

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2006/0472¹³³

BETWEEN:

VIOLINE JOSEPH

Claimant

AND

TERESE MORRIS

SONNEL SAMUEL

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mr. George Lake for the Claimant

Mr. Hollis Francis for the first named Defendant

Ms Samantha Marshall for the second named Defendant

2007: October 17th

2008: April 15th

2009: June 22nd

ASSESSMENT OF DAMAGES

[1] **MATHURIN, M:** On the 22nd November 2003, the Claimant (Mrs. Joseph) was standing at the side of Bolans Main Road when she was struck down by a vehicle which was being

driven by the first Defendant (Mr. Terese Morris) who was being taught to drive by his aunt, the second Defendant (Ms Sonnel Samuel). The accident caused serious injuries to Mrs. Joseph. Mr. Morris and Ms Samuel accepted liability for the accident and agreed special damages to be paid and this court is being asked to assess the general damages and costs that Mrs. Joseph is entitled to. At the time of the accident, Mrs. Joseph was 48 years old. She has three children the youngest of whom was at university in America. Her husband suffers from liver disease and is unable to work and as such she was the breadwinner of the family.

Medical reports and evidence

- [2] Mrs. Joseph was forty eight at the time of the accident. She was initially admitted on the 20th November 2003 to the Holberton Hospital where she was treated for a crushing injury of her right leg by Dr Singh who did reconstructive surgery. Ms Joseph was subsequently treated in Florida at the Memorial Regional Hospital where her limb was amputated and she returned to Antigua where she was fitted with an artificial limb.
- [3] In March 2005, Dr Singh stated that her current prosthesis was worn out and that she would require a new one. He recommended her visiting a consultant in Puerto Rico to have one fitted at a cost of US \$6,500.00.

Mrs. Joseph's evidence

- [4] In her witness statement of 15th June 2007, Mrs. Joseph states that since the accident in November 2003 that her work life has been curtailed. She states that at the time of the accident she was self employed and had a business making masonry accessories which earned her \$2,900.00 per month. She describes the work as strenuous and states that as a result her working life has been reduced. Mrs. Joseph does not however elaborate on the extent to which it has been curtailed.

[5] The quality of Mrs. Joseph's personal life has also suffered as a result. She states that prior to her injuries she enjoyed physical exercises and recreational sports with her other villagers as well as gardening, shopping for clothes and food and dancing. She states that she is no longer able to do these things.

[6] During the period of her recovery and rehabilitation, Mrs. Joseph states that she had to employ persons to assist her around the house and to care for her and her husband as she was incapacitated and unable to perform every day duties for herself including bathing, moving around the house or preparing meals. Mrs. Joseph also states that she is unable to stand for long periods and this has affected her ability to cook, wash clothes, mop or sweep. She says she can not lift heavy objects. She also states she is in constant pain and that the joy and satisfaction of caring for her husband and family have been diminished.

[7] Mrs. Joseph states that she will require future assistance for her household chores and yard and gardening works. She states that she now spends \$800.00 per month on domestic help and has had to purchase a vehicle which had to be specially adapted to her needs.

[8] Counsel sought damages under several headings to which Counsel for the Defendants responded and I will consider them individually. On the question of general damages, the law is settled. The case of Cornilliac v St Louis (1965) 7 WIR 491 is the locus classicus on this point and Wooding CJ set out the considerations to be borne in mind in assessing general damages;

- (a) The nature and extent of the injuries sustained
- (b) The nature and gravity of the resulting physical disability
- (c) The pain and suffering experienced
- (d) The loss of amenities if any
- (e) The extent to which pecuniary prospects are affected

[9] Further, applying the principles in **Heeralall v Hack Bros.** (1977) 15 WIR 117, the law expects an award of fair compensation, fair to Mrs. Joseph for what has happened to her through the negligence of Mr. Morris and Ms Samuel and fair for Mr. Morris and Ms Samuel to pay for such negligence. Such damages cannot be perfect compensation, but it will be fair compensation for her injuries and for the social, economic and domestic consequences to her. I must consider therefore, the nature and extent of the injuries that Mrs. Joseph sustained and the effect that this has had on her health. I must also consider her past pain and suffering, any future pain and suffering that she will experience and any curtailment in her living that the injury has produced.

Pain and suffering and loss of amenities

[10] Counsel for the Claimant states that the Mrs. Joseph was forced to endure both physical and emotional pain as a result of the initial injuries and subsequent amputation. He submits that she had to endure months of painful rehabilitation in order to learn to function using an artificial limb. Counsel submits an award should be at the top of the range for amputated limbs as he states that "*it was a traumatic amputation caused in a devastating accident and the claimant remained conscious*". Counsel adds that several attempts were made to save the leg but it was amputated several months later.

[11] I agree with Counsel for the Defendants' that there is no evidence to support the traumatic amputation to which Counsel for the Claimant refers. I will however acknowledge the pain and suffering which must necessarily accompany an amputation of a person's limb.

