

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2008/0975

BETWEEN:

ROBERT ANTOINE

Claimant

and

(1) JOHNSTON INTERNATIONAL LIMITED
An External Company whose nominated Attorney-in-Fact is Gary D. Dodd of Sunny Acres in the Quarter of Castries in the State of Saint Lucia and whose registered place of business in Saint Lucia is situated in at Sunny Acres in Castries.
First Named Defendant

(2) STEVEN MATHURIN of Marigot in the Quarter of Castries in the State of Saint Lucia
Second Named Defendant

Before:

The Hon. Mr. Ephraim Georges

High Court Judge [Ag.]

On written submissions of Ms. Maureen John for the Claimant
Defendants not present and unrepresented

2010: May 4
November 30.

JUDGMENT

- [1] **GEORGES, J [AG.]:** This is an application for assessment of damages pursuant to Part 16 of the **Civil Procedure Rules 2000** (CPR) by a 48 year old heavy equipment operator who about mid morning on 29th August 2006 while in the course of employment with the First Named Defendant (JIL) and other employees at a construction site called Discovery at Marigot Bay was instructed by his supervisor to take a bail of cement from the construction yard to the concrete plant.
- [2] This necessitated driving uphill where he alleged that he stopped and parked on his left and proper side and placed boulders at the back of the wheels of the dumper to prevent it from rolling backwards downhill as there was no handbrake.
- [3] It was then he claimed that another durrper truck driven by the Second Named Defendant also an employee of JIL negligently collided with his dumper causing it to begin rolling downhill directly towards a manhole where three other employees of JIL were at the time working.
- [4] In order to avert the looming danger the claimant said that after shouting in vain to alert the men of the approaching hazard he ran towards his dumper truck got on it and attempted to divert it from them which he managed to do successfully but fell off in the process and the dumper itself fell on the left side of his body crushing it and causing him serious extensive physical injury loss and damage.
- [5] This is the claimant's account of how the accident occurred as set out at paragraphs 1 to 8 of his statement of claim. Liability is attributed to JIL for requiring him to drive and operate a dumper which had no handbrake and failure to mend it after being told. Further and in the alternative JIL would be vicariously liable for the negligent driving of the 2nd Defendant its servant and/or agent in the course of his employment.
- [6] The claimant would also in my view on those facts be contributorily liable for

knowingly driving a dumper truck without a handbrake and parking it on a hill and placing boulders at the back of each wheel thus posing serious risk which would clearly attract a degree of culpability for any ensuing loss and/or damage. None of this was addressed by the claimant's attorney. I will return to it later.

[7] For the issue at hand is not strictly one of liability but of quantum of damages for judgment in default of acknowledgment of service against both defendants was entered for the claimant on 12th October 2009 for an amount to be decided by the court and attention will now therefore be focused on that for the time being.

[8] At the outset I must say that there are a number of unsatisfactory features in this application which has rendered the assessment (on the papers as it is) tedious and arduous. I shall address them as they arise.

Loss of earnings

[9] A substantial part of this claim is special damages. The first item under that head is loss of earnings amounting to \$150,751.00. This is computed on the basis that as a heavy duty operator aged 45 years and 7 months at the date of the accident and earning approximately \$1400.00 monthly his claim for loss of income from the date of the accident (29th August 2006) to attainment of retirement age of 65 would have been 233 months x 647.00 = \$150,751.00 taking into account receipt by the claimant of NIC monthly benefit of \$753.00.

[10] However not a single salary slip of the claimant has been exhibited. And whilst I would not question the accuracy of the NIC monthly benefit calculations I note that no discount is allowed for the enhanced value of the lump sum payment which the claimant would receive instead of the monthly salary installments over the years and account in my view would also have to be taken of the contingencies and uncertainties of life in arriving at an appropriate multiplier so as to achieve a fair and equitable award under this sub-head.

- [11] In determining the multiplier I have adopted the reasoning of Satrohan Singh J.A. in **Alphonso & Ors. v Ramnath** [1997] ECLR 233 paras E, G, H and I in which Dr. Ralph Gonsalves for the appellants presented nine unreported cases on the topic for the guidance of the Court and which in the main received the Court's approbation.
- [12] In the case cited the trial judge treated the 45 year old respondent as having a working life of up to 65 and discounted that by a quarter in arriving at a multiplier of 15 which the Court reduced to 12 following the trend of the authorities referred to in **Alphonso v Ramnath**. For my part I would apply a multiplier of 12 in this case.
- [13] So that in the result the claimant would be entitled to loss of earnings in the sum of 144 months x \$647.00 = \$93,168.00 discounted by 10% because of its lump sum nature and to cater for the contingencies of life resulting in a final net figure of **\$83,851.20**.

