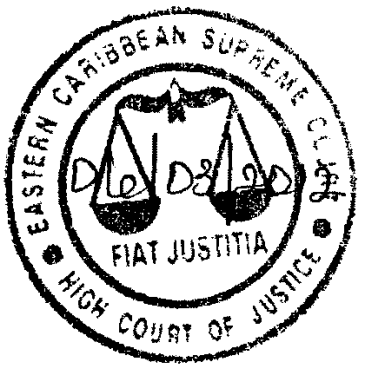

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 359 OF 2009

BETWEEN:

KAREN JOHN

Claimant

v

DAVID DEBIQUE

Defendant

Appearances: Mr. Duane Daniel for the Claimant
The Defendant In Person.

2011: November 7, 17, 29
2012: March 6

JUDGMENT

[1] **THOM, J**: On December 28, 2006 Ms. John was employed as a bartender at Fun City Bar in Kingstown, St. Vincent. At about 5:00 p.m. on the said day Mr. Debique and some friends visited the bar. Mr. Debique was the holder of a firearm licence and at that time had a firearm in his possession. During an incident at the bar the firearm was discharged and Ms. John suffered personal injury.

[2] Ms. John in her claim alleges that Mr. Debique while intoxicated negligently and/or recklessly discharged the firearm and caused her injuries which resulted in her right arm being amputated. The particulars of negligence alleged are as follows:

(a) In possession of a firearm whilst intoxicated.

(b) Discharge of a firearm in a public place without lawful excuse.

(c) Behaving in a manner likely to cause injury, harm or death.

(d) The Claimant will also rely on the doctrine of *Res Ipsa Loquitur*.

[3] Ms. John claims the following reliefs:

(a) Special damages in the sum of $118,105.79 and continuing.

(b) General damages.

(c) Interest.

(d) Further or other relief as the Court deems fit.

(e) Costs.

[4] In his defence, Mr. Debique alleges that Ms. John was contributorily negligent since it was her action that precipitated the incident. Ms. John lunged at his hand as he was taking money out of his pocket. The gun was in the same pocket and the gun was discharged thereby injuring Ms. John. Mr. Debique admits that Ms. John was injured and that as a result her right arm was amputated. In paragraph 17 of his defence, Mr. Debique stated that he does not deny that as a result of the injury Ms. John has experienced severe pain, hardship, permanent disability and loss as a result of the injury as outlined in paragraph 18 of the statement of claim.

EVIDENCE

[5] Ms. John testified and called one witness being Dr. Charles Woods. Mr. Debique testified. He called no witnesses.

[6] The evidence of Ms. John is that on December 28, 2006 she was employed as a bartender at Fun City in Kingstown, Saint Vincent and the Grenadines. She was at work during the afternoon. Mr. Debique was a patron at the bar on the said afternoon. He was intoxicated and exposed his firearm and negligently or carelessly discharged his firearm and shot her in the right side of her chest. As a result of the injury she received she spent approximately eight (8) days as a patient at the Milton Cato Memorial Hospital. She then went to Trinidad and Tobago where she was further hospitalized and underwent several operations. Her right arm was amputated from the elbow. After the amputation she continued to suffer pain and she returned to Trinidad and Tobago where she was hospitalized. However, due to financial difficulties she did not receive the further treatment

she needed and she returned to Saint Vincent. Subsequently, she was admitted to the Milton Cato Memorial Hospital where she underwent another operation in which the upper part of her right arm from the shoulder was amputated by Dr. Charles Woods.

[7] Under cross-examination Ms. John stated that she knew Mr. Debique. They had a good relationship. Mr. Debique had come to her assistance when her former boyfriend was trying to cause her some problems. Also, she and Mr. Debique sang at Karaoke together on some occasions. At about 5:00 to 6:00 p.m. on December 28, 2006 she was at work at Fun City Bar and Mr. Debique came to the bar with a friend. He ordered drinks. At that time the bar was not busy and she played pool with Mr. Debique. Some time later the bar got busy and she went to serve in the bar. There was an argument involving her and Mr. Debique's friend and Mr. Browne permitted her to rest for a while. She went and sat in the area of the pool table and she was looking at the game. Mr. Debique offered drinks to her and her friend. Mr. Debique took out his gun and had it on the pool table and said he felt like shooting someone. Ms. John further testified that she was still sitting in the area of the pool table with her hand under her chin when she heard a loud noise. She looked up and saw Mr. Debique with the gun in his hand. She said, "David, what happened?" Mr. Debique responded, "Karen, don't die. I don't know how the gun went off." She fell to the ground and when she caught herself she was at the Milton Cato Memorial Hospital. Ms. John insisted that Mr. Debique did take the gun out of his pocket.

[8] Dr. Charles Woods, who was deemed a medical expert, in his testimony stated that the injury received by Ms. John was a gunshot wound to the right side of her chest in the area of her neck which resulted in injury to the bronchial and subclavian vessels which resulted in the eventual amputation of the right arm as circulation of blood to the right arm was impaired.

[9] Dr. Woods also testified that Ms. John sustained much physical and psychological trauma, as well as permanent disability due to her injury and the resultant loss of her right arm. In his opinion her further employability and social interaction would also be severely negatively impacted. Mr. Debique declined to cross-examine Dr. Woods.