[12] Counsel for the Parties have supported their submissions with the following authorities.

- (a) **Cornilliac v St Louis** (1964) 7 WIR 491
- (b) **Kodilinye, The Law of Torts in the West Indies**
- (c) **Surju v Walker** (1973) 21 WIR 86
- (d) **Heeralall v Hack Bros** (1977) 25 WIR 117
- (e) **Alphonso v Ramnauth** Civil Appeal No 1 of 1996 British Virgin Islands

- (f) **Rosetta Mayers v Deep Bay Development Company Limited**
ANUHCV1993/0241 per Olivetti J at para 60
- (g) **Fenton Auguste v Francis Neptune** Civil Appeal No 6 of 1996 Saint Lucia
- (h) **Gaius Mathurin and Joachim Mathurin v Andrew Paul** SLUHCV2002/0867

[13] These are helpful in so far as they restate the general principles on which compensation is made but the injuries in those cases are not what I would consider similar injuries and therefore it is incumbent on the court to make an award that it deems fair and reasonable in all the circumstances. It is regrettable that neither Counsel have provided the Court with any authorities which would assist in guidance in relation to quantum although I am sure the jurisdiction must provide some.

[14] In the matter of **Bernard Warner v Eustace Coates and Roy Browne** ANUHCV1997/0377, Mr. Warner who was 18 at the time of the accident had to have his right leg amputated as a result of an accident caused by the negligence of the Defendants. In considering an appropriate award, Olivetti J. considered the change in the quality of his life including his employment prospects as well as his age. The learned judge also made provision for the replacement of his prosthesis in the future by providing a sum for the value of two.

[15] Mrs. Joseph was 48 at the time of this accident in 2003. I accept the evidence that she has had to replace her prosthesis in the future and accordingly make an award in the sum of 2 pairs at U.S. \$6,500.00= US\$ 13,000.00 which amounts to EC\$35,100.00 when calculated at the accepted rate of 2.7. There is no evidence in support of the claim for future medical expenses and as such I decline to make an award under this head.

[16] I have considered the evidence in support of payment of domestic aid in the form of a receipt from Ms Celestine James for the sum of \$3,000.00 from January to May of 2007 which averages \$600.00 per month which given the imponderables and vicissitudes of life, will be adjusted to a multiplier of 8 which amounts to an award of \$57,600.00. I will also

take into consideration the future expenses for gardening at the rate of \$200.00 with a multiplier of 8 amounting to \$19,200.00.

[17] The insufficiency of evidence in relation to the reduction of earnings does not allow me to make an exact calculation in relation to future loss of earnings but I accept that there would be a decline in the revenue of Mrs. Joseph due to her injury and I accordingly make an award of \$2,900.00 with a multiplier of 5 which amounts to \$14,500.00.

[18] Having considered the general principles, the evidence and submissions I make the following awards:-

For pain, and suffering	\$ 85,000.00
Loss of amenities	\$ 50,000.00.
Prostheses	\$31,500.00
Future loss of earnings	\$14,500.00
Domestic aid	\$57,600.00
Gardening expenses	\$19,200.00

Total **\$257,800.00**

Special Damages agreed as

Per consent order filed on

26th February 2009 **\$625,341.41**

TOTAL **\$883,141.41**

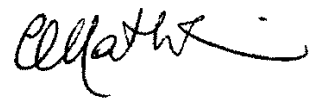
[19] Interest is awarded to a claimant in a personal injuries case on the sum awarded for general damages for pain and suffering and loss of amenities prior to Judgment. Interest on this sum is calculated from the date of the service of the claim form to the date of judgment at the rate of a short-term investment. After judgment, the claimant is entitled to the full amount awarded at the statutory rate of 5%.

[20] Costs in this claim are to be assessed as prescribed under Part 65.5(1) of the Civil Procedure Rules 2000. The total award is EC\$883,141.41. In keeping with Appendix B, costs are calculated in the sum of EC\$90,657.57 which is to be reduced to 55% as the claim concluded prior to trial but up to the case management conference and including assessment of damages. This amount is further reduced by 10% by the Court because of the delay occasioned by the Parties in filing the consent order in relation to special damages which assisted the Court in calculating the costs. This amounts to costs in the sum of \$40,795.90

Summary of Order

[21] In summary, the following is the order on the assessment of damages:-

1. The defendants will pay the sum of \$257,800.00 as the global award for general damages to the claimant.
2. The defendants will also pay agreed special damages in the sum of \$625,341.41
3. The defendants will pay interest at the rate of 3% on the sum of \$257,800.00 from the date of service of the claim (25th July 2006) to date of the hearing of the assessment (15th April 2008)
4. The defendants will pay interest on the total judgment sum of \$883,141.41 at the statutory rate of 5% per annum from 19th June 2009 until payment.
5. The defendants will pay 45% of Mrs. Joseph's prescribed costs in these proceedings in the sum of \$40,795.90.



**CHERYL MATHURIN
MASTER**