Nursing Services

- [14] In respect of this sub-head which is referred to as housekeeping assistance a claim of \$72,900.00 is made comprising:

Total disability assistance payments (\$800.00 x 6 months) ...	\$4,800.00
Partial disability assistance payments made to date and continuing until the age of 65 years (227 months x \$300.00)	<u>\$68,100.00</u>
Total under this head	<u>\$72,900.00</u>

- [15] The claimant averred that he had paid a caretaker \$800.00 a month during a 6 month temporary total disability period and \$300.00 per month during a period of temporary partial disability thereafter until the present time and that assistance of that kind would most likely be required for the rest of his life which is pegged at 65. Again there were no receipts as the claimant says he did not receive any from his caretaker. How then is this to be resolved?

[16] Orthopedic Surgeon Dr. Richardson St. Rose FRCS in his report dated 7th October 2006 wrote that the claimant's injuries consisted of :

- A crush injury to his pelvis resulting in comminuted fractures and bilateral subluxations of sacro-iliac joints.
- Bilateral ala fractures of the first sacral vertebra.
- Injury to the left first (L) lumbar nerve resulting in foot drop.
- Neuro praxia of the right sacral plexus.
- Crushed chest injury with fractured ribs and ruptured diaphragm.
- Ruptured bladder.

He was in severe pain and discomfort and emergency surgery was done by Dr. A. Richardson: repair of diaphragm and other intra abdominal structures.

About one week later, the divarication of the pubic symphysis was reduced by and fixed by plates and screws. Adjacent fractures of the ilium were reduced. At this point a large tear in the bladder was repaired.

On the 17.09.06 he was again taken to the operating theatre and the dislocation of the right sacro-iliac joint was reduced and fixed with a three-hole plate and screws, it was not possible to fix the left sacro-iliac joint, as the fracture sacrum was too comminuted.

The patient was at the time confined to a bed and a chair he disclosed.

[17] The claimant was transferred on 18th October 2006 to St. Jude's Hospital for continued care and management by Dr. Ndidi Dagbue a Consultant Orthopedic Surgeon who in a 3 page report dated 11th September 2007 wrote inter alia:

Stability of Medical Condition

At this point in time, his clinical condition is stable, and is not expected to deteriorate over the next one year. He is, however, expected to improve slightly in strength and balance of his lower limbs over the next six (6) months or so. He will most likely have chronic pelvic pain on and off and for the rest of his life, and due

to change in alignment of the pelvis, he may develop chronic osteoarthritis of the hips in the future. He has osteomyelitis of both tibiae which may flare up from time to time.

Effects of Medical Condition on activities of Daily Living

In his present condition, he cannot walk for long distances. He would most likely require some support for walking for the rest of his life. He will also not be able to participate in activities that require him to run.

Impairment Evaluation

He had total a total disability period of about six (6) months, and a temporary partial disability period till date.

According to the American Medical Association (AMA) guides to the evaluation of permanent impairment, he has a whole person impairment of 35% from the fractures of the pelvis and about 21% from weakness of left lower limb which gives a total impairment of 56%.

[18] All of this clearly confirms the disabilities mentioned at paragraph 15 and the obvious need for nursing assistance. The claimant was hospitalized at St. Jude's according to six pages of a patient's ledger from 18th October 2006 to 31st January 2007 when the hospital fees balance stood at \$19,877.43 which were written off to N.I.C yet that amount is claimed as special damage "as a result of care and assistance that I received as a result of the accident."

[19] I therefore have no hesitation in disallowing that sub-head under the nomenclature of Hospital Fees and in the absence of cogent evidence to substantiate the expenditure allegedly incurred by the claimant in respect of housekeeping assistance I would likewise disallow the sum of \$72,900.00 claimed as unproven.

[20] At paragraph 2 of his medical report dated 11th September 2007 Dr. Dagbue noted

that the claimant had healed his pressure ulcers in the sacrum and had regained some power in his lower limbs. He could ambulate slowly with crutches. His clinical condition was stable and was not expected to deteriorate over the next year. His prognosis appears to have shown improvement. He added that he had a temporary total disability of about six months and a temporary partial disability period to date. Whatever assistance was then needed by the claimant I expect would have been provided by the hospital's care and management services unless otherwise convincingly demonstrated.

Physiotherapy Supplies and medication

[21] The sum of \$5,000.00 has been claimed under this subhead. Thirty four receipts for \$15.00 and one for \$20.00 totaling \$530.00 were submitted to the Court. There is an x-ray receipt for \$90.00 and a lab receipt for \$100.00 with a balance of \$100.00 owing as well as a solid brace for \$20.00. The receipts produced under this sub-head total no more than \$740.00 altogether. Claimant attorney states that she could not find the receipts for the medication purchased as he did not save them. Yet it is noticeable that he did save a significant number of other receipts.

