

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2008/0656

BETWEEN:

**SAMANTHA ANTHONY as
Next Friend of OKARIE ANTHONY**

Claimant/Applicant

and

GREGORY EDWARD

Defendant/Respondent

Before:

The Hon. Mr. Ephraim Georges

High Court Judge [Ag.]

Appearances:

Ms. Egan Modeste for the Claimant

Mr. Geoffrey Du Boulay for the Defendant/Respondent

2010: November 19.

JUDGMENT

[1] **GEORGES, J [AG.]:** This is a claim for damages for personal injuries brought by Samantha Anthony as next friend of her son at present aged 12 who on Sunday 9th December 2007 was attacked and bitten on and above his buttocks whilst on Cas en Bas beach at Gros Islet by the defendant's Rottweiler dog.

[2] According to the claimant's statement of claim filed 8th July 2008 the dog attacked the minor whilst he was sitting on the beach and then pursued him into the sea where he was further bitten near his temple on his shoulders and upper arm. The attack ceased only when the defendant intervened and hit the dog with a chain causing it to run out of the sea. It is alleged that the defendant stated after the attack that the dog did not like children.

[3] At paragraph 5 of the statement of claim the claimant declared that the dog was a dangerous dog as defined by the Animals Act 2003 and was not fitted with a muzzle at the material time. The said attack was alleged to have been caused by the negligence of the defendant particulars of which are set out in the said paragraph and include failure to keep the dog under proper control so as to prevent it from attacking the boy and failure to place a lead on the dog to prevent it from attacking him.

[4] As a result of the attack by the dog the minor allegedly suffered pain and suffering – the details of the injuries being set out at paragraph 9. Particulars of the defendant's negligence are given in subparagraphs (a) (b) and (c) of paragraph 8 and the claimant claims: -

- (1) Special damages of \$440.00 (later revised to \$790.00)
- (2) General damages
- (3) Interest at the statutory rate of 6% per annum
- (4) Further or other relief
- (5) Costs

[5] Liability was not disputed and judgment in default of acknowledgment of service was duly entered against the defendant on the 31st March 2009 for an amount to be determined by the Court.

[6] A notice of application for assessment of damages pursuant to Part 16 of the **Civil Procedure Rules** (CPR) was filed by the claimant on 1st March 2010 and in her supporting

affidavit after detailing her hospital and medical expenses at paragraph 3 claimed the sum of \$790.00 in respect of special damages which in the main was properly substantiated by receipts. I would therefore allow that head of damage which was later in fact conceded by the defendant.

[7] At paragraph 4 the claimant described and depicted the injuries which her son had sustained as a result of the dog bites with four photographs showing their nature location and extent – Exhibits SA3, 4, 5 and 6.

[8] In paragraph 5 of her supporting affidavit the claimant averred:

“That consequent on the attack the minor suffered pain to the back and face and sustained a deep gash on the top of the left buttock, multiple gashes on both buttocks and back of the left thigh, puncture wounds to the right temporal region, puncture wounds in the left lumbar region with puncture wounds extending to the right lumbar region, a 2 cm scratch on the left scalpular area and anterior shoulder and several ½ cm tooth marks in the left pre-auricular area. The minor had also suffered hypertrophic (itchy) scars of his left flank. Attached hereto and marked S.A. 4, S.A. 5 and S.A. 7, S.A. 8, S.A. 9 and S.A. 10 are Medical Reports detailing the aforesaid injuries.

[9] At paragraph 6 she estimated that the appropriate award for general damages for the injuries sustained by her son was \$15,000.00 citing the Trinidad case of **Alexander v Persad** (No. 44A of 1987) where a 9 year old boy sustained a deep abrasion on his back and distress due to pain as well as an injury to his ear lobe. The award in that case in 1987 was TT\$12,000.00. That figure, updated to November 2002 is TT \$27,070.00 or EC\$12,818.50. The injuries sustained by the minor it was felt were more severe as he had sustained puncture wounds to his buttocks and lower back as well as his shoulder and temple, in addition to scarring.

[10] It is that figure which was seriously challenged by Mr. Geoffrey DuBoulay for the defendant who cross-examined Samantha Anthony at some length during which she explained that she was unable to find a receipt from Dr. Bird (relating to special damages) and gave all the others to her lawyer. She admitted that she did not use prescribed potent steroid injections on the boy but had applied ointment instead. By and large this witness

impressed as a truthful person and whatever discrepancies may have emerged in cross-examination were not in my view of any real consequence.

[11] On the question of general damages for pain, suffering and loss of amenities Respondent Counsel filed submissions consisting of 23 paragraphs supported by a string of authorities beginning with the seminal case of (**Cornilliac v St. Louis [1965] 7 WIR491**) laying down the guiding principles for the assessment of damages and from Daly's Damages for minor injuries in the High Court of Trinidad and Tobago spanning the years 1969 to 1984 adjusted to November 2002.

[12] He concluded that in light of the defendant's acceptance of the Applicant's claim for special damages and of the submissions in relation to the award of general damages the Court should award \$3, 500.00 in respect of that head.

He went on to submit that the only resulting physical disability and lingering problem suffered by the minor revealed by his mother's very own testimony was hypertrophic (thickened) itchy scars on his left flank:

As regards pain and suffering Counsel whilst conceding that there was no doubt that the minor had suffered from a physically painful experience went on to point to the fact that Dr. Johnny's report (exhibit S.A. 7) was prefaced by the observation that on examination the young male was in moderate painful distress which clearly is a subjective and relative view.

