

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

SAINT LUCIA

CLAIM NO. SLUHCV2005/0772

BETWEEN:

GILLS IMBERT AUGUSTIN

Claimant

and

PC SHAWN DENIS

Defendant

Appearances :

Mrs. E. Greene-Ernest for Claimant

Mr. A. St. Clair for Defendant

2008: April 11.

JUDGMENT

- [1] **COTTLE, J.:** This is an assessment of damages due to the Claimant to compensate him for personal injuries caused by the Defendant.
- [2] Only the Claimant gave evidence. On 5th December, 2004 it was Roseau Day. A dance was being held that evening as part of the celebrations. The Claimant attended and paid the requisite entrance fee. During the dance, as happens far too often these violent days, an altercation ensued. There was a scuffle involving the Claimant and another patron. A cutlass was present. The Claimant says that he struggled with the other man who tried to pull the weapon from his trousers. He managed to subdue his assailant and took possession of the cutlass.

- [3] The Defendant was attracted by the struggle. He came and took the cutlass from the Claimant. There was also a struggle between these two men. The Claimant left the area.
- [4] Sometime later the Claimant returned to the vicinity of the dancehall. On his way he met the Defendant who had a gun in his right hand. He discharged one round. The Claimant was struck in the right leg below the knee.
- [5] The Claimant suffered a .5 cm diameter wound. There was no bone involvement, the wound was cleared and sutured and the Claimant was discharged. The bullet which had fragmented was removed from the Claimant's leg but one fragment could not be removed.

Special Damages

- [6] In his Statement of Claim the Claimant seeks to recover \$3,883.109 as special damages.
- [7] I award him this sum. No effort was made to contradict the Claimant on cross examination as to the items of special damages he testified to in his witness summary.

General Damages

Pain, suffering and loss of amenities

- [8] Counsel for the Claimant cited two cases of gunshot injury to the leg. Both cases are from Trinidad in the early 1970's. In both cases the injury was more severe than those of the instant Claimant.
- [9] The Claimant in **Diamond v Timothy** was awarded \$2,500 TT in 1973. In **Gill v Charles** the award was \$5,000 TT in 1972.

[10] Counsel for the Defendant cites two cases from Trinidad as well -

- **Daniel v Patrick** involved a serious laceration of the right ankle. The award in 1985 was \$9,265 TT.
- **Baldeo v Irish** concerned fractures of the leg with complete recovery. The award was \$12,262 in 1972.

[11] Having considered the authorities, I am content to award the Claimant the sum of \$15,000.00 for his general damages.

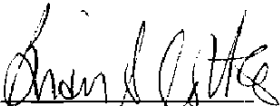
Exemplary and Aggravated Damages

[12] I see nothing in the facts of this case which would justify the award of either exemplary or aggravated damages. This injury was sustained in circumstances of a fracas at a dancehall. Alcohol may have been a factor. It is not the kind of oppressive arbitrary or unconstitutional action by a servant of the Government which might attract an award of exemplary damages.

Interest

[13] Interest is awarded on the special damages at 3% from 6th December, 2004 to today. Interest is awarded on the global sum at 6% from today until payment.

[14] The Defendant will pay the Claimant prescribed costs on the award in the sum of \$5,664.93.


BRIAN S. COTTLE
HIGH COURT JUDGE