[22] And whilst I accept that the claimant underwent extensive physiotherapy for which he paid as well as supplies and medication to assist his recovery the ballpark figure of \$5,000.00 claimed in the absence of credible supporting evidence does seem inflated and I would consequently allow **\$1,500.00** under that subhead.

Transportation and Medical Reports

[23] In respect of transportation and medical costs from his home to the hospital for physiotherapy at a cost of \$60.00 per visit the sum of **\$1,500.00** for 25 trips is allowed. I would similarly allow **\$250.00** for the two specialist medical reports furnished by Dr. Richardson St. Rose and Dr. Ndidi Dagbue the Orthopedic Surgeons. Receipts were exhibited and I certainly would not quibble over the value of the claimant's clothing which was damaged as a result of the accident and valued at **\$100.00** but I would disallow advertisement of the notice of claim in the

Voice Newspaper and the Official Gazette at a cost of \$748.00 and filing fees of \$30.00 as those items of expenditure rank as disbursements by Counsel and are not special damages.

[24] I shall now address the head of general damages in which the claimant seeks compensation for pain and suffering and loss of amenities. After setting out the considerations to be borne in mind when assessing general damages as enunciated by Wooding C.J in **Cornilliac v St. Louis** (1965) 7WIL 491 learned counsel listed the nature and extent of the injuries sustained by the claimant as a result of the accident. These have been summarized at paragraphs 16 and 17 as is the pain and suffering endured by him as well as the nature and gravity of resulting physical disability and loss of amenities suffered.

[25] These are the factors which weigh in quantification of such damages. For that purpose Counsel submitted two tables providing comparable cases and related them to the instant case. The cases in one table came from Daly's Damages out of the High Court of Trinidad and Tobago in the early seventies. The damages awarded then were converted and updated to current EC values. On that basis Counsel concluded/submitted that a global figure of \$120,000.00 for general damages would be just in the circumstances.

[26] The severe pain and suffering which the claimant endured as a result of this accident judging from both his internal and external injuries and the nature and gravity of the resulting physical disability and consequential loss of amenities cannot in my opinion be imagined. The medical reports give some insight.

[27] Applying the principles in **Heerall v Hack Bros.** (1977) 25 WIR 124 paragraphs H and I, the law expects an award of fair compensation to the claimant for what has happened to him 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 the injuries and for the social

economic and domestic consequence.

[28] In light of all the circumstances I am satisfied that an award of **\$120,000.00** would not be unreasonable.

Contributory negligence.

[29] In reviewing the circumstances surrounding this tragic accident there can be no gainsaying the fact that by parking his dumper truck on a hill well knowing that the handbrake was not functioning and placing boulders behind each wheel of the truck posed a serious hazard on the road itself as well as users of the road. It was a highly irresponsible act of negligence and the claimant must accept a portion of the blame for the accident which ensued. It is for these reasons that I hold him contributorily liable and whilst adjudging the first and second defendants primarily liable the extent of their liability will be reduced by the extent to which the claimant himself contributed to his misfortune. Hence I shall discount the global figure of special and general damages by 20%.

[30] In the result judgment is entered for the claimant against the first and second defendants jointly and severally as follows:

Special Damages

Loss of earnings ...	...	...	...	...	...	...	\$83,851.20
Transportation ...	...	...	...	...	...	...	\$1,500.00
Physiotherapy ...	...	...	...	...	...	...	\$1,500.00
Medical Reports ...	...	...	...	...	...	...	\$250.00
Damaged Clothing ...	...	...	...	...	...	...	\$100.00
							\$87,201.20
Less 20% discount ...	...	...	...	...	...	...	\$17,440.24
Total ...	...	...	...	...	...	...	\$69,760.96

General Damages

General damages for pain, suffering and loss of amenities	\$120,000.00
Less 20% discount	\$24,000.00
	\$96,000.00

Total Damages \$165,760.96

Interest at the rate of 3% per annum in respect of special damages from date of accident (29th August 2006) to date of assessment (30th November 2010).

Interest at the rate of 6% per annum in respect of general damages from date of service of writ (10th November 2006) to date of assessment (30th November 2010).

There will be interest on this global sum at the rate of 6% per annum from date of assessment to date of payment in accordance with Article 1009A of the **Civil Code**.

Costs to the claimant at 60% of the prescribed costs of a full trial in accordance with Rule 65.5(1) CPR and Appendices B and C.



Ephraim Georges
High Court Judge [Ag.]