

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

GRENADA

CLAIM NO.GDAHCV2009/0338

BETWEEN:

ANN ROBERTSON

Claimant

AND

THE ATTORNEY GENERAL

Defendant

Before:

Master Cheryl Mathurin

Appearances:

Ms Shireen Wilkinson for the Claimant

Ms Karen Samuel for the Defendant

On written representations

2010, July 13th; October 20th

ASSESSMENT OF DAMAGES

[1] **MATHURIN, M:** By consent on the 1st March 2010, judgment was entered for the Claimant (Ms Robertson) against the Defendant (Attorney General) for damages to be assessed. The parties filed written representations to assist the Court with its determination and on the 13th July 2010, the decision was reserved.

[2] The basis of this matter is a very unfortunate incident in which Ms Robertson suffered severe injuries when Mr. James Walter, who was an employee of the Government at the time, caused Ms Robertson to be struck on the leg with the Heavy Duty Roller he was driving at the time. At the

time of the incident Ms Robertson was 70 years old. On examination, it was revealed that she had a deep extensive wound with irregular edges on the medial aspect of her left leg with exposure of bone. X-Rays subsequently revealed that she had an open fracture of the left fibula and tibia as well as abrasion on the same leg.

Special Damages

- [4] On the authority of Hayward and another v Pullinger & Partners Ltd (1950) 1 KBD 581 and Ilkiw v Samuels (1963) 1 WLR 991 it is established that special damages which are generally capable of exact calculation have to be specifically pleaded and proven. A quotation of Diplock J in Ilkew v Samuels (supra) is ample support for this proposition.

"Special damage in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularized... it is plain law... that one can recover in an action only special damage which has been pleaded, and, of course, proved."

Further, McGregor on Damages 16th edition (2003) paragraph 43-006 states as follows;

"Where the precise amount of a particular item of damage has become clear before the trial, either because it has already occurred and so becomes crystallized or because it can become measured with complete accuracy, this exact loss must be pleaded as special damage"

- [5] Ms Robertson in her statement of claim has sought special damages in the sum of \$789.00 as the cost of medication, x-rays, the medical report and transportation. Counsel for the Defendant challenges this amount on the basis that she has provided no evidence of these expenses other than allegations in the Statement of Claim and her subsequent affidavits dated the 18th and 20th June 2010 which were filed in support of this assessment. However based on the medical report which establishes that she was medicated, that x-rays were done and that she had to visit the hospital on more than one occasion, I am able to find that the probability existed that some loss resulted and on this basis and not finding the amounts claim unreasonable, I award the Ms. Robertson the sum of \$789.00 accordingly. This method was found acceptable by Bernard CJ in the case of GRANT v MOTILAL LOONAN LIMITED (1988) 43 W.I.R. 372.

[6] In the affidavits in support of this assessment, Ms Robertson has also alleged further expenses to the tune of \$30,646.42. These expenses she states were incurred subsequent to the filing of the Claim in August 2009. She alleges that because of the injury, she went to Canada for further treatment and was hospitalized in September 2009 for another operation on her leg. This is unsubstantiated by any medical evidence or proof that she was hospitalized for the injury established. This claim was filed on the 4th August 2009 and that it could have been amended to reflect further special damages incurred in September and October 2009 is evident from the fact that the Parties only entered a consent judgment on liability on the 1st March 2010. It is clear that expenses incurred after filing of a claim will not be considered as special damages unless the pleadings are amended accordingly. In the circumstances, I am unable to make any further award under the head of special damages and this amount is accordingly refused.

General Damages

[7] As far as General Damages are concerned Counsel have both set out the factors to be considered by the Court on assessment based on the decision Cornillac v St. Louis (1965) 7 WIR 491. These factors are the nature and extent of the injuries sustained the nature and gravity of the resulting physical disability, the pain and suffering which had to be endured, the loss of amenities suffered, and the extent to which the injured party's pecuniary prospects have been materially affected. Further, applying the principles in Heeralall v Hack Bros. (1977) 15 WIR 117, the law expects an award of fair compensation, fair to Ms Robertson for what has happened to her through the negligence of the defendant and fair for the defendant 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.

