

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

Claim No. SLUHCV 2011/0210

BETWEEN:

Robert Gabriel

Claimant

And

Trevor John

Defendant

Appearances:

Dr. Robert Barrow for Claimant

2012: January 17th

DECISION

[1] **Master V. Georgis Taylor-Alexander.** This assessment is made pursuant to Part 12.4, and 16.2 of the Civil Procedure Rules 2000.

Facts

[2] On the 3rd day of January 2010, the claimant a 44 year old man was struck by the defendant in the face, with a four foot long fluorescent light tube. The claimant parried the blow resulting in explosive rupturing of the light tube, showering the claimant's face with particles of the tube causing momentary blindness. The claimant sustained a cut under his right eye caused by pieces of the broken glass tube.

- [3] The defendant then impaled the claimant in the abdomen with the sharp edges of the fluorescent edges of the broken fluorescent tube.
- [4] On the 28th October 2010 the defendant was successfully convicted of having intentionally caused grievous harm to the claimant.
- [5] A claim form and statement of case was filed on the 28th February 2011 and was served personally on the defendant on the 2nd March 2011.
- [6] The defendant did not acknowledge service of the process on him nor did he file a defence. Judgment was entered in default of acknowledgment of service on the 11th July 2011, with damages to be assessed.
- [7] The quantum of damages payable for the tort now stands to be assessed.

Special Damages

- [8] The claimant pleaded reimbursable loss of \$1480.00 which sums have been satisfactorily proved by the charge tracking sheet annexed to the claim. I therefore allow the claimant's special damages claim of \$1480.00, in full.

General Damages

- [9] The claimant in his submissions has asked the court to consider separate awards for battery which he states is actionable per se and for aggravated damages. General damages in this case may be aggravated by the circumstances of the tort, and by the conduct of the defendant and of the effect which it has actually produced.
- [10] In support of his claim for aggravated damages, the claimant pleads the deliberate actions of the defendant to perpetrate injury and damage to the claimant and the successful prosecution of the defendant in the criminal court.

Law on Damages for Battery

- [11] Battery is a trespass to the person and is actionable without proof of actual damage. Thus nominal damages at least are recoverable where no injury has occasioned, and substantial damages are recoverable for discomfort and inconvenience, or injury to dignity, even where no physical injury is proved. Where as in this case physical injury does result from the battery, the damages will be calculated as in any other action for personal injury.

- [12] I am satisfied that in this case a single award that considers all of the factors relevant and assesses the circumstances of this case is to be preferred. Having obtained guidance from awards granted for similar type injuries, the court will be guided as to a global figure that most accurately reflects in monetary terms a fair and just figure for the injuries that have been inflicted to the claimant.
- [13] I have borne in mind the considerations identified by Wooding CJ in the case of **Cornilliac v St. Louis (1965) 7 WIR** that general damages due to a claimant for personal injuries is payable under the following heads:
- [a] the nature and extent of the injuries suffered;
 - [b] the nature and gravity of the resulting physical injury;
 - [c] the pain and suffering which had to be endured;
 - [d] the loss of amenities suffered and
 - [e] the extent to which consequentially the claimant's pecuniary prospects have been materially affected.
- [14] I have considered the injury particularised by the claimant, namely:-
- [i] laceration of the liver in consequence of the puncturing of the abdominal cavity by the jagged edges of the broken fluorescent tube;
 - [ii] a two inch horizontal scar representing the point of entry of the jagged fluorescent tube into the claimant's abdominal cavity;
 - [iii] a five inch vertical scar on the abdomen to the left side of the umbilicus representing the point at which the abdominal wall was breached to perform life saving surgery in consequence of the claimant's abdominal injuries;
 - [iv] a 1.5 inch cut below the right eye;
 - [v] decreased vision in the right eye;
 - [vi] scarring below the right eye.

- [15] I have also considered the medical reports of Dr. Wayne Felicien the emergency room attending physician and the report of the surgeon dated the 3rd of January 2010 by Dr. Charfuah Fevrier who performed surgery to repair the injury to the claimant. I am satisfied that this report concludes that there was a laceration to the abdomen, which was repaired by surgery.
- [16] I have considered the pleading of the claimant where he states that he experienced agonising pain in consequence of the puncturing of his abdomen by the jagged edges of the light tube; that he bleed profusely and held on to a sign post until he collapsed to the ground, and that as a result of the injury he spent 10 days at Victoria Hospital. The surgery to repair the laceration has resulted in a five inch scar from the umbilicus stopping just short of the sternum.
- [17] No loss of amenities was pleaded by the claimant, neither did he plead or provide any evidence that his pecuniary prospects had been affected.
- [18] In assessing general damages for pain and suffering and loss of amenities in a personal injury case, it is the judicially-accepted approach that the court should seek by an award of damages to put the claimant as far as possible to do so by a monetary award in the position that he would have been in had he not sustained the injury to his person.
- [19] The claimant in his submissions has helpfully provided authorities extracted from Daley's on damages to guide the court in the types of awards that have been made appropriate to the injury loss and damage of the claimant. It was nevertheless acknowledged by counsel for claimant that cases on par or similar type injury cases were challenging to find.
- [20] I have reviewed the extracts of authorities provided by the claimant, in particular **Buntley v Golcharan and Bacchus v Jennings** from the High Court of Trinidad and Tobago. I have considered the case of **Hoyte v Kirpalni Ltd** Award TT\$2,000.00 Updated to December 2010 to TT\$63,564.00 OR EC\$26,836.77
- [21] I have further considered the following authority from the Eastern Caribbean Supreme Court:-
- Jude Jack v The Attorney General et al GDAHCV2006/0531** where in 2010 a claimant who sustained a flesh wound from a gunshot wound to his right lower back was awarded \$15,000 general damages.
- And the following authorities for the High Court of Jamaica:-
- Yee v Grant and Anor Suit Number C.L 1989/Y011** where in 1990 General damages for pain suffering and loss of amenities were awarded for bruises across the abdomen, hips, and right side of the neck, ankle sprain and cut on the palm of the left hand in the amount of JA \$5,000.00 updated to December 2011 to JA\$153,886.01 or EC\$4,817.12.

Clunie v Johnson and Anor C.L 1987/C517 where for contusions to the right loin and to the right kidney, a crushed right thumb resulting in a 10% disability, the court awarded JA \$55,000.00 updated to December 2011 to JA\$1,524,261.28 or EC\$47,709.38

- [22] I am aware that the awards made would have been in consideration of not just the injury but of the pain suffering and loss of amenities and the extent to which pecuniary prospects had been affected. I followed the existing practice of comparison and adjustments, bearing in mind that this approach is not flawless and that each case must be assessed on its own peculiar facts. Thus, both the similarities and the distinguishing features of comparative cases were taken into account. Taking into account the totality of the circumstances and of the circumstances of the awards in the identified cases I am of the considered opinion that an award of EC\$23,000.00 is a fair monetary award for the claimant's general damages.

Summary of Award

- [23] In conclusion the claimant is awarded the global figure of \$24,480.00 representing special damages of \$1480.00 and general damages of \$23,000.00. I also award interest on special damages at the rate of 6%per annum from the date of injury being the 3rd January 2010 and on general damages at 6% per annum from the date of judgment and continuing until settlement in full and prescribed costs of \$2203.20

**V. Georgis Taylor-Alexander
High Court Master**