[13] Reliance was placed on a report dated 17th December 2009 produced by Dr. Kimberly Johnny of Victoria Hospital (exhibit S.A. 7) and filed on 1st March 2010 which stated inter alia that the youngster had suffered from 'few puncture wounds to his right temporal region left lumbar region: extensive bite marks in left lumbar region with few puncture wounds to right lumbar region.' Dr. Johnny presumably had examined and treated the patient in the Emergency Room at Victoria Hospital on the day of the incident and subsequently.

[14] Dr. Jacqueline L. Bird MB BSC DCH DM (PAEDS) (UWI) examined the youth the following day and according to her report (exhibit S.A. 8) filed 1st March 2010 the minor

sustained the following injuries:

- (a) Several ½ cm tooth marks in the left pre-auricular area, left temple and occipital area;
- (b) A 2 cm scratch on his left scapular area and anterior shoulder;
- (c) Multiple gashes on both buttocks and back on the left thigh; and
- (d) A deep gash on the top of his left buttock.

[15] Reference was made to a report five months after the incident by Dr. Adela Lalsingh M.B BS (UWI) DIP DERM (LOND) F.A.A.D (exhibit S.A. 9) filed 1st March 2010 in which she stated that:

“Physical examination revealed a 1 cm linear scar in front of the left ear and three horizontal scars on the left side of his flank towards the back. The scars measured – 0.5 cm, and 3 cm in length. The longest scar [3 cm in length] was also quite thick, whilst the two adjacent scars were not significant. I am of the opinion that the only scar which needs treatment is the 3 cm long thick lesion. I prescribed a potent steroid to be used under occlusion ...”

[16] Learned Counsel submitted that that report effectively showed that 5 months after the incident the victim's wounds had healed and formed 4 scars the longest of which was thick whilst the two adjacent ones were non-significant.

[17] Of the legal authorities cited I am particularly attracted to and persuaded by the dicta of Queen's Counsel Michael Gordon J.A. (Ag.) in Civil Appeal No. 10 of 2003 out of St. Vincent and the Grenadines in **CCAA Limited and Julius Jeffrey** who in delivering the judgment of the court where the only issue was the quantum of damages to be awarded in a personal injuries case had this to say at paragraph 8 regarding the circumstances in which an appeal Court would interfere with a discretionary order of a judge:

“It is my view a function of the law as far as possible to be predictable given the infinite variety of the affairs of human kind. In the context of damages for personal injuries there are certain principles which apply and then there is a discretion which needs to be exercised. In the case of pain suffering and loss of amenity that discretion could be wholly subjective and hence unpredictable or it could be precedent based that is to say the trial judge having considered all of the

evidence led before him would take into account other awards within the jurisdiction and further afield. Awards of similar injuries would clearly be very helpful in relating the claimant's injuries on a comparative scale. This is not a precise science leaving much room for the exercise of the trial judge's discretion.

[18] Following on at paragraph 9 the learned judge added:

"I am aware of the school of thought advanced before us that a trial Judge may take into account damages awarded in comparable cases but is in no way bound to. I believe that that school of thought has served its time and has been replaced by the more modern school as expressed in **Wells v Wells**¹ (a House of Lords decision) wherein Lord Hope of Craighead observed that:

"The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's best estimate of the plaintiff's general damages."

[19] It is obvious that in an exercise of this kind opinions will inevitably vary – tot homines tot sententiae – but in the light of the principles and guidelines laid down the proper exercise of one's discretion should fall within a certain defined compass to be justified /acceptable rather than out of synch or arbitrary.

[20] It is quite impossible to imagine the pain and suffering which the 10-year old boy endured first from the dog bites inflicted on his posterior whilst on the sand and then on his upper body after the dog pursued him into the sea. What precisely Dr. Kimberly Johnny meant by "on examination: young male in moderate painful distress ..."? That opinion is of course subjective and plainly relative and not particularly helpful in my view.

[21] Mr. Du Boulay contended that the injuries suffered by the minor were in no way comparable to those of the minor in **Alexander v Persaud** (see paragraph 9) on which the claimant relied and which had resulted in a partial separation of an ear lobe from the head and a deep abrasion on the back of a 9 year old.

¹ [1998] 3 ALL ER 481

[22] In my view although not strictly speaking comparable the two cases certainly bear some resemblance having regard broadly speaking to the ages of the victims at the time of the incident the nature and extent of the injuries sustained and the degree of pain and suffering which must have been endured by them.

[23] In light of all the circumstances it is my considered view that an award in the sum of \$10,000.00 in respect of pain and suffering and loss of amenities would be meet in this case and judgment will accordingly be entered for claimant against the defendant as follows: -

General damages	\$12,000.00
Interest at the rate of 6% per annum from date of service of the writ on 6.8.08 to date of judgment on 19.11.10	
Special damages	\$790.00
Interest at the rate of 3% per annum from date of incident 9.12.07 to date of judgment 19.11.10	-----
Total	\$12,790.00

Interest thereafter on the global sum at the rate of 5% per annum to date of payment. Costs at the prescribed rate of 60% of the full trial rate in accordance with Part 65.5(1) CPR Appendices B and C.


Ephraim Georges
High Court Judge [Ag.]