[8] The medical report of Dr Kendra Blanchard dated 31st March 2009 details the diagnosis and treatment of Ms Robertson on her admission to the General Hospital and subsequently. She states that there was "*a deep extensive wound with irregular edges on the medial aspect of the left leg with exposure of the bone. The wound was dirty, with foreign particles, including sand and gravel. There was audible and palpable bony crepitation... A superficial abrasion was noted proximal to the wound.*"

- [9] Dr Blanchard states that x-rays revealed complete displaced fractures of the distal tibia and fibula. Ms Robertson was operated on and the wound healed satisfactorily and she was discharged from the hospital 10 days later with follow up treatment to continue at the out patients clinic. Ms Robertson was reviewed in March 2009 when it was noted that there were signs of superficial infection at the site of the wound with skin breakdown. At this point, the report states that she was readmitted to the ward for wound management and daily treatment and on the 31st March 2009, the doctor concluded that she had improved significantly and that there were signs of granulation. This is the extent of the medical evidence submitted.
- [10] Ms Robertson states that prior to the accident she was an independent person and rarely need assistance in accomplishing her daily routines and tasks. She says now she is frightened to go out into the streets and foresees herself needing others to run errands for her. She says that since the accident she is fearful of using her left leg because of pain and states that her doctors told her she would have to endure extensive therapy to regain full use of her leg. She says the pins placed in her leg are an immense pain on a daily basis. She says her previous conditions of Hypertension and Bronchial asthma have been exacerbated by the injury and now she relies on her daughter to function daily.
- [11] I have no doubt that the claimant would have endured pain and suffering from what appears to be a horrendous injury. It can also be recognized that her daily movements would have been restricted for some time and this is evident from Dr Blanchard's report. It is really regrettable that the very serious nature and the continuity and effect of the injuries as alleged have in no way been substantiated by any medical support which would be fundamental to being accepted as factual as it is only an expert who could ascertain the majority of these assertions.
- [12] The parties have submitted the following authorities amidst others to assist the court in its determination in assessing the quantum of damages to be awarded to the claimant in this matter.

Excerpt from **Supplement on Damages for Personal Injuries**; prepared by Stephanie Daly LLB, January 2001

Bernice Jeremiah v Royston Gilbert GDAHCV2008/0038

CCAA Limited v Julius Jeffrey SVGCA 10 of 2003

Patrick Morille v Paul Pierre and Joseph Ramnal SLUHCV1994/0596

Violine Joseph v Terese Morris and Sonnel Samuel ANUHCV2006/0133

Randy James v Leroy Lewis and others ANUHCV2007/0403

Laura Marrocco v The Attorney General of Antigua and Barbuda ANUHCV1997/0240

Delivered 24th October 2006

- [13] I have had regard to the evidence and medical report of the Ms Robertson and submissions of both Counsel. I have noted the authorities that the parties have submitted in support of their submissions and have taken into account the criteria to be considered in assessing compensation. I have duly made comparisons of the awards in the jurisdiction for similar type injuries and although they may not be on all fours with this claim, they are of invaluable assistance in ascertaining what would be a fair award of compensation to pay Ms Robertson. In all the circumstances, I am of the view that an award under the head of general damages for pain and suffering of \$45,000.00 and an award of \$15,000.00 for loss of amenities is reasonable.
- [14] Interest on the special damages of \$789.00 is awarded at the rate 3% from the date of the accident on the 5th February 2009 to the date of this assessment on the 3rd November 2010
Interest on the general damages is awarded at the rate of 6% from the date of service of the Claim to the date of this assessment on the 3rd November 2010.
The entire award attracts statutory interest from the 3rd November 2010 until satisfaction.
- [15] This Claim was determined by a Consent Judgment as to liability in March of 2010 and reserved for assessment of damages upon submissions of both parties in July 2010. The Defendant never filed a defence and the Claimant never sought judgment previous to this. I assume that the parties were both trying to arrive at settlement of the matter but fell short on the issue of quantum. In the circumstances I would award prescribed cost of 45% in accordance with Appendices B and C of the CPR2000 amounting to \$7,271.10.

[16] In summary, the award of the Court is as follows;

1. General damages to Ms Robertson in the sum of \$60,000.00 with interest at 6% from the filing of the Claim until satisfaction
2. Special damages to Ms Robertson in the sum of \$789.00 with interest at 3% from the date of the accident until judgment and thereafter at the statutory rate until satisfaction.
3. Costs in the sum of \$7,271.10

CHERYL MATHURIN
MASTER