

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV1994/0596

BETWEEN:

PATRICK MORILLE

Claimant

and

(1) **PAUL PIERRE**
(2) **JOSEPH RAMNAL**

Defendants

Appearances :

Mr. H. Fraser for Claimant

Mr. L. Faisal for Defendants

2008: February 28

JUDGMENT

[1] **COTTLE, J.:** This is an assessment of damages due to a Claimant as a result of injuries he suffered in a motor vehicle accident. The Defendant having failed to file any defence, the Claimant was awarded judgment in default of defence.

[2] Counsel for the Defendant at the stage of assessment of damages has sought to persuade the Court that there are elements of the Claimant's case which the Court should reject as not having been proven. This attempt must fail of course. The opportunity for the Defendant to challenge the Claimant's case is now long past. It is worth noting the provisions of CPR 2000 Part 12.13:

12.13 Unless the Defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a Defendant against whom a default judgment has been entered may be heard are –

- (a) an application under rule 12.10 (4);
- (b) costs;
- (c) enforcement of the judgment; and
- (d) the time of payment of any judgment debt.

[3] I thus proceed to assess the damages to the Claimant on the uncontroverted evidence of the Claimant.

Special Damages

[4] It still remains for the Claimant to plead, particularize and prove his special damages. I find that the following items pleaded have been proven to my satisfaction.

Cost of vehicle	\$ 6,800.00
Cost of transport to and from hospital and out patient visits	4,020.00
Loss of earnings 203 days x \$250 per day = \$50,750 discounted by 25% for income taxes	38,062.50
Medical Expenses	<u>5,098.05</u>
Total	<u>\$53,980.55</u>

[5] I pause to add that the Claimant did adduce evidence of additional medical expenses but also as these had not been pleaded they cannot be allowed as special damages.

General Damages

Pain suffering and loss of amenities

- [6] The Claimant suffered a broken tibia and fibula. The fracture later became infected and required multiple and extensive surgical intervention. The accident occurred on 17th April, 1993. On 7th February, 1994 Dr. Vance considered that he was fit to resume work. Unfortunately the infection of the fracture resurfaced and the Claimant had to endure many more bouts of surgery. He was finally discharged from hospital on 19th February, 1994.
- [7] A medical report dated 26th June, 1995 revealed that his fracture had healed, his osteomyelitis was quiescent through he still reported some pain. He suffered a relapse and the medical report in October 2005 showed the Claimant to be unable to work and requiring a further 6 months at least before he could consider being able to work.
- [8] Both Counsel have pointed to a number of decisions including Antoni and James v Dewan, Burnett v Kola ingh, Stewart v Ragbir Ramjitsingh v Gosine, and Ragoonanan v Maharaj all reported in Daly's Damages.
- [9] It is important to note that the fracture of the Claimants bones along with the attendant ostemyelitis resulted in his repeated hospitalization and multiple surgical procedures. Indeed it was not until some 18 months after the initial accident that the Claimant was discharged from hospital from another round of surgeries. He still required another 12 months to be fit for work.
- [10] In all the circumstances, I consider the award for pain, suffering and loss of amenities should be \$80,000.00.

- [11] Interest is awarded on the special damages at the rate of 3% from 24th January, 2000 to today.
- [12] The award in total is thus \$80,000.00 + \$53,980.55 = \$133,980.55.

Costs

- [13] I award the Claimant prescribed costs in the sum of \$17,000.00. I calculate this at 60% of the costs on a full trial as this has been a default judgment with damages assessed.

**BRIAN S. COTTLE
HIGH COURT JUDGE**