[10] Mr. Debique who was unrepresented at the trial (his counsel was given leave to withdraw) did not file a witness statement. He was not aware of the need to do so. The Court permitted him to give oral testimony.

[11] Mr. Debique testified that on December 28, 2006, he received a sum of money from the National Commercial Bank and he was about to go and pay workers at Barrouallie. He met two friends and one of them informed him that he was getting married and wanted to have a drink. They went to Fun City Bar. At the bar, he met Ms. John, Mr. Browne the owner of the bar and two other persons who were leaving at that time. He ordered a Hennessey for himself, his friend ordered a Red Bull and he also ordered a drink for Ms. John and Mr. Browne. Mr. Browne subsequently went to his computer. He and Ms. John began to play pool. His friend was listening to music. He asked Ms. John for her boyfriend's telephone number. Her boyfriend was also his friend. He telephoned him. While he and Ms. John were playing, the ball got stuck. Ms. John called Mr. Browne to open the pool table. He then went to the bar and while there his friend was ready to leave and he asked Ms. John how much he owed. Ms. John told him he owed $26.00. He reached into his pocket for the money. He had a firearm in the same pocket with the money. When he reached into his pocket Ms. John grabbed at his hand and his firearm went off. Ms. John shouted. He looked at her and saw blood coming from her chest. He tried to hold her but she went to the pool area. He left and went to the Police Station and told the Police what had happened and he gave them the firearm. He was detained in custody.

[12] Under cross-examination, Mr. Debique testified that at the time of the incident he was wearing short pants and he was seated. The gun was a .38 special revolver. It is about 6 ½ inches long. It did not have a safety. The gun could fit completely in his hand. He could not recall if Ms. John was bending or standing straight when the incident occurred. He testified that his finger was not on the trigger. He agreed that the trigger of the gun has to be pulled back for a bullet to be discharged. He insisted that when Ms. John grabbed at his hand the gun was discharged. When Ms. John grabbed at his hand, his hand was by his waist. He does not dispute the injuries Ms. John suffered. However, he insisted that

she was contributorily negligent. Mr. Debique also admitted that he pleaded guilty at Criminal Assizes in the High Court to the offences of wounding with intent and unlawful use of a firearm.

ISSUE

[13] The issue is whether Mr. Debique is solely liable for the damage suffered by Ms. John or whether Ms. John was contributorily negligent.

SUBMISSIONS

[14] Learned Counsel Mr. Duane Daniel submitted that the court should accept the testimony of Ms. John whose testimony was consistent under cross-examination. Mr. Debique on the other hand gave several versions of how the incident occurred. Mr. Debique's demonstration of what occurred showed clearly that the incident could not have occurred in the way in which he demonstrated it occurred.

[15] Mr. Debique in his submissions maintained that Ms. John was contributorily negligent. Further, he contributed $9,200.00 towards her medical expenses and he has paid her approximately $5,200.00 in compensation.

FINDINGS

[16] Having reviewed the testimony of Ms. John, Dr. Woods and Mr. Debique, I believe the testimony of Ms. John and her witness Dr. Woods. There were no inconsistencies in their testimony. Mr. Debique sought under cross-examination to demonstrate how he was sitting on a bench about 18 inches high and took out his gun from his pocket, had it by his waist with his hand over it and Ms. John grabbed his hand and it went off. By the demonstration of Mr. Debique, it was not possible for Ms. John to be injured in the area of the neck as described by Dr. Woods whose testimony was not challenged. Mr. Debique also suggested that Ms. John may have pulled the trigger, or the trigger or the hammer

may have been caught on his clothing. Also in his defence and in his testimony in examination-in-chief Mr. Debique stated that the gun was in his pocket and he was about to retrieve money from his pocket when Ms. John grabbed his hand and the gun went off. However, under cross-examination he testified that the gun was out of his pocket, his hand was over the gun and the gun was by his waist. On neither of the versions given by Mr. Debique was it possible for Ms. John to receive the injury in the area of her neck.

[17] Mr. Debique does not dispute the special damages claimed or that Ms. John has suffered pain and permanent disability as outlined in paragraph 18 of her statement of claim.

[18] In conclusion, I find that Ms. John has proved on a balance of probabilities that Mr. Debique was negligent and his negligence resulted in personal injury to her as described by Mr. Charles Woods. I agree with the submission of Learned Counsel Mr. Duane Daniel that Mr. Debique has failed to prove on a balance of probabilities that Ms. John in any way contributed to her injury. I find that Ms. John was not contributorily negligent.

[19] It is ordered:

(a) Judgment is entered for the Claimant.

(b) The Defendant shall pay the Claimant special damages claimed and general damages for the injury suffered.

(c) The damages shall be assessed on the application of the Claimant, such application to be made within three months.

(d) The Defendant shall pay the Claimant interest on the sum assessed at the rate of six (6) per cent per annum from the date of assessment until final payment.

(e) The Defendant shall pay the Claimant costs as prescribed in Part 65 of CPR 2000.

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Gertel Thom
HIGH COURT JUDGE