
- [15] There was no evidence as to the loss of any special amenities that she suffered. However, the court can infer from the nature of her injuries that she was and continues to be hampered in some of her movements and in engaging in the usual physical activities one would expect a woman of her age to be involved in. I note she was unemployed for 3 years as a result of the injuries although she suffered no loss of income as Social Security paid her. This was reflected in the special damages figure.

Quantum of General Damages

- [16] Ms. Johnson submitted that an award in the sum of \$60,000.00 is appropriate for general damages. In support of this submission counsel relied on two cases, an English decision **Re Goodall (1999)** reported in **Kemp and Kemp**, Volume 3 and one from our jurisdiction.
- [17] In **Re Goodall**, the claimant, aged 33 suffered major disc protrusions at L5/S1, acute pain and permanent severe disability. He suffered from continuous and acute pain, spent most of his time in bed and had to use a wheelchair due to pain. General damages for pain suffering and loss of amenities was awarded at £40,000.00.
- [18] The local case is **David Saunders et al v Grace Rhymer**.³ In that case the claimant was involved in a motor vehicle accident and suffered residual whiplash injury of the neck and back (cervical muscle strain). General damages was awarded at EC\$14,000.00.

³ Civil Suit 41 of 2001, St. Christopher & Nevis

- [19] Mrs. Hannaway-Boreland submitted that the injuries suffered by Mrs. Hatchett fall between minor and lower moderate back injury based on the Judicial Studies Board Guidelines and that an award of US\$10,139.25 to US\$16,222.80 would be appropriate. In support, Counsel referred to the case of **Kenth v Heimdale Hotel Investments Limited**⁴ in which the sum of £12,500 was awarded to a person who suffered prolapsed intervertebral disc, psychiatric illness, severe chronic back and leg pain.
- [20] **Kenth** was awarded this sum as the court having considered her medical history, physical and working conditions found that the strain in her spine would have occurred in 5 years. This case can be distinguished as there is no medical evidence here to suggest that Mrs. Hatchett had a pre-disposition to disc deterioration and that the accident accelerated the onset of her disc degeneration.
- [21] **Antoni Tylman v British Coal Corporation**⁵ was also relied on. The claimant aged 36 sustained an injury to his back. He had continued discomfort for years in his lumbar spine radiating into the left hip on walking and also into the right hip. Bending made the pain worse, lateral flexion was limited and there was tenderness in the L3/4 region in the low back. He was awarded £7,000.00 general damages.
- [22] Any compensation awarded is meant to put a claimant in the same position he would have been in had the accident not occurred. In doing so the court is guided by awards for comparable injuries in its and other jurisdictions having similar social and economic conditions to those prevailing in the British Virgin Islands.
- [23] The injury suffered by Mrs. Hatchett, to my mind, is one which is at the top end of the moderate category for back injuries as described by the JSB Guidelines. Mrs. Hatchett is not disabled, she however will require further medical attention in the form of facet joint injections to alleviate her pain and discomfort. She has not and will not make a complete recovery and according to the medical report of Dr. Arvind Salian her condition will only get worse with or without surgery as she ages.
- [24] I have considered the authorities cited and am of the view that the cases are not comparable. Taking into consideration the matters to be considered as per the **Cornilliac**

⁴ [2001] EWCA Civ. 1283 (unreported)

⁵ July 19, 1993, Liverpool High Court

case and all the circumstances of this case I am of the view that **US\$20,000.00** represents fair and reasonable compensation for the injuries sustained by Mrs. Hatchett.

- [25] An award of interest is generally made on the sum awarded for general damages from the date the claim was served until judgment. The usual rate is 5% per annum which is akin to the rate applicable on judgments. I will therefore award interest on the general damages at that rate and for that period.

Whether Mr. Edward should be asked to contribute equally to satisfy the judgment on damages

- [26] Mrs. Hannaway-Boreland based her request for contribution from Mr. Edward on **Stuart Adam Jones v British Broadcasting Corporation et al**⁶ and **Lister v Romford Ice and Cold Storage**⁷ which establish that an employer is entitled to compensation from an employee for damages to the employer arising from the employee's negligent actions in the course of employment.

- [27] Ms. Richards submitted that based on the rationale behind the doctrine of vicarious liability that Mr. Edward should not be asked to contribute. Counsel relied on **Winfield & Jolowicz on Torts, 12th Edn. at page 602** "...a "master" today is normally not an individual but a substantial enterprise or undertaking, and that, by placing liability on the enterprise, what is in fact achieved is the distribution of losses caused in the conduct of its business overall the customers to whom it sells its services or products...the enterprise insures against this liability and the cost of this insurance is reflected in the price it charges to its customers...and the injured person is compensated without the necessity of calling upon an individual, whose personal fault may be slight or even non-existent, to suffer the disastrous financial consequences that may follow liability in tort."

- [28] Further, in the case of **Imperial Chemical Industries v Shatwell**⁸ Lord Pearce stated that "the doctrine of vicarious liability has not grown from any very clear, logical or legal principle but from social convenience and rough justice. The master having (presumably for his own benefit) employed the servant, and being (presumably) better able to make good any damage which may occasionally result from the arrangement, is answerable to

⁶ unreported, 22nd June 2007

⁷ [1957] AC 555

⁸[1965] AC 656

**the world at large for all the torts committed by his servant within the scope of it.
(Emphasis added)**

[29] The question whether the Bank is vicariously liable for the accident has already been answered as the court found that at the time of the accident Mr. Edward was acting in the course of his duty as an employee of the Bank. This means that the Bank is primarily liable.

[30] Furthermore, the Bank did not make a claim in this action for contribution from Mr. Edward as can be seen from its Defence and the court has no jurisdiction to entertain such a claim at this late stage of the proceedings. It follows therefore that the attempt to claim a contribution from Mr. Edward must fail. The Bank is solely responsible for satisfying this judgment.

Costs

[31] Having succeeded at trial on the liability issue and having made an award in the sum of \$20,000.00 for general damages and \$37,222.63 for special damages it follows that Mrs. Hatchett is entitled to the costs of this action which fall to be determined under CPR 65 Appendix B.

Conclusion

[32] To sum up, for the foregoing reasons, I give judgment for Mrs. Hatchett as follows:

- (1) General damages of \$20,000.00 with interest from the date the claim was filed (September 21, 2006) to date of this judgment at 5% per annum;
- (2) Special damages in the sum of \$37,222.63 with interest at 2% per annum from September 21, 2006 to date of judgment;
- (3) Prescribed Costs.

Rita Joseph-Olivetti
High Court Judge